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Exploring the Mechanisms for Challenging Racial Discrimination in Relation to French Political Culture

A Race Critical Approach

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Submitted for the Degree of
Doctor of Philosophy

University of Sussex

June 2011

I hereby declare that this thesis has not been and will not be, submitted in whole or in part to another University for the award of any other degree.

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Pour Basidi

UNIVERSITY OF SUSSEX

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Doctor of Philosophy

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Relation to French Political Culture
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SUMMARY

This thesis questions the effectiveness of anti-racial discrimination mechanisms in France, particularly in relation to the national political culture. Considering the overall import of republican ideology in France, which emphasizes values of universalism, colour-blindness, and *laïcité*, there are significant implications for how institutional, legal and civil society actors have traditionally approached issues of racism in France. From primary data, gathered through fieldwork in France (consisting of a series of semi-structured interviews with key antiracist and anti-racial discrimination actors), this thesis highlights the ways in which the political culture impacts the anti-racial discrimination agenda. By taking into account the various levels of antiracism in France, this thesis constitutes a unique, holistic and race critical analysis whereby legal, civil society, institutional and non-conventional mechanisms are considered in conjunction with each other, instead of separately. Using “race” as an analytical tool for understanding the French context, this thesis offers a critical re-reading of French history, linking an ethnicized and racialized formation of national identity throughout key historical moments to contemporary forms of racism. This research thus argues that certain antiracist approaches based on republican ideology result in a limited understanding of racialized processes, which appears to constrain actors from producing effective mechanisms for challenging racism and racial discrimination.

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List of Acronyms

- ADEN** *L'Association des descendants d'esclaves et de leurs amis* - The Association of Descendants of Slaves and their Friends
- AFNOR** *L'Association française de normalization* - The French National Organisation for Standardization
- ANC** *L'Alliance Noire Citoyenne* - Black Citizen's Alliance
- Carsed** *Commission Alternative de Réflexion sur les "Statistiques Ethniques" et les Discriminations* - Alternative Commission of Reflection on "Ethnic Statistics" and Discrimination
- CERD** Committee on the Elimination of Racial Discrimination
- CNCDH** *Commission nationale consultative des droits de l'homme* - National Consultative Commission on Human Rights
- CNIL** *Commission nationale de l'informatique et des libertés* - National Commission for Data Processing and Liberties
- Collectif DOM** *Collectif des Antillais, Guyanais, Réunionnais et Mahorais* - Collective of the Caribbean, Guyana, Reunion and Mayotte
- Comedd** *Comité pour la mesure et l'évaluation de la diversité et des discriminations* - Committee for the Measure of Diversity and the Evaluation of Discriminations
- CRAN** *Conseil représentatif des associations noires de France* - Representative Council of Black Associations
- CRT** Critical Race Theory
- EC** European Council
- ECHR** European Convention on Human Rights
- ECRI** European Commission against Racism and Intolerance
- ENAR** European Network Against Racism
- EU** European Union
- FLN** *Front de libération nationale (Algérie)* - Algerian National Liberation Front
- FN** *Front National* – National Front
- GELD** *Groupe d'étude et de lutte contre les discriminations* - Group for the Study of and the Fight against Discriminations
- HALDE** *Haute Autorité de Lutte contre les Discriminations et pour l'Egalité* - High Authority for the Fight Against Discrimination and for Equality
- HCI** *Haut Conseil à l'Intégration* - High Council for Integration
- IAA** Independent Administrative Authority
- ICCPR** International Covenant on Civil and Political Rights
- ICERD** International Convention on the Elimination of All Forms of Racial Discrimination
- INED** *Institut national d'études démographiques* - National Institute of Demographic Studies
- INSEE** *Institut national de la statistique et des études économiques* - French National Institute for Statistics and Economic Studies
- LDH** *Ligue des droits de l'homme* - The Human Rights League

LICRA *Ligue internationale contre le racisme et l'antisémitisme* - International League Against Racism and Anti-Semitism

MIR *Mouvement des Indigènes de la République* - Movement of the Natives of the Republic

MRAP *Mouvement contre le racisme et pour l'amitié entre les peuples* - The Movement against Racism and for Friendship Amongst People

PS *Parti Socialiste* Socialist Party

QPC *question prioritaire de constitutionnalité* - Priority Issue of Constitutionality

RCT Race Critical Theory

SLG Starting Line Group

UMP *Union pour un mouvement populaire* - Union for a Popular Movement

UN United Nations

Introduction

“No, race does not exist. And yet it does. Not in the way that people think; but it remains the most tangible, real and brutal of realities.”¹

May 2011. Paris, France.

On May 10th, 2011, antiracist activists of the Black Citizen’s Alliance (ANC) were violently expelled from a formal ceremony commemorating the abolition of slavery, for wearing t-shirts with the slogan “Anti-Negrophobia Brigade” across the front.² Despite carrying formal invitations, the activists were barred from attending the ceremony, informed they could attend if they removed their offensive t-shirts but finally forced out of the park surrounded by a throng of police officers and security yelling “cage them, we’re evicting them!”³

This recent event speaks loudly of existing tensions in contemporary French antiracism. Not only does it reveal the schism between state-sanctioned antiracism and grassroots activism, but it also elucidates key conceptual discord on how to broach the fight against racism. The ANC activists were banned from the ceremony because the slogan on their t-shirts was perceived as biased, even though the commemoration of the abolition of slavery is in itself antiracist, much like their slogan.⁴ Within the context of French antiracism, however, this exclusion is not

¹ Colette Guillaumin, “‘I know it’s not nice, but...’ The changing face of ‘race’,” in *Racisme, Sexism, Power and Ideology*, trans. Andrew Rothwell and Max Silverman (London: Routledge, 1995), 107.

² Doumé, “Nérophobie à la commémoration parisienne de l’abolition de l’esclavage, vidéos,” *Radio Sun*, May 25, 2010, <http://www.radiosun.fr/sun-news/6577-negrophobie-a-la-commemoration-parisienne-de-labolition-de-lesclavage-videos> Accessed 2011-06-24.

³ ANC France, *L’envers du décor de la commémoration de l’abolition de l’esclavage du 10 mai 2011*, n.d., http://www.dailymotion.com/video/xinu03_l-envers-du-decor-de-la-commemoration-de-l-abolition-de-l-esclavage-du-10-mai-2011_news Accessed 2011-06-24.

⁴ Doumé, “Nérophobie à la commémoration parisienne de l’abolition de l’esclavage, vidéos.”

surprising as it reflects the constant struggle in trying to challenge racism without conforming to the republican universalist approach.

A major shift occurred at the end of the 1990s when racial discrimination, as a manifestation of racism, was highlighted as a key problem in French society,⁵ but since then it has predominantly been examined through the lens of specific disciplinary confines: racial discrimination as a legal issue, as a political issue, as a policy issue or as a sociological issue. While growing scholarship on fighting racial discrimination has emanated from France, a narrow disciplinary focus allows only a partial evaluation of contemporary anti-racial discrimination mechanisms. This research attempts to bridge the gap between these different perspectives by producing a holistic, multi-disciplinary analysis and evaluation of the current mechanisms in place for fighting racism and racial discrimination in republican France.

Central to the research is the investigation of existing tensions in French antiracism posed by the constraints of fighting racism within the bounds of republican values. Condemning their expulsion from the commemoration, the ANC president, Franco, claims there is a “French strategy seeking to drown out different forms of racism under a generic term.”⁶ He is referring here to an overwhelming tendency to universalize the fight against discrimination in such a way that racism gets pushed aside. This statement sums up the key difficulty in fighting racism within the republican framework where race is not allowed to figure in antiracist efforts. Effectively, “racelessness” has been the predominant approach of institutional and civil society antiracism and continues to inform the current fight against racial discrimination.⁷

Considering the overall import of republican ideology in France, which emphasizes specific values of universalism, colour-blindness, laïcité, and non-

⁵ Didier Fassin, “L’invention française de la discrimination,” *Revue française de science politique* 52, no. 4 (2002): 20.

⁶ Quoted in Doumé, “Nérophobie à la commémoration parisienne de l’abolition de l’esclavage, vidéos.”

⁷ David Theo Goldberg, “Racial Europeanization,” *Ethnic and Racial Studies* 29, no. 2 (2006): 331-364.

differentiation between French citizens, there are significant implications for how institutional, legal and civil society actors have traditionally approached issues of racism in France. Taking into account the various levels of antiracism in France, this research produces a unique and comprehensive race critical analysis whereby legal, civil society, institutional and non-conventional mechanisms are considered in conjunction with each other, instead of separately. Using “race” as an analytical tool for understanding the French context, this thesis offers a critical re-reading of French race relations that takes into account the racialized formation of national identity throughout key historical moments and its direct implications on contemporary forms of racism.

Race Critical Theory as the Framework for Antiracist Research

This research is largely grounded in race critical theory, which is considered to be the most appropriate framework from which to critically engage with and assess the impact of republican values on antiracism. In every aspect of antiracism and anti-racial discrimination in France, I consider the effects of a colour-blind, raceless approach on the successful implementation of antidiscrimination mechanisms. Crucial to this questioning is the necessity to challenge the very idea that race does not exist in France, in order to fully establish the extent of racism, before evaluating antiracist practice. Race critical theory provides the theoretical tools to conduct such a study.

In establishing race critical theory as the main theoretical framework grounding this research, an important distinction must be drawn between *critical race theory* (CRT) and *race critical theory* (RCT). As a theoretical tradition, critical race theory first emerged from critical legal studies in the United States,⁸ questioning racial bias in legal studies and the American legal system. It has been critiqued by other race

⁸ Kimberlé Crenshaw et al., eds., *Critical Race Theory: The Key Writings that Formed the Movement* (New York: The New Press, 1995); Richard Delgado and Jean Stefancic, eds., *Critical race theory: the cutting edge* (Philadelphia: Temple University Press, 2000).

scholars, such as Goldberg and Essed, who position themselves within *race* critical theory and question Critical Race Theory's applicability beyond the American context of critical legal studies. This context is perceived to be limited in scope and in its capacity to expand beyond this realm.⁹

Kevin Hylton, a critical race scholar in the United Kingdom, challenges this critique, attempting to demonstrate the complementary nature of CRT and RCT. Mapping out the five main characteristics of critical race theory, Hylton argues that RCT is an "umbrella" category which encompasses CRT, but does not always fit all of its characteristics.¹⁰ Nonetheless, one significant absence in critical race theory is a strong critical engagement with and critique of the very notion of "race." Even though Hylton himself attempts to address the problematic and essentializing uses of "race," it nonetheless does not feature as a central characteristic in his assessment of critical race theory.¹¹

Framed within race critical theory, this research deals specifically with the theoretical tensions existing between the notions of race as a "biological fact" and race as a social construct. Considering the dominant French stance on race – the negation of race (biological or social) – a race critical approach would appear to be an anathema to this stance, which is precisely why this approach is necessary. Because this research is grounded in a multi-disciplinary perspective that combines the legal, but also socio-political and historical analyses of the French context, race critical theory provides the theoretical flexibility for working beyond the scope of the law in combining these perspectives. Furthermore, the context of France, where race is a taboo, requires a more nuanced understanding of the "race" concept; an understanding reached by subjecting the concept itself to critical analysis.

⁹ David Theo Goldberg and Philomena Essed, "Introduction: From Racial Demarcations to Multiple Identifications," in *Race Critical Theories. Text and Context*, ed. David Theo Goldberg and Philomena Essed (Blackwell, 2002), 1-11.

¹⁰ Kevin Hylton, "'Race', sport and leisure: lessons from critical race theory," *Leisure Studies* 24, no. 1 (n.d.): 84.

¹¹ Hylton, "'Race', sport and leisure: lessons from critical race theory."

To properly explore the French context of racism where “race does not exist” it is important to frame the discussion around race critical theory because it will allow for an analysis that, rather than only considering “race” as a social construct, challenges the very notion of racelessness and pierces the insidious forms of racism that sidestep race. These racisms, instead of overtly operating on the basis of “race,” are structured according to euphemized approximations of race – what often passes as “respectable racism.”¹²

The goal of this research is therefore to introduce race as a key point of analysis for the French context of racism and racial discrimination where race has traditionally been left out of the equation. Challenging the dominant mainstream negation of the concept of race, this research brings race and racism (in all its manifestations) to the center of its investigation of the effectiveness of anti-racial discrimination mechanisms. Paramount to centralizing race for the purposes of this research is the need to question the impact of republican values, most importantly, to question universalism and French colour-blindness as ideal ideological frameworks for achieving antiracism, from a multidisciplinary research. A failure to do this would cast a shadow over some of the trends that constantly re-appear in all aspects of anti-racial discrimination, and that are reflective of a wider and more nuanced problem of antiracism without races.

Finally, at the center of this research is a personal commitment to antiracism and equality. As an antiracist project, the goal of this research is to bring forward the conceptual constraints that currently limit antiracist and anti-racial discrimination mechanisms in France, to provide avenues through which change can be implemented. George J. Sefa Dei outlines key elements of antiracist research, which places minority groups at the forefront of the research project. According to Dei, “the research purpose is to understand social oppression and how it helps construct and constrain identities (race, gender, class, sexuality), both internally and externally through

¹² Borrowing the phrase of Saïd Bouamama, see Saïd Bouamama, *L'affaire du foulard islamique. La production d'un racisme respectable*. (Paris: Geai bleu, 2004).

inclusionary and exclusionary practices.”¹³ Antiracist research thus securely places itself within an approach that centers on antiracism, rooting itself within an antiracist framework that takes into account the power relations involved in racial, gendered and classed experiences.¹⁴

An antiracist bias in research emerges from the perception that the more “objective” forms of research reflect a bias that fails to acknowledge or to adequately analyze racial power structures. Some of these forms of knowledge, for example, are rooted in liberal universalist traditions that consider themselves free and equal, and in doing so, do not reflect structural inequalities between “races” or groups. One of the main aspects of antiracist research is the firm belief that mainstream social science is dominated by institutionalized racism and, thus, silences the voices of the oppressed. Antiracist research looks to break with this tradition by taking a different standpoint, one that is rooted in fighting racism.¹⁵

In the same way that feminist research seeks to initiate change, antiracist research looks to “promoting anti-racism objectives, and particularly to challenging domination and power relationships in society through the promotion of social justice, equity, and fairness.”¹⁶ This can be achieved, it is believed, by providing a platform to hear the voices, experiences and lives of the oppressed. While this research does not directly do this – in the sense that it analyzes the *discourse* of antiracism – it seeks to examine the absence of these voices and experiences from contemporary antiracism in France.

¹³ George J. Sefa Dei, “Critical Issues in Anti-Racist Research Methodologies. An Introduction,” in *Critical Issues in Anti-Racist Research Methodologies*, ed. George J. Sefa Dei and Gurpreet Singh Johal, vol. 252, Counterpoints (Oxford: Lang, 2005), 2.

¹⁴ Ibid., 5.

¹⁵ Andrew C. Okolie, “Toward an Anti-racist Research Framework. The case for interventive in-Depth Interviewing,” in *Critical Issues in Anti-Racist Research Methodologies*, ed. George J. Sefa Dei and Gurpreet Singh Johal, vol. 252, Counterpoint (Oxford: Lang, 2005), 245–247.

¹⁶ Dei, “Critical Issues in Anti-Racist Research Methodologies. An Introduction,” 13.

As such, “Anti-racist research does not claim that the only valid knower is one who has experienced the *fact*”¹⁷ Knowledge does not come from a particular biological factor (such as skin colour), instead emphasis is placed on the methodologies used to gain knowledge, in the research relationships and the theoretical frameworks to help produce valid knowledge.¹⁸

From this dual positioning, this research therefore evaluates contemporary approaches to racism and racial discrimination in France across various sectors, particularly civil society activism, the legislative framework and the growing discourse of diversity. This evaluation is consistently interwoven with a historical, antiracist and race critical analysis, and informed by the position that racism is an inherently *political* system rooted in the nationalism of modern nation-state formation and imperialism.¹⁹ Through this analysis, it will be argued that there are key limitations to current approaches to fighting racial discrimination, significantly restricted by the insistence upon republican universalism that shapes French antiracism without races. This commitment to a raceless approach to racism results in a failure to address the political nature of racism, which becomes evident across each of these sectors. As “race” is increasingly conceptually removed and effaced from anti-racial discrimination mechanisms, so the practical implications become greater. Conceptual limitations produce limited antiracist action in the civil society sphere and hinder key aspects of the legal fight against racial discrimination.

¹⁷ Ibid., 8.

¹⁸ Ibid., 8–10.

¹⁹ Alana Lentin, *Racism and Anti-Racism in Europe* (London: Pluto Press, 2004); Alana Lentin, *Racism, A Beginners Guides* (Oxford: Oneworld, 2008); David Theo Goldberg, *The Racial State* (Oxford: Blackwell Publishing, 2002); David Theo Goldberg, “The end(s) of race,” *Postcolonial Studies* 7, no. 2 (2004): 211–230; Étienne Balibar, “Is there a ‘Neo-Racism’?,” in *Race, Nation, Class: ambiguous identities*, ed. Étienne Balibar and Immanuel Wallerstein (London: New Left Books, 1991), pp 17–28; Étienne Balibar, “‘Racism and Nationalism’,” in *Race, Nation, Class: ambiguous identities*, ed. Étienne Balibar and Immanuel Wallerstein (London: New Left Books, 1991), pp 37–67.

Methodology

To conduct this research, two qualitative methods of research have been employed: in-depth interviews and documentary research and analysis. Interviews have provided a range of perspectives on the complex problem of racial discrimination as a key social and political issue that increasingly dominates the public domain in France. By combining these two methods, this research draws theoretical conclusions on the main obstacles to challenging racial discrimination and determines the depth and the nature of the relationship between universalism, antiracism and anti-racial discrimination.

To gain a comprehensive understanding of various mechanisms currently in place to address racial discrimination in France and the impact of the colour-blind republican model on these mechanisms, I conducted twenty-seven semi-structured in-depth elite interviews with key actors in this field (see [Appendix 1](#) for a full list), and two shorter interviews with academics which were cut short due to constraints in their schedule. The interviews were conducted over a period of five weeks in Paris, France, in March and April 2009, with the exception of one interview conducted in England in February 2009. The interviews were recorded using an mp3 digital recorder, and subsequently transcribed and translated by myself. Interview lengths varied with an average length of one and a half hours. I had previously determined key topics and questions relating to the central research themes, covering the broad topics of: effective tools for fighting racial discrimination, diversity, the impact of political culture and barriers to antiracism. At the beginning of each interview, I explained my research project and explained how interviews would be used and obtained the consent of participants. Aside from one case, interviewees agreed to be recorded so that the material could be used for the research; in the case when a recorder was not used, notes were taken.

Prior to the interviews, I identified antiracist organizations and actors to be interviewed through the existing literature and a survey of antiracist organizations through the internet. Through this process, I identified eight antiracist organizations to interview and that would provide a balanced perspective between mainstream and alternative antiracist organizations (four of each). Before the fieldwork period, I examined the websites and any relevant articles on these antiracist organizations to gather information on their structure, type of work and activities, and public statements or campaigns.

I attempted to establish contact with these organizations prior to arriving in Paris via email or through their website, but establishing contact proved more productive once I was in France and was able to contact organizations directly. After I arrived in Paris, I called the organizations when possible, or established contact through connections (either other interviewees or personal contacts) as well as by attending academic or activist events and introducing myself directly.

Interviews were therefore conducted with leading members of civil society organizations that focus their work on fighting racial discrimination and racism including SOS Racisme, the International League Against Racism and Anti-Semitism (LICRA), the Human Rights League (LDH) and the Movement against Racism and for Friendship Amongst People (MRAP). These four organizations have often been identified as the leading four organizations working to fight racism in contemporary France and were therefore interviewed as leaders in this field. When possible, two interviews were carried out with these organizations (SOS Racisme and the MRAP) to get the added perspective of the specifically legal approach to racial discrimination in addition to the given association's general approach to racism.

To balance out the perspective offered by the more widely known organizations above, I identified four organizations which I perceive to carry an alternative antiracist message, to tally with my use of the distinction between mainstream and alternative antiracism. I therefore carried out interviews with the

Representative Council of Black Associations (CRAN), the Movement of the Natives of the Republic (MIR), the Association of Descendants of Slaves and their Friends (ADEN) and the Collective of the Caribbean, Guyana, Reunion and Mayotte (Collectif DOM). ADEN and Collectif DOM have less visibility than the CRAN or the MIR, but all four organizations present an alternative approach to antiracism than that found in the four leading antiracist organizations. The distinction between alternative and mainstream antiracist organizations will be explored in Chapter Three.

Aside from interviews with civil society activists, interviews were also conducted with lawyers and legal advisors that participate in the legal challenge to racial discrimination, as well as with institutional actors (both governmental and non-governmental) working in the *Conseil Constitutionnel*, the High Authority for the Fight Against Discrimination and for Equality (HALDE), the National Consultative Commission on Human Rights (CNCDH) and the Committee on the Elimination of Racial Discrimination (CERD). A number of academics were also interviewed, primarily as knowledgeable experts on topics related to racial discrimination in France, but at times, for their involvement in areas outside of academia (for example Dominique Schnapper, who is both a sociologist and was a member of the Constitutional Council when interviewed). I established contact with academics and actors in the field of antidiscrimination working in universities or in institutional settings (like the HALDE and the *Conseil Constitutionnel*) primarily through email and networking at seminars or through other interviewees.

Except for cases where participants were interviewed as individuals (which was mainly those with an academic background), all participants were interviewed in their capacity as representatives of a given organization or institution. As a result, all interview citations referring to a civil society organization are anonymous, except in cases where the interviewee was the actual spokesperson or a highly visible representative of the organization (Houria Bouteldja of the MIR and Patrick Lozès of the CRAN). Bouteldja, for instance, is an example of activist/intellectuals who have a high-profile presence on the public scene. She often appears on television platform

discussions as the public figure representing the Movement of the Natives of the Republic.

The decision to anonymize interviews conducted with civil society activists working in antiracist organizations reflects the intention of this research to explore the *discourse* of antiracism in contemporary France, particularly in the way that the political culture centered on republican values affects this discourse. While there is always the possibility that the empirical data presented in this research can sometimes reflect publicly available statements and information, including the “official” views and positions of public figures within antiracist organizations, institutions or even academics who write about these issues, the interviews nonetheless serve an additional and unique purpose.²⁰ The material incorporated throughout this work plays a key role in bringing forward crucial nuances to the realities of antiracist practice in France as well as providing expert opinions particular to the French context, which may not always appear in academic writings or public information. This expert opinion was predominantly used to highlight the practical and political hindrances to the legal antiracist and anti-racial discrimination mechanisms.

For this research project, the interviews are therefore used in conjunction with public material to provide a wider and more in-depth analysis that takes into account any discrepancies between public positions and practice. Internal attitudes and opinions can vary within organizations, and therefore could have led to different interview results had the interviews been carried out with someone else within a given organization. However, I carried out interviews with activists *responsible* for practical implementations of antiracist policy (for example by providing legal aid to victims of racial discrimination) and/or for contributing to the organization’s antiracist positions. In addition to antiracist activists, I also interviewed key actors, institutional, political and academic, who are involved in debates in this field and who

²⁰ Joel D. Aberbach and Bert A. Rockman, “Conducting and Coding Elite Interviews,” *PS: Political Science and Politics* 35, no. 4 (December 2002): 673.

can also reflect a particular political position. It is specifically the way that these various positions impact the fight against racial discrimination that proves particularly interesting for the aims of this research. While interviewees could have been voicing their own opinions in parts of the interview), they are nonetheless in a position where, as antiracist *practitioners* working in often visible organizations, institutions, or public debates that affect policy, their statements, positions and even personal opinions can reflect and contribute to a wider discourse of racism and antiracism through everyday practice.

These different types of actors provide a good foundation for conducting interdisciplinary research, as they span across the antidiscrimination field ranging from academia, to activism, to institutional action. The multidisciplinary approach of the research is appropriately reflected in the interviews. These were primarily carried out in French, and subsequently transcribed and translated. Unless an official English version was found, I also translated all secondary documentation citations to the best of my ability. The fieldwork was complemented by documentary analysis, and together, these combined methods allow an analysis of the major discourses informing the protection against racial discrimination.

With interviews, there are always questions or issues of power, especially in the relationship between the interviewer and the interviewee. Steinar Kvale highlights a key power imbalance in conducting qualitative research interviews, from the interviewer structuring the interview, to the interview being a “one-way dialogue, [...] an instrumental dialogue” and “a manipulative dialogue.”²¹ To avoid this, measures were taken including setting up the time, date and location of interviews at the convenience of interviewees and providing a flexible interview format to prevent the interviewer from imposing the debate.

²¹ Steinar Kvale, “Dominance Through Interviews and Dialogues,” *Qualitative Inquiry* 12, no. 3 (2006): 484.

Recent literature on qualitative research in the social sciences has also highlighted how interviews conducted with elites can sometimes lead to a shift or even a reversal of the power imbalance of interviews. As Wench et al. explain, “Researchers conducting interviews with elites are faced with the ‘double trouble’ of mastering the interview situation and balancing the power of the elite interviewee,”²² arguing that “studies on elite interviewing are unanimous that the power balance is likely to favour the informant over the researcher.”²³ It should therefore also be noted that there was also a potential shift in the balance of power working against me as interviews were carried out with leading, knowledgeable and expert actors in the field of anti-racial discrimination, sometimes with institutional figures of high importance, and I was often considered an inexperienced outsider to the French context. The “balancing act” required for interviewing elites in the business world that Welch et al. refer to is a useful way of describing my experiences when the power dynamics did not always reflect the typical issues of qualitative research interviews raised by Kvale.²⁴

In this research, power can also be exerted by myself – as the only investigator – in the way that fieldwork material is analyzed and presented. This issue reflects a key power imbalance in the practice of interviewing for qualitative research,²⁵ however great lengths have been taken to ensure that the information presented in this research does not misrepresent the views expressed during interviews. Nonetheless, since this research analyzes the discourse of antiracism, interview information has been interpreted according to the research objectives outlined above.

The data and information gathered from interviews were analyzed according to pre-established research questions outlining the general themes of civil society,

²² Catherine Welch et al., “Interviewing Elites in International Organizations: A Balancing Act for the Researcher” (presented at the European International Business Academy (EIBA), 25th Annual Conference UMIST, Manchester, United Kingdom, 1999).

²³ Catherine Welch et al., “Corporate Elites as Informants in Qualitative International Business Research,” *International Business Review* 11, no. 5 (2002): 615.

²⁴ Welch et al., “Interviewing Elites in International Organizations: A Balancing Act for the Researcher.”

²⁵ Kvale, “Dominance Through Interviews and Dialogues.”

diversity, antiracist legislation, political culture, history and racism, ethnic statistics, and the network of antiracism. To ensure that the research reflected the material gathered from fieldwork and to prevent imposing a particular research agenda, the interviews were analyzed in a flexible way to allow new themes to emerge if necessary. This flexibility proved crucial as it resulted in key issues surfacing from the material, especially in relation to the law, that were not necessarily apparent before the fieldwork. This allowed for a more nuanced evaluation of the antidiscrimination scene in France.

Outline

This research is structured along the multi-disciplinary perspectives outlined above to present the continuing constraints posed by French political culture on the fight against racial discrimination. The first part explores the theoretical foundations for applying a race critical analysis to the French context. Chapter One identifies the principal theoretical gaps in the raceless approach to racism that have transpired in academic scholarship, introducing the conceptual benefits of a race critical approach. From this basis, Chapter Two offers a historical contextualization of race in France from significant periods of colonial expansion to postwar migration, to solidify the crucial links between contemporary racisms and past racisms, thereby emphasizing the need for engaging with race critically in any analysis of antiracist and anti-racial discrimination mechanisms. Following from this, Chapter Three begins the examination of contemporary antiracist mechanisms by evaluating civil society activism and highlighting the tensions created by the mainstream antiracist activism that overwhelmingly refuses to acknowledge race, thereby ignoring key forms of racism. As a result, alternative forms of antiracist activism are overshadowed and are discursively silenced by the universalist approach.

The second part of this thesis introduces the legislative framework for combating racial discrimination in Chapter Four by examining the development of

antiracist legislation and the impact of political culture in shaping it. Chapter Five expands the evaluation of anti-racial discrimination tools by identifying practical and conceptual problems in the implementation of legal and institutional mechanisms. This involves an in-depth analysis of the role of the HALDE as an antidiscrimination body as well as the effectiveness of antiracist and anti-racial discrimination laws in contemporary France. Chapter Six then offers a case study of the ethnic statistics debate in France, by exploring some of the recurring elements that continue to pose both practical and conceptual difficulties in fighting racial discrimination in France. Through this debate, the raceless approach to fighting racism is exposed as limiting, in terms of practical solutions and tools for reducing racial discrimination, and duplicitous in its ability to deny yet reinforce racializing and stigmatizing practices.

Finally, the last section examines the antiracist and antidiscrimination potential of “soft policies” in the form of diversity policies. Chapter Seven thus traces the emergence of “diversity” in both the private and the public sectors, to further highlight the tendency to set racism aside in consistent efforts to mold anti-racial discrimination to fit into the limits of republican universalism. Evaluating the implementation of diversity policies in these sectors, often presented as tools for equality, it will demonstrate how diversity does not actually lead to greater equality.

Chapter One: A Race Critical Approach to the French Context of Antiracism

*

Introduction

Understanding the impact of race in France – in its roots, in its manifestations and in its conceptualizations – cannot be disassociated from the dominant ideology permeating every aspect of French life, society and politics: republican values. Republican ideology is the chief framework for any debate on racism and race in contemporary France and *the* point of reference for policy makers, academics, legislators, politicians and antiracist activists. Before exposing how race critical theory will frame this research, this chapter sets out to explore some of the key tenets of republican ideology, demonstrating how the principle of universalism emerges from the convergence of the principal republican values: *liberté, égalité, fraternité* and *laïcité*. Turning towards how the republican framework has impacted and limited conceptual approaches to racism, this chapter argues for a race critical approach to provide a framework for a more nuanced analysis of anti-racial discrimination in France.

The Anathema of Race

Liberté, égalité, fraternité... and laïcité

*"France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs."*¹

Engraved onto most, if not all, public buildings in France, the French motto "*liberté, égalité* and *fraternité*" indicates quite clearly what constitutes republican values. Behind these three pillars of French society lies a very precise conception of the French nation and of the individual citizens coming together to constitute it. This conception dates back to the 1789 French Revolution, which opened the path for the principle of universalism to take a dominant position in French politics from then on. By curbing the powers of the monarchy and feudal lords, the French Revolution is purported to have introduced the notion of equality, by placing all "men" at the same level. Of course, the notion of universalism was restricted to white men, excluding women and non-white men from this universal. This principle was emphasized in seminal texts including the *Declaration of the Rights of Man and of the Citizen*² (August 1789) and the Constitution of Year I (1793), the latter stating: "the sovereign people are the universality of the French citizens" (Article 7) and "Sovereignty resides within the people; it is one and indivisible."³ Written only a few years following the French Revolution, these words solidified the universalist ideal (at least in its abstract form) into French law.

The French nation thus seems to fit into republican sociologist Dominique Schnapper's definition of a nation by "its ambition of *transcending particular*

¹ *La Constitution du 4 Octobre 1958*, 1958 Art. 1.

² *Déclaration des Droits de l'Homme et du Citoyen*, 1789 Art 1.

³ Cited in Nadia Kiwan, "The Citizen and the Subject," in *Redefining the French Republic*, ed. Alistair Cole and Gino Raymond (Manchester: Manchester University Press, 2006), 98.

belongings by means of citizenship and of defining the citizen as an abstract individual.”⁴ This is in sharp contrast to other types of nations perceived as being built around ethno-racial communities or identities such as Germany.⁵ France, unlike other nations or countries, relies on the universality of individual citizens, which can only be achieved by ensuring freedom, equality and fraternity.

In this sense, the French nation is composed of individual citizens who are expected to leave their particular identities (religious, ethnic, racial, cultural or linguistic) in the private sphere in order to participate in the community of citizens located in the public sphere. Political space, Schnapper claims, is where citizens will rise above their particular identities.⁶ Accordingly, republican values, based on the four principles of liberty, equality, fraternity and *laïcité*, rely on this abstraction of the French citizen from any of his or her particularist attachments.

Laïcité, the French form of secularism involves a very specific separation between Church and State, between civic and religious life. Solidified by the 1905 law officially separating religion (the Catholic Church in this case) from state power, *laïcité* corresponds to the French articulation of public neutrality. However, as Laborde rightly states, French secularism has gone beyond the original definition as ordained by the 1905 law, with the expansion of the definition of *public neutrality* beyond the separation of the private and public spheres to include “the condition both of access of all to the public sphere and of respect for differences, which must remain private.”⁷ Gradually, *laïcité* has come to be perceived as a regulating principle imposing complete neutrality from any particular identity in the public sphere.

As Patrick Weil explains the context prior to the 15 March 2004 ban of “ostentatious religious signs” in public schools: “no law outlawed wearing religious

⁴ Dominique Schnapper, *Community of Citizens. On the Modern Idea of Nationality* (London: Transaction Publishers, 1998), 35.

⁵ Ibid

⁶ Schnapper, *Community of Citizens*.

⁷ Cécile Laborde, “The Culture(s) of the Republic. Nationalism and Multiculturalism in French Republican Thought,” *Political Theory* 29, no. 5 (2001): 720.

signs, but *custom* in France wanted, and still wants religious faith to be a private affair (my emphasis).⁸ This statement highlights the expansion of the concept of *laïcité* in debates leading up to this ban. Specifically targeting the hijab, debates blurred the line of what neutrality in public spaces entails, with some proponents of the law imposing neutrality on individuals rather than public spaces.⁹ The fact that a new law was necessitated to allow for a more restrictive concept of *laïcité* supports the idea that the concept of *laïcité* is perceived to have wider application than it legally was intended to. Increasingly constraining conceptions of *laïcité* coincide with greater perceived tensions in relation to immigrant populations from the 1980s onwards.

For French republicans, *freedom* entails “rational self-determination through the exercise of individual autonomy”¹⁰ according to which individuals are able to engage critically with their particularist attachments, especially as they enter the public sphere as free agents. The first article of the 1958 Constitution has been interpreted to mean that the relegation of particularist identities to the private sphere guarantees formal *equality*.¹¹ Leading from this, *fraternité* is based on a “shared willingness to be an active member in a self-determining political community”¹² rather than on the basis of one’s cultural attachments. This can have serious implications for certain types of rights, particularly minority rights which are not recognized by the French government.¹³

Together, these four principles or values become intricately connected, converging to establish colour-blind republican universalism. These principles have their roots in philosophical and historical tradition, but continue to greatly impact political theory in contemporary France, influencing legislation, political and media debates, and politics in general. It is argued here that universalism in particular, plays

⁸ Patrick Weil, *La République et sa diversité. Immigration, intégration, discriminations* (Paris: Seuil and La République des Idées, 2005), 66.

⁹ Pierre Tévanian, “Une révolution conservatrice dans la laïcité,” *Oumma.com*, April 4, 2011, <http://oumma.com/Une-revolution-conservatrice-dans> Accessed 2011-06-17.

¹⁰ Laborde, “The Culture(s) of the Republic,” 718.

¹¹ Ibid

¹² Laborde, “The Culture(s) of the Republic,” 719.

¹³ Dieter Kugelmann, “The Protection of Minorities and Indigenous Peoples Respecting Cultural Diversity,” in *Max Planck Yearbook of United Nations Law*, vol. 11, 2007, 246.

a very specific role in relation to debates, policies and legislation surrounding the issue of racial discrimination.

These republican values are not only “guiding principles” for French society, but overwhelmingly structure most political, legal and sociological affairs. They are enshrined in legal documents – namely the most recent 1958 Constitution – and upheld by institutional bodies: the Constitutional Council, the highest judicial body in France, ensures that all legislation is in accordance with these values. Dominique Schnapper, for example, sat on the Constitutional Council until March 2010 and therefore had a key role to play in one of the most prestigious and highest ruling bodies in France. The significance of republican values in contemporary France is crucial to understanding how various debates are framed surrounding issues of racism and racial discrimination. Throughout, it is important to keep in mind the distinction between the actual principles, and the *meanings* attributed to them over time, either through custom, as cited above, through ideology or political interest. The powerful impact carried by these values over contemporary French political culture is particularly evident in the treatment of race. One significant result of placing so much weight on republican values has been the interpretation of the principle of equality – in its expression in Article 1 of the 1958 Constitution – as negating the existence of race.

“There are no races here”

Today, the mere reference to “race” in French political thought or public life, whether biological or even as a social construct, is presented as completely antagonistic to the values of the republic. Instead, the phrase “race does not exist here” is oft repeated, with it the insinuation that race is something that is external to France.¹⁴ The ideas of the Enlightenment were highly influential in the creation of a French nation on a “contractual” basis, as opposed to the “ethnic” model favoured by other nations, as was the case in Germany: “the Revolution established the nation as a voluntary

¹⁴ During my fieldwork in France, I was often reprimanded for using the term “race.”

association or contract between free individuals,”¹⁵ whose membership to the nation does not depend on race. Ernest Renan is often quoted for his 1882 lecture “What is a nation?” in which he stresses the distinction between nation and race, to show that the latter has no place in the establishment of the former.¹⁶

The idea that race does not exist and the overall reticence towards even using the term in France can also be attributed to the widespread establishment of biological races as scientific fallacy in the wake of the Second World War with the 1950 UNESCO statement on “The Race Question”.¹⁷ As Lentin, Taguieff, Balibar and Guillaumin, among others, have demonstrated, UNESCO efforts related to racism post 1945 amounted to the discrediting of race as a legitimate object of reference and the replacement of race with the equally problematic notion of culture.¹⁸ This process was supported by the contributions of a number of scientists, anthropologists and researchers (Lévi-Strauss, Klineberg, Juan Comas, Dobzhansky) in discrediting the scientific notion of race as a fallacy of science, as reflected in the following passage taken from the 18 July 1950 UNESCO Statement:

Scientists have reached general agreements in recognizing that mankind is one: that all men belong to the same species, *Homo sapiens*. It is further generally agreed among scientists that all men are probably derived from the same common stock; and that such differences as exist between different groups of mankind are due to the operation of evolutionary factors of differentiation such as isolation, the drift and random fixation of the material particles which control heredity (the genes), changes in the structure of these particles, hybridization, and natural selection. In these ways groups have arisen of varying stability and degree of differentiation which have been classified in different ways for different purposes.¹⁹

¹⁵ Maxim Silverman, *Deconstructing the Nation. Immigration, racism and citizenship in modern France*, Critical studies in racism and migration (London: Routledge, 1992), 9.

¹⁶ Ibid., 19–22.

¹⁷ Alana Lentin, “Replacing ‘race’, historicizing ‘culture’ in multiculturalism,” *Patterns of Prejudice* 39, no. 4 (2005): 379–396.

¹⁸ Lentin, *Racism and Anti-Racism in Europe*; Etienne Balibar, “Le retour de la race,” *Mouvements* 50, no. 2 (2007); Guillaumin, “‘I know it’s not nice, but...’”; Pierre-André Taguieff, “Du racisme au mot ‘race’ : comment les éliminer? Sur les premiers débats et les premières Déclarations de l’Unesco (1949–1951) concernant la ‘race’ et le racisme.,” *Mots* 33, no. December (1992): 215–239.

¹⁹ “Text of the Statement issued 18 July 1950,” in *UNESCO and its programme. The Race Question* (UNESCO, 1950) Art. 1.

The 1950 Declaration was the first of several versions, with revised versions released in 1951, 1967 and 1978. Throughout this period, the notion of biological or scientific race became increasingly delegitimized.²⁰ What is interesting in the French context is how this delegitimization of race seems to have progressively been incorporated within the republican tradition, as an integral aspect of universalism. The idea that race does not exist fit in well with the republican principle of equality had been reaffirmed a few years prior in the Preamble of the 1946 Constitution: “The French people proclaim once again that any human being, without distinction of race, religion or belief, possesses inalienable and sacred rights.”²¹

In the French context, attempts to delegitimize race were welcome after the devastation of the Second World War and France’s role in the Holocaust under the Vichy Government.²² As a result, many antiracist activists and academics argue against using the term race, even as a conceptual tool, because it is seen to go against French universalism, which stresses the indivisible nature of the republic.²³ The concept of race is considered to break with the principles of equality and universalism as well as to shatter the indivisibility of the republic. Indeed, the concept of race (in its biological and social/cultural forms) became so taboo that passionate academic debates led to the questioning of the term’s very presence in the French constitution. In March 1992, a colloquium took place in Paris to consider the place of the term “race” in the French Constitution, with resulting articles published in the December 1992 issue of the French review *Mots* (*Words*) entitled « Sans distinction de... race ». This special issue included the opposing views of theorists such as Danièle Lochak, who found the controversial term’s presence in the French constitution problematic because its “performative effect” would bring legitimacy to the concept,²⁴ and others, including

²⁰ Lentin, *Racism and Anti-Racism in Europe*.

²¹ *La Constitution du 27 Octobre 1946*, n.d. Preamble.

²² Lentin, *Racism and Anti-Racism in Europe*; Goldberg, “Racial Europeanization”; Julie Chi-Hye Suk, “Equal by Comparison: Unsettling Assumptions of Antidiscrimination Law,” *The American Journal of Comparative Law*, no. 55 (2007): 52.

²³ Patrick Simon, “Les statistiques, les sciences sociales françaises et les rapports sociaux ethniques et de ‘race’,” *Revue française de sociologie* 49, no. 1 (2008): 153-162.

²⁴ Danièle Lochak, “La race, une catégorie juridique ?,” *Mots* 33, no. December (1992): 291 - 303.

Etienne Balibar, who did not find any value in changing the constitution because it would be taking a step away from reality.²⁵ The potential reification of race is constantly set against the dangers of ignoring race completely within the current French context. As Balibar notes, the reality of the French situation is that “race,” whether one wants to admit it or not, plays a substantial role in structuring French society and in restricting minorities from enjoying full citizenship.²⁶

This semantic opposition was recently renewed, inciting similar passionate responses during 2008 senate debates on constitutional reform. Several amendments proposed the removal of the controversial word “race” from the first article of the Constitution, recycling the same arguments used more than a decade earlier. The primary argument against the word’s presence in the constitution was that it only served to legitimate the existence of races. One senator, Mrs. Alima Boumediene-Thiery distinguished the Anglo-Saxon notion of race from the French one, claiming that in English there is no equivalent for the French term “origin” and that in France race “reflects on the darkest pages of [French] history” referring to the French collaboration with the Nazis during the Second World War under the Vichy Government.²⁷ This is a recurring theme, as this reference and explanation is constantly deployed to justify antiracist action and approaches. However, several senators such as Mr. Jean-Jacques Hyest, Mr. Roger Badinter and Mrs. Rachida Dati, former *Garde des sceaux*, opposed any amendments to the constitution, arguing that the term’s presence in the constitution was a crucial aspect of fighting racism.²⁸

Arguments against using the term “race” have had quite an impact and regardless of the fact that the *Conseil d’État* chose to keep it in the Constitution, the concept of race as a concept progressively became a “taboo” subject across the

²⁵ Étienne Balibar, “Le mot race n’est pas « de trop » dans la Constitution française,” *Mots* 33, no. December (1992): 241-256.

²⁶ Ibid.

²⁷ *Séance du 18 juin 2008 (compte rendu intégral des débats). 4. Modernisation des institutions de la Ve République.*, June 12, 2008, <http://www.senat.fr/seances/s200806/s20080618/s20080618001.html> Accessed 2009-06-12.

²⁸ Ibid.

board.²⁹ Antiracist activists and actors often reiterate this sentiment, classifying its very mention as racist in itself. For example, in an interview, legal scholar Gwénaëlle Calvès, adamantly declared that “race does not exist in France,”³⁰ a sentiment echoed by civil society antiracist activists like the Association of Descendants of Slaves and their Friends (ADEN) who also stated in an interview that “race doesn’t exist. The word race, it doesn’t mean anything.”³¹

Discomfort in using the word race has spilled over into a widespread semantic concern over terminology.³² Not only is there confusion in terms used to designate possible victims of discrimination: immigrant populations, visible minorities, second-generation immigrants, of French stock, etc... (*personnes issues de l’immigration, minorités visibles, deuxième génération issue de l’immigration, français de souche, etc...*) but there is also contention on employing words deriving from race, including “racial discrimination.” Sociologist Veronique de Rudder and her colleagues, for example, explicitly refused to use the term racial or ethnic, opting instead for “racist” or “ethnicist” discriminations, once again fearing that using the terms racial or ethnic would give legitimacy to race and ethnicity.³³ Journalist and advocate of *laïcité* and gender equality, Caroline Fourest, deplores the supposed move from “racist” to “racial” discrimination in antiracist discourse.³⁴ However, the taboo of race is so strong that racial discrimination is rarely referred to as such but rather lumped together under the general category of “*les discriminations*” which will be explored further in Chapters Five and Seven.

²⁹ Simon, “Les statistiques, les sciences sociales françaises et les rapports sociaux ethniques et de ‘race’”; Didier Fassin and Patrick Simon, “Un objet sans nom. L’introduction des discriminations raciales dans la statistique française,” *L’Homme* 3-4, no. 187-188 (2008): 271-294.

³⁰ Gwénaëlle Calvès, March 26, 2009.

³¹ L’Association des descendants d’esclaves et de leurs amis, Audio recording, April 6, 2009.

³² Didier Fassin, “Nommer, interpréter. Le sens commun de la question raciale,” in *De la question sociale à la question raciale ? Représenter la société française*, ed. Didier Fassin and Éric Fassin, Cahiers libres (Paris: la Découverte, 2006), 1 vol. (263).

³³ Véronique De Rudder et al., “Les enjeux politiques de lutte contre le Racisme: discrimination justifiée, Affirmative Action, discrimination positive, parle-t-on de la même chose?,” *Cahiers du Ceriem* 7, no. June (2001): 12 While De Rudder may be likened to other “republican” sociologists such as D. Schnapper on this point, the two sociologists nonetheless have different theoretical perspectives on a range of other issues.

³⁴ Caroline Fourest, *La dernière utopie. Menaces sur l’universalisme*. (Paris: Éditions Grasset & Fasquelle, 2009), 69–71.

The predominantly negative connotations associated with the term race have significantly impacted how racism and antiracism are conceptualized in France. Various activist movements and civil society organizations gained momentum by tackling *racism* as a specific issue, falling in line with efforts to denounce race as a valid category of reference.³⁵ The taboo of race thus created an antiracism without races, while simultaneously, racelessness quickly became equated to antiracism. In this sense, eradicating “race” is in and of itself perceived as an antiracist action. French antiracism took shape in large part by contributing to overall efforts to eradicate “race” as a point of reference.³⁶ During the second half of the Twentieth Century, race gradually disappeared from antiracist vocabulary, as increasingly, any reference to race came to be perceived as racist in itself, and instead, race-related issues, specifically racism or racial and ethnic discrimination were articulated according to another frame of reference: the republican model of integration.

Theoretical Limitations of the Republican Reticence Towards Race

The Republican Model of Integration as an Alternative Framework to Race

Until recently, problems affecting minorities in France, ethnic, racial or religious, have predominantly been contained within the language of immigration and integration.³⁷ Officially, the French Government’s approach towards managing the influx of migrants (predominantly from French colonies or former colonies) following the Second World War has relied on republican model of integration as opposed to assimilation.

³⁵ Lentin, “Replacing ‘race’, historicizing ‘culture’ in multiculturalism.”

³⁶ I will return to antiracist activism in Chapter Four in much greater detail. The point here, is to emphasize that French antiracism generally took an approach to tackling racism that follows the idea of “antiracism without races.”

³⁷ Gérard Noiriel, *The French Melting Pot. Immigration, Citizenship, and National Identity* (London: University of Minnesota Press, 1996), 24–29; Hélène Bertheleu, “A propos de l’étude des relations inter-ethniques et du racisme en France,” *Revue Européenne des Migrations Internationales* 13 (1997): 117–118; Fassin, “L’invention française de la discrimination,” 403–407.

Assimilation is defined as “an adaptation process whose sought result [is] the disappearance of cultural differences in the public sphere, ultimate stage of acculturation.”³⁸ However, following from this definition of assimilation, integration *à la française* has generally been acknowledged as integrating by assimilation, whereby new migrants to France have been expected to assimilate to republican values and the French way of life and leave their particular identities behind. Policies based on this model of integration are shaped by republican ideology in order to reinforce the concept of a “community of citizens.”³⁹ Through assimilation, immigrants from diverse backgrounds would in theory transcend their particular cultural affiliations, adhering to republican values in order to integrate fully into French society.⁴⁰ In terms of policy, the republican model of integration requires a complete refusal to recognize race and ethnicity or minority rights.

As awareness of racism in France grew from the 1970s onward, it was chiefly thought of as a problem affecting immigrants, especially with the rise of the extreme Right party, the *Front National*, in the 1980s and the pressure placed on immigrants to assimilate to French culture via the republican model of integration. With a large presence of postcolonial migrant populations in France perceived as “problematic” compared to European migrants, social scientists started focusing on immigration as a way of understanding and interpreting social relations and social inequalities in a more diverse France.⁴¹ This mirrored official policy that had attempted to solve racial tensions and inequalities by placing an emphasis on integration, which became official policy in the late 1980s with the creation of the High Council for Integration (HCI).⁴² Integration was the main frame of reference for understanding the complex relationship between post-colonial migrants and the majority white French population. A causal relationship was thus established between the racism

³⁸ Weil, *La République et sa diversité*, 47.

³⁹ Schnapper, *Community of Citizens*.

⁴⁰ Michel Wieviorka, *Une société fragmentée? Le multiculturalisme en débat* (Paris: La Découverte, 1996).

⁴¹ Simon, “Les statistiques, les sciences sociales françaises et les rapports sociaux ethniques et de ‘race’.”

⁴² Jeremy Jennings, “Citizenship, Republicanism and Multiculturalism in Contemporary France,” *British Journal of Political Science* 30 (2000): 575-598; Fassin, “L’invention française de la discrimination.”

experienced by first and second-generation migrants and their integration into French society.

The emphasis placed on integration as a conceptual framework could be interpreted as a reaction to political developments of the time. In his analysis of French integration policies, Favell attributes the emphasis placed on the French model of integration to an effort to challenge the political success of Le Pen, leader of the *Front National*, in the mid-1980s.⁴³ In response to the political rise of the extreme right that specifically focused on the problems of immigrants, the Left focused on playing down immigration as an issue, and stressing the importance of integration.⁴⁴ Despite the recent emphasis and relative newness of this model of integration, it was nonetheless presented as a continuation of a long-standing tradition of incorporating immigrant populations into French society.⁴⁵

The focus on integration has had important implications on the theorization of racial discrimination in the social sciences and in wider French society. Because the model of integration was so heavily emphasized in discussions on inequalities and racism, it is important to examine how the general debate on integration has played out in terms of perceived, imagined or real problems arising from the presence of minorities in France. Examining three trends in theorizing such forms of inequality (traditional, modernizing and multicultural republicanism),⁴⁶ it becomes evident that conceptualizing racism and racial discrimination within the framework of immigration, integration and republicanism proves limiting, especially in its potential impact on policy and antiracist action.

⁴³ Adrian Favell, *Philosophies of Integration. Immigration and the Idea of Citizenship in France and Britain* (New York: Macmillan, 1998), 53–55.

⁴⁴ Patrick Simon, "Comment la lutte contre les discriminations est passée à droite," *Mouvements* 52 (2007): 154–156.

⁴⁵ Jennings, "Citizenship, Republicanism and Multiculturalism in Contemporary France," 581.

⁴⁶ These theoretical trends emerged from Jennings' useful analysis of citizenship and multiculturalism in France.

Traditional and Modernizing Republicanism

Leading republican thinkers, such as essayist Régis Debray, historian Emmanuel Todd or philosopher Tzvetan Todorov have stressed the validity of the republican model of integration as the right approach to “handling” immigrant populations.⁴⁷ While there are varying degrees of “traditional republicans,” the dominant message is that only the republican model of integration, respect for universalism and republican institutions can provide a solution to redress social and economic inequalities.⁴⁸ The republican school, especially, is the source for achieving success and proper insertion into society, by transmitting republican values to future generations and creating French citizens. One characteristic of traditional republicanism is the focus on integration through assimilation. Todd expresses this clearly in the introduction of his famous study *Le destin des immigrés*, stating that “assimilation must be considered an ultimate fate”⁴⁹ Or again, politician Arthur Paecht, who deplores the move away from any discussion of assimilation: “we no longer talk of assimilation. Yet, can we integrate without assimilating? The question is not to force anything; but does an immigrant not plant an irritating thorn in the social fabric saying: “Me, I have my habits, my traditions, my clothing customs, etc.”?”⁵⁰

There are, however, some republicans who allow for a more open conception of republicanism. Schnapper, for example, is a prime example of a scholar who posits a limited questioning of French republicanism in order to see how it can be *adapted* (if needs be) to the changing dynamics of French society, amidst the growing concerns of minorities and immigrant groups dissatisfied with the republican model of integration. Based on her above conception of citizenship, she develops an argument for a limited form of “cultural pluralism” that does not overextend its reach to

⁴⁷ Jennings, “Citizenship, Republicanism and Multiculturalism in Contemporary France,” 587; Régis Debray, *La République expliquée à ma fille* (Paris: Seuil, 1998); Tzvetan Todorov, *Nous et les autres. La Réflexion française sur la diversité humaine*. (Paris: Éditions du Seuil, 1989); Emmanuel Todd, *Le Destin des immigrés: assimilation et ségrégation dans les démocraties occidentales* (Paris: Seuil, 1994).

⁴⁸ Jennings, “Citizenship, Republicanism and Multiculturalism in Contemporary France,” 585–589.

⁴⁹ Todd, *Le Destin des immigrés*, 11.

⁵⁰ Arthur Paecht, “Revaloriser l’assimilation,” in *Les modèles d’intégration en questions. Enjeux et perspectives*, ed. Arthur Paecht and Michel Pélistier (Paris: IRIS/Presses Universitaires de France, 2004), 23.

supersede key components of French republicanism. For Schnapper, the diverse nature of French society must be accepted and accommodated without a legal recognition of differential rights. Manifestations of the pluralist nature of French society should not develop into a full-fledged state recognition of different groups, as this would trump the idea of individual citizenship, favouring group identities instead.⁵¹ Jacqueline Costa-Lascoux and Patrick Weil also fall under this category, for their references to the republican model as an appropriate way of accommodating difference.⁵² Weil, for example, argues that “the issue here is not to break with our Republican tradition, to institute difference where equality is proclaimed, but on the contrary, to give the “principle of equality” its full effectiveness.”⁵³

However, a recurring theme in Schnapper’s work is the resilience of the integration model and Republican values as the right approach to dealing with problems relating to immigrants and their children. While she denounces the *application* of Republican values within national institutions, she nonetheless continues to endorse Republicanism as the leading framework in related discussions. Universalism is not something tangible and concrete, but rather, an idea, a “guiding principle” that should be aspired to, by finding new mechanisms within the framework of universalism to promote equality. One of the ways to achieve this is through the welfare state, which Schnapper claims redresses universalism through its redistributive policies.⁵⁴ Both traditional and modernizing republicans thus focus on the redeeming value of a true republican model of integration based on universalism and other republican values. While the latter appears to question the real capacity of the republican model to ensure equality, both groups ultimately rely on an abstract ideology as the solution. The result is very vague and ambiguous solutions that do not address the root of the problem: racism. Redistributive social policies alone will not solve the problem. The ambiguity is further compounded by a general appeal to

⁵¹ Jennings, “Citizenship, Republicanism and Multiculturalism in Contemporary France,” 585–589; Dominique Schnapper, “L’universel républicain revisité,” *VEI Enjeux* 121, no. June (2000): 20–21.

⁵² Jacqueline Costa-Lascoux, “République et particularismes,” *Problèmes politiques et sociaux* 909 (2005); Weil, *La République et sa diversité*.

⁵³ Weil, *La République et sa diversité*, 103.

⁵⁴ Schnapper, “L’universel républicain revisité,” 20–21.

respect universalism and to teach republican values in schools, but without any concrete suggestions for how this will be enforced, or how universalism will overcome racism.

The Dangers of Multiculturalism and Communitarianism

One characteristic of both modernizing and traditional republicans (most likely stronger in the latter) is their vilification of any challenge to republicanism, especially if expressed by advocates of a different understanding of a pluri-ethnic French society. This generally amounts to two types of critiques: firstly of “Anglo-Saxon” multiculturalism and secondly, of the threat of “communitarianism”.

Within the framing, implementation and theorization of integration, the republican model has often been considered (and applauded) as the antithesis of multicultural policies found in countries such as Canada, the United Kingdom but particularly, the United States, where cultural or religious differences are embraced and even subject to specific legislation or policies.⁵⁵ As such, a systematic opposition between “Anglo-Saxon multiculturalism” and the French republican model is progressively apparent in French debates, for example on socioeconomic based positive discrimination in French universities (2001, 2010)⁵⁶ and the recurring debate on the use of ethnic statistics as a tool to counter racial discrimination (most recently in 2008), to name a couple. The debate sparked by Sciences Po’s initiative to institute a form of socioeconomic based positive discrimination in this elite university often

⁵⁵ Lucile Schmid, “Intégration et gestion de la diversité culturelle: quels modèles pour demain?,” in *Les modèles d'intégration en questions. Enjeux et perspectives*, ed. Arthur Paecht and Michel Pélissier (Paris: IRIS/Presses Universitaires de France, 2004), 195-199; Denis Lacorne, “Le multiculturalisme est-il un communautarisme? Le débat en France, aux États-Unis et au Royaume-Uni,” in *Les modèles d'intégration en questions. Enjeux et perspectives*, ed. Arthur Paecht and Michel Pélissier (Paris: IRIS/Presses Universitaires de France, 2004), 185-193.

⁵⁶ Debate on socio-economic forms of positive discrimination established by Sciences Politiques (2001) and current debates on quotas for socially and economically disadvantaged youths in elite establishments (2010).

cited examples of American affirmative action or political correctness “gone mad” to make a case against such policies in France.⁵⁷

Opposition to multiculturalism feeds into the opposition to “communitarianism”. Parallel to growing concerns about racism, accompanied by increasing demands for equality by minority populations, another discourse emerged onto the public scene: *communitarianism*. In the French context, communitarianism does not refer to the strand of political theory articulated by philosophers Alasdair MacIntyre, Michael Sandel, Charles Taylor and Michael Walzer, who critically engaged with Rawlsian liberal theory in the eighties and nineties.⁵⁸ Quite an ambiguous term, it has generally come to indicate a tendency for minority groups to organize along specific cultural, religious or particularistic identities. However, this concept carries more insidious connotations, as communitarianism is presented as contrary to republican values, especially universalism, and subsequently an overall threat to the republic. Minorities are seen as trying to import multicultural policies to bring them into effect in France for example by establishing community organizations, which were illegal until 1981.⁵⁹

Julien Landfried’s book *Against Communitarianism* and Grossman and Miclo’s work *The Minority Republic: Against Communitarianism* are characteristic of this tendency to conflate the idea of community-based organization with a threat to national cohesion.⁶⁰ Julien Landfried is a politician and a founding member of the website, the *Observatoire du Communautarisme* (Communitarianism Observatory), dedicated to bring information on and protecting republican values against the threat

⁵⁷ Alain-Gérard Slama, “Contre la discrimination positive. La liberté insupportable,” *Pouvoirs* 111 (2004): 133-143.

⁵⁸ Alasdair MacIntyre, *After Virtue: A Study in Moral Theory* (USA: University of Notre Dame Press, 1981); Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (USA: Basic Books, Inc, 1983); Charles Taylor, *Sources of the Self: The Making of Modern Identity* (Harvard University Press, 1989); Michael J. Sandel, *Liberalism and the Limits of Justice* (New York: Cambridge University Press, 1982).

⁵⁹ *Loi n°81-909 du 9 octobre 1981*, n.d.

⁶⁰ Julien Landfried, *Contre le communautarisme* (Paris: Armand Colin, 2007); Robert Grossman and François Miclo, *La République minoritaire. Contre le communautarisme* (Paris: Éditions Michalon, 2002).

of communitarianism. Robert Grossman is also a politician, François Miclo is editor in chief of online magazine *Causeur*. Public affirmations or statements of pluralist identification are thus coined as communitarian, a form of “*repli communautaire*” (assertion of one’s identity/cultural isolationism/self-segregation) that advocates sectarianism between different groups. These groups are consequently likened to the politics of the extreme right, who essentialize group identities based on biological factors. This accusation of sectarianism was evident in an interview with SOS Racisme when asked about the *Mouvement des Indigènes de la République*:

SOS Racisme: The indigènes of the republic, [...] I find their philosophy dangerous.

KS: In what way?

SOS Racisme: Well, already, because it is inefficient, I think that’s the first observation, it’s that more or less, they take stock of a France where there are extremely heavy discriminations, and instead of advocating citizenship, they use a language of victimhood to more or less imply there would be a coherent group, a separate community from the national community that would consist of those who are victims of discrimination, and for that, they use an interpretive framework, that for these types of questions is very ancient.⁶¹

This implicit accusation of communitarianism, set against the values of citizenship, is a very prominent aspect of French antiracist activism, as will be explored in Chapter Three. Here, the intersection between theory and practice is evident as antiracist activists replicate the discourse opposing republican values and identity-based formations. Overall, measures by individuals or groups are perceived to assert their identity (different than the majority and dominant culture) as problematic for national cohesion, seen as essential to the French nation.

Landfried, for example, defines communitarianism as a “sociopolitical system in which community organizations led by community entrepreneurs claim to represent their ethnic, religious or gender-based “community.””⁶² What he decries, however, is the supposed involvement of such communities in sociopolitical affairs, their presence in the media and more importantly, their claims to “symbolic” or

⁶¹ SOS Racisme, Audio recording, April 16, 2009.

⁶² Landfried, *Contre le communautarisme*, 14.

material rights.⁶³ Grossman and Miclo present similar arguments, warning against the danger of communitarianism, going so far as to characterize it as deadly: “The rise in potency of communitarianism would be a phenomenon without any weight if it did not translate into criminal acts today. First of all, in our regions, for several years now, communitarianism is lethal: animating a true ethnic purification, it feeds civil war in Corsica and the Basque Countries.”⁶⁴ They go on to propose that “Communitarianism initiates the pillaging of civil peace and republican citizenship.”⁶⁵

Claims of a threatening and dangerous multiculturalism or communitarianism in France are now very present in the media, political speeches and debates, as well as in academic and intellectual circles.⁶⁶ Rooted in a very strict or literal reading of and interpretation of republican universalism, these claims are based on the belief that republican citizenship is incompatible with *any* type of particularist articulation of identity. Two discourses emerge here, each establishing a dichotomy between the French republican model and a contrasting model: republican model *versus* multiculturalism (external dichotomy) and republican model *versus* communitarianism (internal dichotomy). Through the discourse of communitarianism, we can see how republican values slowly develop secondary meanings in the media and mainstream consciousness. To be branded *communautariste* diminishes one’s value in the public eye, as this ambiguous term has come to designate a threat to French society.

Some minority figures in politics who are forcefully vocal against forms of racism have faced this accusation, risking their credibility in politics. George Pau-Langevin, former president of the Movement against Racism and for Friendship Amongst People (MRAP) and elected MP (*Parti Socialiste*) of the Twentieth *arrondissement* of Paris in 2007 (making her the only elected minority in the National

⁶³ Ibid.

⁶⁴ Grossman and Miclo, *La République minoritaire*, 21.

⁶⁵ Ibid., 22.

⁶⁶ Fabrice Dhume-Sonzogni, *Liberté, égalité, communauté? L’État français contre le communautarisme*. (Paris: Éditions Homnisphères, 2007).

Assembly) is an example of this. Pau-Langevin's nomination to represent the PS in the 2007 legislative elections gave rise to accusations of *communautarisme* because she is both female and from the DOM-TOM.⁶⁷ However, these accusations go beyond political strategizing, as Langevin herself describes: "When I subsidize an event around Aimé Césaire at Paris City Hall, I am sometimes told that that is "communautarisme", while it is to highlight one of the biggest French-language writers!"⁶⁸

These two discourses feed into the wider, more pervasive discourse of the "French exception" (*exception française*). From the importance awarded to republican ideology and the constant references made to republican values in various aspects of French life, these values have come to contribute to what many characterize as the French exception.⁶⁹ Specifically, *political* French exception refers to how French political culture – as influenced by republican ideology and values – comes to be presented and considered as an exception, something particular to France, which cannot be understood or critiqued by other countries. This exception centers on the legacies of the 1789 French Revolution and the philosophical tradition stemming from the Enlightenment, considered to have placed France as the "country of human rights". Today, this is often interpreted to mean that the contemporary political culture (of republican values), as a progression from these legacies, is foremost in ensuring equality and social policies.⁷⁰ Furthermore, it is in large part this political exceptionalism, which reinforces France's specific position on its negation of race.

⁶⁷ Pierre Le Vigan, "Un communautarisme indécent : une négation de la démocratie et de la République," *Altermedia.info*, June 7, 2007, http://fr.altermedia.info/general/un-communautarisme-indecent-une-negation-de-la-democratie-et-de-la-republique_10937.html Accessed 2011-05-08; "Interview. Sophia Chikirou : « A quoi bon jouer le jeu de l'intégration républicaine si nous devons être écartés au profit d'autres qui font ouvertement le choix du communautarisme ? »," *Observatoire du communautarisme*, July 10, 2006, http://www.communautarisme.net/Sophia-Chikirou-A-quoi-bon-jouer-le-jeu-de-l-integration-republicaine-si-nous-devons-etre-ecartes-au-profit-d-autres-qui_a795.html Accessed 2011-05-08.

⁶⁸ Franck Salin, "George Pau-Langevin : « je voulais montrer que la diversité, c'était possible »,» *Afrik.com : l'actualité de l'Afrique noire et du Maghreb - Le quotidien panafricain*, June 21, 2007, <http://www.afrik.com/article11989.html> Accessed 2011-05-08.

⁶⁹ Emmanuel Godin and Tony Chafer, eds., *The French Exception* (Oxford: Bergham Books, 2005); Guénif-Souilamas, "The Other French Exception. Virtuous Racism and the War of the Sexes in Postcolonial France," *French Politics, Culture & Society* 24, no. 3 (2006): 18; Andrew Jack, *The French Exception. France - Still so Special?* (London: Profile Books, 1999); Philippe Seguin, "La République et l'exception française," *Philosophie Politique*, no. 4 (1991): 45-62.

⁷⁰ Tévanian, "Une révolution conservatrice dans la laïcité."

Multicultural Republicanism

Despite the momentum gained by these discourses on the public scene, traditional and modernizing republicanism has not gone unchallenged. In the mid 1990s (before communitarianism really emerged as a discourse) several scholars including sociologist Michel Wieviorka, Alain Touraine, Farhad Khosrokhavar and Françoise Gaspard, contributed to the book *A Fragmented Society? Debating Multiculturalism* to specifically prevent the anti-multiculturalism discourse from dominating debates.⁷¹ Frustrated with how the dichotomy opposing republicanism and multiculturalism quenched any real debate on reforming social policy in France to redress inequalities, they sought to change the terms of the debate. Particularly, Wieviorka criticized the tendency of republicans (citing Schnapper) to reduce examples of multiculturalism to its worst examples and problems, amalgamating multicultural policies to civil wars (Yugoslavia, Lebanon...) or other forms of extreme situations. Wieviorka argues that by citing the republican model and *abstract* universalism as guarantors of equality and contrasting it with Anglo-American multiculturalism, the so-called staunch republicans prevent any move forward in tackling increased pluralism in French society.⁷²

Thus emerges a new trend, questioning the abstract concept of republicanism as an outdated idea or mode of operation for tackling the pressing issues raised by contemporary forms of societal organization and pluralist affinities in contemporary France. More importantly, multicultural republicanism breaks with tradition and looks to examples external to France to improve the situation within. Joël Roman, for

⁷¹ Farhad Khosrokhavar, "L'universel abstrait, le politique et la construction de l'islamisme comme forme d'altérité," in *Une Société Fragmentée? Le Multiculturalisme En Débat*, ed. Michel Wieviorka (Paris: La Découverte, 1996); Françoise Gaspard, "La République et les femmes," in *Une Société Fragmentée? Le Multiculturalisme En Débat*, ed. Michel Wieviorka (Paris: La Découverte, 1996); Alain Touraine, "Faux et vrais problèmes," in *Une société fragmentée? Le multiculturalisme en débat*, ed. Michel Wieviorka (Paris: La Découverte, 1996); Michel Wieviorka, "Culture, société et démocratie," in *Une Société Fragmentée? Le Multiculturalisme En Débat*, ed. Michel Wieviorka (Paris: La Découverte, 1996).

⁷² Wieviorka, "Culture, société et démocratie."

example, advocates a different understanding of Republicanism, warning of the dangers of repressing forms of diversity in French society, which may lead to a break down of civil society. For Roman, the pressures of assimilation must be replaced by increased recognition of difference.⁷³

These considerations of multiculturalism within the French context distinguish themselves from modernizing and traditional republicanism in their questioning of universalism. Having identified key problems with the republican model of integration, they open up the dialogue to finding new ways of “living together” despite cultural differences. More importantly, this discussion does not close the door on a rethinking of republican values and of the republican principle of universalism. However, the reach of these discussions remains quite limited: remaining within an overall discussion of immigration and integration, it also largely maintains race as a taboo.

Key Limitations of Mainstream Theoretical Approaches

The emphasis on republican values as the solution and main frame of reference is further entrenched by the opposition established between communitarianism and republicanism. The threat of communitarianism is imposed on any analysis of French society that takes racialized dynamics into account to understand the prominence of inequalities. So not only are mainstream approaches to analyzing French society narrow in their limited focus on immigration and integration, but they also establish limits to how the debate can be framed in general, branding “contentious” ideas as communitarian.

Overall the importance placed on republican values as a principle point of reference for any form of critical or theoretical engagement with sociopolitical phenomena, especially inequalities, is quite evident. Republican values, and

⁷³ Joël Roman, “Pour un multiculturalisme tempéré,” *Hommes et Migrations* 1197 (1996): 18-22.

universalism in particular, have largely framed discussions of inequality (even when subject to critique). Specifically, these theoretical trends highlight the extent to which French political culture shapes public thought and intellectual developments.

Former president of the HCI, Blandine Kriegel, posed the following questions in 2004: “How to give a place to cultural diversity in French society without challenging its common culture? How to be more open without disintegrating?”⁷⁴ These are the questions that are often raised in relation to the republican model of integration, in particular in debates on immigration. The recency of these questions, however, indicates the continued omnipresence of integration as the frame of reference. Whether explicitly or implicitly – the implicit nature of an ever-present discourse on integration will be explored in later chapters – integration continues to feature in the debates, but not only in the above attempts to theorize race relations and racism in France. Kriegel’s questions highlight the double-edged sword that speaking of race through the language of integration consists of: these questions resonate with a thinly veiled reference to a threat, the threat of immigration. The implication is that the problems posed by immigration will “challenge the common culture” or “disintegrate” French society if not handled or managed properly.

Framing debates on racism around the republican model of integration cements the debate, which continuously operates in terms of a duality between the immigrant, the foreign Other, and the “native” French, “*français de souche*,”⁷⁵ representative of a traditional French identity. The Other, perpetually envisioned as foreign to the national identity, is thus conceptualized as a threat to the status quo, as something to be managed, or else French society will face destruction. Unless the debate challenges the very way this question is framed – within the framework of republican integration – the discourse will continue to take this duality for granted.

⁷⁴ Blandine Kriegel, “Communauté et pluralité, réinventer l’intégration en France,” in *Les modèles d’intégration en questions. Enjeux et perspectives*, ed. Arthur Paecht and Michel Pélissier (Paris: IRIS/Presses Universitaires de France, 2004), 129.

⁷⁵ The contentious term of “*français de souche*” increasingly refers to French citizens whose parents and grandparents were born in France. Demographers and researchers like Michèle Tribalat’s works largely contributed to popularizing this distinction. The term is also utilized by the *Front National*.

This becomes increasingly problematic when the very discourse of integration, mediated through republican values of *laïcité* and universalism, becomes the vehicle for acceptable forms of racism.

Even more significantly, *race* as a critical concept of analysis remains absent. The three dominant approaches to these issues, traditional republicanism, modernizing republicanism and multicultural republicanism, attempt to address problems such as that of racial discrimination or inter-ethnic/racial relations within the paradigm of universalism. While they may attempt to indirectly address problems of racial discrimination by focusing on the best methods to manage integration, immigration and the presence of more than one culture in France, they only graze the extent to which race dominates life in France. The absence of race from theoretical analyses of racial discrimination or inequalities reflects overarching discomfort across France of employing the term “race” itself, still present in contemporary debates.

Staying within the universal framework, the scope of such analyses remains very constrained. By viewing racism from a raceless lens centered on immigration and integration, or more precisely, assimilation, racism becomes nothing more than an epiphenomenon. The extreme right is primarily blamed for racism, but indirectly, so are the immigrants themselves, as they do not “adequately” integrate into the folds of French society. Even though they are not perceived as capable of assimilation, the failed integration is often placed on the shoulders of immigrants. In addition, the last three decades have witnessed a tightening of the republican values themselves, further handicapping any real integration for immigrants, who are consistently excluded. Traditional republicans only reaffirm the primacy of the republican model, but without acknowledging that this model is configured in such a way that it allows for the exclusion of immigrants and their descendants. Modernizing republicans can admit some problems with this model, but still remain fixed on adapting it through, for example, socio-economic measures to strengthen the welfare state. But these analyses fail to examine where the inequalities faced by migrants or minorities actually take root.

Limitations of the general reticence towards using race, as a feature of analyzing and conceptualizing racism and racial discrimination, are not however limited to theory.⁷⁶ Manifestly, several key empirical limitations shape the practical application of antiracist and anti-racial discrimination tools, as will be examined throughout this research.

Introducing a Race Critical Approach

Taking into account the role French political culture has played in stigmatizing the concept of race, on the one hand, and in framing theoretical and empirical responses to racism on the other, this section seeks to introduce race critical theory as a more comprehensive approach to racism and racial discrimination in France. Turning the focus towards the role race has, and continues to play, in contributing to the formation of a national identity, this section will further explore the nuanced expressions and conceptualizations of race and racism in France, arguing for a race critical theoretical approach.

Particularist Universalism

As underlined earlier, race has often been presented as having no role in the formation of the French nation. The absence of race therefore becomes equated to the ideal of the French nation and to republican values, especially universalism. This section argues, however, that not only can universalism itself, as a conflation of French republican values, manifest particularisms, but also that the relationship between universalism, race and racism is more complicated than one of mere opposition.

Renan's 1882 lecture is often referenced to reinforce the idea of a long-standing historical commitment to universalism and equality. However, as Maxim

⁷⁶ Patrick Simon, "Qu'est-ce qu'une politique contre les discriminations?," *Recherche Sociale* 171 (2004): 6-14; Khalid Hamdani, "Visible pour les discriminations, invisibles pour les statistiques," *Esprit*, no. 320 (December 2005): 35-37.

Silverman demonstrates, despite the lack of racial essentialism in Renan's work as a defining element of the nation, his ambiguous use of "culture" points to the strong presence of "cultural essentialism" as crucial to the development of the French nation. What emerges then, is a form of "cultural nationalism" that emphasizes French history, language, and shared traditions, characterized by Silverman as "national/cultural racism" or "cultural/racist nationalism."⁷⁷ These more nuanced forms of racism and nationalism find root in the exclusionary nature that nationalism can take, even if not defined racially. Nation-building is a process through which distinctions are made between the nation, the people who form this nation and those who are outside of the national community. By emphasizing one specific history, one specific culture or one specific language as requisites for acquiring one specific nationality, there remains little scope for diversity within this specificity and there is an obvious possibility for exclusion from it.

This conception of the nation continues to be developed today by some staunch Republicans in France: Todorov, like Renan a century prior, argues for understanding the nation as a culture and emphasizes the need to break away from the dichotomy opposing nation as race and nation as a contract. Here, culture is seen as an acquired characteristic as opposed to an innate one; its acquisition could be learned by individuals, and involves first and foremost the language, but also the traditions, history and societal practices; most importantly it does not depend on blood or place of birth.⁷⁸ The problem, as we will see, is in the way that culture continues to be presented as something innate in debates on racism.

The link established by Silverman between nation and racism has also been developed by Étienne Balibar in *Race, Nation, Class*. Following on from Silverman's analysis, the French nation, which has been developed alongside the idea of universalism, is understood within this framework as ascribing cultural characteristics as a condition to nationality, posing a neat and natural distinction

⁷⁷ Silverman, *Deconstructing the Nation*.

⁷⁸ Todorov, *Nous et les autres*.

between nationals and non-nationals. Through this exaltation of the nation, the distinctions are consequentially or perhaps inevitably organized according to a hierarchal order.⁷⁹ In the 2009-2010 “great debate on national identity” that took place in France – launched by Eric Besson (Minister of Immigration, Integration, National Identity and Solidary Development)⁸⁰ – these same processes were at work again. The debate has taken a clear turn in delineating between who is and is not French, with a particular focus on Muslims, in spite of many already being French citizens.

This discussion of nationalism brings us to the more contemporary forms of racism in France, because the recent utilization of nationalism in contemporary political discourse and policy as well as in social sciences is equally contentious for some. As Finkelkraut describes, cultural racism once again emerges in full force with decolonization and post-colonial immigration to France.⁸¹ Some, like Pierre-André Taguieff present cultural racism as a form of neo-racism only emerging in the post-Second World War era as a result of antiracist efforts to instill cultural relativism.⁸² This perspective fails to see that this is not a completely new phenomenon, but reminiscent of the cultural racism constructed alongside national identity, which was present in colonial assimilation policies, as will be shown in the following chapter.

The rhetoric of culture and ethnicity dominating the public discourse works to replace and conceal the traditional and scientific notion of race. New forms of racism thus emerge, which according to Gilroy can be “distinguished by the extent to which they identify race with the terms “culture” and “identity.””⁸³ Attempting to adjust to postcolonial immigration places incredible weight on the need to integrate immigrants into French society. Because French identity is engrained in a conception

⁷⁹ Balibar, “‘Racism and Nationalism’.”

⁸⁰ “Grand débat sur l’identité nationale : 25 000 contributions reçues dès la première semaine,” *Portail du Gouvernement*, November 18, 2009, <http://www.gouvernement.fr/gouvernement/grand-debat-sur-l-identite-nationale-25-000-contributions-recues-des-la-premiere-semain> Accessed 2011-04-12.

⁸¹ Alain Finkelkraut, *La défaite de la Pensée* (London: The Claridge Press, 1988).

⁸² Lentin, *Racism and Anti-Racism in Europe*, 86–88.

⁸³ Paul Gilroy, “The End of Antiracism,” in *Race Critical Theories. Text and Context*, ed. Philomena Essed and David Theo Goldberg (Oxford: Blackwell, 2002), 254.

of French nationhood and republican values rooted in culture, integration requires that immigrants and their children assimilate to the traditional conception of Frenchness, and more importantly, leave all of their particularist affiliations behind, or at the very least keep them out of the public sphere. Coupled with the official absence of race, the focus of integration for immigrant groups stresses culture, which in turn takes on a natural or biological character. As Beriss writes, "Culture becomes, then, a convenient gloss for something that "looks" like race."⁸⁴ So even within a context where race supposedly does not exist, various semantic mechanisms and approximations allow for discussions on culture, in such a way that culture becomes interchangeable with race. What is especially important to note here, is that culture is more than just something that "looks like race" because it discursively take on the naturalized characteristic of race as well.

First of all, the relationship between notions of race and culture extended beyond a semantic replacement of race by culture with growing disavowals of "race" following the Second World War. Race and culture have been interrelated ideas from the time the concept of biological races rose to prominence in Western Europe during the Nineteenth Century. This point is raised by Robert Young, who states that "[a]ny notion of culture will involve a form of history [...] The close relationship between the development of the concepts of culture and race in the nineteenth century means that an implicit racism lies powerfully hidden but repeatedly propagated within Western notions of culture."⁸⁵ The notion of culture is thus not devoid of racial connotations. In its recent utilization, it has become euphemistically employed to designate that which we can no longer relate to the illicit notion of race. What the above Young quote highlights, however, is that regardless of any strategy of employing culture as a replacement for race in the second half of the Twentieth Century, the very notion of culture is affected by race and racism. A historicized reading of culture therefore has to be conducted in relation to race, linking back to the idea of culture-based or ethno-

⁸⁴ David Beriss, "Culture-as-Race or Culture-as-Culture. Caribbean Ethnicity and the Ambiguity of Cultural Identity in French Society," in *Race in France. Interdisciplinary Perspectives on the Politics of Difference*, ed. Herrick Chapman and Laura L. Frader (Oxford: Bergham Books, 2004), 40.

⁸⁵ Robert Young, *Colonial desire: hybridity in theory, culture, and race* (London: Routledge, 1995), 91.

racial based nations. This historical tie between culture and race further puts into question whether such a distinction between the two types of nations is even possible.

Some scholars, such as Michel Wieviorka reject the association of culture and racism, referring specifically to *cultural* racism. While acknowledging (the presence of) discrimination and prejudice targeting minorities because of their culture, Wieviorka critiques the use of “racism” to qualify these phenomena because he claims there is nothing involving “biology”.⁸⁶ However, Balibar offers a strong argument for why the specific concept of *cultural racism* is key to understanding the French context.

In the essay “Is There a Neo-Racism?” Balibar also investigates the character of a new racism particular to decolonization and the ensuing immigration from former colonies to the *métropole*, characterizing it as “racism without races.”⁸⁷ Attempts to tackle racism during the post-war and postcolonial era saw the biological concept of race removed from mainstream discourse, only to be replaced by euphemized versions of race. Culture comes into play to explain human differences as well as to explain racist actions. The accent placed on cultural differences and their importance is presented as the correct form of antiracism – one that does not reify racism – whilst providing an explanation for racist behaviour.⁸⁸

Balibar’s analysis also provides a starting point for understanding how culture is more than a euphemized replacement of race. As he points out, “*culture can also function like a nature*” (original emphasis) in the context of neo-racism.⁸⁹ He is talking here about the mechanisms by which, through discursive means, cultural referents often become naturalized and over time, come to *act* like race (as opposed to simply replacing it). Stuart Hall’s theory of race as a “floating signifier” is useful for gaining insight into how this discursive process takes place. Race, as a floating signifier, does not have a fixed meaning, but is instead variable. Race, thus acquires meaning through

⁸⁶ Wieviorka, “Culture, société et démocratie.”

⁸⁷ Balibar, “Is there a ‘Neo-Racism’?,” 21.

⁸⁸ Ibid., 22–23.

⁸⁹ Ibid., 22.

different contexts, whereby racial meaning is attributed to varying signs.⁹⁰ In terms of our discussion on culture, cultural characteristics can thus come to represent race through discursive or symbolic associations of cultural factors to race. Through racialization, meanings with racial connotations are thus attached to different phenomena, and in the process, cultural characteristics are presented as natural and immutable.⁹¹

So in the case of France, the use of culture to frame discussions of race and immigration cannot be isolated in its role in establishing naturalized differences, providing a conceptual bridge between universalism/nationalism and race. Instead, it must be considered as playing a key role in structuring racism without races, cultural racism, sometimes “neo-racism.” But, as the following chapter will show, this “new” racism is not entirely novel, in France especially. Instead, it is reminiscent of the cultural racism implicated in the development of the nation as well as the colonial “civilizing mission.”

In effect, even though the French nation is presented as having eschewed incorporating race into its concept of nationhood, exploring the role of race and culture in the construction of national identity provides an alternative understanding. From a specific idea of nationhood, however, republican values are derived and strengthened (through the French Revolution, the Enlightenment, etc...) as the concept of racelessness becomes synonymous with universalism. Universalism, a key aspect of republican values thus warrants a closer look.

⁹⁰ Stuart Hall, “The Spectacle of the Other,” in *Representations: Cultural Representations and Signifying Practices*, ed. Stuart Hall (London: Sage and the Open University, 1997), 228–230.

⁹¹ Karim Murji and John Solomos, “Introduction: racialization in theory and practice,” in *Racialization: studies in theory and practice.*, ed. Karim Murji and John Solomos (Oxford: Oxford University Press, 2005), 1–27.

Universalism and Race

Thus far, this section has put forward two main points by framing a discussion of racism through a critical reading of race and culture in France. Firstly, in many ways, culture can come to function like race, whether it is in relation to culture-based nation models, or whether it is in the attempts to employ culture as an alternative concept to that of race. Secondly, this relationship between race and culture allows a deeper analysis of contemporary forms of racism that are masked behind the language of culture, whilst retaining the mechanisms of race. In order to effectively determine the extent to which race is pervasive in France and enabled by the prevailing political culture, it is important to take the argument further by examining the relationship between universalism and race. The principle of universalism is thus being reexamined to explore how it can contain or serve to produce (in its usage) ethnocentric, racializing and racist elements.

In Aimé Césaire's *Discourse on Colonialism*, Renan is cited at length, but this time, it is for his purportedly racist beliefs: "The regeneration of the inferior or degenerate races by the superior races is part of the providential order of things for humanity."⁹² Or again, "Nature has made a race of workers, the Chinese race, who have wonderful manual dexterity and almost no sense of honor; govern them with justice, levying from them, in return for the blessing of such a government, an ample allowance for the conquering race, and they will be satisfied; a race of tillers of the soil, the Negro; treat him with kindness and humanity, and all will be as it should; a race of masters and soldiers, the European race."⁹³ Renan's words, clearly exalting racial hierarchies, were written nearly a decade before "What is a Nation?" but Renan remains famous for his presentation of the French nation where race does not play a role. Renan's two contradictory positions reflect one of the chief tensions of

⁹² Cited in Aimé Césaire, *Discourse on Colonialism*, trans. Joan Pinkham (London: Monthly Review Press, 1972), 4.

⁹³ Ibid.

universalism, as it relates to race. Trying to identify the root of this contradiction is key.

Even advocates of republican values and universalism such as Todorov acknowledge the ethnocentric character that this principle *can* take: universalism adopts particular values and ideas as a starting point, then generalizes them as universals; these particularities, however, emerge from a specific culture and society. To have a “non-ethnocentric” character, it would be necessary for universalism to select rationally favourable values over detrimental values and to be conscious of values that are outside society or culture’s realm as values to incorporate in the principle.⁹⁴ However, Todorov, like Dominique Schnapper, conceives of universalism as a “regulating principle,” one that always needs to be re-examined, especially if it falls into the perils of ethnocentrism or racism in the way that it is being used.⁹⁵

Such arguments are very common in mainstream attempts to understand historical events that reflect poorly on the use and application of republican universalism and values. In an analysis of the post-colonial situation in France, Todd Shepard highlights this tendency of the government and intellectuals to think of the colonial administration and assimilation policies as “a contradiction to the values [of the Republic] and thus foreign to it” as opposed to understanding such policies as “reflecting the incoherencies and paradoxes of republican values.”⁹⁶ Just as it is for Schnapper and Todorov, universalism is presented as an abstract idea not always reflected in institutions, policy and practice but that nonetheless should be sustained. But this begs the question: how empty a concept can universalism become before it ceases to have any value? These explanatory arguments for lapses in universalism do not adequately account for the possibility for universalism to be espoused at the same time as completely contradictory, race-based ideas, as in Renan’s case.

⁹⁴ Todorov, *Nous et les autres*, 19–20.

⁹⁵ Ibid., 425–429; Schnapper, “L’universel républicain revisité.”

⁹⁶ Todd Shepard, “Une république française « post-coloniale »,” *Les mots sont importants*, September 2006, <http://lmsi.net/Une-republique-francaise-post>.

Recently, various academics and intellectuals have stressed the importance of seriously examining the inherent contradictions of the universalist model, not only as an ideal that has been falsely or incorrectly applied at various occasions, but one that is in and of itself paradoxical. Achille Mbembe, for example, sees a deep contradiction in a “universalism held up by a particular culture and a particular language,” that only serves to disguise an “ethno-racial nationalism.”⁹⁷ Similarly, Nacira Guénif-Souilamas underlines the “ethnocentric conception of Frenchness that could be viewed as a “particularist universalism” legitimizing racism and discrimination.”⁹⁸ According to Guénif-Souilamas, “French ethnonationalism” maintains its tolerance for diversity while rendering “specific and constructed groups” invisible behind the veil of universalism.⁹⁹ She argues that new sexualized forms of racism in France (those that present the Arab male youth as an enemy) “[are] the expression and invention of a quintessentially French particularism: ethnonational separatism in the name of universalism [that] demonstrates that what is stated as “universal” is not automatically “universalizable.””¹⁰⁰

In “Racism as Universalism” Balibar further explores this question of a paradoxical universalism, in an attempt to clarify the ambiguous relationship between universalism and racism highlighted here. Balibar attempts to theorize universalism by moving away from the more obvious opposition of universalism and racism. Instead, he proposes that racism and universalism each “has the other inside itself – or is bound to affect the other *from the inside*” (original emphasis).¹⁰¹ Here, Balibar argues that attempts to define universalism inevitably set a limit to what actually is universal (such as defining what humanity consists of), meaning that at the limit of the definition, there will always be something outside the universal. Thus, in a way akin to

⁹⁷ Achille Mbembe, “La République et l’impensé de la ‘race’,” in *La Fracture Coloniale. La Société Française au Prisme de l’Héritage Colonial*, ed. Nicolas Bancel Pascal Blanchard (Paris: Éditions la Découverte, 2005), 152.

⁹⁸ Nacira Guénif-Souilamas, “La république aristocratique et la nouvelle société de cour,” in *La république mise à nu par son immigration*, ed. Nacira Guénif-Souilamas (Paris: La Fabrique, 2006).

⁹⁹ Guénif-Souilamas, “The Other French Exception,” 28.

¹⁰⁰ Ibid.

¹⁰¹ Étienne Balibar, “Racism as Universalism,” in *Masses, Classes, Ideas. Studies on Politics and Philosophy Before and After Marx*, trans. James Swenson (London: Routledge, 1994), 198.

racism, the universal and the non-universal will always be ranked according to some hierarchy. And conversely, racism universalizes some particular (lack of a) quality as belonging to a certain race.¹⁰² Offering a more general examination of universalism, Balibar's work can provide insight into understanding French universalism. Even though republican universalism is often presented as the antithesis of racism and as the way to combat it, Balibar's contributions to the debate challenge this by repositioning racism in relation to universalism, as co-existing rather than opposing.

This breakdown of universalism is crucial for exploring and evaluating antiracist and anti-racial discrimination mechanisms in contemporary France, in so far as republican values and the discourse of universalism largely contribute to shaping how these mechanisms operate in practice. The paradoxical nature of a seemingly particularist universalism which has a complex relationship with racism highlights some of the dominant problems in thinking of racism and race relations within a framework of integration that does not recognize the existence of race. The absence of race as an analytical tool means that the aforementioned framework does not provide an adequate conceptualization of the links between universalism and racist ideology, and even less so an adequate understanding of racial discrimination and the ways it is challenged.

According to Beriss, racial discrimination has been seen as a "matter of culture, but of a culture that constrains people in ways that resemble race."¹⁰³ Therefore as a question of the failed or successful acculturation of foreigners, it becomes a problem of integration, contributing to the exhaustive public debate on the success or failure of the republican model of integration. However, anti-racial discrimination is also seen to have a link with the integration project, either as an alternative approach necessitated by the failure of integration to reduce racial discrimination, or as a mechanism intended to indirectly reinforce the aims of the integration model.

¹⁰² Balibar, "Racism as Universalism."

¹⁰³ Beriss, "Culture-as-Race or Culture-as-Culture," 133.

In practical terms, republican values and the principle of universalism have definitely shaped how policy is formulated and limited the scope of institutional measures (either governmental institutions, businesses or in education) in that they legally require policies to be colour-blind. A growing number of analysts are starting to note the difficulties that adherence to the principle of universalism imposes on the fight against racial discrimination. One of the key points of contention is the illegality of obtaining statistical information based on race or ethnicity, especially regarding employment. However, there continues to be a reluctance to fully examine the impact that universalism has in reinforcing cultural racism, even when faced with the limited successes of the measures taken to fight racial discrimination.¹⁰⁴

Furthermore, Simon and Geisser show how, under the guise of universalism, a variety of phenomena occur that indirectly trump the fight against racial discrimination. First of all, the tradition of the Left to focus on economic inequalities rather than the racist factors that can lead to them displaces the problem and leads to a denial of the importance of racial discrimination. Secondly, the presentation of universalism and colour-blind policies as guarantors for protecting human rights makes it even more difficult to delve into how universalism contributes to racial discrimination. Finally, the contradictory nature of universalism has reduced the breadth and ambitions of civil society and activism in France (until recently?). While the 1980s saw many antiracist and minority groups coming onto the public scene to advocate equality and (some) recognition of their experiences, condemning institutionalized racism, the emphasis placed on universalism since then has seen an important characteristic in civil society.¹⁰⁵

Accusations of *communitarianism*, coupled with the shame created by a universalism that does not leave room for any particularism, has led to civil society becoming a tool of the integration process: advocating universal colour-blind

¹⁰⁴ De Rudder et al., "Les enjeux politiques de lutte contre le Racisme."

¹⁰⁵ Vincent Geisser, "L'Intégration Républicaine: réflexion sur une problématique post-coloniale," in *Culture Post-Coloniale 1961-2006: Traces et mémoires colonials en France*, ed. Nicolas Bancel and Sandrine Lemaire Pascal Blanchard (Éditions Autrement, 2006), 145-165.

principles and working with the government to ensure proper integration of immigrants and their children. This allegiance to the goals of the government to assimilate immigrants makes it more difficult to adequately advocate the rights of minorities, who face inequalities and racism, partly as a result of universalism and their exclusion from what is universal.

The discourse of *communitarianism* itself becomes increasingly problematic in relation to anti-racial discrimination efforts. Fabrice Dhume-Sonzogni has analysed how communitarianism first appeared in the media (tracing it back to 1997) and the ways in which it has been employed by the State, the media and intellectual commentators. Through a discourse analysis, Dhume-Sonzogni demonstrates how this concept has been utilized to a) reaffirm the notion of French exception, b) reinforce the republican model of integration and c) result in the justification of discriminatory practices. The idea of the French exception reemerges by borrowing terminology from multicultural contexts (communitarianism explicitly refers to American or Canadian style multiculturalism that is supposedly spreading in France). Following from this, the analysis highlights how the discourse of communitarianism, coinciding with the general decline of integration as a point of reference for French society, attempts to return to a republican model of integration by showcasing the dangers of importing multicultural approaches to diversity. Finally, he argues that through the opposition created between republicanism and communitarianism, a renewed stigmatization of certain minorities (especially Muslims) as a threat to national values because of their perceived adherence to communitarianism ultimately leads to justified discrimination of these groups.¹⁰⁶

However, bearing in mind how universalism can actually take on a *particularist* character – *communautarisme* of the majority population – it seems quite plausible that there is an interesting dynamic between universalism – as it shapes policy and the integration model – and the fight against racial discrimination. According to Simon,

¹⁰⁶ Dhume-Sonzogni, *Liberté, égalité, communauté?*.

universalism, especially its integration policy, seems to be intimately involved in creating racial discrimination and in hindering effective remedies against it and to redress it.¹⁰⁷ This dynamic will be considered throughout.

Potential Contributions of a Race Critical Approach

Theoretical contributions from varying disciplines, including post-colonial studies and sociology, have thus begun to illuminate lacunae in approaches contained within the framework of republican universalism. By questioning the concept of universalism, they demonstrate the existence of a significant link between this concept and racial discrimination – in how it has developed and in the way it has become a matter of public policy.

As Geddes and Guiraudon aptly describe, “The French way of fighting racism has [...] consisted in ignoring race.”¹⁰⁸ I have demonstrated how this attitude is manifested in dominant theoretical approaches to racism and antiracism, within legal and academic interpretations. This final section explores some of the theoretical implications of keeping race out of the equation, as well as the contributions race critical theory can make to advance the debate, by underlining the importance of understanding the sociopolitical mechanisms and power relations involved in the construction of race as a basis for understanding racism and racial discrimination.

To cite Goldberg, “Race is the glove in which the titanic, the weighty, hand of racism fits.”¹⁰⁹ As seen above, there are several practical implications to ignoring race in debates on racism and finding practical and sustainable approaches to curbing racial discrimination. By not thinking critically about race, most approaches tend to

¹⁰⁷ Simon, “Comment la lutte contre les discriminations est passée à droite”; Patrick Simon and Sylvia Zappi, “La lutte contre les discriminations: la fin de l’assimilation à la française?,” *Mouvements* 27-28 (2003): 171-176.

¹⁰⁸ Andrew Geddes and Virginie Guiraudon, “Britain, France, and EU Anti-Discrimination Policy: The Emergence of an EU Policy Paradigm,” *West European Politics* 27, no. 2 (2004): 339.

¹⁰⁹ Goldberg, “The end(s) of race,” 216.

link racism to culture or class. According to Fred Constant, this “[denies] race any explanatory powers, which are attributed to problems of policy, of social engineering or of State management.”¹¹⁰ Not only does this prevent exposing the extent of racism and its rootedness in all aspects of French society, but also significantly hinders the conceptualization of how racialization operates, masking less overt forms of racism. I have mentioned how specific racialized experiences are not taken into account by mainstream attitudes, but several other insidious forms of racism are consequently ignored.

The lack of problematizing the process of racialization applies to different forms of racism such as cultural racism or even religious racism. A recurring theme throughout this research will be that of Islamophobia and its current manifestations. An example is the now infamous law on the veil that banned young Muslim women from wearing headscarves in French public schools has been deemed an issue of *laïcité*, the French version of secularism. An issue that has raised international attention, it is hardly ever problematized in relation to racism within France. Pierre Tévanian is one of the few who do, arguing against what he characterizes as a racist law, premised on the racialization of Muslims, who are reduced to various stereotypes assigned to them within the French imagination.¹¹¹ In mainstream social science interpretations, few question how religion has come to be increasingly racialized in contemporary French society. The following chapter will attempt to do just that, by establishing key links between historical racisms and contemporary manifestations of racism.

Finally, one of the key ways in which race critical theory can contribute to understanding racial discrimination in France, and thus promoting a better anti-discriminatory agenda, is by posing a theoretical challenge to aspirations of an unquestioned universalism as guarantor of equality in France. Through this

¹¹⁰ Fred Constant, “Talking Race in Colour-blind France: Equality Denied, ‘Blackness’ Reclaimed,” in *Black Europe and the African Diaspora*, ed. Darlene Clark Hine, Tricia Danielle Keaton, and Stephen Small (Chicago: University of Illinois Press, 2009), 147.

¹¹¹ Pierre Tévanian, Audio recording, March 28, 2009.

theoretical framework, I consider how the concept of race in France plays (and played) a role in the construction of national identity and political culture. The principle of universalism can thus be re-examined to explore how it can contain or serve to produce ethnocentric, racializing and racist elements. This would help expand the overall understanding of how racism functions. In this research, racism is considered to consist of more than a classification into “races” or the expression of hatred directed at those considered inferior according to supposed biological races. Racism is a widespread system of oppression that cannot be dissociated from the social, economic and political transformations of the modern era. Serving the purposes of nationalism, colonialism, slavery, imperialism and economic, material and human exploitation, racism is perceived to function as a tool for the subjugation of certain populations and continues to manifest itself in areas beyond *expression*.

While racial discrimination has come to challenge the traditional understanding of racism as expressions of extreme right political movement, race critical theory can contribute to widening the analysis of racism to uncover more insidious forms of systemic, institutional and most importantly state racism, which must be identified before it can be condemned. It becomes more and more evident then, that race critical theory would be a useful theoretical framework to apply to the French context to ascertain the extent to which race has shaped contemporary France. While different actors have opened up the scene to allow for a more racialized analysis of France, causing Fred Constant to claim that French society is beginning to speak about race,¹¹² this still remains limited.

Over the course of the last few years, there has been a noticeable emergence of a discourse on race within French activism and within academic circles. The emergence of antiracist movements such as the CRAN and the *Mouvement des indigènes de la république* highlights the greater incorporation of the question of race into activist practice. In French academia, a growing number of works published in the

¹¹² Constant, “Talking Race in Colour-blind France.”

last six years also reflects a greater interest of scholars to talk about race. Ndiaye and Le Cour Grandmaison bring forward select historiographies of race in France, taking into account the history of blacks in France and French colonial history respectively.¹¹³ The works of É. Fassin, D. Fassin and Geisser have also engaged with these issues within the discipline of sociology, with Geisser steadily working on questions surrounding Islamophobia and Fassin and Fassin making significant contributions that shift the focus from the “social question” to the “racial question.”¹¹⁴ Finally, Tévanian and Khiari have contributed greatly to the debates on racism from an activist background rather than from within academia, particularly surrounding issues of the 2004 ban of the *hijab* in schools and on colonial racisms’ impact on contemporary France, respectively.¹¹⁵

While the expansion of this area of study both within and outside of France is notable, as will be shown throughout this research, the practical approaches to fighting racial discrimination do not necessarily mirror these developments. On the contrary, the empirical research presented here will depict the different ways in which race is repeatedly brought forward in various aspects of French anti-racial discrimination policies and actions, from civil society activism to institutional and legal approaches, only to be once again euphemized and constrained under the guise of conforming to republican values. This is will be particularly notable in the dismissal of groups such as the *Mouvement des indigènes* or the CRAN by both academics and antiracist practitioners. Speaking of race remains especially constrained in its lack of historical analysis.

¹¹³ Pap Ndiaye, *La condition noire. Essai sur une minorité française*. (Paris: Calmann-Lévy, 2008); Olivier Le Cour Grandmaison, *Coloniser, Exterminer : Sur la guerre et l'Etat colonial* (Paris: Fayard, 2005); Olivier Le Cour Grandmaison, *La République impériale : Politique et racisme d'Etat*. (Paris: Fayard, 2009).

¹¹⁴ Vincent Geisser, *La nouvelle islamophobie* (Paris: La Découverte, 2003); Didier Fassin and Éric Fassin, eds., *De la question sociale à la question raciale ? : Représenter la société française* (Paris: La Découverte, 2006).

¹¹⁵ Pierre Tevanian, *La République du mépris. Métamorphoses du racisme dans la France des années Sarkozy* (Paris: La Découverte, 2007); Sadri Khiari, *La contre-révolution coloniale en France. De de Gaulle à Sarkozy* (Paris: La fabrique, 2009).

Goldberg characterizes racism without race as a “racism purged of historical roots, of its groundedness, a racism whose history is lost.”¹¹⁶ But in France, racism continues to be thought of without race. Extremely virulent reactions to the *Mouvement des Indigènes de la République*, a recent movement that addresses the racial question head-on, demonstrate there is still little willingness to conceptualize race and the extent to which it is a significant social reality despite its lack of scientific basis. Race critical theory can help establish this link and is able to historicize racism by problematizing the various mechanisms of racialization, both past and present. As Eléni Varikas notes, citing historian Higginbotham, race is “a notion that, like gender, is a potent *metalanguage*.”¹¹⁷ In this sense, it would seem impossible to continue to exclude race from debates on racism and racial discrimination. As academia and antiracism reciprocally shape each other, whilst having the central role of influencing how racial discrimination is challenged, it is crucial they begin to factor race into their theorizations of racism and racial discrimination and thus start employing race as a theoretical tool.

Conclusion

This first chapter has sought to explore how the issue of racial discrimination has been theorized, demonstrating how the social sciences remain constrained in their approaches to racism and racial discrimination because of national reluctance, rooted in the political culture, to question problems using race. Despite the efforts of a small number of academics and organizations to focus on the question of race,¹¹⁸ these efforts remain quite limited in relation to the dominant anti-race discourse. The new agenda against racial discrimination appears hindered by the reticence towards race, producing a wide conceptual gap in which superficial solutions are attempted, without

¹¹⁶ Goldberg, “The end(s) of race,” 226.

¹¹⁷ Eléni Varikas, “Sentiment national, genre et ethnicité,” *TUMULTES* 11 (1998): 93.

¹¹⁸ See for example Fassin and Fassin, *De la question sociale à la question raciale ? : Représenter la société française*.

a deeper understanding of the extent racial discrimination and racism have seeped into French society.

Therefore, the goal of this research is to apply race critical theory to bring a new perspective to the racial discrimination debate, specifically by employing race as an analytical tool to bridge the aforementioned gap. By exploring the impact of the political culture on all levels in which anti-racial discrimination mechanisms are currently put in place, whilst keeping a race critical “lens” on, this research seeks to establish an in-depth analysis that takes race into serious consideration when thinking about racial discrimination in France. The following chapter will provide a historicized basis for employing race critical theory for this research, establishing a crucial link between the foundation of racial hierarchies in the French context and contemporary forms of racism, demonstrating the imbrication of race and universalism throughout French history.

Chapter Two: Contextualizing Racism from a Historical Perspective

**

“French identity, which seemed fixed and constantly unfolding, can now be taught as the unstable product of specific historical forces in which certain events are consciously forgotten and others are deliberately re-membered.”¹

Introduction

“The European dream needs a Mediterranean dream. It shrunk when the former dream that long ago sent knights from all of Europe on roads to the Orient shattered, the dream that attracted so many emperors of the Holy Empire and many kings of France towards the south, the dream that was Bonaparte’s dream in Egypt, Napoleon the Third’s in Algeria, of Lyautey in Morocco. This dream that was not as much a dream of conquest so much as a dream of civilization.”²

President Nicolas Sarkozy expressed these words during a speech in Toulon, on February 7th, 2010. Throughout the speech, Sarkozy denounced “casting a dark shadow over the past” whilst simultaneously exalting the colonial civilizing mission and all those who participated in educating, feeding, healing and developing the indigenous populations. This speech resonates with an earlier speech Sarkozy made in Dakar, Senegal in July 2007, during which he proclaimed “Africa’s tragedy is that the African man has not entered into history enough. The African farmer, who has, for thousands of years, lived with the seasons, whose ideal life is to be in harmony with

¹ Alice L. Conklin, “Boundaries Unbound: Teaching French History as Colonial History and Colonial History as French History,” *French Historical Studies* 23, no. 2 (Spring 2000): 216.

² “Nicolas Sarkozy speech, Toulon, France.”, February 7, 2010.

nature, only knows the eternal regeneration of time rhythmized by repetition, with no end to the same gestures and the same words”³ and “Muslim civilization, Christianity, colonization, beyond the crimes and mistakes committed in their name and that are not excusable, opened African hearts and mentalities to universalism and to history.”⁴

These excerpts from Sarkozy’s speeches directly reflect Golberg’s concept of historicist or progressivist racism whereby racial ordering appears to be determined by historical development.⁵ In the President’s take on history, the African is resituated as developmentally backwards, and blamed for not taking the opportunities for progress offered through France’s colonial presence in Africa. In a paternalistic tone, Sarkozy reaffirms the civilizing mission that strived to bring African colonial subjects into progress and development, but only resulting in the “African tragedy” as this potential for progress was not reached.

It would thus appear that the myth of the civilizing mission continues to resonate loudly in official and collective memories in France. This speech demonstrates the extent to which a shadow is cast over historical manifestations of racism and contemporary ones. Instead, France’s civilizing mission through colonial expansion is utilized to caution against French citizens of foreign origin who do not properly integrate into French society.⁶

History plays an important role in shaping French antiracism and anti-racial discrimination. In the previous chapter, a case was made for taking a race critical approach to analyzing racial discrimination in contemporary France; this involves tackling the “race question” historically. The previous chapter set the stage for critically engaging with the intersection of notions of Frenchness with those of race.

³ “Nicolas Sarkozy speech in Dakar, Senegal”, July 26, 2007.

⁴ *ibid*

⁵ Goldberg, *The Racial State*, 74–75.

⁶ “Nicolas Sarkozy speech in Dakar, Senegal.”

History is often evoked in contemporary France to justify not using the term “race” or to warn of the dangers of racial hierarchies. In research interviews with antiracist organizations such as the LICRA or with intellectuals like sociologist Dominique Schnapper, the most prominent example cited was France under Vichy’s government and the collaboration with Nazi Germany during the Second World War as a cautionary tale against race. This can become problematic when such a narrow historical focus shapes current French antiracism views so as to obscure other instances of racism: racism as a system of oppression instead of an aberration of France’s national history.⁷ Attempts to impart a vision of racism as a deviation from the norm figured largely in post-war efforts to combat racism, as Lentin and Lentin explain in the introduction of *Race and State*, “Their approach was founded upon the idea that racism is an external force that invades the body politic but that the state itself, contrary to the argument this collection seeks to make, is unconnected from this process. Racism is seen as an aberration of the politics of democratic nation-states, the work of posthumously named fanatics as epitomised by Adolf Hitler.”⁸

French participation in the Holocaust is often represented as a *momentary* departure from republican values and universalism, as a period during which the values of the republic were defied. This contrasts with the approach of this research to consider racism to be intimately linked to the development of modern nation-states, and therefore to the state. These links have been theorized in great detail by Goldberg in *The Racial State*, where he argues that: “Race marks and orders the modern nation-state, and so state projects, more or less from its point of conceptual and institutional emergence.”⁹ But in the case of France, presented in this way, the aberration is an irregular absence of universalism, rather than representative of a longer history of subjecting the racialized to a sub-status. This chapter thus seeks to bridge the gap left open by selective historical memory.

⁷ Goldberg, “Racial Europeanization”; Alana Lentin, “Racism, anti-racism and the western state,” in *Migrant Voices: Discourses of Belonging and Exclusion*, ed. G. Delanty, R. Wodak, and P. Jones (Liverpool: Liverpool University Press, 2007).

⁸ Alana Lentin and Ronit Lentin, “Introduction,” in *Race and State*, ed. Alana Lentin and Ronit Lentin (Cambridge Scholars Publishing, 2006), 4.

⁹ Goldberg, *The Racial State*, 4.

Through specific case studies and snapshots of how race holds a large place in French history, this historical chapter aims to highlight key periods in French history warranting inclusion in discussions of contemporary forms of antiracism and anti-racial discrimination policy. The goal of such an exploration is not necessarily to justify any specific forms of policies directed at particular minority groups, but it is necessary for conducting effective antiracist action. As historian Pap Ndiaye states, a historical justification is not necessary considering the already precarious status of minorities in France due to everyday racism and discrimination in so many aspects of daily life.¹⁰ However, it has become increasingly evident that the articulation of an antiracist strategy depends on an analysis of racism that does not favour one interpretation of history over another, especially as history has become an integral aspect of antiracism.¹¹

What does a historical approach to race relations in the French context imply? Through an examination of key phases of French history, rather than attempting to conduct a comprehensive historical analysis, this chapter will demonstrate how the principle of universalism has a) consistently and continuously been contradicted both in metropolitan France and in the colonies, and b) itself been utilized to contribute to a racial system of oppression. Carrying on from Chapter One, this chapter pursues an analysis of periods in French history during which universalism was concomitant with the institutionalization of race, ultimately establishing the crucial link between contemporary forms of racism and racial discrimination to France's racial and racist past. The goal of this chapter is not to simply point out instances when the French government can be shown to have gone against the principle of universalism, but to emphasize the relevance of historicizing race in France to understand and adequately deal with current manifestations of racism.

¹⁰ Pap Ndiaye, Audio recording, March 31, 2009.

¹¹ An example of how antiracism involves educational policies, focusing on history is found in France's country reports to CERD, in which education is listed as one of the French government's strategies for challenging racial discrimination. See for example, *Reports Submitted by State Parties Under Article 9 of the Convention. Seventeenth, eighteenth and nineteenth periodic reports of States parties due in 2008** FRANCE (United Nations Committee to End all Forms of Racial Discrimination, December 16, 2009).

As noted in the first chapter, lapses in republican values and failures in achieving universalism have attempted to be explained as just that: aberrations in French history which do not warrant a reevaluation of this principle. Yet, “universalism” as a principle, and derivatively as a discourse, has not only been contradicted in the institutionalization and application of a number of unequal and oppressive practices, but has also contributed significantly to entrenching these practices. This chapter will first show how through regulations of naturalization, citizenship and specific statutes such as the Indigenous Code (*Code de l'indigénat*) and the Black Code (*Code Noir*), a system of racialization became institutionalized, both in mainland France and in French colonial territories, enforcing widespread oppression of primarily non-white Europeans. This chapter also seeks to demonstrate how, just as a racial hierarchy was imposed on colonial subjects and slaves via legislation, French national identity was reciprocally shaped and influenced by developments in the colonies, especially in the period following the First World War.

Historiography

Memory has increasingly been appropriated by political figures and enshrined into law in a variety of ways. February 23rd, 2005, the *Assemblée Nationale* (National Assembly) adopted a law stating, “education programmes specifically recognize the positive role of French presence overseas, especially in North Africa, and award the history and sacrifices of fighters in the French army from these territories, the prominent position they deserve.”¹² Sparking great controversy in intellectual, academic and political circles, this law was repealed shortly after. The debates that ensued raised important questions about the role of history, the role of historians and the role of the State in imposing any form of official history. This was not the first time that these questions had been raised in France. Most baby boomers will recall that

¹² *Loi 2005-158 du 23 février 2005 portant reconnaissance de la Nation et contribution nationale en faveur des Français rapatriés*, 2005 Art 4 aliena 2.

their history education in the French public school system did not touch upon the role of the Vichy government during the Second World War. The reconciliation with France's collaboration with the Nazis took long to take shape;¹³ schools started to teach students about this history from the 1980s onwards, while the State Council (*Conseil d'État*) only recognized the "moral and legal responsibility" of the French State in deporting French Jews during the Second World War in 2009.¹⁴

The deportation of Jewish French people to Nazi extermination camps during the Second World War is very present in French collective memory, but the 2005 law on the positive role of colonization and ensuing debates highlight some of the tensions that exist from the relative absence of other histories from collective memory. In *Racial Europeanization* Goldberg identifies a specific link between which histories feature prominently in European collective memory and the above consideration of racism as an aberration. Goldberg argues that there is a focus on anti-Semitism because the Holocaust, as the epitome of racism, led to the removal of race as a means of understanding or depicting other experiences.¹⁵ As Goldberg states, speaking of a phenomenon that marks Europe in general, "in making the Holocaust the referent point for race, in the racial erasure thus enacted in the European theatre another evaporation is enacted. Europe's colonial history and legacy dissipate if not disappear."¹⁶ This "erasure" is particularly significant in the influence it can have in shaping the contemporary understanding of and challenge to racism. Through the process by which race is rendered an unacceptable mode of analysis, colonial legacies are rarely fully inclusive of the role played by race in shaping imperialism. The reading of race as an aberration therefore washes over the experience of race as a system. Furthermore, race becomes an unacceptable category from which current forms of racism can be challenged; this is especially pertinent for incorporating the concept of racialization to perceive racial dynamics.

¹³ Gérard Courtois, "Les blessures de la colonisation," *Le Monde* (Paris, 2006).

¹⁴ Bruce Crumley, "Behind the French Ruling on WWII Deportation of Jews," *Time*, Access Date 2009, <http://www.time.com/time/world/article/0,8599,1880118,00.html>.

¹⁵ Goldberg, "Racial Europeanization," 336.

¹⁶ *Ibid.*

Slowly, steps have been made towards the recognition of France's tumultuous history with slavery, and its role in the transatlantic slave trade. The May 2001 Taubira Law officially declared slavery and the transatlantic slave trade a crime against humanity,¹⁷ and May 10th has, since 2006, been declared the day commemorating the abolition of slavery and the slave trade. It should be noted that the French government has also legally recognized the Armenian Genocide and the Holocaust.¹⁸ The increasing legislation on historical matters can raise concerns over the Government's place in managing an official national history, as well as the politics surrounding which memories appear to gain prominence.

From these political developments, a light has been shone on the dearth in scholarship on and attention to France's colonial past. Overall, studies delving into these brushed-over eras of French history remain quite limited, specifically in exploring the relationship between colonialism and current socioeconomic and political phenomena.¹⁹ This is further compounded by the fact that a large part of academic scholarship, and similarly or perhaps consequently, mainstream antiracism,²⁰ ignore the link between contemporary forms of racism and France's colonial history and active participation in the transatlantic slave trade.²¹

However, recent post-colonial scholarship has begun to trace these lines and make these connections, advocating and undertaking further exploration of conditions under France's colonial empire. This is due to the overall dissatisfaction with the way

¹⁷ *Loi n°2001-434 du 21 mai 2001 tendant à la reconnaissance de la traite et de l'esclavage en tant que crime contre l'humanité*, 2001.

¹⁸ *Loi n°2001-70 du 29 janvier 2001 relative à la reconnaissance du génocide arménien de 1915*, 2001; *Loi n°90-615 du 13 juillet 1990 tendant à réprimer tout acte raciste, antisémite ou xénophobe*, 1990.

¹⁹ Françoise Vergès, "Les troubles de la mémoire. Traite négrière, esclavage et écriture de l'histoire," *Cahiers d'études africaines* 3-4, no. 179 (2005): 1143-1177; Jean-Frédéric Schaub, "La catégorie 'études coloniales' est-elle indispensable?," *Annales. Histoire, Sciences Sociales* 2008, no. 3 (2008): 625-646.

²⁰ As will be explored in Chapter Three, two types of civil society antiracism can be determined: mainstream antiracism that represents the most popular and recognized antiracist organizations (SOS Racisme, LICRA, MRAP, LDH) and alternative antiracism, that presents a challenge to mainstream conceptions of racism (CRAN, *Mouvement des indigènes de la République*, ...)

²¹ In France, academics play an important role in the civil society scene, contributing their areas of expertise to a particular goal.

that historians have framed colonialism, and its impact on history programmes in schools. One important example, stressed by historian Myriam Cottias, relates to the general tendency for historians to glorify Napoleon the First, as a great figure of French history, while casting a blind eye over several crucial aspects of his life and reign. Cottias argues that historians covering Napoleon's life fail to integrate slavery into their narratives, as if slavery had nothing to do with France's history.²² As Françoise Vergès notes, abolition is mentioned as a reflection of France's contribution to the world in terms of human rights, but not dwelled upon in the national history.²³

Increasingly, a small number of historians and post-colonial scholars are making up for this, arguing for the necessity of developing this historiography, and contributing to the production of this knowledge.²⁴ In *The Color of Liberty*, Sue Peabody and Tyler Stovall compiled a series of works on the histories of race in France. Along these lines, Bancel, Blanchard and Lemaire's *Culture Coloniale* (Colonial Culture) delves into various themes in French colonial history and Olivier Le Cour Grandmaison has published important historical works on French colonial history and racist State practices.²⁵ Immigration historian Gérard Noiriel has also traced public racist and anti-Semitic discourse, from the 19th Century to the 20th Century.²⁶ The works of Cottias, Emmanuelle Saada, Sylvie Thénaut, Pap Ndiaye, and Alice Conklin to name but a few, have contributed to this historiography, some within France, and others from other parts of the globe.²⁷

²² Myriam Cottias, "Et si l'esclavage colonial faisait Histoire nationale?," *Revue d'histoire moderne et contemporaine* (1954-) 52, no. 4 (2005): 59-63.

²³ Vergès, "Les troubles de la mémoire."

²⁴ Sandrine Lemaire, "Histoire nationale et histoire coloniale: deux histoires parallèles (1961-2006)," in *Culture Coloniale. La France Conquise Par Son Empire, 1871-1931*, ed. Pascal Blanchard and Sandrine Lemaire Nicolas Bancel (Paris: autrement, 2008), 523-536; Pascal Blanchard and Nicolas Bancel, "La fondation du républicanisme colonial. Retour sur une généalogie politique," *Mouvements* 38 (2005): 26-33.

²⁵ Le Cour Grandmaison, *Coloniser, Exterminer : Sur la guerre et l'Etat colonial*; Le Cour Grandmaison, *La République impériale : Politique et racisme d'Etat*.

²⁶ Gérard Noiriel, *Immigration, antisémitisme et racisme en France (XIXe-XXe siècle) - Discours publics, humiliations privées*. (Paris: Fayard, 2007).

²⁷ See also Emmanuelle Saada, *Les enfants de la colonie. Les métis de l'Empire français entre sujétion et citoyenneté* (Paris: La Découverte, 2007); Sylvie Thénaut, *Une drôle de justice. Les magistrats dans la guerre d'Algérie* (Paris: La Découverte, 2001).

This has not always been met with great enthusiasm: a review of Blanchard, Lemaire and Bancel's *La Fracture Coloniale* (The Colonial Fracture) by Eric Juillot, for example, finds fault with their attempts to think critically of France as a post-colonial space and to engage with the processes by which French colonial history was imbued with racial hierarchies that still have an effect today.²⁸ Juillot's review takes on a particularly derisive and dismissive tone, but also reflects the tensions between perceived *communautarisme* and republican values. Juillot's piece was commissioned by the website, the *Observatoire du Communautarisme* (Communitarianism Observatory), dedicated to bring information on and protecting republican values against the threat of communitarianism.²⁹ This example brings to light how history is not immune to political agendas, as well as the challenges facing alternative histories of racism.

Nonetheless, there are scholars who are up to this challenge, who continue to produce research that sheds light on France's complicated history of slavery and colonialism, linking the national history to French history, which is long overdue.³⁰ Based on some of this engaging material, these next two sections will now explore how race fits into this history.

Race and Empire: The Use of Race in the Expansion of the French Colonial Empire

Firstly, this chapter examines the ways in which race has been intimately linked with the French participation in the slave trade, as well as playing a significant role in the expansion of France's colonial empire during the Nineteenth Century. Despite tensions

²⁸ Éric Juillot, "La fracture coloniale est-elle plausible? Une analyse en profondeur du concept de 'fracture coloniale' qui minerait la société française.", June 27, 2009, http://www.communautarisme.net/La-fracture-coloniale-est-elle-plausible_a1043.html Accessed 2011-06-28.

²⁹ "Les objectifs de l'Observatoire du communautarisme," *Observatoire du communautarisme*, July 22, 2003, http://www.communautarisme.net/Les-objectifs-de-l-Observatoire-du-communautarisme_a5.html Accessed 2011-05-09.

³⁰ Lemaire, "Histoire nationale et histoire coloniale."

with republican values after the Revolution, a variety of justifications were expounded to reconcile these values with a colonial enterprise that relied on cultural and biological racism.

From the Code Noir to the Statut de l'Indigénat

Slavery was institutionalized in law in France with the first *Code Noir* (Black Code) in 1685, regulating slavery in French colonies in the Caribbean. As Vergès and Khiari respectively explain, the Code Noir did not specifically use the concept of race but did nonetheless institute a colour bar.³¹ Vergès stresses how the Code Noir *officially* established distinctions between those born free, those who were not and those who were freed. However, this distinction nonetheless also entrenched the different status of “whites, free by nature, and Blacks, slaves by nature.”³² By 1724, a second Code Noir came to regulate slavery in France’s colony in North America, Louisiana. This time, an unambiguous racial component to slavery was codified, with references to “negro slaves” and “Whites.” This second piece of legislation regulated vast arenas of white/black relations, including outlawing mixed marriages. This second code instilled a colour line, thereby associating the status of slave to the condition of being black, with restrictions such as those on inheritance: for example, neither slaves, nor free or liberated blacks were allowed to inherit from a white person.³³

The second instance of legislation put in place to regulate colonial relations was the *Code de l'indigénat* (Indigenous Code), which was first implemented by the Algerian *senatus consulte* (legislation) July 14th, 1865.³⁴ Algeria, a French colony since 1830, marked the first expansion of the French empire beyond the Caribbean involving the domination over a large indigenous population. While the 1870

³¹ Khiari, *La contre-révolution coloniale en France*; Françoise Vergès, *Abolir l'esclavage: une utopie coloniale. Les ambiguïtés d'une politique humanitaire* (Paris: Albin Michel, 2001).

³² Vergès, *Abolir l'esclavage: une utopie coloniale. Les ambiguïtés d'une politique humanitaire*, 18.

³³ Khiari, *La contre-révolution coloniale en France*, 30–31.

³⁴ Michael Brett, “Legislating for Inequality in Algeria: The Senatus-Consulte of 14 July 1865,” *Bulletin of the School of Oriental and African Studies, University of London* 51, no. 3 (1988): 440-461.

Crémieux decrees awarded citizenship to all Jews living in the three Algerian departments, the 1881 *Code de l'indigénat* further entrenched inequalities by criminalizing certain activities for “the natives” and not the colonials or French citizens. The *Code de l'indigénat*, establishing indigenous people under colonial rule as French subjects, was then extended in 1887 to apply to all other French territories, which vastly grew during Europe’s “scramble for Africa.” Included in this code were various forms of punishments for French subjects as well as forced labour, taxes and forced conscription (“Blood Tax”). Forced conscription (especially in the form of Senegalese *tirailleurs*) would later prove to be essential to France’s war efforts during the First World War.³⁵

Just as the Black Code solidified different legal standings based on one’s colour, and later race, the Indigenous Code also established firm legal distinctions along ethno-religious and racial lines. A clear example of this was in relation to naturalization rights in Algeria. Access to French citizenship through the process of naturalization was technically allowed to Muslim converts to Christianity, but in practice remained limited. The naturalization process for Muslim converts to Catholicism in Algeria demonstrates how a large part of this population was not naturalized, because of young age (if under 21), but also because colonial officials discouraged many from doing so.³⁶ This can largely be attributed to the widespread belief in the inferiority of Arabs and Muslims. As the Algiers Appeals Court ruled in 1903, the term “Muslim” “does not have a purely religious meaning, but on the contrary, designates the entirety of individuals of Muslim origin who, not having been admitted to the *droit de la cité*, have necessarily conserved their personal status of Muslim, without the need to distinguish between whether or not they belong to the Mahomedian cult.”³⁷ The convert thus remains subject to the Indigenous Code, despite having converted to another religion.

³⁵ Patrick Weil, “Histoire et mémoire des discriminations en matière de nationalité française,” *Vingtième Siècle. Revue d’histoire* 84, no. octobre-décembre (2004): 5-22.

³⁶ Ibid.

³⁷ Cited in Ibid., 8.

While the *indigènes* were technically French, they were restricted to the inferior status of indigenous, a status which appears to depend on both religion and ethnicity. As such, so-called natives were restricted from grouping together or forming any type of assembly, restricted from leaving their villages and often subject to curfews.³⁸ After the Second World War, the Indigenous Code was eradicated in most French colonies, with the exception of Algeria, where it was maintained until independence in 1962.

France is therefore no stranger to legally enshrined inequalities between people based on their nationality, gender, skin colour or race, repeatedly creating a rupture with the principle of universalism. Inequalities based on race were of course justified throughout France's imperialist endeavours, namely through the concept of the *mission civilisatrice* (civilizing mission) which guided French assimilationist colonial policy, especially from the middle of the Nineteenth Century onwards. Universalism therefore already established exclusions based on race, but also on ethnicity, culture and religion. Through these legal documents, exclusions to the universal rule (defining who does and does not belong to the universal) were enshrined and dictated colonial relationships.

Civilizing Missions

The civilizing mission was an integral aspect in the expansion of the French empire across the globe throughout the Nineteenth Century. This doctrine was crucial to the justification of colonization and subjection of millions of "natives" to colonial domination and oppression. Faced with the competition of growing colonial Empires (especially the British Empire), France sought to assert itself as a colonizing power, but also had to find a way to justify these imperialist aspirations and align them with its revolutionary values of freedom, equality and fraternity. The importance of the civilizing mission is rooted in the inherent contradiction born out of attempts to subjugate colonial populations, through slavery, forced taxes and labour, whilst (attempting to) remain within the bounds of universalism.

³⁸ Weil, "Histoire et mémoire des discriminations en matière de nationalité française."

French colonization relied on racial categories, which were only reinforced with increased French presence in North Africa, and later in other parts of Africa. As Hafid Gafaiti demonstrates, French domination in North Africa, particularly in Algeria, involved both the distinction between colonials and subjects, as well as additional divisions among subjects. Colonial subjects were split into different ethno-religious categories: as noted above, Jewish people were already considered separate from other subjects in Algeria and were granted citizenship in 1870; distinctions were also reinforced between Berbers (Kabyles) and Arabs, Kabyles typically being “whiter” than others.³⁹ The “Kabyle myth” was thus created, feeding the general conception that Berbers were more assimilable than Arabs. In the words of Viscount Caix de St. Aymour:

Arabs cannot be transformed whereas the Kabyles can be assimilated... Arabs are lazy, soft, slow... almost sad and fanatical. The Berber is hardworking, enterprising, practical... and finally not very religious. Accordingly, “If we have one duty in Algeria, it is to combat Islam, our eternal enemy, in all its manifestations,” so as to Europeanize culturally the ‘moderate Moslem’; i.e., the Berbers of Greater Kabylia. Therefore, as Captain Carette concluded in 1848: “Kabylia... must in a few years become the most intelligent auxiliary of our enterprise and the most useful associate in our tasks.”⁴⁰

Reminiscent of more recent approaches to the integration of postcolonial migrants, France’s civilizing mission – as was characteristic of other European countries’ imperialist expansion – relied on the notion of assimilation to justify the colonial contradictions of universalism, characterized by Goldberg as “progressivist racial historicism.”⁴¹ It centers on a view of progress and the capacity (or lack thereof) of the racialized, of slaves, of colonial subjects, to evolve into and achieve a greater level of “civilization.” As he explains, using the example of France, “colonial assimilationists were confident of their possession of universally just laws, building the policy on the assumption that natives should become civilized through their acquisition of the rule of law and the custom of the colonizers, by ceasing, that is, to be native. Education was

³⁹ Hafid Gafaiti, “Nationalism, Colonialism, and Ethnic Discourse in the Construction of French Identity,” in *French Civilization and its Discontents. Nationalism, Colonialism, Race.*, ed. Tyler Stovall and Georges Van Den Abbeele (Plymouth: Lexington Books, 2003).

⁴⁰ Rachid Tlemçani, *State and Revolution in Algeria* (London: Zed, 1986), 198.

⁴¹ Goldberg, *The Racial State*.

the principle mode.”⁴² In this sense, colonial subjects were seen as barbaric and in need of saving and civilizing by the benevolent French colonialists.

Historicist racism is at the root of France’s justification of colonial expansion and domination: by bringing “civilization” to the so-called barbarians, French colonialists were able to appease concerns that republican values of equality, freedom or universalism undermined their colonial aspirations. To get around the problematic aspects of the notion that freedom and equality applied universally, subjects were removed from that humanity. Here, Balibar’s argument that universalism and racism, rather than being extreme opposites, are actually “bound to affect the other *from the inside*” manifests itself.⁴³ In order to allow for the blatant disregard for principles of universalism and equality, French colonialists needed to ensure that the humanity defined within the universal, could not include the “natives” or slaves. Progressivist or historicist racism is therefore useful in explaining the mechanisms by which this humanity is defined and controlled. By demarcating a hierarchy based along progress, the universal is not necessarily closed off, as it is technically only unattainable to those who have not reached a certain level of civilization. Yet, universalism becomes fairly constrained in practice, as few can actually meet the necessary requirements to be incorporated into the universal.

Historicist racism takes the shape of cultural assimilation, whereby white Europeans are considered the epitome of development and progress, while natives are expected to assimilate European culture, education and technological and material developments to move towards a higher level of civilization. There are doubts, of course, as to the genuineness of the expectation that it was ever possible to fully achieve the European level of civilization and culture, as was the case for the number of Muslims who converted to Catholicism, but were still denied the naturalization process. The sinister aspect of this type of racism is that it offers universalism as something that might be attainable, whilst concurrently using criteria other than

⁴² Ibid., 82.

⁴³ Balibar, “Racism as Universalism,” 198.

biology to institutionalize difference. It therefore becomes a less obvious, but just as insidious racism.

The development of historicist racism does not necessarily mean that biological racism no longer plays a role from this point forward. Historicist racism can co-exist with a form of biological racism (racial naturalism) as these two forms of racism operate in relation to one another. In the example of France, Goldberg argues that racial historicism was the predominant “racial governance” informing colonial administration and expansion. But this does not preclude ideas of innate racial hierarchies from contributing to colonial rule during this time.⁴⁴ According to Julien-Joseph Virey’s 1803 definition, “the Negro is and will always be slave; interest requires it, politics demand it, and his own constitution submits to it almost without pain.”⁴⁵ Slavery and blackness were synonymously used after the emergence of racial categories and hierarchies to justify enslaving Africans and participating in the transatlantic slave trade. As the above quote stresses, by the turn of the Nineteenth Century (after slavery was reinstated in France by Napoleon Bonaparte in 1802, the year prior), “slave,” “black” and “Negro” were used interchangeably.⁴⁶

Furthermore, political debates on colonization were based on a biological notion of races. As prominent politician Jules Ferry pronounced in front of Parliament in 1882 in defense of France’s seizure of Tonkin: “We must believe that if Providence deigned to confer upon us a mission by making us masters of the earth, this mission consists not of attempting an impossible fusion of the races but of simply spreading or awakening among the other races the superior notions of which we are the guardian.”⁴⁷ Two years later, he went on to add, “The superior races have a right vis-à-vis the inferior races... they have a right to civilize them.”⁴⁸ Historian Alice Conklin

⁴⁴ Goldberg, *The Racial State*, 77.

⁴⁵ Julie-Joseph Virey's entry under 'Negro' in *Nouveau Dictionnaire d'histoire naturelle* (1803) quoted in Pap Ndiaye, *La condition noire. Essai sur une minorité française*. (Paris: Calmann-Lévy, 2008), 130.

⁴⁶ *ibid*

⁴⁷ Alice L. Conklin, *A Mission to Civilize. The Republican Idea of Empire in France and West Africa, 1895-1930* (Stanford: Stanford University Press, 1997), 13.

⁴⁸ *Ibid*

notes that these claims to racial superiority as a driving force for a civilizing mission were hardly contested by Ferry's peers who had faith in France's "unique civilizing mission." Instead, politicians at the time primarily disagreed on the methods of conducting such a mission, especially concerning the use of violence.⁴⁹

In his thorough history and analysis of "the black condition" in France, Pap Ndiaye shows how ideas of racial superiority and inferiority began to develop among travelers and thinkers at the onset of French participation in the transatlantic slave trade in the middle of the Seventeenth Century. Attempts to explain physiological differences between Europeans and Africans relied on various interpretations (environmental, cultural, moral or religious) and resulted in a widespread belief that Africans were mentally, physically and morally inferior to Europeans.⁵⁰ Racial hierarchies and racism emerged in full force with scientific racism taking the reigns in the classification of humans along racial categories and ranking them along a hierarchy with white Europeans at the top, and Africans or blacks at the bottom. From the mid 1800s, French scientists were largely involved in fleshing out theories of polygenesis, which define and organize races as separate and distinct human species. Arthur de Gobineau's famous essay *The Inequality of Races* exemplifies the reach of biological racism in his depictions and ranking of the different races.⁵¹ So just as the French empire was extending to include territories beyond the remaining Old Régime colonies like Guadeloupe and Martinique, both naturalist and historicist forms of racism were expounded as a justification for France's acquisition of more colonial territories and ensuing exploitation of colonial subjects.

⁴⁹ *ibid*

⁵⁰ Ndiaye, *La condition noire*, 230–236.

⁵¹ *Ibid*

Islamophobia's Roots? Colonial Orientalism and the Civilizing Mission

France's civilizing mission thus utilized various forms of racism: on the one hand it was based on a hierarchy of biological races, and on the other, it was centered on a scale of progress and development. This section now turns to examining the particular example of colonial Orientalism – as a form of civilizing mission – to further explore the ways in which racism manifested itself in this context. Considering the contemporary context of anti-Muslim and anti-Arab racism in France, it is important to look at this particular example to be able to ascertain whether these contemporary forms of racisms bear any resemblance to colonial Orientalism. Any links between the two will prove significant for dealing with the contemporary forms.

While the development of scientific races in France has been studied by a few disciplines, Bancel and Blanchard argue for greater research into the impact of racial categories on the civilizing mission and the link between colonization and racism in France.⁵² These racialized dynamics are evident in Maleks Alloula's *Colonial Harem, Images of a Sub-Eroticism* in which he examined a series of colonial photographs depicting North African women.⁵³ In his analysis, Algerian intellectual Alloula brings to light the Orientalist portrayal of Maghrebi women in colonial postcards. From the traveling nature of the postcards, this discourse became "ubiquitous," constantly moving and resonating in Europe. These representations symbolized colonial attitudes concerning the Orient, and particularly women of the Orient. More precisely, they illuminate the different stereotypes the French had of North African societies, reflecting French opinion in relation to their role as colonizers.⁵⁴ Recurring themes in the postcards and photographs relied on traditional Orientalist depictions. Colonized

⁵² Nicolas Bancel and Pascal Blanchard, "Civiliser: L'invention de l'indigène (1918-1940)," in *Culture coloniale. La France conquise par son Empire, 1871-1931*, ed. Nicolas Bancel, Pascal Blanchard, and Sandrine Lemaire (Paris: Éditions Autrement, 2008), 207-217.

⁵³ Malek Alloula, *Le Harem Colonial. Images d'un sous-érotisme*. (Paris: Éditions Slatkine, 1981).

⁵⁴ *Ibid* 9-10

North African women were often portrayed as prisoners, reviving the idea of the harem. More importantly, this confinement was also sexual. By snapping pictures of women with bare breasts and as odalisques, the photographer was able to enter the private and sexual sphere of North African societies, from which he was barred in reality.⁵⁵

These representations symbolize the power relationship between the French and the populations they colonized. By portraying the native women as such, the French were asserting their authority over them and consequently over the men as well. The submissive representation of North African women enabled the French to affirm their superiority over their colonial subjects. The fact that the French were in a position to represent these women in such a degrading fashion was meant to demonstrate the weakness of the North African population, especially that of the men.⁵⁶ Women captured in “typical scenes” were dehumanized: to be collected, to be hung on a wall or placed in a book, as a way of asserting social, cultural and political authority over colonial subjects. In the words of Winifred Woodhull, “in the colonialist fantasy, to possess Algeria’s women is to possess Algeria.”⁵⁷

This example of colonial representations, which relied on racist stereotypes of indigenous populations in French colonies, can serve to show how these depictions were created and used to further strengthen arguments supporting the necessity of a civilizing mission. Women were seen to “embody not just the native society in Algeria, but the ancient soul of the orient that supposedly survives in the Maghreb under the guise of Islam.”⁵⁸ These women were also represented as sexually and morally promiscuous, in sharp contrast to European women, often depicted as moral and

⁵⁵ *ibid* 21

⁵⁶ As neither men nor women had a way to prevent these photographs from being taken or their diffusion. There was not much that they could do to counter these representations. Postcards were not intended for the indigenous populations in the colonies, but were meant for tourists, military, settler populations (which was quite large in Algeria) and people on the receiving end of the postcards, mostly in France, but also throughout the Empire.

⁵⁷ Winifred Woodhull, *Transfigurations of the Maghreb. Feminism, Decolonization, and Literatures* (Minneapolis: University of Minnesota Press, 1993), 16.

⁵⁸ *Ibid* 19

respectable.⁵⁹ “Oriental” women, presented as such, were in desperate need of foreign intervention to escape their perpetual prison (the harem) and their questionable morals.⁶⁰ Through their dissemination, these images thus worked to justify the civilizing mission on the one hand, and constantly reaffirm French national identity on the other. By propagating these imageries, colonialists reified racist beliefs in mainland France, “proving” the importance of French people’s role in the civilizing mission as civilized people.

Meanwhile, French attitudes towards their colonial subjects and the meaning behind the civilizing mission also took on new dimensions *within* the colonies, especially during the interwar period. As Bancel and Blanchard describe, “the period following the First World War is characterized by the extension of principle archetypes developed in the 19th Century, tracing a border between “us” and “them.””⁶¹ In order to promote the “assimilationist” model of the civilizing mission, a process of “standardization” of the figure of the *indigène*⁶² began to take place during the interwar period. Attempts were made to present the *indigènes* as a more uniform group as opposed to having a hierarchy between different groups of colonial subjects, as had been previously done. This would in turn reinforce the idea of the French universal citizen, diametrically opposed to the colonial native.⁶³ This process falls under the overall goal of attempting to conform to the revolutionary principles of citizenship and universality: as Bancel and Blanchard write, “the emergence of the figure of a *native type* of the empire, colonial equivalent of the citizen that comforts the idea of the universality of France’s values and civilizing mission on the one hand, and reaffirms racial inequalities on the other (the *indigène* is defined by this inferiority, which materializes by a political and juridical discriminatory status).”⁶⁴

⁵⁹ Patricia A Morton, “National and Colonial: The Musée des Colonies at the Colonial Exposition, Paris, 1939,” *The Art Bulletin* 80, no. 2 (1998): 357-377.

⁶⁰ Woodhull, *Transfigurations of the Maghreb*.

⁶¹ Bancel and Blanchard, “Civiliser: L’invention de l’indigène (1918-1940),” 210.

⁶² The term ‘*indigène*’ directly refers to the *Statut de l’indigénat*, which relegated colonized populations to the status of French subjects.

⁶³ Ibid

⁶⁴ *ibid* 213

Using the example of colonial education policies in Cameroon at this time, Claude Marchand underlines the shift, following the First World War, from considering that the black (African) man is simply an inferior being to an inferior being that is capable of being civilized: “extremely delicate sense of justice and kindness... curiosity to learn, exceptional memory, ability to observe and to materially imitate.”⁶⁵ Marchand’s focus on education policy brings to light the heightened emphasis on pursuing the civilizing mission through education. Attributing Africans’ “intellectual limitations” to their supposed belief in fairy tales, legends, magic and superstition, colonizers saw potential in educating African children. Seen as means of bringing the black race “up to speed,” education was also a colonial tool to influence colonial populations positively towards the French nation, especially considering it was hoped that children educated in the French system would then transmit this to their families. Prohibiting indigenous languages from being taught, the French language was disseminated, in addition to history and geography lessons that highlighted the attributes of France. Nonetheless, education policies remained limited in two ways: firstly, from fear of creating elites that would challenge colonial authority, and secondly, to preserve racial purity.⁶⁶

The overall fear of rebellion, particularly on the part of educated elites, was widespread in the colonies. As Conklin shows, similar fears guided colonial policy in French West African colonies during the interwar period. This period saw the civilizing mission take on new dimensions, with a stronger emphasis on *association*,⁶⁷ marking a more significant rupture with republican ideology. She notes a change in the “liberating” tenets of the pre-1914 civilizing mission which had supposedly had a more universal tone to it, meaning that colonizers considered (or at least claimed) that

⁶⁵ H.M. Dubois, “La psychologie appliquée à nos noirs d’Afrique,” *Africa* II (1929): 350.

⁶⁶ Claude Marchand, “Idéologie coloniale et enseignement en Afrique noire francophone,” *Canadian Journal of African Studies* V, no. iii (1971): 349-358.

⁶⁷ A policy according to which colonial governance turned towards elite colonial subjects for consultation on the organization and management of colonial affairs. See Conklin, *A Mission to Civilize. The Republican Idea of Empire in France and West Africa, 1895-1930.*, 6-7.

colonial subjects could be turned into Frenchmen. The promise of accessing the universal, in this case Frenchness, would only be broken.

In hope of quelling elite rebellions and increasing demands for equality, colonial policy took a new turn. France's West African colonies experienced a shift in policy that re-evaluated who could and could not be assimilated into French citizenship. Increasingly, universalism was thus being restrained and redefined, to establish further restrictions on what makes humanity. Africans, from their very nature, were seen as inassimilable, lacking the essential qualities that could make them proper French citizens.⁶⁸ As one member of the Superior Council for the Colonies stated in 1925, "A Frenchman born in France of French parents and whose ancestors always lived on French soil, [is] not of the same nature as a subject born... on recently annexed territory."⁶⁹

The first section of the chapter has thus demonstrated how France's colonial endeavors and their justification relied on biological and cultural racisms, naturalist and historicist racisms. Linking back to the previous chapter, this section puts forward the relationship between cultural and biological racisms. As previously mentioned, Robert Young argues that culture is very much interlinked with the notion of race,⁷⁰ which becomes increasingly clear through this historicized analysis of the role played by race in French history. Through the civilizing mission, race intertwines with culture thereby setting new criteria by which to establish racial hierarchies. Over this period, the culture of the Republic, including the universal values espoused to validate the civilizing mission, becomes entangled with race and racism. This entanglement is both in the redefinition of universalism to justify the civilizing mission and the constant reference to race.

⁶⁸ *Ibid* 142-73

⁶⁹ Cited in *ibid* 167

⁷⁰ Young, *Colonial desire*.

These forms of racism have continuously been enshrined in law, giving a legally inferior status to blacks and to colonial subjects and legitimizing severe discriminatory practices based on these distinctions. These distinctions and practices continued during the interwar period during which the French government struggled to maintain control over its colonies, as well as manage the higher presence of colonial subjects and non-Europeans in mainland France.

Race and Metropole: Impacts of Colonial and Racial Ideologies in Metropolitan France

Having examined the pervasiveness of cultural and biological racism as operational contributions to colonial expansion and management of colonial subjects, this section now turns towards metropolitan France in order to demonstrate that race and racism were not restricted to the colonial empire. It argues, rather, that the racism exported through colonial expansion was also a permanent staple within mainland France throughout this period.

As a precursor to the Second World War, the interwar period in France was rife with colonial and imperialistic racism that took on new levels, increasingly importing and entrenching colonial and imperialist mentalities to the metropole. As previously seen, French national identity in the metropole developed dialectically with the image and representation of the native in the colonies. However, this relationship gained certain complexities with the increased presence of colonial subjects in the metropole and France's increasing dependence on immigrant labour.⁷¹

Civilized Immigration Only!

⁷¹ Alec G. Hargreave, "Introduction," in *Immigration in Post-War France. A Documentary Anthology*, ed. Alec G. Hargreaves (London: Methuen & Co. Ltd, 1987), 3-12.

As historian Elisa Camiscioli aptly demonstrates in her research on pronatalist movements and demography in the first half of the Twentieth Century, France's immigration debates and policies were deeply affected by racial and *racist* thinking. Following the First World War, France entered a demographic crisis, due to the high number of casualties during the war and to very low birthrates. Immigration was thus presented as a viable solution to this crisis, by various pronatalist lobby groups, but only in a limited sense. Because the demographic crisis left a gap in both the labour force, as well as among *citizens*, pronatalist movements lobbied for a form of managed migration, whereby only "assimilable" immigrants were acceptable.⁷² The demographic crisis brought a new dimension to debates on immigration: while there was already a presence of colonial subjects and other foreigners in metropolitan France, "an assimilability and ability to reproduce French offspring became the most salient criteria by which foreigners were to be judged, the evaluation of simple labour power no longer sufficed."⁷³

Therefore, the pronatalist movement advocated for *European* immigration (Italians, Poles, Spaniards) rather than non-white immigration, because it was not seen to pose a threat to the "racial composition" of the French population. As Camiscioli highlights, pronatalist groups often referred to immigration and the possible (or impossible) assimilation of foreigners in terms of biology and blood. As expressed by Albert Troullier of the *Alliance Nationale pour l'Accroissement de la Population Française* (The National Alliance for the Increase of the French Population), "[choosing] an individual without physiological flaws, with blood *compatible* to that of the person requiring the transfusion... There exist actual blood types and one cannot, without great danger, mix the blood of different and *incompatible* groups."⁷⁴ Biological racism was thus strongly manifesting itself in relation to immigration, but this was also infused with a cultural element: as a further measure, foreigners who were seen as a threat to the integrity of the French nation and French race, such as "Kabyle street

⁷² Elisa Camiscioli, "Producing Citizens, Reproducing the 'French Race': Immigration, Demography, and Pronatalism in Early Twentieth-Century France," *Gender and History* 13, no. 3 (2001): 593-621.

⁷³ *Ibid.*, 595.

⁷⁴ *Ibid.*, 609.

sweepers, Annamese stokers, Negro dockers, and Chinese labourers,” were deported in favour of immigrants that were seen to a) produce large and strong families (Spaniards, Italians) and b) would properly integrate into French society.⁷⁵ The question of integration reinforces the idea that there is something more at play here than only biological racism (a biological racism that would supposedly disappear with the “revelation” that race is a fallacy after the Second World War). Concerns over immigrants’ capacity to integrate into French society relates to the cultural compatibility of immigrants and French citizens. These very same issues continue to resonate today in relation to immigration and integration. As discussed in Chapter One, the cultural capacity of immigrants into French society remains the dominant framework not only in contemporary debates on immigration, but also on racism and *laïcité*.

France experienced a tightening of immigration policies after World War I, marked by a reaffirmation of the primacy of republican values and of colonial efforts as justified by the civilizing mission. Over these periods, a series of measures were put in place (or enforced, if they were already in place) demonstrating the extent to which French citizenship and republican values were not applied in the same way to all French citizens, even in the metropole. Republican values and universalism were contradicted time and again with the unequal treatment imposed on these groups who are supposedly French, but not treated as such by the government.⁷⁶ Discriminations on the basis of nationality were legally enshrined from the beginning of the Nineteenth century. French women form one of the groups largely affected by such discriminatory legislation: from 1803, French women marrying “a foreigner” automatically lose their nationality, take on their husband’s nationality and become “foreigners” themselves.⁷⁷ By the end of the First World War, nearly 200,000 women were rendered foreigners due to their marrying non-Frenchmen. This change in status affected women’s lives in several ways. Now required to register as foreigners in

⁷⁵ Ibid., 602.

⁷⁶ Weil, “Histoire et mémoire des discriminations en matière de nationalité française.”

⁷⁷ Ibid.

France and acquire the appropriate identity card, they were also at risk of losing their livelihoods if they worked as civil servants.⁷⁸

Similarly, non-French nationals who acquired French citizenship between 1927 and 1934 did not receive the full civil and political rights that “regular” French citizens were entitled to. These naturalized “foreigners” were politically and professionally restricted: they were ineligible for parliamentary mandates for ten years following their naturalization, as well as for standing as employee representatives within companies. A number of restrictions were later added through several decrees, prohibiting naturalized Frenchmen from accessing employment in the civil service (12 July, 1934) or preventing them from voting for five years after their naturalization (12 November, 1945).⁷⁹

The new dimensions of immigration had a severe impact on colonial subjects living in the metropole in the period following the First World War, despite their contribution to wartime efforts on behalf of France. Contrary to the expectations of colonial subjects who had hoped for more political and civil rights, or perhaps *actual* French citizenship, many faced increased forms of policing, control and unequal treatment in the metropole. As Lewis details, in her study of North African migrants in France during this period, these colonial subjects saw both their civil and social rights constrained by the French government in the twenties and thirties. Despite the creation of specialized services through the *Services des Affaires Indigènes Nord-Africaines* (North African Indigenous Affairs Services), North Africans in various French cities faced increased policing and ultimately deportation (in the 1930s). Lewis’ research demonstrates how the status of *indigène* applied in metropolitan France as well as the colonies. In spite of their French “nationality,” colonial subjects found themselves with little access to many social benefits, in addition to their already

⁷⁸ Ibid

⁷⁹ Ibid

limited civil rights, leaving them in extremely precarious economic and working conditions.⁸⁰

The End of Race?

As racism became even more intertwined with colonial ideology in French occupied territories, racism in the metropole also continued to grow steadfastly during the interwar years. In addition to official immigration policies differentiating between desirable and non-desirable immigrants in France and favoring European migrants, growing anti-Semitism penetrated the social and political spheres. Already apparent at the end of the Nineteenth Century with the Dreyfus Affair,⁸¹ French people of Jewish descent faced increasing racism in these years, leading to systemic state racism during the Second World War. The experience of the Vichy Government in Nazi-occupied France during this time discursively remains one of the deepest wounds in French collective history, especially in the government's treatment of Jewish people.

The most resonant case (in contemporary France) of institutionalized inequalities is of course the laws affecting Jews during the Second World War. Once again, it was through nationality laws that the government was able to strip Jews of their civil and political rights, despite their Frenchness. Firstly, the laws of 22 and 23 July 1940, which did not explicitly deal with the French Jewish population, did nonetheless target Jews by allowing for a revision of naturalization rules.⁸² More directly targeting the Jewish population, the 7 October 1940 law repealed the 1870 Crémieux Decree that had previously granted French citizenship to Jews in Algeria.

⁸⁰ Mary Dewhurst Lewis, "Subjects, Not Citizens. North African Migrants and the Paradoxes of Republican Imperialism," in *The Boundaries of the Republic: Migrant Rights and the Limits of Universalism in France, 1918-1940* (Stanford: Stanford University Press, 2007).

⁸¹ The Dreyfus Affair consisted of the wrongful arrestation and later conviction of a military captain accused of treason, but based on no evidence. This scandal invigorated anti-Semitic sentiment with strong mobilization against the supposed "Jewish plot." For more details see Lentin, *Racism*, 75-76; Enzo Traverso, *Pour une critique de la barbarie moderne. Ecrits sur l'histoire des Juifs et de l'antisémitisme* (Lausanne: Page deux, 1996), 44-45.

⁸² Naturalizations resulting from the 1927 law which widened access to the naturalization process

Just like that, Algerian Jews transitioned from French citizens to French subjects. Through these laws, a great part of the Jewish population in France was disenfranchised and stripped of French citizenship for crimes, or activities and opinions perceived as contrary to national interests. Not only were Jews disenfranchised and denaturalized, but also an estimated 76,000 Jewish people were deported and sent to extermination camps, with only approximately 3,000 returning at the end of the war.⁸³ The 1940 laws were only repealed after Liberation in 1945, albeit with some resistance by some politicians who acceded to Government after the war and wished to maintain the denaturalization of Jewish people.⁸⁴

This period in French history has severely marked and shaped antiracism in France,⁸⁵ and in the immediate aftermath of the Second World War, the trauma caused by France's collaboration with Nazi Germany and its direct implication in the Holocaust eventually led to a widespread reticence towards the use of racial terminology, as discussed in the previous chapter. It is within this context that antiracism was shaped under the direction of UNESCO and an approach was adopted that consisted in delegitimizing the notion of race. However, while there were important efforts to eradicate the use of race, these efforts did not simply do away with pre-war racisms, especially those predicated on a biological conception of different and unequal races. Considering the extent to which racism pervaded colonial ideology, as well as informed political ideologies in mainland France, especially with regards to immigration, it seems implausible that these forms of racisms simply vanished with the end of the Second World War, despite concerted attempts to eradicate the use of "race."

The purpose of historicizing and contextualizing race within French history becomes crucial at this point of chronological development. Effectively, the only significant change after the Second World War was the removal of race from

⁸³ Weil, "Histoire et mémoire des discriminations en matière de nationalité française," 10.

⁸⁴ "Histoire et mémoire des discriminations en matière de nationalité française."

⁸⁵ This will become more evident in Chapter Three which deals with civil society.

hegemonic discourse. Racist discourse, and more importantly practice, was not altered in any other significant manner as racism continued and continues to shape and inform social dynamics and politics.

This particular point in the timeline is significant to the overall argument and basis for this research. It is at this point that universalism re-emerges in full-force as the embodiment of antiracism. The abstraction of race, within the French national context, allowed universalism and republican values to be reinforced, almost as if the UNESCO efforts were only confirming republican values as the valid political ideology in which there is no room for racism. However, when it is claimed today – as it often is – that reference to race is not part of the republican tradition, it is a retroactive perspective that misrepresents the past. On the contrary, this chapter has shown how universalism has never been equivalent to an absence of either race or racism. This coupling of racelessness and universalism thus appears to be very recent, and yet, is presented as something long standing, as part of France's history of promoting equality and human rights since the French Revolution.

After the war, the doors were reopened to immigrants from the colonies to participate in reconstruction efforts, and generally to contribute to the labour force during this period of high levels of industrialization. Historians have shown how migration from the colonies continued throughout the Twentieth Century,⁸⁶ but the post-war era saw more families coming to France, some through family reunification. Neil MacMaster has explored the rise in racism towards migrants coming from colonies (and later former colonies), focusing his research on Algerians, and underscores the intense racism faced by Algerians living in France. Police brutality, surveillance and raids were commonplace, especially in the years leading up to the Algerian War (1954-1962). In addition to being harassed by police forces, North African migrants faced a variety of institutionalized discrimination, notably in housing

⁸⁶ Neil MacMaster, *Colonial Migrants and Racism. Algerians in France, 1900-62* (London: MacMillan Press Ltd., 1997).

and employment conditions.⁸⁷ This is but one example of the treatment imposed on colonial and post-colonial migrants in France after the Second World War.

It becomes increasingly evident then that the racism faced by colonial subjects, post-colonial migrants (after independence from French colonization) and blacks (both the *domiens* coming from French overseas territories and those who fall in to the above categories) cannot be disassociated from the long trajectory of the colonial empire traced in this chapter. At the same time as France was supposedly stepping into a new “post-racial” phase from the 1950s onwards, racial hierarchies continued to inform social relations in metropolitan France (and they still continue to do so), and race continued to constitute an important part of the French narrative.

Post-war colonial migration was dealt with as temporary phenomenon, as migrants were not expected to remain in France. Since colonial and post-colonial migration – ie the migration of blacks and *indigènes* – was both necessary and unwanted, it was approached as if it were something that needed managing. This was especially reinforced by the idea that these types of migrants, as opposed to European migrants, were less able to assimilate into French society and culture. Measures were taken to socialize lapsing migrants, in order to direct their proper insertion⁸⁸ into French society.⁸⁹

In spite of their hard work and contributions to reconstruction efforts and industrialization, these migrants were continuously treated as an underclass and faced poor housing conditions, threats of expulsion, and inferior and discriminatory working conditions. This was manifested by the series of migrant strikes from the late sixties through the seventies and eighties, fighting for rights in employment, in housing, against expulsions, against racism, for regularization and for rights in

⁸⁷ Neil MacMaster, “The ‘seuil de tolérance’: the uses of a ‘scientific’ racist concept,” in *Race, Discourse and Power in France*, ed. Maxim Silverman (Avebury, 1991), 14-28.

⁸⁸ This term refers to the integration of immigrants into French society.

⁸⁹ Khiari, *La contre-révolution coloniale en France*, 97.

general.⁹⁰ However, migrants were not even allowed to join and form civil society associations until 1981.⁹¹

Throughout the sixties and seventies, immigration increasingly became an issue of public concern and a searing political issue. Growing concern from the elite and public over immigration progressively led to the rise of the extreme right *Front National* in the 1980s and saw immigration gradually becoming a salient issue in political elections. The *Front National's* rise in popularity paralleled growing antiracist action and immigrant mobilization with the December 1983 *March for Equality and Against Racism* which saw close to 100,000 people demonstrating for equal rights.⁹² This period was dominated by a discourse of integration – the Republican model of integration – often ambiguously assimilationist.⁹³ Islam, in particular, came to be perceived as a threat to immigrant integration, an incompatible value, religion, way of life with French culture and society.⁹⁴

Since the period of mass migration in the 1950s and 1960s, first, second and third generations of migrants have settled in France and acquired French citizenship, whilst continuing to face everyday racism and racial discrimination, which has continued to this day. Pierre Tévanian and Sylvie Tissot respectively show, for example, the systemic discrimination experienced by foreigners and French people of foreign origin (notably of North African descent) in access to employment and housing. Unemployment and poor housing continues to disproportionately affect these populations who are repeatedly cast aside. Past systems of discrimination (such as national preference for employment) continue to impact immigrants or French people of foreign origin on a greater level, as they are more prone to be made redundant or to be currently unemployed.⁹⁵

⁹⁰ Ibid., 87–93.

⁹¹ *Loi n°81-909 du 9 octobre 1981.*

⁹² Khiari, *La contre-révolution coloniale en France*, 105–107.

⁹³ Touraine, “Faux et vrais problèmes”; Todd, *Le Destin des immigrés*.

⁹⁴ Geisser, *La nouvelle islamophobie*, 37.

⁹⁵ Pierre Tévanian, “Une discrimination systémique. L’insécurité dont on ne parle pas (Troisième partie),” *Les mots sont importants*, September 2010, <http://lmsi.net/Une-discrimination->

Mustafa Kessous, *Le Monde* journalist, evokes a “mental apartheid” to describe the daily humiliations he faces in his professional and everyday life as a result of appearing or sounding Muslim, Arab, North African.⁹⁶ Through the perpetual degrading interactions, where racialized minorities confront racist attitudes and systemic discrimination, they are perpetually denied their place in French society as fully-fledged French citizens. In the words of Kessous, “they say about me that I am of foreign origin, a beur, scum, an Islamist, a delinquent, a savage, a “beurgeois”, a child of immigration... But never, never French, French full stop.”⁹⁷

Colonial Continuity

An example of racial continuity that is strikingly apparent is the contemporary forms of Islamophobia in France. The very term “Islamophobia” warrants a discussion at this point, as it has become a controversial concept within French debates. From journalists and intellectuals like Caroline Fourest and Pascal Bruckner to antiracist activist groups like the LICRA resounds growing criticism of the concept of Islamophobia. This criticism is rooted in the perceived necessity to distinguish between critique of the religion – considered important and necessary – and anti-Muslim racism, which is considered morally wrong and illegal. The journalist, essayist, self-acclaimed feminist and antiracist, Caroline Fourest warns against this supposedly dangerous amalgamation: “At this stage, we must insist on the distinction between “Islamophobia” and racism against Muslims (that we can also call “Muslimophobia”) [...]. We will never put enough warnings against this tricky word, that confuses criticism of Islam, as a value system, with a type of racism.”⁹⁸ Previously, Fourest had

systemique#nb1 Accessed 2011-06-25; Sylvie Tissot, “Une discrimination en douce. À propos des inégalités dans l'accès au logement social,” *Les mots sont importants*, April 2006, <http://lmsi.net/Une-discrimination-en-douce> Accessed 2011-06-25.

⁹⁶ Mustapha Kessous, “Moi, Mustapha Kessous, journaliste au ‘Monde’ et victime du racisme,” *Le Monde*, September 23, 2009.

⁹⁷ Ibid.

⁹⁸ Fourest, *La dernière utopie*, 208.

already argued that the use of the term "Islamophobia" by antiracist activist turns them into "watchdogs for fundamentalism" but is also counter-productive in targeting "real racism" ("*les vrais propos racistes*").⁹⁹ The critique of Islam is thus set apart from the concept of racism, portrayed instead as a fraudulent misrepresentation of racist attitudes.

The contention here, however, is that in contemporary discourse, politics and debates, these two distinctions operate along blurry lines: it becomes increasingly difficult to distinguish between that which constitutes valid critique of Islam and anti-Muslim racism. Effectively, it appears that the critique of Islam as a religion is imbued in the process of racializing Muslims in a number of discourses, particularly in relation to the place of Islam in France and through the systematic redefinition of *laïcité*. Caroline Fourest is herself not immune to the type of critique of Islam that strongly resembles anti-Muslim racism, even though she criticizes the extreme right utilization of a republican discourse to be racist towards Muslims.¹⁰⁰ Khiari, for example, demonstrates the ways in which Fourest often resorts to over-generalizations of Muslims as prone to fundamentalism, crudely lumping all Muslims, cross-culturally, cross-nationally, in the same category.¹⁰¹ Her tendency to make generalized statements on Islam and Muslims, often devoid of references, is found throughout her other works, and contributes to rendering her critiques of Islam more ambiguous, especially when discussing the growing Islamic threat.¹⁰² While it is important to note here, the potential racializing tendency of critiques of Islam will be examined in greater detail in the following chapter's discussion of the 2004 ban of "ostentatious religious signs" in schools.

⁹⁹ Caroline Fourest, *La tentation obscurantiste* (Grasset, 2005), 69.

¹⁰⁰ Fourest, *La dernière utopie*, 210–213.

¹⁰¹ Sadri Khiari, *Sainte Caroline contre Tariq Ramadan. Le livre qui met un point final à Caroline Fourest*. (Paris: La Revanche, 2011).

¹⁰² Fourest, *La tentation obscurantiste*; Caroline Fourest, *Frère Tariq. Discours, stratégie et méthode de Tariq Ramadan*. (Paris: Grasset, 2005); Fourest, *La dernière utopie*; Khiari, *Sainte Caroline contre Tariq Ramadan*.

Another issue of a slightly different nature can be raised about using the term Islamophobia to refer to anti-Muslim racism. Some might argue that it is contradictory to use the specific term of Islamophobia to refer to anti-Muslim racism rather than to the more general concept of racism. However, its use becomes necessary because Islamophobia has, through a widespread discourse that blurs the lines between critique of Islam and anti-Muslim racism, become a largely more acceptable form of racism.¹⁰³

Concerted attempts to strip this concept of any meaning contribute to rendering this type of racism “respectable.”¹⁰⁴ Therefore, the notion of Islamophobia as it is used in this research, stresses the *extent* of this form of racism, bringing it forward and challenging its widespread acceptability. While it encapsulates anti-Muslim racism – racism directed at Muslims – it also functions in its reference to the racialization of anyone considered or appearing as Muslim, and stigmatizes various groups, especially North Africans, whether Muslim or not. For that reason, using this term in this research is an attempt to counter the widespread acceptability of reinforcing anti-Muslim and anti-Arab racism through the facet of the right to criticize religion and to oppose the increasing acceptability of this phenomenon.

Stressing Islamophobia also works to counter the idea that culture and religion have nothing to do with race. In attempting to delegitimize the concept of Islamophobia, essayist Pascal Bruckner argues, for example, that there is no connection between religion and race:

This creation, worthy of totalitarian propaganda, maintains a deliberate confusion between a religion, specific system of religiousness, and the faithful of all backgrounds who adhere to it. But a confession is not a race, not any more than is a secular ideology: Islam, like Christianity, is revered by Arabs, Africans, Asians, Europeans, just like men from all countries are or who have been Marxists, liberals, anarchists. Until

¹⁰³ “Le ministre de l’intérieur, la justice et la morale,” *Lemonde.fr*, December 20, 2010, http://www.lemonde.fr/politique/article/2010/12/20/le-ministre-de-l-interieur-la-justice-et-la-morale_1455811_823448.html Accessed 2010-12-21.

¹⁰⁴ Bouamama, *L’affaire du foulard islamique*.

proof of the contrary, we have the right, in a democratic regime, to deem religions false and retrograde and to not like them.¹⁰⁵

Along the same line of thought, some even contend that referring to "anti-Muslim racism" is dangerous: Bisma Lahouri and Eric Conan, argue for example, that "the confusion has become such that *Le Monde* forged the barbarism "anti-Muslim racism", thereby "biologizing" a religious cultural fact, as if it were a question of genes."¹⁰⁶ Both of these claims are therefore attempting to prevent an analysis of Islam that takes into account racial politics, denying that there is any type of relation between the two. Nevertheless, the historicized account of race and racism throughout this chapter has demonstrated that there is in fact a crucial link between Islam and race, rooted in French colonial history.

Race critical theory proves crucial to this analysis, as it allows us to establish these significant links between past and present, to counter the claims that there is nothing biological about Islam. It is not a question of arguing that there is such a thing as a naturally determined Islamic race, but rather a question of highlighting the ways in which Muslims and North Africans are *racialized*. Through discursive attacks on Muslims and Islam, stereotypes of Arabs, Africans, and Muslims are presented as immutable over time.

The refusal to acknowledge Islamophobia (in many ways operating through the refusal to employ the term) constitutes a denial of the stigmatizing and dehumanizing effect of political and mediatic discourses on Islam, compounded by increasing legislation targeting migrants and Islam such as the aforementioned 2004 ban on "ostentatious religious signs" in schools,¹⁰⁷ and the 2010 ban of burqas in public

¹⁰⁵ Pascal Bruckner, "L'invention de l'«islamophobie»," *Tribune de Genève. Savoir ou se faire avoir*, November 27, 2010, <http://blogdesamialdeeb.blog.tdg.ch/archive/2010/11/27/pascal-bruckner-l-invention-de-l-islamophobie.html> Accessed 2011-05-09.

¹⁰⁶ Bisma Lahouri and Eric Conan, "Ce qu'il ne faut plus accepter. La laïcité face à l'islam," *L'Express*, September 18, 2003.

¹⁰⁷ *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.*, 2004.

spaces,¹⁰⁸ as well as by the 2009 debate on national identity and the 2011 debate on the place of Islam in France.¹⁰⁹ These all contribute to further entrenching a conception of national identity which does not include Muslims, as well as fueling a discourse according to which all Muslims are presented as an homogenous and inferior group. Thus, through this process of racialization, Muslims are relegated, as a group, to an inferior status. Going back to the notion of cultural racism and neo-racism explored in the first chapter, racism directed towards Muslims grows, because precisely the homogenizing discourse on Islam produces a group that *functions* like a race, but based on cultural and religious elements. It is the perfect example of racism without races. As writes Khiari, "in today's world and more particularly in the conjecture of the last thirty years, Muslimness is established as one of the attributes of the inferior race."¹¹⁰

Racialized and racist dynamics have thus emerged and re-emerged in full force in the current Islamophobic and xenophobic climate. In *La Nouvelle Islamophobie*, Vincent Geisser describes a process of implementation – “*passage à l’acte*” – whereby the focus of debate and controversy has shifted from immigration to Islamic presence in France. He identifies a “new” form of Islamophobia, which cannot be assimilated to previous forms of Islamophobia for two reasons: firstly because it is a racism carried by elites and media rather than a popular racism and secondly, because this racism targets the “threat of Islam” rather than ordinary Muslims and Muslim practices.¹¹¹ In several works, Geisser cautions against establishing tenuous links between colonial racisms and contemporary forms of racism.¹¹² This chapter’s analysis of contemporary forms of Islamophobia would thus correlate with this, but he warns against

¹⁰⁸ Reuters, “Le Parlement vote l’interdiction du port de la burqa,” *Le Point*, September 14, 2010.

¹⁰⁹ Florent Guignard, “Un débat sur l’islam pour contrer le Front national,” *Radio France Internationale*, February 17, 2011, <http://www.rfi.fr/france/20110217-debat-islam-contrer-le-front-national>; “Grand débat sur l’identité nationale : 25 000 contributions reçues dès la première semaine.”

¹¹⁰ Khiari, *La contre-révolution coloniale en France*, 68.

¹¹¹ Geisser, *La nouvelle islamophobie*, 114–115.

¹¹² Geisser, *La nouvelle islamophobie*; Vincent Geisser and El Yamin Soum, *Discriminer pour mieux régner: enquête sur la diversité dans les partis politiques*. (Paris: Les éditions de l’atelier, 2008).

“establishing a direct and natural continuity between colonial representations of Islam and contemporary ones.”¹¹³

It is, of course, important to keep these distinctions in mind, since racism can take on different forms and targets, changing over time, especially in the presentation of a universal France that is beyond racial categories. However, Geisser’s distancing from a post-colonial or decolonial reading of contemporary French race relations demonstrates some limitations to the types of analysis elaborated by such theorists. Geisser has produced important literature that takes into account how Islam and Muslims in France have become racialized and dehumanized through increased racist media coverage and elite political discourses.¹¹⁴ Even though he alludes to the role that colonialism may have played, he nonetheless refuses to see a direct link between colonial and “new” Islamophobia. This separation created between colonial racisms and contemporary racisms is too neat and lacking nuance, because, as seen throughout this chapter, colonial racisms were not limited to the colonies nor constrained to the period of French colonization. On the contrary, colonial racisms, both historicist and naturalist, were actively present in informing how post-war migrants would be treated in metropolitan France. These forms of racisms have always been carried by elites and political figures while the “threat of Islam” cannot be dissociated from everyday practices.

Some of these racial tensions were amplified by Algeria’s struggle for independence in the 1950s, which was also carried out in metropolitan France by Algerian migrants. Policies were put in place directly targeting North African migrants, emphasizing the racialized depiction of the “threat.” For example, in September 1958, police commissioner Maurice Papon established a curfew over all North Africans in an attempt to thwart the activities of the *Front de Libération Nationale algérien* (FLN).¹¹⁵ The contextual elements and circumstances of the Algerian revolution played a role,

¹¹³ *La nouvelle islamophobie*, 114.

¹¹⁴ Geisser, *La nouvelle islamophobie*; Geisser, “L’intégration Républicaine”; Geisser and Soum, *Discriminer pour mieux régner*.

¹¹⁵ Jean-Pail Brunet, *Police contre FLN, le drame d’octobre 1961* (Paris: Flammarion, 1999), 28–29.

but the racism directed towards North Africans and the inequalities experienced by non-European migrants were a direct result of centuries of colonization, slave trade, and exploitation based on the belief that they were inferior to “civilized” French people.

In contrast to Geisser, Khiari argues that “Islam is both identity of the colonized and one of the formative signs of the racial enclosure that clutches a fraction of the population within a statutory dominated group,”¹¹⁶ therefore likening the situation of Muslims in France today and Muslim colonial *subjects* as comparable, even if not identical. Elsewhere he adds: “‘French society’ is a colonial enclave. It is the double continuum, temporal and spatial, through which the colonial relation permanently reconstitutes itself, breaks, and remodels itself in racial confrontation, in power relations.”¹¹⁷ Khiari’s analysis framed around the notion of a “double continuum,” is useful for understanding the nuances that are missing from Geisser’s distancing from a “colonial reading” of contemporary French society. While Geisser rightly states that current forms of Islamophobia have taken on new dimensions, particularly in references to the threat of Islam, there are other elements at play here.

Taking the March 2004 law banning “ostentatious religions signs” in public schools as an example,¹¹⁸ it becomes evident that Islamophobic discourse runs deeper than a fear of the potential threat of Islam. The threat of Islam is an element of the debate, intimately linked to the security threat that is supposedly posed by Islam: according to this logic, Muslim women who wear the headscarf manifest extremist interpretations of Islam and are thus potential extremists. This is only one element, however, as other factors influence the debate, including the *hijab* as a symbol of Muslim women’s oppression and the *hijab* as anti-*laïc*, anti-secular. These discourses rely on a number of racialized stereotypes that are not new or recent. Rather, they are closely reminiscent of the colonial Orientalist discourses seen above, whereby the

¹¹⁶ Khiari, *La contre-révolution coloniale en France*, 130.

¹¹⁷ Ibid., 59.

¹¹⁸ *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.*

Muslim/Arab woman is depicted as in need of saving from her oppressive husband, brother, uncle; a voiceless woman whose actions only reflect her submission. The civilizing mission thus re-emerges in contemporary France, exhibiting slight alterations in its form, but in substance continuing to find its roots in the established conception of Muslims as inferior to the “French native” (*“français de souche”*), an inferiority that was enshrined into law during colonization.

In this sense, the contemporary obsession over headscarves and *burqas* highlights an aspect of how the colonial continuum can play out: from the *Code de l’indigénat*, to the classification of North Africans/Muslims as unassimilable migrants and finally to current institutionalized forms of discrimination rooted in racist stereotypes and dichotomies of the Muslim/Arab man and woman. This example is only one of many, as other minorities or groups face similar systemic forms of racism, discrimination and subjugation. For example, 2010 witnessed the persecution of Roma, specifically targeted as an ethnic group as part of President Sarkozy’s security and immigration crackdown.¹¹⁹ Also in 2010, the violent expulsion of families of *sans-papiers* took place, including pregnant mothers and children in the Courneuve.¹²⁰ The racialized groups of France have varied experiences and distinct contexts from which this racialized hierarchy emerged in the French imagination. To summarize, Khiari aptly captures the hierarchy:

The dominant race defines itself as Christian, European, white, civilized, Western, universal, democratic, liberal, rational, secular, feminist, antiracist, fan of *Charlie-Hebdo*, group of richest countries, native French, Neuilly City Hall, NATO, etc. As for the dominated race, it is defined as uncivilized, barbaric, Negro, indigenous, oriental, immigrant, clandestine, ruffraff, developing, least developed countries, candidates for diversity, Muslims, terrorists, polygamists, sensitive neighborhoods, etc.¹²¹

¹¹⁹ Elise Vincent, “Immigration; Une circulaire sur les Roms contredit les propos d’Eric Besson,” *Le Monde*, September 14, 2010; Françoise Fressoz, “La polémique monte autour de l’expulsion des Roms,” *Le Monde*, August 19, 2010, sec. Economie - Entreprises.

¹²⁰ Médiapart, “Evacuation de familles sans logement à la Courneuve,” *Dailymotion*, August 2, 2010, http://www.dailymotion.com/video/xe8a4n_evacuation-de-familles-sans-logemen_news Accessed 2011-05-05.

¹²¹ Khiari, *La contre-révolution coloniale en France*, 40–41.

Khiari's statement underscores several significant elements at play here. The distinction between "self-defining" and "being defined" is crucial to understanding the context of racism in France. The "dominant race" here is a unified whole, falling under one main category of the white majority, benefitting from white privilege. The "dominated race," on the other hand, reflects the diverse forms of oppression and racialization occurring. Often intersecting, it is important to remember their variety and distinction. This point reinforces the significant contribution of a race critical perspective to the French context. Firstly, it will allow us to gain a better understanding of how different groups have become racialized at different points in French history. Historicizing this process of racialization then enables us to develop a time frame for analysis, which takes into account changing dynamics and hierarchies throughout different periods. So just as Geisser points out a new form of Islamophobia in France, a more historicized examination of how Muslims and Arabs have been classified as subordinate from colonialism to contemporary periods can highlight the existing links between contemporary Islamophobia and past racist mechanisms.

Geisser is not alone in cautioning against making such strong historical connections between past and contemporary racisms. Fourest, for example, denounces the *Appel des indigènes de la République* because of their definition of colonization: "To start with this very ambiguous definition of the term "colonization" – that no longer designates a political process [that places] one country and a people under supervision, but everything and anything: discrimination but also the republican ideal and laïcité."¹²² Fourest goes on to argue that this vision of colonization falls into line with that of the Muslim Brotherhood (and is therefore fundamentalist) that gives colonization a cultural dimension instead of a political one.¹²³ There are two key problems here woven around Fourest's erroneous reading of colonialism as restricted to a legal and political context of tutelage rather than a much bigger and more pervasive enterprise. In the above quote, Fourest highlights the blind spot of many contemporary intellectuals, journalists, scholars and activists in acknowledging

¹²² Fourest, *La tentation obscurantiste*, 99.

¹²³ Ibid.

the co-existence of republican values and colonial racisms. Furthermore, in addition to making unsubstantiated claims that the *Mouvement des indigènes de la République* subscribe to fundamentalism through their echoing of the Muslim Brotherhood, Fourest dismisses the existence of a cultural element to colonialism. As I have shown throughout this chapter, however, colonial assimilationist policy was imbricated with cultural policies, markers of the capacity of colonial subjects to “progress.” To remove colonialism from the analysis therefore prevents making these important links between culture, race and racism.

Analyses proposed by Sadri Khiari and the *indigènes de la République* can therefore incite great disagreement among academics and intellectuals, especially concerning the link between colonial racisms and contemporary racisms. But even those on opposing sides of certain debates (Geisser and Fourest) can come together in agreement, at least partially, over this link between colonial racism and contemporary, domestic racism. This may be an indication of the steadfast dissociation of the past from current antiracist efforts and general analyses of social and political phenomenon.

These diverging approaches to the problem of Islamophobia have an impact that goes beyond the realm of theory. As will be explored in greater detail in Chapter Three in relation to antiracism activism within French civil society, history impacts antiracist approaches to racism, but if certain historical links are erased, antiracist action will subsequently be biased according to the historical elements taken into consideration.

Furthermore, Khiari’s dichotomies also bring forward a very important aspect of the French context of antiracism: the dominant race purports to be antiracist, antiracism becoming somewhat of an innate condition. This is especially important for the French context in which France’s revolutionary history situates France as *the*

country of human rights.¹²⁴ This revolutionary legacy has implied that the Republic's very universalism makes it antiracist, and that the average Frenchman is not racist, as he is liberal and civilized. The assumption that through republicanism and universalism, antiracism is a key aspect of French society and culture, institutions and politics, can be very counterproductive for discerning the roots of racial discrimination and racism. This is especially significant in a context where "race" has vanished from French culture, society, politics and history as if it has never had a place in French life, as if it never had a role in organizing social and racial hierarchies. Without a race critical analysis, the French legacy of human rights, universalism and colour-blind antiracism can very easily be taken at face value.

A race critical perspective, however, digs deeper, questioning the assumption that universalism equates antiracism. This is done partly by contextualizing the place of race in French history – as done in this chapter – and by challenging the notion that "race does not exist" in a universal France – as done in Chapter One. More importantly, it allows us to distinguish forms of racism that are not considered as such, such as Islamophobia. It is only by engaging from a race critical perspective that the debate can go forward with a more nuanced and in-depth comprehension, analysis and assessment of contemporary forms of anti-racial discrimination in France.

I have revealed how French history has repeatedly been marked by racial classifications, and how French universalism is itself a concept heavily marred by racial connotations and not inherently antiracist as is often suggested. This will enable us to critically engage with antiracist activism, legislation and activities in different areas of French public life.

¹²⁴ Catherine Lloyd, *Discourse of Antiracism in France* (Aldergate: Ashgate, 1998).

Conclusion

This chapter has focused on how France's history over the last three centuries has continuously been imprinted with both biological and cultural racisms. Throughout the expansion of France's colonial empire, republican ideology went hand in hand with increasing dependence on scientific racism, as well as cultural assimilation under the guise of an honourable mission to civilize indigenous populations. What the third part of this chapter has underlined, however, is the extent to which these ideas were not limited to the colonies, but strongly affected metropolitan France. National identity was strengthened by being put in opposition to the figure of the inferior native, while systematic and institutional forms of discrimination practiced in the colonies deeply impacted the treatment of non-Europeans within mainland France. The racism and discrimination experienced by the various waves of immigrants throughout the Twentieth Century take root in the racist ideologies that enabled France to expand into a colonial empire. Unfortunately, these historical links are often underestimated in contemporary antiracist debates, as the next chapter's exploration of contemporary antiracist activism will demonstrate.

Chapter Three: Civil Society Approaches

Introduction

So far, Chapter One has laid out some of the theoretical problems and contradictions in attempts to analyze and curb racism from a raceless perspective, the dominant position in France, while Chapter Two contextualized the central role of race in French imperialism, establishing crucial links between contemporary and past racisms. The aim of this research, however, is also to examine how the universalist denial of race shapes praxis, specifically in antiracist activism. To this end, this chapter now turns the focus towards contemporary civil society approaches to antiracism, as it relates to the more recent focus on racial discrimination and developments over the last decade.

Antiracism in France is not a new field of enquiry and has been explored in great detail in works by Cathie Lloyd and Alana Lentin to name only a couple.¹ However, with the advent of a specific focus on discrimination, this chapter seeks to explore how antiracist discourse has adapted or changed within this new context, a context which is further complexified by the emergence of new groups and associations adding an alternate discourse on antiracism.

In France, antiracist civil society plays a significant role in contributing to the nation's antidiscrimination action. Several organizations such as the International League Against Racism and Anti-Semitism (LICRA), the Human Rights League (LDH) and the Movement against Racism and for Friendship Amongst People (MRAP) have been on the scene for most of the Twentieth Century, leading antiracist campaigns, lobbying for legislative reforms and taking cases to court. Joining these older

¹ Lentin, *Racism and Anti-Racism in Europe* Chapter 3; Lloyd, *Discourse of Antiracism in France*.

organizations, newer antiracist organizations have made strides, also contributing their efforts, albeit in different ways, to this struggle. The role of antiracist civil society is considered to be not just significant but *crucial* to national efforts, as these organizations appear as frontrunners of the struggle.

Since 2005, the antiracist field has changed significantly, especially with the creation of the High Authority for the Fight Against Discrimination and for Equality (the HALDE) as the independent administrative authority (IAA). The HALDE carries many duties, handling complaints brought by victims of discrimination and promoting equality in various sectors. However, the HALDE, being a generalist antidiscrimination agency, deals with all forms of discrimination and cannot direct all of its efforts towards racism and racial discrimination. Legal expert Gwénaëlle Calvès expressed in an interview that more emphasis should be placed on civil society and trade unions, since the HALDE has too many competences that prevent it from fulfilling its mandate properly.² Antiracist organizations therefore remain quite important, since they are not only meant to be independent from the government, but they carry the brunt of antiracist action both from their historical presence and from contributing where the HALDE cannot do so because of financial constraints and personnel limitations. It is thus quite common to place pressure on antiracist organizations to carry out a large proportion of antiracist activities.

Because of the importance placed on civil society, this chapter centers on how antiracist organizations carry out their work and activities, particularly exploring their different approaches to the notions of racism and racial discrimination as well as the impact of republican values on their approaches. For this purpose, interviews were carried out with different types of antiracist civil society organizations to include both the older, more established, organizations (SOS Racisme, MRAP, LICRA, and the LDH) as well as more recently created organizations (Collectif DOM, Mouvement des Indigènes de la République (MIR), the Association of Descendants of Slaves and their

² Calvès, interview.

Friends (ADEN) and the Representative Council of Black Associations (CRAN)). The loose category of “antiracist civil society” is used here to encompass different types of organizations and movements currently active in challenging racial discrimination and racism in one way or another. Targeting these diverse organizations, a more comprehensive evaluation can be made on the impact or potential impact different approaches can have. This chapter thus sets out to provide a contemporary snapshot of antiracist discourse and to analyze how this discourse has adapted to the increasing public awareness³ of discrimination as an aspect of racism as well as examining how emerging discourses relate or compare to mainstream antiracist discourse. Throughout the chapter, it will become evident that organizations’ interpretation of racism significantly shapes antiracist activism and contributes to the dominance of mainstream antiracist organizations over alternative ones in the civil society field of antiracism.

The picture that emerges of the contemporary French antiracist scene is that there are some clear failures in antiracist approaches because of a continued reliance on a universalist approach that erases race from antiracist practice. While emerging alternative discourses break from mainstream directions and offer a minority-based conceptualization of racism, the transformative power of these differing alternative voices remains limited. Throughout, this chapter will show how antiracist civil society remains largely influenced by a strong commitment to republican antiracism based on colour blindness, in spite of new approaches introduced by alternative antiracist organizations.

This chapter begins by introducing the different organizations, distinguishing between “mainstream” and “alternative” antiracist organizations. The second section examines the different conceptual approaches to racism and racial discrimination before evaluating the conceptual impact on activities and campaigns. Using the example of mainstream antiracist responses to the 2004 ban of ostentatious religious

³ Public awareness does not, however, necessarily imply strong action by public officials and representatives.

signs in schools, this chapter then examines the place of Islamophobia in antiracism, followed by a more specific examination of the tensions existing in raceless antiracism.

Mainstream and Alternative Antiracist Voices

In *Racism and Antiracism in Europe*, Lentin outlines four main categories of French antiracism: “traditional human rights organizations, antiracist/anti-fascist organizations, immigrant and solidarity groups and the new associations of the 1980’s.”⁴ This concise breakdown of French antiracism provides a useful schema of the objectives and approaches of different organizations, with a reference to their unique specificity. Lentin’s work on antiracism demonstrates the intrinsic link between French antiracism and republican thought, whereby “ownership of antiracism has been estimated according to the capacity of the discourse promoted by the various organizations to effectively sustain these tenets of republicanism.”⁵ As Lentin argues, antiracist organizations that framed their antiracism in republican terms, such as SOS Racisme, took a leading role on the French antiracist arena, overshadowing the efforts of identity-based movements like the *beur* movement.⁶ Drawing upon Lentin’s conclusions and my own fieldwork, it can be determined that four principal *mainstream antiracist organizations* continue to dominate the French context.⁷ Expanding on Lentin’s use of Cathie Lloyd’s model,⁸ I introduce a fifth category of *alternative antiracist organizations*, which have emerged over the last ten years, differentiating themselves from previous types of antiracist organizations. Reminiscent of the *beur* movement of the 1980s these alternative organizations

⁴ Lentin, *Racism and Anti-Racism in Europe*.

⁵ Ibid., 115.

⁶ Ibid.

⁷ For the purpose of this analysis, the internal distinctions between mainstream antiracist organizations are not very relevant here. Instead, focus is placed on their overall recognition across all boards of French society and anti-discrimination field of these four organizations as being the principle civil society antiracist organizations.

⁸ Lloyd, *Discourse of Antiracism in France*.

present unique antiracist approaches based on the experiences of victims of racial discrimination.

Several of the contemporary leading antiracist organizations have been active for decades, historically present on the antiracist scene. The longest running organization working on racism is the LDH, established in 1898 to advocate a number of issues, including antiracism and anti-Semitism. The LICRA and the MRAP followed suit in 1928 and 1949, respectively. In comparison, SOS Racisme's appearance on the scene in 1984 is relatively late, but the organization quickly secured a leading position as an antiracist organization making its mark through heavily mediated attempts to reach youths.⁹ Together, the LDH, LICRA, MRAP and SOS Racisme are considered to fall under the category of "mainstream antiracist civil society organizations."

There are several reasons for which these organizations are characterized as "mainstream." My fieldwork shows that these organizations have all apparently succeeded in gaining national recognition for their work in antiracism, as well as having gained recognition amongst each other and from institutional and governmental actors in this field. This position potentially enables the "big four" to carry a great amount of influence through their participation at national, regional (European Union) and international levels, with numerous possibilities of influencing anti-racial discrimination policies and legislation. SOS Racisme, for example, has played a crucial role in legalizing "testing,"¹⁰ a method of proving discrimination that is now permitted by the courts as a valid method and is now applied by a number of companies and organizations.¹¹ More importantly, these mainstream organizations can influence and sway many public debates related to racism, due to their public image as experts in antiracism. For example, the debate on ethnic statistics (February-May 2009) that was taking place at the time of this research's fieldwork witnessed

⁹ Lentin, *Racism and Anti-Racism in Europe*.

¹⁰ Situation testing will be explored in greater detail in Chapter Five.

¹¹ Laetitia Van Eeckhout, "Le premier ministre légalise le « testing » contre les discriminations," *Le Monde* (Paris, 2005).

each organization positioning themselves on the use of ethnic statistics as a tool to tackle racial discrimination. This debate will be addressed further in Chapter Six.

In contrast to the mainstream antiracist organizations, the groups that together constitute the loose category of “alternative” are not homogenous in any way. The alternative associations interviewed for this research all offer different perspectives to that proposed by the mainstream, but vary quite significantly in their origins, their structure and their approaches. This chapter examines four very different groups: the CRAN, the MIR, ADEN and the Collectif DOM.

All four groups have come onto the French antiracist scene over the last decade: ADEN was created in 2001 to further develop the collective memory of slavery, following the 10th May 2001 law declaring slavery and slave trade a crime against humanity.¹² Collectif DOM then appeared in 2003, followed by the CRAN and the MIR in 2005. The CRAN, a lobby composed of a federation of associations, is the first “black” organization as such, while the MIR (also referred to as ‘*indigènes*’) grew out of the tract “We are the Natives of the Republic!” (“*Nous sommes les indigènes de la République!*”),¹³ which condemned the neo-colonial and post-colonial dynamics present in contemporary France. Collectif DOM emerged from a perceived need to lobby on behalf of citizens from French overseas territories.¹⁴

The creation of the MIR and the CRAN must also be contextualized within a wider socio-political context: 2005 witnessed several key developments which may have played a role in leading to the emergence of alternative antiracist organisations. The MIR’s tract became public just one month before the French National Assembly passed the controversial law stressing the positive aspect of colonialism in February

¹² Loi n°2001-434 du 21 mai 2001 tendant à la reconnaissance de la traite et de l’esclavage en tant que crime contre l’humanité.

¹³ Mouvement des Indigènes de la République, “Nous sommes les indigènes de la république!”, January 2005, <http://www.indigenes-republique.org/spip.php?article1>.

¹⁴ Collectif DOM, Audio recording, April 15, 2009.

2005.¹⁵ Further to this, the November 2005 riots brought to the fore the extent of discontent and exclusion felt by the often racialized underclass living in the *banlieues* and subjected to inequalities, police harassment, and unemployment in their everyday life.¹⁶ These events gave cause for concern among activist circles and likely contributed to the creation of new antiracist movements which sought to address the continued racialized tensions in France in spite of existing antiracist activism and to specifically address the complicated relationship between historical racism and contemporary social inequalities.

What binds these groups together into a fifth type of French antiracism is the collective approach centered on particular experiences of victims of racism and racial discrimination and descendents of colonialism. This common focus on racialized experiences may not always be overtly expressed, but rather emerges from the different discourses articulated by each organization through interviews, campaigns and actions. Combining these different elements, it becomes evident that each of these groups proposes alternative discourses for tackling racial discrimination. These four alternative groups came onto the French antiracist civil society scene because of one main factor: the perceived failure of mainstream antiracism to deal adequately with and address the questions posed by racism.

Although this chapter outlines two main categories as a base of analysis, distinguishing between mainstream and alternative antiracist organizations, it becomes clearer and clearer that while these categories are minimally useful to set up the analysis, the lines of what is mainstream and what is alternative tend to be blurred depending on the focus of the analysis.

¹⁵ *Loi 2005-158 du 23 février 2005 portant reconnaissance de la Nation et contribution nationale en faveur des Français rapatriés* Art. 4 aliena 2.

¹⁶ Paul A. Silverstein and Chantal Tetreault, "Postcolonial Urban Apartheid," *Riots in France - SSRC*, June 11, 2006, http://riotsfrance.ssrc.org/Silverstein_Tetreault/ Accessed 2011-10-26 06:40:07.

Antiracist Approaches to Racism and Racial Discrimination

The argument thus far has been to expose the theoretical limitations of conceptualizing racism without race and to trace clear links between colonial racisms and contemporary forms of racism, exhibiting the polymorphous nature of racism. Crucial to this argument has been the demonstration that republican universalism has consistently co-existed with and indeed often contributed to racism. Turning to civil society associations, this analysis needs to examine how these groups tackle the question of racism, the extent to which antiracist discourse is imbued with republican ideology as well as the potential of subverting this discourse. At the basis of this chapter's analysis of antiracist activism is an understanding of racism that goes beyond the clear cases of racial segregation or expressions of racial hatred, to include the historical and political aspect of racism developed under colonialism and through nationalism, functioning as a system of oppression.

Despite the recent emphasis placed on racial discrimination, the concept of racial discrimination is of course not a new one within French antiracism, as SOS Racisme was tackling racial discrimination by setting up testing situations in the 1990s.¹⁷ Also, as will be shown in Chapter Four on the legislative framework, several politicians took note of the problem of racism and racial discrimination and lobbied for the 1972 antiracist Gayssot law.¹⁸ However, since the "French invention of discrimination"¹⁹ the particular attention that is now paid to racial discrimination by high level government officials,²⁰ and the legislative reforms that have been put in place since 2001 have had a significant impact on the structure of antiracist organizations and the type of work that they conduct.²¹ Mainstream organizations have had to transform or shape some of their activities to accommodate new legal anti-racial discrimination measures. This is especially noteworthy considering the

¹⁷ Lentin, *Racism and Anti-Racism in Europe*.

¹⁸ Claude Klein, "The New French Law Against Racism and Anti-Semitism," *Israel Law Review* 11, no. 1 (1976): 88-97.

¹⁹ Fassin, "L'invention française de la discrimination."

²⁰ Nicolas Sarkozy speech, December 2008, Sciences Po France

²¹ *Loi n°2001-1066 du 16 novembre 2001 relative à la lutte contre les discriminations*, 2001.

previous emphasis placed on direct acts of racism such as racist speech, incitement to violence, and racist insults or actions, rather than on racial discrimination specifically. These organizations thus shifted from a sole focus on expressive racism to one including access racism.²²

In the past, antiracist organizations specifically targeted explicit forms of racism, exemplified by extreme right movements such as the Vichy Government collaborating with Nazi Germany during the Second World War, or in more recent times, Le Pen and the rise of his party the *Front National* (FN) during the 1980s.²³ MRAP activists explain the impact of these events on their focus:

Because at the time, anti-Semitism was still dominating the scene after the horrors of the Second World War, of Nazism, of the Vichy regime, whereas later, we said that we put that second, or taken that out of our preoccupations. Not at all, but it was other forms of racism, or racisms that have other targets that were at the center in the 1970s, against immigrants migrations ... We were coming out of the Second World War, anti-Semitism was present, the horrors of the war were also visible, after the war, so the MRAP was also influenced by all that, by history.²⁴

Their activities have mirrored the earlier focus of antiracist legislation, which looked more towards these forms of overt racism until the legislative reforms of 2001 onwards, as opposed to the more insidious and much less obvious manner in which racism can operate.²⁵

In light of this general trend amongst mainstream antiracist organizations, this chapter questions whether the articulation of racism and racial discrimination remains the same during this transition. To answer this question, this chapter examines some of the key activities and approaches of mainstream antiracist organizations in a first part to evaluate their contemporary articulation of racism. In a

²² Pap Ndiaye, "L'étrange carrière de SOS racisme," *Mouvements. des idées et des luttes.*, 2007, <http://www.mouvements.info/L-etrange-carriere-de-SOS-racisme.html> Accessed 2009-10-12.

²³ Ibid.

²⁴ Mouvement Contre le Racisme et pour l'Amitié entre les Peuples - Service Juridique, "MRAP," Audio recording, April 3, 2009.

²⁵ Erik Bleich, *Race Politics in Britain and France : Ideas and Policymaking since the 1960s* (Cambridge: Cambridge University Press, 2003).

second part, mainstream approaches are contrasted with alternative approaches to examine the potential of alternative antiracist discourse.

Which Racisms? Which Discrimination?

As previously mentioned, mainstream antiracist organizations have had a long tradition of antiracist action primarily focusing on expressive forms of racism. The LDH, LICRA and MRAP were all established during periods when anti-Semitism was a grave concern and extreme right movements were posing a momentous threat in France and Europe in general. With the rise of the Nazis and the collaborationist Pétain government in France, the Second World War heavily marked antiracism's direction, turning it towards the dangers of overt forms of racism, namely incitement to racial hatred and expressive racism.²⁶ Antiracist legislation was generally influenced in the same way and mainly geared towards this form of racism, as opposed to racial discrimination. The legislative reforms since 2001 have significantly shifted this focus, strongly legislating against racial discrimination, both direct and indirect.²⁷

Since 2001, mainstream organizations have mirrored this shift in legislation and incorporated racial discrimination as part of their antiracist efforts and in their overall perception of *what* racism is:

Discrimination is a complicated subject [...] we are not in the mechanisms of ideological racism, that we could find in neo-Nazi movements where someone raises their hand with a very questionable ideology. [...] We all fall victim to prejudice. You, like me, like most people. The difficulty is precisely, to fight against these prejudices, I mean, prejudices lead to racism. – LICRA²⁸

²⁶ Suk, "Equal by Comparison."

²⁷ Christian Joppke, "Transformation of Immigrant Integration. Civic Integration and Antidiscrimination in the Netherlands, France, and Germany," *World Politics* 59, no. January (2007): 243-73; Geddes and Guiraudon, "Britain, France, and EU Anti-Discrimination Policy."

²⁸ Ligue Internationale Contre le Racisme et l'Antisémitisme, "LICRA," Audio recording, April 15, 2009.

Discrimination is a rupture in equality; it is a right. We are speaking of justice, of equality between individuals. – SOS Racisme²⁹

People of foreign origin (outside of the European Union) are victims of discrimination on all levels of social integration, employment, housing, and leisure. These discriminations are due to individuals holding racist prejudices. – SOS Racisme website³⁰

Indirect discrimination is complicated because it results from causes that can emerge from representations, prejudices, social systems and family systems, and so the observed result is inequality of access, in something, in access to something, not necessarily correctable by the person convicted for that discrimination. – LDH³¹

Interviews with mainstream organizations thus show their evolving understanding of racism: 1) moving away from the traditional conception of racism as associated with extreme right movements only, 2) linking discrimination (as a form of racism) to the concept of equality, and 3) expanding the notion of racism to include various types of racism. LICRA's assessment exemplifies mainstream antiracism's evolution over the last decade, precipitated by EU legislation imposing important legislative reforms in France. As antiracist legislation significantly moved away from the previous focus of antiracist legislation in France,³² importing EU definitions of direct and indirect racial discrimination, mainstream antiracist organizations followed these developments. Forced to apply these legislative reforms in their daily antiracist activities, they appear to be adapting their own definition of racism to incorporate these changes and widening their scope of activities to involve legal actions against racial discrimination as well as leading various types of campaign.

²⁹ SOS Racisme, interview.

³⁰ "Pôle anti discrimination. Le rôle.," *SOS Racisme*, January 7, 2008, <http://www.sos-racisme.org/Le-role.html> Accessed 2011-03-01.

³¹ Ligue des Droits de l'Homme, Audio recording, April 9, 2009.

³² Geddes and Guiraudon, "Britain, France, and EU Anti-Discrimination Policy."

Antiracism and the Fallacy of Race

Expanding their definition of racism to incorporate notions of direct and indirect racial discrimination does not necessarily imply a drastic change in the mainstream antiracist approach. A closer look is thus required at antiracist discourse that examines their articulation of how racism functions.

The dominant mainstream form of antiracism in France has a tradition of falling in line with the type of colour-blind antiracism that emerged out of the UNESCO tradition in the second half of the Twentieth Century. As examined in Chapter One, the UNESCO efforts relating to racism post 1945 amounted to the discrediting of race as a legitimate object of reference and the replacement of race with the equally problematic notion of culture.³³ The 1950 Declaration and its subsequent versions delegitimized the notion of biological or scientific race, which in the French context has been incorporated within the republican tradition, as an integral aspect of universalism.

Taguieff notes on the subsequent effects of UNESCO's campaign on antiracism, "To be antiracist, in an educated and intelligent manner, is thenceforth *no longer thinking in terms of race*, and *no longer speaking using the word "race"*" (original emphasis)³⁴ thereby highlighting this link. UNESCO's commissioned work on race set the stage for antiracism to become unequivocally linked to the discounting of race. At the same time, universalism in France was being reaffirmed, especially in the wake of France's role in the Holocaust; the invalidation of race as nothing more than scientific fallacy thus corresponded well to ideals of universalism. Universalism and

³³ Lentin, *Racism and Anti-Racism in Europe*; Balibar, "Le retour de la race"; Guillaumin, "I know it's not nice, but..."; Taguieff, "Du racisme au mot 'race'."

³⁴ Taguieff, "Du racisme au mot 'race'," 215.

racelessness are thus married through this process, which will have a shaping effect on mainstream antiracism.

The content of these declarations and statements has been analyzed in depth by Lentin in *Racism and Anti-Racism in Europe* but one important point that she raises is how racism became largely associated with prejudice through the UNESCO tradition:

[T]he negation of the superiority of certain groups of people over others, and its emphasis on racism as prejudice [...] circumvent a discussion of the role of the state in the rise of the idea of 'race'. Instead, the formula proposed is based on the proposition that real cultural differences between human groups do exist which in turn are perceived by people who, in reaction, often behave in prejudicial ways. This state of affairs was instrumentalised by a racial science which had been proved false. Therefore, contemporary aversion to human difference could be discredited as prejudicial, rather than being justified by a theorisation of a hierarchy of superior and inferior 'races'.³⁵

As Lentin shows, the discrediting of scientific races largely displaced a political analysis of race according to which the hierarchy of superior or inferior races is seen to have been mobilized for both domestic and colonial racisms. This focus on prejudice appears to remain flagrant in contemporary mainstream discourse on racism.

In spite of this step towards integrating the anti-racial discrimination agenda into their *modus operandi* and adapting their conceptions of racism to include racial discrimination, the above quotes highlight the fact that mainstream antiracist organizations do not appear to challenge their traditional approach to racism as much as they could; *prejudice* remains the dominant explanatory discourse for understanding racism.³⁶ This was apparent throughout the interviews with these four organizations, wherein racial discrimination comes to be seen as resulting from the general public's ignorance that it is "wrong" to be racist – wrong in the moral, ethical, sense – as well as fallacious because biological races do not exist. This perception has led to numerous educational, sensibility and awareness building campaigns targeting

³⁵ Lentin, *Racism and Anti-Racism in Europe*.

³⁶ MRAP generally displayed some difference from the other mainstream organizations in this sense.

this ignorance. For the LICRA, part of their awareness building centers on “spreading the word that discrimination is a crime, that it is prohibited by French law, that naturally, we are all *victims* [author’s emphasis] of our prejudices, but we must fight these prejudices.”³⁷

This conceptualization of racism that focuses on prejudice is problematic on several levels. First of all, it individualizes the problem of racism and reduces it to a natural reaction that individuals are bound to have. As such, it removes any political elements of racism, seeing it instead as something that is normal; a normal reaction to that which appears strange or different. Consequently, the way to get over these supposedly “normal” reactions to diversity is through education. The LICRA’s view that this awareness building should attempt to educate the public of the noxious effects of discrimination (the experience of racism and discrimination by victims) without “moralizing” appears to further remove any responsibility from perpetrators of discrimination. Not only are people thus subject to their prejudices, but they are also characterized as “victims.” Victims of their natural inclination towards prejudice.

This assessment of what primarily causes racism – prejudice – centers on the perpetrators of discrimination, their motivations for discriminating and results in a neglect of the experiences of victims. Although there is some or occasional acknowledgement of the need to investigate the experiences of victims of discrimination, the focus on authors of discrimination, when doubled with the reduction of racism to prejudice, appears to diminish this. For example, SOS Racisme turns its focus towards the authors of racial discrimination, calling for more attention to be paid on the perpetrators of racism, “we need many more studies on the practices, on the victims, but also on the authors.”³⁸ In fact, in interviews, these mainstream antiracist organizations mainly stressed the prejudicial perpetrators of discrimination without really addressing the *experience* of racism. This is more evident in descriptions of the process by which these organizations take on cases of

³⁷ Ligue Internationale Contre le Racisme et l’Antisémitisme, “LICRA.”

³⁸ SOS Racisme, interview.

racial discrimination to pursue legally, which highlight the suspicion directed towards people claiming to be victims of discrimination, a suspicion that goes beyond the important need to see whether a case has judicial merit (whether it can be proved, whether there was discrimination...). This following statement by SOS Racisme highlights the difference between being a victim objectively and the subjective feeling of persecution:

We are often led to conduct a, how to say, psychological support because most victims really need to talk about their problems, without it always being a problem, because they are not *all* victims of discrimination. It is rather a feeling a feeling of persecution, a sentiment we'll say instead, it's the phenomenon, if I dare say, a phenomenon of victimization currently. I don't know if it will increase or not, because it's only one year that I'm at SOS Racisme, so I don't know before that, how it worked, if it was more or less, but I have the impression that with the financial crisis leading to redundancies, that leads to problems, to an increase of let's say of discrimination in hiring, etcetera, more I think since 2001, I am not sure either, it would be a sentiment of xenophobia or other, there, so people have a tendency to call themselves victims when it's not always the case. – SOS Racisme, Service Juridique.³⁹

This statement indicates a number of interesting points and perspectives. As mentioned above, it begins by questioning the validity of people's claims to discrimination. From their position as "mainstream" organizations, it follows that these organizations will receive a high number of calls and queries from people who believe they have experienced racism or racial discrimination. It is up to the organization (and more specifically its legal department) to determine whether the organization can provide assistance in bringing a claim against somebody to court. It is always important to establish whether a victim of discrimination has enough proof, without which it would be very difficult to bring a case to court successfully. As the MRAP describes:

We ask people who consider themselves victims of discrimination, of racism, to write to us. [...] We respond to the person and we see, we study, in fact we study the facts that make up the person's story. If it constitutes discrimination and if we consider that there are not enough elements of proof in the file, because everything centers on proof, then we will respond to the person. We will ask them to give us further material elements that confirm their assertions of discrimination, of racism. If then we assess that there is not enough in the file, we cannot establish the discriminatory events, we'll inform the person. – MRAP Service Juridique.⁴⁰

³⁹ SOS Racisme - Pôle Anti-discrimination, Audio recording, April 3, 2009.

⁴⁰ Mouvement Contre le Racisme et pour l'Amitié entre les Peuples - Service Juridique, "MRAP."

This contrasts with SOS Racisme's approach that appears to put forward an attitude that goes beyond this evaluation: it displays an attitude of suspicion towards the people claiming to have experienced racial discrimination. This suspicion will guard against people who feel "persecuted" and who believe themselves to be victims without cause. Associating the claims of victims of discrimination to a general tendency of victimization, of a sentiment of "persecution," exposes the need to be cautious when handling claims. Victims of discrimination have to prove themselves doubly, and rise up to what SOS Racisme considers to be a real experience of discrimination.

Doubting the claims of victims is a theme that also appeared in interviews with other actors. Jean-François Amadieu, director of the Inequalities Observatory (*Observatoire des Inégalités*) dismissed the idea that potential victims of discrimination can actually know whether they have been discriminated against: "If you ask people, people cannot, by definition, answer the question of discrimination. It is up to the researcher to determine it. It is simple, it is not you who is going to say [it is because] I am black, why, because a job candidate, how can he know if he is discriminated against? How can he have a vision, he knows nothing."⁴¹ This statement reiterates the general sentiment of doubt directed towards minorities and removes any subjectivity victims of discrimination may have or experience.

This refusal to focus on the subjective victims of discriminations links back to attempts to circumvent race by avoiding victim-based identifications that result in communitarianism. Concentrating on the perpetrators allows for a discussion of racism without dealing with how race is constructed and manifests through racist incidents. Although Amadieu's particular attitude was most likely motivated by the ongoing debate on ethnic statistics happening at the time of the interview, it does nonetheless reinforce an antiracist perspective focusing on perpetrators rather than

⁴¹ Jean-François Amadieu, Director, "Observatoire des discriminations," Audio recording, April 8, 2009.

victims of discrimination. The above statement has great repercussions for the notion of the lived experience, removing the opportunity for racialized minorities to express their experiences, and therefore also to have a considerable impact in shaping the antiracist struggle.

As these organizations cannot take on every case, it is important that some sort of evaluation is made about claims that are brought forward. However, the MRAP's interviewee addressed this issue in a different manner: "There are also people who use it [discrimination], either because they were made redundant and they don't agree, except that here the redundancy would be justifiable legally – I'm not speaking here about the human level."⁴² They identify the possibility of other factors contributing to a situation resulting in firing or lack of promotion other than racism or racial discrimination, but do so without bringing into question the motivation of the claimants as SOS Racisme did. MRAP activists expressed concern related to the serious consequences that can arise from a weak case: if an organization or a person brings forward a case against a person or a company that does not result in a conviction because of too few elements of proof, they can then be pursued for defamation by the defendant.⁴³

Combining the tendency to focus on the authors of discrimination with the varying degrees of doubt directed at people claiming to have experienced discrimination, underlines a limited concern over the lived experience of racism. This mainstream focus on prejudice and on the authors of discrimination heavily influences the types of activities that these organizations engage in, namely education and awareness building. They also conduct legal actions, but their resources are limited, and more focus is placed on these activities instead: as the LDH stresses, "In the fight against discrimination, we are really on the topic of prioritizing education, awareness building."⁴⁴

⁴² Mouvement Contre le Racisme et pour l'Amitié entre les Peuples - Service Juridique, "MRAP."

⁴³ Ibid.

⁴⁴ Ligue des Droits de l'Homme, interview.

The LICRA also stressed the importance of education in targeting individual prejudice. For example, the LICRA currently campaigns to raise awareness of patronymic discrimination amongst recruiters, with the slogan “there is a mistake in Jamila’s CV; the problem is that she is named Jamila”.⁴⁵ Through campaigns such as this, LICRA targets recruiters responsible for hiring people (and thus likely to discriminate) who might be “victims” of their own prejudice.

Alternative Voices: Filling the Gap of Mainstream Antiracism

While mainstream associations are well established and have gained notoriety on the subject of antiracism, their voice and approaches are not the only ones that can be found in contemporary French civil society. On the contrary, their stronghold on antiracist discourse has inspired new organizations to emerge, offering alternative discourses on antiracism. In addition to the “big four” antiracist organizations, four “alternative” organizations were interviewed to provide a contrast to mainstream antiracist discourse: the CRAN, the MIR (*indigènes*), ADEN and Collectif DOM. There are of course other groups that would be considered “alternative”⁴⁶ but these were specifically chosen because antiracism features as central to these organizations.

The difference in their approach is rooted in a conceptual analysis of racism and racial discrimination that removes itself, or at least takes a step back from the traditional framework of republican universalism as it is used by mainstream organizations. This particularity may not always be overtly expressed, but rather emerges from the different discourses articulated by each organization through their interviews, campaigns and actions.

⁴⁵ « il y a une faute dans le cv de Jamila, le problème c’est qu’elle s’appelle Jamila »

⁴⁶ For example: les Blédardes, Collectif contre l’islamophobie, Alliance Noire Citoyenne, etc...

The four alternative organizations that are portrayed here are all relatively new in comparison to the stronger historical presence of the mainstream organizations. The emergence of these groups appears to be strongly influenced by a need to provide an alternative discourse to that of mainstream antiracism. According to interviews with these four groups, they came onto the French antiracist civil society scene to fill the gap created by their perceived failure of mainstream antiracism to take specific causes into account:

Leftist thinking of antiracism actually blundered the question of racism. The question of racism has always been apprehended as a moral question, racism is not good, never again, it's not good, you have to work on mentalities, it's a question of pedagogy... so the left never asked itself the question first of racism's structural character, and second, that there is an economic and political function to racism, and that the privilege of being white, it's a system of interest for which you will fight for, consciously or unconsciously. – *Mouvement des Indigènes de la République*⁴⁷

As we know that SOS [Racisme] has been present for a long time, but it doesn't mean racism has been reduced. – Collectif DOM⁴⁸

[SOS Racisme] did good work, but there comes a point, it is necessary that we put things in terms of politics because if we agree, well, we can be against racism but racism was not born just like that, we must go further. But we go a bit further. – ADEN⁴⁹

These groups all expressed an interest in introducing a new perspective on racism, one that did not and does not appear in mainstream approaches. As the above statements demonstrate, two key elements are at play. Firstly, there is the acknowledgment that, in spite of mainstream efforts to curb racism, there does not appear to be much progress on that front. And secondly, as raised by ADEN and in more depth by the *indigènes*, there is a political aspect to racism that is completely being overlooked by mainstream antiracist organizations, which tend to focus on prejudice and the authors of racism, as noted above. The *indigènes* emphasize this difference in approach: the focus on pedagogy and mentalities detracts from the structural, political institutionalization of racism as a system of oppression. As ADEN

⁴⁷ Houria Bouteldja, Spokesperson, "Mouvement des Indigènes de la République," Audio recording, April 15, 2009.

⁴⁸ Collectif DOM, interview.

⁴⁹ L'Association des descendants d'esclaves et de leurs amis, interview.

points out, it is not sufficient to be morally opposed to racism to fight it; what is needed is an analysis that takes into account the political nature of racism to understand its roots. The question that arises then, is whether alternative antiracist organizations achieve this in their own antiracist discourse and approach?

One of the noticeable differences between alternative and mainstream antiracism is the transition from the universal or global (mainstream) approach, to a more particularist approach. For example, the CRAN came onto the public scene in 2005 to lobby the government to challenge the racial discrimination experienced by black people. That is to say, the CRAN identified an important gap within antiracist discourse on the black question. Similarly, ADEN and Collectif DOM were also established because of a general lack of consciousness towards racism experienced by black people in France.⁵⁰ The gap results from a wider invisibility of blacks in France, which only recently emerged as a racialized group in public consciousness.⁵¹

ADEN came into existence to counter the silence over the question of slavery in French history, continuously overlooked in antiracist educational campaigns, and national curricula and not even recognized by the government (at the time of creation). Collectif DOM surfaced with the increased awareness of the daily experiences of racism and injustice experienced by people originating from the French overseas territories but living in mainland France, unofficially referred to as the “Fifth Dom.” While ADEN and Collectif DOM have a more specific concern than the CRAN – the first with the history of slavery and the latter with French citizens from France’s overseas territories – all three organizations are concerned with highlighting the experiences of black people, which they perceive to be insufficiently taken into account by mainstream antiracist organizations.⁵²

⁵⁰ Patrick Lozès, President of CRAN, “Interview with Patrick Lozès, President of CRAN,” Audio recording, April 3, 2009; L’Association des descendants d’esclaves et de leurs amis, interview.

⁵¹ Éric Fassin, “The Black Minority in France – Visible and Invisible,” Revised version of the paper presented at the AAA Meetings, “Race After the Riots in France” panel (2006).

⁵² Patrick Lozès, President of CRAN, “Interview with Patrick Lozès, President of CRAN”; Collectif DOM, interview; L’Association des descendants d’esclaves et de leurs amis, interview.

Finally, les *indigènes* launched their movement in 2005 with their seminal text “We are the Natives of the Republic!”⁵³ outlining their resistance to what they identify as a system of oppression reigning in France, residual from colonialism. Their concern centers on the residual effects colonialism has had on contemporary race relations in France and they also targets racialized minorities. In February 2010, the MIR transitioned into a political party: *le Parti des Indigènes de la République* (PIR).⁵⁴

Part of what distinguishes alternative antiracism from mainstream antiracism is in these groups’ attempts to move away from the perception of racism as an individual and prejudicial matter. One of the uniting features is in the way that they all frame their antiracist discourse in terms of the lived experience of racialized minorities in France, in one form or another. The appearance of ADEN, Collectif DOM and the CRAN reflects a widespread and increasing concern over the invisibility of black people in France, especially in relation to racism. This concern over invisibility is reflected in the following statement by ADEN on the neglect of certain histories and its serious impact: “Most didn’t know they were descendants of slaves because it wasn’t spoken of. We weren’t allowed to say it because, in Martinique, they learn French history, and not at all the history of Martinique, nor geography. They know French geography more than the geography of Martinique. [...] When you don’t know your history, to know who we are... we need to know from where we come.”⁵⁵

Alternative Histories

Alternative antiracism seeks to render visible what has been invisible for so long, through work on the history of racism and colonialism. History is a key aspect of antiracism, but approaches vary on how history is incorporated into antiracist

⁵³ Mouvement des Indigènes de la République, “Nous sommes les indigènes de la république!”.

⁵⁴ Even though they are now the PIR, the *indigènes* will be referred to as MIR for consistency.

⁵⁵ L’Association des descendants d’esclaves et de leurs amis, interview.

discourse and activities. Mainstream antiracist organizations direct a large portion of their efforts towards education and awareness building, as a way of challenging the prejudicial attitudes of individuals prone to racist stereotypes. Awareness building is thus also directed towards youths and students in school, through education of history. The LICRA explains the role this can play: "We can obviously draw from history, French history, world history. Its necessarily elements that allow to explain vast things and to bring awareness to kids and to teenagers of the dimension of racism and of discrimination [...] For example, we can talk about the Vichy regime, we can speak of the Apartheid regime in South Africa, we can speak about the condition of black Americans in the United States during the fifties, etcetera, etcetera... they are pretty sensitive to these themes."⁵⁶ Previous examples of racism are thus used to educate youths about the immorality of racism, as a warning against the atrocities committed in the name of race.

A survey of mainstream antiracist organizations' websites, reports and campaigns gives the impression that there is some awareness and understanding of racism that goes beyond racial discrimination as solely due to individual prejudice. For example, SOS Racisme launched a campaign in May 2008 appealing for "effective education of the history of colonization and slavery,"⁵⁷ while LICRA's *History and Memory* commission website included a special report on "Slavery: History of a Crime against Humanity."⁵⁸ These websites would thus indicate that mainstream antiracist organizations have established a minimal link between France's past of colonization and slavery and contemporary racism, contributing to creating these prejudices. Yet in person, during interviews with key figures in these organizations, the historical foundations of racism in France are not as clearly established, primarily appearing as

⁵⁶ Ligue Internationale Contre le Racisme et l'Antisémitisme, "LICRA."

⁵⁷ "Appel en faveur d'un enseignement effectif de l'histoire de la colonisation et de l'esclavage," *SOS Racisme*, May 10, 2008, <http://www.sos-racisme.org/appel-en-faveur-d-un-enseignement.html> Accessed 2011-03-01.

⁵⁸ LICRA, "L'esclavage: histoire d'un crime contre l'humanité", n.d., <http://www.LICRA.org/memoire-histoire/dossiers/1310-lesclavage-histoire-dun-crime-contre-lhumanite> Accessed 2009-04-11 11:40:33 URL no longer active.

an after-thought. The main exception is the French episode of collaboration with the Nazis under the Vichy government during the Second World War.

In spite of these online activities and campaigns, a disconnect appears between discourse and action. The significance of this example rests not in what is said, but in what is omitted. As the above statement by the LICRA indicates, French history, aside from the Vichy experience, does not figure as a point of reference for racism: a blank is drawn when thinking of France's sinister past with racial hierarchies, French imperialism, and France's deep involvement with the trans-Atlantic slave trade. These two aspects of French history immensely contributed to instilling racial hierarchies within France and in French colonies; yet it is deemed more relevant to teach young students about examples of racism mostly external to the French context, rather than exploring and stressing the significant French examples of dangerous racial hierarchies. The examples of Apartheid or segregation, and of course the Shoah, are presented as extreme cases of racism, while the omission of France's imperialism and slave trade gives the impression that they are not considered to be as significant as those *extreme* examples.

This selective focus is explored by Goldberg in *Racial Europeanization*, one part of his wider study of geographically and politically located racisms. Here he reflects the sentiment found in the above quote from the LICRA:

Where race re-entered the consciousness of Europeans later in the twentieth century, accordingly, it was initially in the very delimited and altogether exteriorized case of opposition to apartheid South Africa. If on its own soil Europe could see race only in the cauldron of anti-Semitism, Apartheid and American racial politics were taken as the sum of racism anywhere. This then expanded into conceiving race as the force of prejudice exercised against newcomers, race still being an irrational excess tethered to the historical exemplification of the anti-Semitic.⁵⁹

Goldberg argues that the focus on anti-Semitism is due to the fact that "[f]or Europe, the Holocaust is the defining event, the mark par excellence, of race and racially inscribed histories. [...] The Holocaust signals the horrors of racial invocation and

⁵⁹ Goldberg, "Racial Europeanization," 343.

racist summation. In its wake, accordingly, race is to have no social place, no explicit markings. It is to be excised from any characterizing of human conditions, relations, formations.”⁶⁰ This appears to mark mainstream antiracism significantly in their own historical focus. Even if they do make references to slavery and colonization on their websites or in passing, it is not sufficiently linked to contemporary forms of racism. The particular focus on the Holocaust strengthens the position that delegitimizes race and ultimately leads to “historical amnesia.”⁶¹

In interviews and in their literature, there is no obvious further analysis identified in mainstream antiracist references to slavery and colonialism. Their mention is most likely related to the increased visibility of these questions from the rise of groups such as the CRAN, or the 2001 Taubira law declaring slavery and the trans-Atlantic slave trade crimes against humanity. On paper (or websites), mainstream antiracist organizations appear to be developing a more complex understanding of racism than they had in the past. In incorporating the notion of racial discrimination into their overall struggle against racism, they have worked towards expanding their discernment of how racism and racial discrimination operate, and how they hold a prominent position in contemporary France in the way they shape and inform social relations and contribute to massive inequalities. Yet, taken in conjunction (the websites, manifestos, reports and interviews), a muddled characterization of racism emerges. While tenuous links are established or mentioned between racism, discrimination, colonization, slavery, prejudice, etc... they lack any deeper analysis of contemporary forms of racism and their links with historical forms of racism. But, as seen in the previous chapter, the historical development of racism significantly inform contemporary forms of racism, so their inclusion in current analyses of racism is necessary.

⁶⁰ Ibid., 336.

⁶¹ Ibid., 337; Stuart Hall, “The multi-cultural question,” in *Un/Settled Multiculturalisms: Diasporas, Entanglements, Transruptions*, ed. B Hesse (London: Zed Press, 2000), 209-240.

This may be due to the fact that these organizations, taking a self-proclaimed republican approach to antiracism, dismiss the very notion of race as something that has, and continues to, affect French life, politics, social relations and history. The irony of the French context is that race appears to be accepted as a reality in other places, in contexts external to the French one, namely the American one. As the LICRA explains, “The histories of the United States lend themselves to this type of [analysis].” But “in France’s system and history, in my opinion, it does not enter this framework.”⁶² Race is therefore once again abstracted from France’s history, contrasting to the US example where race was historically prevalent.⁶³ In a sense, this serves to reinforce the notion of the French exception. The constant references to the United States, or to Anglo-Saxon models of multiculturalism that would take race or ethnicity into account are employed to show the superiority of a French universalism that does not believe in races.

However, at the same time (if not contradictorily), the acceptance of “race” outside of France is seen as given, even if it is also considered inferior to the French approach. Even the example of France under Vichy is perceived as external to France: an exception to the rule. Lauding the French resistance promotes this idea that the majority of “reasonable” French citizens were opposed to the Vichy government and resisted to secure republican values.⁶⁴ Ultimately, mainstream antiracism remains centered on a republican approach to antiracism, where universalism becomes interchangeable with antiracism:

Part of our activity concerns anti-Semitic writings or speech, but later the analysis was that the fight against racism constitutes a single set because precisely, this fight is based on a universal approach. Meaning, us, we are not going to specify, or we are not going to separate all the different victims of racism by separating them, by specifying different forms of racism, but we combat all racisms. [...] precisely, our approach is

⁶² Ligue Internationale Contre le Racisme et l’Antisémitisme, “LICRA.”

⁶³ Pierre Bourdieu and Loïc Wacquant, “On the Cunning of Imperialist Reason,” *Theory, Culture & Society* 16, no. 1 (1999): 41-58.

⁶⁴ Lentin, *Racism and Anti-Racism in Europe*; Lloyd, *Discourse of Antiracism in France*.

antiracist, therefore universal for the unity of humankind. Which doesn't mean denying different dynamics in different forms of racisms. – MRAP⁶⁵

The problem with the universalist approaches expressed by the interviewed mainstream antiracist organizations is that they establish an opposition to an analysis based on the experiences of the victims. Recalling the horrors of the Second World War does not conflict with, but rather supports this universalist stance, as providing a basis for racelessness. Discussions that bring forward identity-based experiences and link them to contemporary forms of racisms are perceived to maintain race categories and are thus seen as problematic. They are particularly concerned about a new focus on victims. The LICRA's summation of the *indigènes de la République* exemplifies this: "The *indigènes de la république*, for us, they're not people, how to say, they are in a discourse of victimhood. Meaning, they confine people who are victims of discrimination in a status that they will have *ad vitam aeternam*. Meaning, they would stay in a complete status of victimhood often with pretty anti-republican arguments." Similarly, the LDH and SOS Racisme expressed distaste for the *indigènes* and other identity-based movements, showing how history plays a significant role in shaping the opposition in antiracism between mainstream and alternative organizations.

Whilst most mainstream antiracist organizations (aside from the MRAP) continues to focus on anti-Semitism and racism as expressed by extreme right political movements at key moments in French history, notably the French collaboration with Nazi Germany during the Second World War, alternative antiracism breaks from these historical references, expanding the scope of French history which is taken into account. The significance of history to antiracism becomes apparent in relation to invisibility, in the words of historian Pap Ndiaye, "symbolic violence is precisely the ways of denying or ignoring the historical attachments of these people, and especially questions relating to slavery, colonization, etc. So unquestionably, there is a very strong symbolic violence there."⁶⁶ ADEN's chief goal, for example, is to work on antiracism through education about France's participation in the trans-Atlantic slave

⁶⁵ Mouvement Contre le Racisme et pour l'Amitié entre les Peuples - Service Juridique, "MRAP."

⁶⁶ Ndiaye, interview.

trade and its repercussions on black people in contemporary France. Establishing key links between the racial hierarchies established to justify slavery, ADEN seeks to have this history recognized and integrated into national history. For ADEN, the significance of history re-emerges through current uprisings in French overseas territories in 2009, which underline the extension of colonial practices in these territories in this post-colonial setting.⁶⁷

On a similar note, Collectif DOM criticizes the continued lack of recognition of key black figures in French history, constantly neglected by mainstream general culture and history. Or again, the CRAN has successfully lobbied for changing the definition of colonialism in mainstream dictionaries.⁶⁸ The previous definition of “colonization” and “to colonize” in the *Petit Robert* dictionary still read as “enhancement, exploitation of countries that became colonies” and “to colonize a country to enhance it, exploit its wealth” respectively until 2006.⁶⁹ Because these definitions had not been changed since 1967, this organization identified a big problem with how history has been apprehended:

[this organization works on] the burns of history, memory, in order for this part of history to have rightful place and that this past can be cleared, because when it is not cleared, it resurges violently, and it comes to poison social debate and social issues or racial issues. All this is intertwined, discrimination, memory, it all intermingles because precisely, we don't work on memory, we don't address discrimination, so we have the impression that there is fault elsewhere. – CRAN⁷⁰

The *indigènes* pose a comparable historical question, going slightly further in their elaboration of a historical appreciation of the development of racism in France. Very much an intellectual movement,⁷¹ *indigènes* activism grounds itself in an elaborate,

⁶⁷ L'Association des descendants d'esclaves et de leurs amis, interview.

⁶⁸ The MRAP also criticized the definition of colonialism in the *Petit Robert* Dictionary. The definition was not changed, but instead, a quote of Aimé Césaire was added to it, so that it also includes "colonisation = chosification" (colonization = thingification) see Jean-Baptiste de Montvalon, "Mémoire un an après les critiques du CRAN et du MRAP. Le 'Petit Robert' ajoute une citation de Césaire à sa définition de la colonisation," *Le Monde*, September 5, 2007.

⁶⁹ Ibid.

⁷⁰ Patrick Lozès, President of CRAN, "Interview with Patrick Lozès, President of CRAN."

⁷¹ Although the movement features a number of activists involved in various causes, a number of their key figures often publishing texts on their website or related to the MIR's cause are intellectuals: Saïd Bouamama, Sidi Mohamed Barkat, Christine Delphy, Sadri Khiari.

extensive and provocative analysis of structural racism in France, stressing its roots in France's history of slavery, colonialism, neo-colonialism and post-colonial immigration: "Racism is veiled, it masks behind all of this, it transforms itself, it metamorphoses, provided, it's not the same thing, and so there is a metamorphosis of racism, but at the same time, it still has the same origins."⁷²

Of all the antiracist organizations in France, the *indigènes* distinguish themselves by elaborating the most conscious analysis of racism as a political, economic and social system of domination and oppression. Denouncing both the left and the right, *les indigènes* seek recognition, self-determination and self-identification, refusing to let their voices be drowned out by either side of the political spectrum.⁷³ By linking past struggles (of decolonization, *beurs* movement of the 1970s-1980s) to their own struggle, *les indigènes* challenge the republican ideology on two counts.

Firstly, *les indigènes* contest the idea that "race does not exist" in France, an idea that has been so closely intertwined with republican ideology. Even though this issue largely remains taboo in mainstream antiracism, *les indigènes* base their activism and their conceptualization of racism on the premise that race, as a social construct, is very well and alive in France. Not only alive, but a crucial component in structuring contemporary social, economic and political relations. Secondly, *les indigènes* challenge the republican myth that portrays the French nation as built upon a contract of individuals rather than according to race. They propose an alternative analysis, such as the one surveyed in the previous chapter, which identifies how the French nation was created along ethno-racial lines, and developed as such leading up to contemporary France. This racialized nation maintains a very particularistic national identity, one that is white, Christian, where one language, culture, history and tradition prime over any other.⁷⁴

⁷² Houria Bouteldja, Spokesperson, "MIR."

⁷³ Ibid.

⁷⁴ Khiari, *La contre-révolution coloniale en France*.

Through this racialized construction of the nation, in parallel to systemized forms of oppression, including the *Code Noir*, *Statut de l'indigénat*, trans-Atlantic slavery, colonization and exploitation, *les indigènes* identify racism as a political, social and economic system and denounce white privilege as part of that system, offering an in-depth, critical analysis of racism in France within the antiracist scene.⁷⁵ Not content with “making the Republic true to herself”⁷⁶ this movement breaks away from republican ideology by questioning the very foundations of the republican myth. In its place they propose an alternative political reality, positioning themselves as antiracist, anti-colonial, anti-imperial etc... and seek alternative debates no longer framed on how republican one is or is not.⁷⁷

It is only when confronted with and opposed to the ideas and discourse of alternative antiracism, especially in the conceptualization of racism, that mainstream antiracism really emerges as limited in its own approaches to tackling racism. *Les indigènes*, particularly, expose these limitations through their complex analyses. For example, the MIR launched a new campaign in early 2001, featuring three figures – a veiled woman, a black man and a North African man – on a poster under the headline “*Touche à ma nation!*” (Hands on my nation!).⁷⁸ This poster is significant in several ways: firstly it plays on former colonial propaganda, diverting the imagery for their own message and secondly, it plays on the campaign launched by SOS Racisme entitled “Hands off my nation!”⁷⁹

Both campaigns are a response to the nation-wide debate on national identity launched by former Minister of Immigration, Integration, National Identity and Mutually-Supportive Development Eric Besson.⁸⁰ Yet, their different campaigns

⁷⁵ Houria Bouteldja, Spokesperson, “MIR.”

⁷⁶ Mainstream and alternative antiracism do not question the French republic and republican ideology; they seek ‘true equality’ and would like to see the republic live up to its ideals.

⁷⁷ As are many of the debates on issues related to racism.

⁷⁸ Henda Bouhalli, “Houria Bouteldja : « Il est nécessaire de souligner le caractère historique des racismes que l’on vit aujourd’hui »,” *Les Indigènes de la République*, January 12, 2011, http://www.indigenes-republique.fr/article.php3?id_article=1195&var_recherche=negro Accessed 2011-04-12.

⁷⁹ “Touche pas à ma Nation!”, n.d., <http://www.toucheapasamanation.com/>.

⁸⁰ “Grand débat sur l’identité nationale : 25 000 contributions reçues dès la première semaine.”

highlight key differences between mainstream and alternative antiracism. The *indigènes* are challenging the very notion of the French nation, whilst linking contemporary forms of racism to France's colonial past. MIR's spokesperson Houria Bouteldja states the necessity to:

[U]nderline the historic character of the racisms we experience today. Meaning that the colonial question is still present under other forms and that we are not finished with Eurocentrism and imperialist spirit. It also seemed that it was important to underline the historical character and filiations of our presence and of our condition in France, whilst underlining the necessity to continue this battle because it is not finished.⁸¹

This colonial continuity is what pushes the *indigènes* to refer to themselves as such, reclaiming the colonial nomenclature for their decolonial, anti-imperialist and antiracist struggle. As Bouteldja explains in an interview for the *Monthly Review*:

The triptych of "colonialism, imperialism, superior ideological norms that should be imposed on all" continues to exist. It has been made fashionable again by the arrival of "neo-cons" to power in all of Europe. The word "indigenous" works as a painful reminder of this truth and our declaration of resistance to it, in terms of political thought, because it is a right slogan that challenges people. The word "indigenous" is a destroyer of myths: the myth of the universal and egalitarian republic. Moreover, it establishes the link with the status that our parents had in the colonial era and it teaches us that the struggle for liberation continues to this day here [in France] as it does there [in the neo-colonial countries].⁸²

In addition to challenging the republican myth of universalism and putting the republican model to the test, the *indigènes* re-appropriation of colonial nomenclature also stresses the centrality of the lived experience in informing their antiracist discourse. It is not just the lived experience of minorities currently racialized in France, but it is a discourse that incorporates the multitude of lived experiences, of slavery, of colonial oppression, of forced conscriptions and exploitation crucial to the development of France's empire. The crucial link between the lived experience of racialized minorities and the political nature of racism is embodied by Sadri Khiari, "Social ties are racial, this means that politics are racial. Society is racial, this means

⁸¹ Bouhalli, "Houria Bouteldja : « Il est nécessaire de souligner le caractère historique des racismes que l'on vit aujourd'hui »."

⁸² Saïd Mekki, "The Decolonizing Struggle in France : An Interview with Houria Bouteldja," trans. Roberto Hernández, *Monthly Review* (November 2, 2009), http://www.indigenes-republique.fr/article.php?id_article=763 Accessed 2011-04-12.

that social ties are tied around racial inequality. Politics are racial, this means that racial inequality is a fight of the dominated social race against the dominant social race. And *vice versa*.”⁸³

Through an analysis of racism rooted in historical formations of racisms and centered on the lived experiences of minorities that are otherwise invisible from mainstream antiracist discourse, alternative antiracist organizations contribute, to varying degrees, to generating a new discourse. Collectif DOM and ADEN’s efforts to bring visibility to the role and experiences of black people, the CRAN’s lobbying to provide anti-racial discrimination tools that take into account these experiences and the MIR’s transition into a decolonial political party are all efforts that together provide an alternative discourse on antiracism. This alternative discourse, albeit carried differently by these different groups, is crucial in its conceptualization of racism as a political project, as opposed to reducing it to prejudice.

The other alternative antiracist organizations that are examined here, ADEN, CRAN and Collectif DOM have a more median position along the antiracist spectrum: all three organizations frame their approaches as compatible with universalism and identify themselves as republican, yet their actions and discourse offers a perspective that takes into account the racialized experience. The following statements from CRAN and ADEN demonstrate this double message:

We refuse window dressing universalism, which is a slightly poor universalism and which in the end reinforces a conservatism. [...] We precisely want that French values be universal, meaning they apply to everyone, including black populations. It’s all we ask. And so we are not opposed to universalism, and on the contrary, I find that the republican approach, our approach is more republican than those enclosed within a republican approach that brag about a Republic that has never existed, that I was telling you about, that it is not only completely disembodied, but that it is false. – CRAN⁸⁴

Race doesn’t exist. The word race, it doesn’t mean anything. – ADEN

⁸³ Khiari, *La contre-révolution coloniale en France*, 14–15.

⁸⁴ Patrick Lozès, President of CRAN, “Interview with Patrick Lozès, President of CRAN.”

ADEN: You really have to go through universalism, yes. KS: In what way? ADEN: we already when we will have understood slavery, that people have properly understood what colonialism and deportation were we'll go through universalism, because we are all universals. – ADEN.⁸⁵

While they position themselves within the republican framework, so as to deny accusations of communitarianism, their activities and their overall discourse nonetheless open the door for other interpretations. Their approach to republicanism, especially noteworthy in ADEN's denial of race, does not prevent them from presenting an antiracist discourse that takes into account the experiences of racialized minorities. As the CRAN explains, what they are interested in is the process by which these groups are "minoritized."

Mainstream antiracist organizations place themselves in a position in which they can be considered *moderate republicans*,⁸⁶ whereby they criticize the way in which republican values of equality have not fully been realized and appeal for "real universalism" confident in the idea that republican ideology will prevail. The three alternative organizations ADEN, Collectif DOM and CRAN, while affirming their republican and universal positions, actually propose, through their actions, a different vision of universalism. The fact that these three organizations were established on the basis of identifying very specific groups that have been victim of racism (blacks for CRAN, "fifth overseas territory" for Collectif DOM and (black) descendant of slaves for ADEN) demonstrates an alternative conceptualization of universalism.

In their own specific way, each of these alternative antiracist organizations has demonstrated how the incorporation of the lived experiences of groups, of individuals, and most importantly, of victims of racism promotes a more refined understanding of how racism operates as a system. This is further reinforced through historical analyses, such as those conducted by ADEN and Collectif DOM, that establish strong links between the past and present to understand better the condition of racism in

⁸⁵ L'Association des descendants d'esclaves et de leurs amis, interview.

⁸⁶ See Chapter One

contemporary France. So while these organizations also carry the republican ideology as part of their approach to antiracism, their *approach* is not in itself republican in the same way as it is for mainstream organizations. It can sometimes limit the scope of activities: for example Collectif DOM and ADEN both oppose the implementation of ethnic statistics as an anti-racial discrimination tool (see Chapter Six). However, overall, their establishment and approaches mark a break with mainstream republican approaches.

Antiracist Approaches to State Racism: the Case of Islamophobia

The lack of any deeper conceptualization of racism is manifest in what is and is not considered to be racism. Another significant limitation in mainstream antiracist organizations' conceptualization of racism is in their incapacity or unwillingness to incorporate the notions of cultural and neo-racisms. This chapter now turns to the case of Islamophobia in France to explore further the contrasting approaches of contemporary antiracist organizations. Islamophobia, as an example of State racism, and more specifically antiracist responses to the 2004 ban of headscarves in public schools, are examined here to underpin how racism without race works in France.

Chapter One has laid out the theoretical framework for this research, through the use of the concept of racialization and critical theory, outlining how various forms of racism have emerged and are very active in contemporary French society. While the second half of the Twentieth Century witnessed a strong disavowal of biological racism – racism based on the belief of biologically determined races – “cultural” or “differentialist”⁸⁷ racism appears to pose a stronger conceptual challenge. Some, like Pierre-André Taguieff argue that biological racism has been replaced by cultural racism, criticizing antiracism for its cultural relativist stance (rooted in the UNESCO tradition).⁸⁸ However, Balibar challenges the idea that cultural racism is a new

⁸⁷ Étienne Balibar, “La construction du racisme,” *Actuel Marx* 2, no. 38 (2005): 13.

⁸⁸ Lentin, *Racism and Anti-Racism in Europe*, 86–89.

phenomenon or that it has completely replaced biological racism.⁸⁹ As Lentin explains, “it is more correct to argue that there is no real or significant difference between the various theoretical justifications for discrimination, be they biological or cultural.”⁹⁰ The link between cultural and biological racisms becomes evident in the exposition of Islamophobia as a type of racism targeting Muslims. Chapter Two has already underlined the historical roots of Islamophobia – therefore highlighting the long-standing existence of cultural racism.

This research has argued for the importance of incorporating the concepts of racialization and race into analyses of the French context to enable a better and deeper assessment of how racialized structures continue to operate in France. Looking at reactions to the 2004 law banning “ostentatious” religious signs in public secondary schools, certain limitations in mainstream antiracism’s ability to challenge cultural and neo-racisms manifest themselves. Furthermore, the subsequent focus on Islamophobia and antiracism highlights how cultural and biological racisms function alongside one another.

Framed within a debate on French secularism, *laïcité*, this law was largely presented as necessary to maintain the distinction between the public and the private spheres in French society. Heavily debated, the law opposed public intellectuals, academics, feminist organizations and many other public figures and organizations. Despite its general nature and wording, there is no doubt that the ban specifically targets Muslim women and girls, which was reflected in all debates.⁹¹ The law, officially named “Law #2004-228 of March 15, 2004 concerning, as an application of the principle of the separation of church and state, the wearing of symbols or garb

⁸⁹ Balibar, “Is there a ‘Neo-Racism’?”.

⁹⁰ Lentin, *Racism and Anti-Racism in Europe*, 90.

⁹¹ Titia Loenen, “The headscarf debate. Approaching the intersection of sex, religion and race under the European Convention on Human Rights and EC equality law,” in *European Union Non-Discrimination Law. Comparative Perspectives on Multidimensional Equality Law*, ed. Dagmar Schiek and Victoria Chege (London: Routledge-Cavendish, 2009), 314–315.

which show religious affiliation in public primary and secondary schools,"⁹² is therefore presented as universal. But it was specifically the compatibility between the *hijab* and *laïcité* that was hotly debated for months and in practice, it was Muslim girls who were predominantly affected by the implementation of this new law in September 2004.⁹³ The law itself states that "In public primary, middle and high schools, wearing signs or outfits by which students ostensibly manifest a religious belonging is prohibited."⁹⁴

Three main arguments were deployed to justify the ban: feminist arguments, secular arguments and national arguments, all of which focused primarily on the veil. Feminist arguments have been particularly prominent in the debate. The feminist argument, spearheaded by many intellectuals, such as feminist philosopher Elisabeth Badinter, centers on attributing a very specific meaning to the headscarf as a signifier. In the December 2003 edition of *Elle* magazine, a number of women including Badinter, signed an open letter to then president Chirac in support of a law, claiming that the *hijab* is "a visible symbol of women's subjugation in areas where the State must guarantee strict equality between sexes".⁹⁵

The feminist justification for banning the *hijab* in schools is based on the interpretation of the *hijab* as a symbol of female subordination, as well as the overall oppressive character of Islam. As the open letter goes on to say, refusal to legislate on the *hijab* is acquiescing to the tyranny of the Muslim patriarch and marks the decreasing importance of sexual equality.⁹⁶ This feminist argument thus relies on the idea that all women who wear the headscarf are oppressed and that Islam as a religion is overwhelmingly sexist. This interpretation leaves little room for differences among Muslim women. Not all Muslim women wear the headscarf and many women actually

⁹² *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.*

⁹³ Loenen, "The headscarf debate."

⁹⁴ *ibid*

⁹⁵ "Droit des femmes et voile islamique. ELLE s'engage. Notre appel à Monsieur Jacques Chirac, Président de la République," *Elle*, December 2003.

⁹⁶ *Ibid.*

choose to wear the headscarf. This interpretation therefore does not allow veiled woman any agency.

Through the deployment of these arguments, we can see how race becomes a “floating signifier,”⁹⁷ with different meanings attached to the *hijab* to suit different arguments. The feminist argument introduces the headscarf as a symbol representing Muslim women’s submission to Muslim men (as the oppressors). The secularist argument presents the headscarf as a sign of proselytism, contrary to *laïcité*. As explained by political theorist Cécile Laborde, “Muslim headscarves introduce signs of private difference and religious divisiveness into the public sphere [...] and infringe on equality between pupils” by impinging on students’ freedom of conscience.⁹⁸ Finally, the *hijab* becomes a symbol of fundamentalism and political Islam. Staunch believers in French Republicanism fear that, by wearing the *hijab* in schools, young Muslim women are asserting their allegiance to the international Muslim community (*umma*) instead of the *République*. This fear is heightened by the correlation between the *hijab* and Islamic fundamentalism that is often brought up in debates. As a consequence, these girls are perceived as a threat to the liberal state since their actions are understood as motivated by fundamentalism, meaning that they could never be proper and loyal French citizens.⁹⁹

These arguments, however, assume an essentialised vision of the *hijab*, based on stereotypes or fears about Muslims in France. The headscarf, as a floating signifier, leads to a number of imputations about Muslims, but also Arabs and North Africans by extension. Further to this, a dichotomy is automatically inscribed within this discourse opposing oppressive Muslim men and submissive or brainwashed Muslim women. As sums up Saïd Bouamama, “the said affair of the “Islamic scarf” was also characterized by a more or less marked presentation of Islam as an ahistorical and homogenous

⁹⁷ Hall, “The Spectacle of the Other.”

⁹⁸ Cécile Laborde, “Secular Philosophy and Muslim Headscarves,” *Journal of Political Philosophy* 13, no. 3 (2005): 327.

⁹⁹ Fourest, *La tentation obscurantiste*; Fourest, *La dernière utopie*; Laborde, “The Culture(s) of the Republic”; Jennings, “Citizenship, Republicanism and Multiculturalism in Contemporary France.”

religion. All the young girls wearing the headscarf were homogenized in one sole global category: manipulated by older brothers and parents, the avant-gardes of the Islamic offensive."¹⁰⁰

Attributing meanings to the headscarf is exemplified by Patrick Weil's explanation of his time on the Stasi Commission, which was set up to reflect on the principle of *laïcité* and ultimately called for the ban.¹⁰¹ Unlike some opponents of the *hijab*, Weil does not reduce this symbol to female oppression or subjugation, but he does make other claims: "Our nearly unanimous feeling (with the exception of one member) was that we had to face a reality often perceived at a local level and less so nationally: to wear the veil or to impose it on others became not a matter of individual liberty but of a coordinated strategy by groups using public schools as their main battle field."¹⁰²

Yet Weil goes on to claim that "to hear more veiled girls would not have changed our reasoning, which did not rest on the evaluation of a religious sign, nor on its meaning."¹⁰³ The former statement clearly contradicts the latter: young veiled women in public schools are presented as proselytizing and asserting pressure on those not wearing hijabs, even though the latter is the majority, but most importantly, they are presented as pawns in a larger "battle," used by "groups." Weil is referring to groups "mainly composed of men" who take on the role of "controllers" when they see non-veiled women as bad Muslims.¹⁰⁴ Weil's reference to groups using public schools as "battle fields" seems to refer to a bigger threat than men imposing the veil on the women in their individual lives, instead referring to something more dangerous, more imminent, something that is waging war... But he does not provide any further details on what this threat may be, and against whom or what this battle is being waged. He does not really have to either, as the subtext is clear enough: even if women wear the

¹⁰⁰ Bouamama, *L'affaire du foulard islamique.*, 24.

¹⁰¹ Weil, *La République et sa diversité.*

¹⁰² Ibid., 68.

¹⁰³ Ibid., 70.

¹⁰⁴ Ibid., 67.

hijab of their own will, there remains a bigger threat to secularism and individual liberties in the rise of extremist Muslim pressure groups exerting their influence over these girls and using public schools to expand their influence.

Despite Weil's contention that the Stasi Commission was not attempting to find and assign particular meanings to the hijab, his assessment of the Commission's conviction of this battle being played out in schools, instigated by ambiguous "groups," displays just that. The danger of this discourse is that not only does it stigmatize Muslims, presented as an ever-growing threat to the French way of life, but also that the obvious contradictions are completely ignored. Thus, Weil can emphasize the importance of making accommodations to facilitate the integration of Muslims and reduce discrimination,¹⁰⁵ but nonetheless simultaneously feed into the discourse that racializes Muslims.

Beyond this stigmatizing discourse on Muslims that was evident in the debates leading up to the ban, many have argued that the law is in and of itself a racist law. Activist and teacher Pierre Tévanian explains further, "if we define racism as a system of discriminatory thoughts and practices based on "race," "origin," "ethnicity" or "culture" then the anti-headscarf law is unquestionably racist: it institutes an inequality by placing a ban that exerts violence on certain students (the veiled Muslim girls, but also Sikh boys wearing turbans) more than others (Christians, who can, if they feel bound to wear one, keep their cross under their sweater)."¹⁰⁶ Tévanian goes on to argue that the law was specifically designed to discriminate against the Muslim headscarf, as it was the only focus of parliamentary and media debates, where racism was imbued in the pro-ban arguments.¹⁰⁷

Ultimately, the *hijab* and the associated negative imageries (the subjugation of women, terrorism, allegiance to an international community, violence in the *cites*,

¹⁰⁵ As part of the 26 recommendations of the Stasi Commission Weil, *La République et sa diversité*.

¹⁰⁶ *Le République du mépris*, 47.

¹⁰⁷ Tévanian, *Le République du mépris*.

etc...) are employed to strengthen a white Christian French national identity, in which Islam will always be something foreign. This obviously proves problematic for Muslims who have French citizenship and who may or not be descendants of migration. This process serves to “symbolically denaturalize”¹⁰⁸ French youths who will never be considered fully “French.” This sentiment is epitomized in socialist senator Jean-Luc Mélenchon’s affirmation on the show *Mots Croisés* in December 2005: “Listen! Our way of living, us the French, is that we don’t wear any headscarf at school!”¹⁰⁹

Despite the arguments presented here on the racist nature of this law, government officials, mainstream antiracist organizations, and academics raised very little concern over the ethno-racial discriminatory nature of this law. This was especially true in terms of the blatant indirect discrimination the law would lead to from its generalized wording, which in practice would mainly affect Muslim girls.¹¹⁰ When asked about the law banning veils from public schools, SOS Racisme and LICRA had the following responses:

We defend [the law]. [...] What’s noteworthy is that five years after and everything is going well. [...] There are three, four cases a year, but often underneath, religious movements are exploiting the little girls. – SOS Racisme¹¹¹

There isn’t only anti-Muslim racism, there is racism towards Islam, where any position is deemed blasphemous towards Islam. [...] These two things are completely different. One falls within the scope of the law, and the other that really depends on freedom of expression, freedom to criticize dogma, religiousness, that is completely legal. – LICRA¹¹²

Laïcité is the best guarantee for the respect of religions. It’s the best guarantee for the respect of free worship. It’s the best guarantee to prevent discriminations between religions in public space. – SOS Racisme¹¹³

¹⁰⁸ Ibid., 48.

¹⁰⁹ Cited in Ibid., 49.

¹¹⁰ Virginie Guiraudon, Audio recording, March 30, 2009.

¹¹¹ SOS Racisme, interview.

¹¹² Ligue Internationale Contre le Racisme et l’Antisémitisme, “LICRA.”

¹¹³ SOS Racisme, interview.

LICRA's response is to warn against accusations of Islamophobia, putting into question even using the term itself, wanting to distinguish between critique of religion, which is perceived as completely legitimate, and racism targeting Muslims. For LICRA, it is more significant to warn against blurring the lines between the two, rather than to consider the impact of banning the veil on the young girls' lives.

From intellectuals and journalists like Caroline Fourest and Pascal Bruckner to antiracist activist groups like the LICRA, growing criticism of the concept of Islamophobia resounds. This criticism is rooted in the perceived necessity of distinguishing between critique of the religion, which is considered important and necessary, and anti-Muslim racism, which is considered morally wrong and illegal. The contention here, however, is that these two differences operate along blurry lines: it is increasingly more difficult to distinguish between critique of Islam and anti-Muslim racism. On the contrary, the critique of Islam as a religion is imbued in the process of racializing Muslims in a number of discourses, as demonstrated in Chapter Two.

SOS Racisme takes their support for the law one step further, by assuming that the "three, four cases" are for the benefit of fundamentalist Muslims rather than actual cases in which young women faced difficulties as a direct result of the law. The idea that *laïcité* will ensure non-discrimination reveals how SOS Racisme's commitment to republican values as guarantors of equality can interfere with their assessment of racism, especially in its more covert forms. Yet this denies the numerous ways *laïcité* has been invoked – and continues to be invoked today – to instill a discriminatory regime towards Muslims in France.

It is equally significant to note, however, that they are taking for granted that the headscarf ban is compatible with *laïcité*. As Pierre Tévanian and Christine Delphy both argue, the 2004 ban operates along a new or changed conception of *laïcité* whereby the onus of maintaining religious neutrality is no longer solely imposed on the State and representatives of the Government in public institutions, but instead, is partially transferred onto users. As Tévanian expains, "The antiveil law has nothing to

do with any “French tradition of laïcité”: on the contrary, it marks a true rupture in the political and legal tradition in the matter, in imposing for the first time “neutrality” on *users* – and no longer only on *agents* – of public education services.”¹¹⁴ Similarly, Delphy supports the argument that it is the “confusion” between “users” and “agents” that led to the law.¹¹⁵

In *Les filles voilées parlent (Veiled Girls Speak)*, Ismahane Chouder, Malika Latrèche and Tévanian compiled first-hand stories of forty-four veiled women (both mothers and school-aged) affected by the ban in one way or another. In this collection, Muslim women bare their feelings, depicting daily trials they faced after the above law was passed. Regardless of the strong theoretical arguments opposing the ban of the hijab because of the racist nature of the law, these poignant stories shed light on the numerous problematic aspects of the law. Based on the perspective of these women, this work provides insight into the lived experience of Muslim women who were subject to demeaning, humiliating and traumatic encounters in schools (as well as outside) as a result of school officials and teachers “enforcing” the law.¹¹⁶ One of the young women, Keltoum, details the emotional and psychological duress experienced during the post-ban transition: “The way we were treated and we were spoken to really hurt me, assaulted me, humiliated me. Confining us in a separate classroom, like rabid animals, depriving us of schooling (while it was the year of the baccalaureate), incurring threats and pressure from the pedagogical team, all this has been very difficult psychologically.”¹¹⁷ The expression of these women’s experiences and their relationship to the veil highlights the pain and alienation suffered as a result of the ban.

¹¹⁴ Tevanian, *Le République du mépris*, 37.

¹¹⁵ Christine Delphy, “Il existe déjà un code de la laïcité. La loi de 1905 contre la persécution religieuse,” *Les mots sont importants*, April 10, 2011, <http://lmsi.net/Il-existe-deja-un-code-de-la> Accessed 2011-04-13.

¹¹⁶ Ismahane Chouder, Malika Latrèche, and Pierre Tevanian, *Les Filles Voilées Parlent* (Paris: La fabrique, 2008).

¹¹⁷ *Les Filles voilées parlent* (Paris: La fabrique, 2008), 54.

What is even more troubling about the law is its apparent overflow into other aspects of French society. In *Les filles voilées parlent*, the voices of veiled mothers and older women are also expressed to attest to how the ban has been used to discriminate against Muslim women in ways that are beyond the scope of law.¹¹⁸ Malika recounts being marginalized from participating as a volunteer chaperone for her children's school trips,¹¹⁹ while Soraya details the humiliating attempts to prevent her from attending university classes for being veiled.¹²⁰ Additionally, numbers of cases are popping up where women are victim to insult and harassment on the streets or refused employment in shops, with complete impunity towards the perpetrators. In October 2008, a Sorbonne professor excluded Samia from a political sociology seminar, refusing to teach her because she was wearing the *hijab*, linking her *hijab* to fundamentalist Islam.¹²¹ Again in February 2009, Sabine, a PhD candidate at the University of Toulouse III, lost her funding and her position in the laboratory because someone took offence to her *hijab* and flagged her up to the administration.¹²²

Taking into account these examples and stories, SOS Racisme and LICRA's dismissal of problems arising from the law, especially in its racist (and sexist?) discrimination against Muslim women, highlights the contradictions which can arise from internalizing the political culture into antiracist approaches. Because of their republican bias, SOS Racisme and LICRA ignore the very racist aspects of the 2004 law, preferring to support an extreme interpretation of *laïcité*. Thus, mainstream antiracism takes on a very narrow gambit, dictated by the French political culture, which limits its conceptualization of racism as something that is no more than prejudice.

SOS Racisme and LICRA are not fully representative of mainstream antiracism; MRAP and the Human Rights League (LDH) also figure quite prominently on the scene,

¹¹⁸ Ibid.

¹¹⁹ Chouder, Latrèche, and Tevanian, *Les Filles voilées parlent*, 136–140.

¹²⁰ Ibid., 185–190.

¹²¹ Hanane Kaddour, "Un prof de la Sorbonne ne veut pas d'une étudiante voilée," *Oumma.com*, October 14, 2008, <http://oumma.com/Un-prof-de-la-Sorbonne-ne-veut-pas> Accessed 2011-03-01.

¹²² Charlie Beyenne, "Nouvelle polémique sur le port du voile," *L'Express*, April 23, 2009.

and can perhaps offer a more nuanced impression of mainstream antiracism. The LDH, for example, presents a middle ground between the complete rejection of the racialization of Islam that SOS Racisme and LICRA manifested and opposition to the 2004 law on religious signs by first stating that “We hear people who consider Islam to be an inferior religion, and its people from a culture that is unaccomplished. If that’s not hierarchy of races, I don’t know where we are at with the prevention of discrimination”¹²³

Yet in the same interview, LDH criticized MRAP and LICRA’s particular attention to Islamophobia and anti-Semitism respectively, arguing on the one hand that an ethnicized antiracist approach is counter-productive to the overall aim of antiracism (therefore reiterating its commitment to republican values and ideology), and on the other, upholding the distinction between racism and religious discrimination as necessary to combat racism. The above quote suggests a better understanding of the mechanisms of racialization experienced by Muslims in France, yet is belied by the continued emphasis on republican universalism. Affirming a “universalist” approach, LDH refuses to distinguish between victims of racial discrimination, but by doing so, failing to address the particular mechanisms at play. This falls into line with the general tendency (like the creation of the HALDE as a generalized anti-discrimination body) to approach discrimination from a generalized perspective: universalizing discrimination to minimize any recognition of difference, which is considered to go against republican values.

Finally, it is important to note how MRAP has distinguished itself from other antiracist organizations, specifically in this debate. Despite internal debates on whether the term “Islamophobia” was even going to be used by the organization,¹²⁴ MRAP has emerged as the only mainstream antiracist organization that challenges Islamophobia, as a form of contemporary racism in France. Accordingly, this organization strongly opposed the law banning the *hijab*, and continue to do so today.

¹²³ Ligue des Droits de l’Homme, interview.

¹²⁴ Pierre Tevanian interview: reasons why he stopped his activist involvement with them.

Stressing their own commitment to republican ideology and strong affirmation for universalism in terms of their approach, MRAP is able to conceptualize the specific experience of Muslims in contemporary France, especially with the recent rise of Islamophobia across Europe, as a form of racism. Similarly, a process of conceptualizing that allows for various understandings of racism as takes shape in xenophobia, or anti-Semitism, or racism experienced by blacks, etc... :

There are nonetheless different dynamics of racism [...] racisms, or racism. Racism that also encompasses anti-Semitism, Islamophobia, and racism that touches minorities, in a general manner, because of their belonging to an origin, a nationality. Also racism against blacks, and against, against all foreigners because xenophobia also participates in racism. – MRAP¹²⁵

MRAP distinguishes itself from other mainstream organizations with its consciousness of how new forms of racism can function in various forms in contemporary France, also noticeable in the organization's sensibility towards discrimination faced by *sans-papiers*, the "illegal" migrants targeted by severe police action over the law few years.¹²⁶ However, the logic expressed behind MRAP's opposition to the law banning the hijab still suggests a limited grasp of the mechanisms behind Islamophobia.

MRAP challenges the law on two premises: firstly, that if veiled girls are supposedly oppressed, their exclusion from schools will only further entrench them in oppressive home environments; and secondly, that *laïcité* is being falsely interpreted by the law.¹²⁷ Basing their opposition to the 2004 law on these arguments displays MRAP's inability to step outside of the debate imposed by pro-republicans rather than changing the terms of the debate. Standing behind arguments of women's rights (the veiled girls are oppressed and need to be saved) and republican ideology (*laïcité* itself is not to be questioned, but rather its interpretation), instead of developing arguments against the racist dimensions of the law indicate an unwillingness to veer away from the traditional republican ideology.

¹²⁵ Mouvement Contre le Racisme et pour l'Amitié entre les Peuples - Service Juridique, "MRAP."

¹²⁶ Ibid.

¹²⁷ Ibid.

Overall, mainstream antiracism does not appear capable or willing to tackle the question of Islamophobia. As this section has shown, mainstream antiracist organizations fail to engage with the racist elements of the 2004 ban of headscarves in schools and Islamophobia in general because of their restricted scope of analysis, which is limited to taking a republican antiracist stance.

Republican Values, Civil Society and Race

So far, this chapter has attempted to underline key aspects of mainstream and alternative antiracist organizations, and elucidate the chief problems at the root of their inability or unwillingness to address state racism in a significant manner. First of all, mainstream antiracist organizations remain blocked by a traditional and simple conceptualization of racism, stuck in a focus on expressive forms of racism. Secondly, racism is primarily attributed to individual prejudice, and addressed as such. This prevents a deeper, more complex and nuanced analysis of the causes of racism in all its shapes and forms. Thirdly, both mainstream and alternative antiracism (with the exception of *les indigènes*) continue to operate within the framework of republican universalism and values, therefore removing the concept of race from the crux of their analyses. As seen in the example of the hijab ban, this persistent commitment to “antiracism without races” does not allow for an approach to racism that takes into account the process of racialization and its very real impact on racialized groups. Without acknowledging the first hand accounts of those who experience racism, mainly because of the refusal to think of race (except as a concept to be excluded from antiracism), these groups do not have the capacity or tools to tackle cultural racisms, or “neo-racism.” This is only further reinforced by the weak links that are established between contemporary manifestations of racism and France’s history.

Because of these elements, mainstream, and to a certain extent, alternative antiracist organizations have a skewed perception of what is or is not racism: in spite of overtly racist and discriminatory practices by the government, these practices will

not necessarily be considered as such. In this sense, a blind eye is cast upon very insidious forms of racism while other forms of resistance are characterized as racist.

Furthermore, the republican antiracist methodology introduces a problematic understanding of any minority-based association or approach as racist itself. The *indigènes* are considered racist, communitarian and a danger to social cohesion: because they present an analysis of French society that takes into account racial, racialized and racist elements of social relations. This goes back to the general tendency, not only within the civil society context, of considering any mention of “race” as racist.

In republican France, accusations of *communautarisme* emerged over the last few decades as an attack against any type of minority-based form of organization. In debates dominating the public sphere over Islam, racism, identity, ethnic statistics, etc... *communautarisme* is flung across debate platforms as an insult, one which has come to imply opposition to republican ideology. This perception of *communautarisme* is also very present in antiracist circles, exposed by Lentin as a dichotomy between “majoritarianism” and “communitarianism.”¹²⁸ Lentin uses this dichotomy to differentiate between different approaches to antiracism in France, arguing that “[i]t is assumed by those who hold a majoritarian stance that such groups are incapable of practicing anti-racism. This is because anti-racism is seen as being a universal value with which everyone must be able to identify.”¹²⁹

This is still reflected today in the opposition between alternative and mainstream antiracist organizations. SOS Racisme and the LICRA oppose *communautarisme* because of their espousal of republican ideologies of non-distinction and separation of public and private, but also for additional reasons related to their understanding of racism. For these organizations, *communautarisme* is a serious danger to society that potentially leads to racism. Consequently, the

¹²⁸ Lentin, “Racism, anti-racism and the western state.”

¹²⁹ Ibid., 18.

Mouvement des indigènes de la République is deeply resented by many antiracist groups and activists, accused of being dangerous for social cohesion in France. This is in spite of the *indigènes*' self-proclaimed antiracist objectives; through their anti-republican message, the *indigènes* would be encouraging *communautarisme* and thus posing a threat to French society by demarcating between *victims* of racism and racialized people on the one hand and perpetrators of racism, and people who benefit from "white privilege," on the other:

This ethnicized vision of French society, and with, especially, this message that is dangerous, that means to say we'll organize ourselves outside [of French society], is ultimately a denial of citizenship, because we're not in a colonial world. – SOS Racisme

When the *indigènes* speak of the republic, [...] speak today of being the *indigènes* in the French republic—because that's their name—in 2009... they are historical shortcuts, in my opinion, that are very harmful for integration, for living together. – LICRA

The accusation against the MIR is thus two-fold. Firstly, as SOS Racisme's quote indicates, MIR's approach to racism (and simultaneously, its display of *communitarianism*) is considered to be threatening republican values because it is based on an "ethnicized vision of French society." As previously seen, this is presented as completely contradictory to the notion of republican universalism and the non-differentiation it entails. Furthermore, LICRA's quote implies that the *indigènes* pose a threat to social cohesion by bringing forward the historical and political foundations of racism. In other words, problems of integration and lack of social cohesion are attributed to the MIR, diverting away from the socio-economic and racial inequalities that cause them.

Mainstream antiracist organizations take a republican colour-blind approach to antiracism, structuring and shaping their activities accordingly. The MIR, and other similar organizations, are thus perceived as going against this republican ideology and approach by advocating a communitarian or minority-based analysis of French society, and subsequently of French racism. As it contrasts so significantly with mainstream republican antiracist approaches, it is considered problematic and even dangerous. In this sense, mainstream antiracist organizations not only deny the

antiracist potential of work conducted by the MIR, but they also take it one step further by accusing them of being *racist* in their approach. Lentin and Titley's link this type of phenomenon to *postracialism* where talking about racism is increasingly thorny due to both the infusion of culture into the debates and the presentation of racism as something of the past.¹³⁰

Interpreting such movements, which are in fact quite reminiscent of previous international antiracist struggles seen during the Civil Rights Movement in the United States or the Black Movement in the United Kingdom in the 1960s, as racist displays some of the drawbacks of mainstream antiracist conceptualizations of racism. It indicates an inability to take into account the victims of racism when attempting to deconstruct how racism and racial discrimination operate because they insist on taking a "universal" approach that does not create hierarchies between victims of racism. Quite significantly, strong opposition towards the *indigènes* is raised because of their refusal to pretend that race does not "exist" in France.

The second aspect of the accusation relates to mainstream antiracism's inability to establish important historical links between contemporary manifestations of racism and past uses of biological and cultural concepts of race. *Les indigènes* are scoffed at and dismissed because they refer to themselves as "natives" because, as SOS Racisme reminds us, "we're not in a colonial world." LICRA accuses the MIR of taking "historical shortcuts" delegitimizing their antiracist efforts by critiquing the very premise of that movement. Deriving a positivist approach that rests on a literal reading of the movement's title, these critiques fail to recognize the important contributions MIR can bring to antiracism, and instead castigate this organization as an example of racism.

What the MIR is saying, however, is that there are serious problems with contemporary social relations and structures in contemporary France, based on very

¹³⁰ Alana Lentin and Gavan Titley, *The Crises of Multiculturalism. Racism in a Neoliberal Age* (London: Zed Books, 2011), chap. 2.

precise systems of domination and oppression that are not only reminiscent of the racist ideology dominant in colonial periods, but are directly linked to them. This is the “colonial continuum:”

The treatment of populations from colonization prolongs, without limiting itself to it, colonial policy. Not only is the principle of equality before the law not respected, but the law itself is not always equal (double jeopardy, the application of the personal status of women of Maghrebi or Sub-Saharan origin...). The figure of the “native” continues to haunt political, administrative and judiciary action; it innervates and imbricates itself to other logics of oppression, of discrimination and social exploitation. Thus, today, within the context of neoliberalism, there are attempts to force immigrant workers into the role of deregulators of the job market to extend even more precariousness and flexibility to all wage-earners.¹³¹

This type of analysis, which examines historical forms of racial oppression, has been criticized for reinforcing contentious categories. In a 2006 article exploring the motivation and discourse behind the MIR, Jérémy Robine characterizes the movement as being a “double discourse,” a contradictory discourse, particularly on the question of race and ethnicity. Citing the *indigènes*’ critique of racialized power dynamics, Robine questions the continued ethnicized approach the movement takes, in their reclaiming of the status of “*indigène*” and in their reference to a system of white privilege.¹³²

Robine also identifies a contradiction in Saïd Bouamama’s¹³³ criticisms of the denial of French colonial racism and the absence of a race-conscious analysis, while at the same time denouncing contemporary tendencies to read certain social phenomena in terms of culture or ethnicity (for example that youths in the banlieues are delinquent because they are Arab/Muslim).¹³⁴ Superficially, this may appear contradictory, but the two are not as paradoxical as one may think. Like a number of postcolonial and critical scholars are beginning to note,¹³⁵ the MIR is highlighting discrepancies in the republican colour-blind approach: that while race is denied, even

¹³¹ Mouvement des Indigènes de la République, “Nous sommes les indigènes de la république!”.

¹³² Jérémy Robine, “Les «indigènes de la République»: nation et question postcoloniale,” *Hérodote* 120, no. 1 (2006): 145–146.

¹³³ Noted sociologist, Saïd Bouamama is a member of the Indigènes de la République

¹³⁴ Robine, “Les «indigènes de la République»: nation et question postcoloniale,” 144.

¹³⁵ Christine Delphy, Nacira Guénif-Souilamas, Pap N’Diaye, etc...

as a social construct, racialized and culturalist discourses continue to dominate, reinforcing the otherness of non-whites (for example, the homophobia and the subjugation of women are attributed to Islam, delinquency to the fact of being Arab or black, etc...). The problem, however, is that this is generally not considered as relating to racism. The *indigènes* are reclaiming their identity in reinforcing the links between historical racism and contemporary discourse that continues to racialize minorities. In this light, it cannot be dismissed as a hypocritical adoption of the categories they challenge, but rather as a form of resistance.

While supposedly communitarian approaches to antiracism are dismissed as part of the problem of racism, as shown in previous sections, mainstream antiracist organizations distinguish themselves as republican, emphasizing the importance of conducting antiracist action in accordance with republican values and principles. This was evidenced in interviews with several mainstream organizations. However these new discourses on antiracism have an equally important role in shaping the critique of state level racism.

The extent to which antiracist organizations can posit a serious critique of the French state and more specifically of state racism appears to be intricately linked to their approaches to racism. Through the interviews carried out with the organizations surveyed here, there was an obvious element of critique directed towards the state. Much of this critique is directed towards the government's willingness to promote antidiscrimination at the state level, which will be explored further in Chapter Five. In addition, these groups criticize governmental policy which they consider to be racist or discriminatory. The MRAP, for example, focuses some of their work on immigration and *sans-papiers*. Alongside SOS Racisme and the LDH, and other relevant groups, MRAP protested strongly against forced evictions of *sans-papiers*.¹³⁶ SOS Racisme and MRAP have strongly positioned themselves against the hardening of the Government's

¹³⁶ "SOS Racisme aux côtés des sans papiers," *SOS Racisme*, July 22, 2010, <http://www.sos-racisme.org/SOS-Racisme-aux-cotes-des-sans.html> Accessed 2011-04-14.

immigration policy, opposing the forced expulsions of Roma people and the general discourse of managed or chosen migration.¹³⁷

However, the treatment of the question of the 2004 ban of the *hijab* in secondary schools and Islamophobia by mainstream antiracist organizations displays a certain ambiguity towards the strength of antiracist approaches to manifestations of racism at state and institutional levels. The first main observation from this chapter's analysis is that mainstream antiracism, through an attempt to maintain a republican antiracist discourse, continues to primarily see racism through the prism of individual prejudice and attitudes that must be challenged through education and pedagogy. Secondly, the opposition towards incorporating race into their own discourse builds a wall against introducing the lived experiences of racialized minorities as part of their grid of understanding how racism functions. Together, these elements combine to produce a somewhat depoliticized analysis of racism that obfuscates certain pernicious forms of racism, notably cultural and neo-racisms, which very much function like biological racism. For these reasons, anti-Muslim racism, or Islamophobia, is largely denied or unproblematized as an object of antiracist concern. Consequently, the State's role in institutionalizing these forms of racisms is brushed aside.

Conclusion

In "Racial Europeanization," Goldberg states that "mainstream European thought about race thus pursued the three interrelated paths [...]: denial of race as socially, politically, and indeed morally relevant; an overriding focus on anti-Semitism as the real (and almost only) manifestation of racism; and the radical delinking of the intellectual and political histories of colonialism and racism."¹³⁸ This chapter has

¹³⁷ "Le ministère de l'immigration et de l'identité nationale tient ses objectifs d'expulsions...", *SOS-Racisme*, July 12, 2010, <http://www.sos-racisme.org/Le-ministere-de-l-immigration-et.html> Accessed 2011-04-14.

¹³⁸ Goldberg, "Racial Europeanization," 343.

demonstrated the ways in which these three paths are still apparent in contemporary French mainstream antiracism. Alternative antiracist discourse, however, seeks to break this pattern to introduce a more political, identity-based antiracism that intertwines history, politics and race into its analysis, particularly demonstrated in the discussion of alternative histories.

What becomes increasingly evident, though, is that the lines delineating mainstream and alternative antiracisms are in fact quite blurred. Mainstream organizations like the MRAP often exhibit the potential to break out of the republican universalist approach, especially in their tackling of Islamophobia, while some alternative antiracist groups limit their analysis from achieving a stronger critique of the relationship between republican universalism and racism. The potential of subversive alternative antiracist discourses is thus limited: while the *indigènes* offer a strong alternative voice, other groups remained constrained. This may be due to size and lack of strong media presence, as in the case of Collectif DOM and ADEN. It may also be due to personality and politics, as in the case of the CRAN, which has managed to find a platform for its agenda, but whose main public figure, Patrick Lozès, is marginalized in the antiracist community.¹³⁹ Overall, the attempts to couple republican values and a racialized analysis by these alternative organizations (with the exclusion of the MIR) can only result in a limited challenge to the way civil society apprehends racism. Yet all four of these alternative organizations continue their efforts and while they are still actively on the scene, undeniably challenge mainstream approaches. The real subversive power of this alternative discourse will become clearer with the developments of the MIR's transition into a political party.

¹³⁹ In many interviews with academics or antiracist activists, M. Lozès' character and actions were often dismissed as lacking seriousness or being relevant.

Chapter Four: The French Legislative Framework for Combating Racial Discrimination

Introduction

Following from the contextualization of a historicized race critical approach as a necessary framework for analyzing racial discrimination in France and an examination of civil society activism, the three subsequent chapters are integral to understanding the “machinery” of the anti-racial discrimination field in France. Chapter Four first seeks to examine the legislative framework currently in place to challenge racial discrimination in France, followed by an analysis of the implementation of legal mechanisms in Chapter Five. Chapter Six then explores the debate of ethnic statistics as a case study of key problems in fighting racial discrimination.

Over the last ten years, France’s antidiscrimination legislation has increasingly been strengthened, in large part due to the 2000 European Union Council Directive 2000/43/EC (“Race Directive”). Prior to 2001, antiracist legislation primarily focused on particular types of racism and resulted from a very specific historical focus on anti-Semitism and overt manifestations of racism, enshrining a colour-blind, race-neutral legal mechanism to tackle racism, in accordance with the republican tradition.

This chapter investigates the specific socio-political and historical conditions shaping current antidiscrimination legislative mechanisms, setting the stage for analyzing the implementation of this legislation in subsequent chapters. This chapter is structured along two chief arguments. Firstly, it argues that French colour-blind antiracist legislation has been determined by a re-affirmation of republican

universalism following the Second World War, and centers on narrow conceptions of racism. Expressive racism manifesting through oral or written articulation of racist thought has been the main focus of antiracist legislation, to the detriment of access racism, which relates to the discriminatory effects that everyday racism can have on access to goods and services such as housing, employment, education, consumer goods, etc...¹ By tracing the development of antiracist legislation, this chapter will also argue that anti-racial discrimination legislation has predominantly been the result of outside influences, rather than a conscious pro-active effort from the French government, thereby limiting the scope of improvements in antidiscrimination.

In a first part, this chapter presents the antiracist legislation in place prior to the 2000 Race Directive, highlighting the roots and rationales behind older antiracist laws. The following section takes a closer look at the Race Directive as a key instigator of crucial changes to French antidiscrimination legislation including France's role in the process, and subsequent transformations to French antidiscrimination law.

Antiracism in French Law Before the Race Directive

French antiracist legislation has been shaped by two significant factors. Firstly, the principle of non-differentiation – universalism – rooted in the French republican tradition has had significant implications for the conceptualization of racism and antiracism, affecting the elaboration of antiracist legislation. Antiracist laws have also been heavily influenced by France's history under Vichy and the treatment of French Jews during the Second World War. Together, these two factors have been key in determining antiracist legislation, especially in its emphasis on expressive forms of racism and the reliance on criminal procedures strongly contributing to the establishment of a colour-blind, race-neutral approach to racism in France.²

¹ Bleich, *Race Politics in Britain and France*.

² Suk, "Equal by Comparison."

As seen in previous chapters, France's rejection of race in the aftermath of the Second World War, in large part influenced by UNESCO's refutation of biological or scientific racism in the 1950s and 1960s, sought to uphold constitutional principles and republican values as *the* way to ensure equality. Just as antiracism was shaped by these developments, antiracist legislation was shaped according to these principles in order to protect against any further deviations from universalism (which the Vichy regime represented). Prior to the implementation of the 2000 Race Directive, France's antiracist legal apparatus was quite limited in certain areas, predominantly directed towards tackling *expressive* forms of racism, rather than posing legislative challenges to *access* racism.

The Marchandeu Decree

Theoretically, the principle of equality has been in effect since the 1789 French Revolution, with Article 1 of the Declaration of the Rights of Man and of the Citizen firmly stating, "Men are born and remain free and equal in rights. Social distinctions may be founded only upon the general good."³ This principle of equality was more recently reaffirmed in the Preamble of the 1946 Constitution and in the first article of the 1958 Constitution of the Fifth Republic, which clearly proposes the notion of formal equality: "France shall be an indivisible, secular, democratic and social Republic. It shall ensure the equality of all citizens before the law, without distinction of origin, race or religion. It shall respect all beliefs."⁴

These provisions have largely been considered to constitute the backbone of antiracist or antidiscrimination legislation since these articles formally express that all

³ *Déclaration des Droits de l'Homme et du Citoyen* Art. 1.

⁴ *La Constitution du 4 Octobre 1958* Art. 1.

French citizens are equal or should be equal before the law.⁵ The Constitutional Council has maintained an overall commitment to formal equality,⁶ but its jurisprudence does indicate growing concern for enshrining substantive equality as well. The Constitutional Council has applied substantive equality by distinguishing between situations that are comparable and those that are not. The principle of formal equality has been maintained in comparable situations, but there have been some allowances for differential treatment based on different situations.⁷ This was the case for justifying increased Government subsidies in economically disadvantaged areas in the 1990s (*Zone d'éducation prioritaire, Zones urbaines sensibles*). The repeated references to equality in constitutional texts have led the Constitutional Council to refer to the principle of equality in general terms, only specifying when necessary.⁸

For a long time, politicians and legislators maintained that the inclusion of these guarantors of equality in these constitutional texts sufficiently provided against racism and racial discrimination.⁹ Despite limitations, non-discrimination in France heavily relied on these principles for a very long time, but until 1972, there was still a significant dearth in legislative provisions specifically tackling racism and racial discrimination. At the time, the main legal provisions against racism dated back to the 1939 Marchandeu Decree, which amended the 1881 free press law, criminalizing “defamation and insults against a group of persons belonging by their origin to a particular race or religion, which have for their purpose to incite hatred against citizens or residents.”¹⁰

⁵ *Analytical Report on Legislation. RAXEN National Focal Point FRANCE* (Vienna: Agence pour le développement des relations interculturelles (ADRI)/ Agency for the Development of intercultural Relations, Paris, 2004).

⁶ John Bell, *French Constitutional Law* (Oxford: Clarendon Press, 1992), 224.

⁷ Louis Favoreu, “The Principle of Equality in the Jurisprudence of the Conseil Constitutionnel,” *Capital University Law Review* 21, no. 1 (1992): 165-197.

⁸ John Bell, Sophie Boyron, and Simon Whittaker, *Principles of French Law* (Oxford: Oxford University Press, 1998), 160.

⁹ Bleich, *Race Politics in Britain and France*, 124–125.

¹⁰ “Decree of April 21, 1939” (Journal Officiel, April 25, 1939), 5295 Art. 1. The Marchandeu law was repealed during the Vichy regime, and later restored at the end of the war.

The Marchandea Decree directly responded to increasing anti-Semitic propaganda, often making its mark in newspaper articles expressing racism against French people of Jewish descent.¹¹ Despite its intention, the Decree was not particularly effective in challenging anti-Semitism, to the disappointment of human rights and antiracist associations because it was “narrow in scope,” and “rarely enforced.”¹² Indeed, lawyers from the antiracist organization the Movement against Racism and for Friendship Amongst People (MRAP) were only successful in two cases under this law between 1945 and 1949.¹³ The law was hardly ever effectively employed to target overt expressions of racism. As Klein explains, “There is no doubt that the 1939 legislation was inadequate. In general, the courts applied the 1939 text in a very limited way and the most important *lacuna* [...] was the fact that associations could not initiate a suit. The conditions of French political life were such that this last point really rendered the decree ineffective.”¹⁴ Further expanding on the reference to “political life” in a footnote, Klein explains that the Public Prosecutor rarely initiated prosecutions.¹⁵ In the decades following the Second World War, MRAP took an active role in lobbying government to pass stronger antiracist laws to make up for the gaps found in the Marchandea Decree.¹⁶

Historically, antiracist legislation developed according to a narrow conceptualization of racism, as Suk explains: “The Vichy past provides an historical explanation for why French laws addressing racism and discrimination have been primarily located in the criminal law, and primarily concerned with racist speech.”¹⁷ According to Bleich and Suk’s respective research into antiracist and antidiscrimination legislation, there is a crucial link between the history and memory of France’s implication in the Holocaust under the Vichy government and the elaboration of antiracist legislation in the 1970s. Repressed for a long time, these

¹¹ Suk, “Equal by Comparison”; Bleich, *Race Politics in Britain and France*; Mouvement Contre le Racisme et pour l’Amitié entre les Peuples, *Les lois antiracistes*, Mallette Pédagogique (MRAP, 2006).

¹² Bleich, *Race Politics in Britain and France*, 119.

¹³ Ibid.

¹⁴ Klein, “The New French Law Against Racism and Anti-Semitism,” 90.

¹⁵ Ibid.

¹⁶ Bleich, *Race Politics in Britain and France*.

¹⁷ Suk, “Equal by Comparison,” 313.

memories became more prominent as French involvement in the Holocaust took a prominent place in public debates at the beginning of the 1970s.¹⁸ This was recently confirmed by MRAP activists detailing their organization's past activities.¹⁹ The Marchandeu Decree, enacted as a direct reaction to growing anti-Semitism but found to be ineffective in producing successful litigation, thereby needed to be reinforced by stronger legislation to deal with continued racism in the wake of the Second World War.

Despite the difficulties in litigating successful cases under the Marchandeu Decree, this law set the scene for future antiracist legislation. The Marchandeu Decree paved the way for racism to be dealt with as a criminal offense as opposed to a civil offense and mainly targeted expressive racism, both aspects that have significantly impacted current antiracist legislation and practice.

1972 Law: First Statute Against Racial Discrimination

While the Marchandeu Decree provided some legal provisions against expressive forms of racism, there were still no such provisions that targeted racial discrimination specifically, because antidiscrimination continued to be considered as maintained by a long-standing constitutional principle of non-discrimination. It was not until 1972 that a law codified racial discrimination as a crime, influenced by three key factors: lobbying initiated by antiracist groups, growing concern over racism directed at immigrants, and France's international human rights commitments.²⁰

In the years following the Second World War, the failure of the Marchandeu Decree to properly address anti-Semitism in France, which continued even after the war, pushed the MRAP to lobby the government to enact a new law, for which they provided a template. MRAP activists were concerned about the constraints of the

¹⁸ Suk, "Equal by Comparison"; Bleich, *Race Politics in Britain and France*.

¹⁹ Mouvement Contre le Racisme et pour l'Amitié entre les Peuples - Service Juridique, "MRAP."

²⁰ Suk, "Equal by Comparison"; Bleich, *Race Politics in Britain and France*.

Marchandeu Decree: that successful court cases using the Marchandeu Decree were rare, and that the decree targeted defamation but not provocation to racial or religious hatred (or incitement to discriminate against particular groups). Another noteworthy obstacle was the inability of antiracist organizations to act as civil parties at the time, to initiate judicial proceedings when the government chose not to. The courts regularly excluded antiracist organizations from acting as civil parties unless they were directly affected and while public prosecutors were responsible for initiating proceedings under the Marchandeu degree, they rarely did so, creating a roadblock in making the Decree effective.²¹

In looking to provide viable solutions to the problematic aspects of the Marchandeu Decree, the MRAP proceeded to draft a law proposal, circulating it to government officials and deputies in the *Assemblée Nationale* (National Assembly) as early as 1959.²² The draft bill aimed to strengthen the legislation, proposing further amendments to the 1881 free press law, to broaden the statute to include incitement to racial and religious hatred and discrimination. In addition, the MRAP included a provision that would allow antiracist organizations to instigate proceedings as civil parties. Building on the Marchandeu Decree, the draft proposal continued to primarily focus on expressive racism as one of the MRAP's main concerns for curbing anti-Semitism. The law also emphasized criminal proceedings as the most appropriate legal route for apprehending both expressive and access racism. As Bleich notes, "by arguing that access racism be publishable by the criminal law, the MRAP responded not only to considerations of legal effectiveness, but also to normative considerations of what was appropriate."²³ He goes on to explain: "Several French participants and observers have asserted that since the wrong of access racism concerned not just the individual victim, but implicated society as a whole in confronting racism, criminal sanctions were the appropriate method of punishment."²⁴

²¹ Bleich, *Race Politics in Britain and France*, 120–123.

²² Ibid

²³ Bleich, *Race Politics in Britain and France*, 121–122.

²⁴ Ibid., 122.

At the same time, there were increasing concerns about the treatment of immigrants in France. In spite of a rise in racist attacks, the main consensus amongst government officials and legislators was that racism was not enough of a problem to specifically legislate against anew. This concern was not as marked as in the campaign against anti-Semitism and expressive racism, but throughout the 1960s, heightened tensions between France and Algeria led to increasing numbers of racially motivated violence and acts. However, a long time elapsed from the time MRAP first proposed the draft bill in 1959, to the passing of the law in 1972. Despite greater media attention towards the living conditions of immigrants and the everyday racism they faced during that period, the government and lawmakers were not keen to pass any new antiracist legislation. Aside from a few Communist deputies who insisted that the current legislation was not adequate, there was not much support for this bill.²⁵

This changed when Minister of Justice Edmond Michelet took up the cause in 1961 and attempted to find new ways of getting a similar bill passed, but despite these efforts, the bill remained unpopular.²⁶ Overall, racism was still not seen as a pressing matter, as manifested by a statement made by a representative of France at the United Nations Security Council in 1964, "There are few traditions which are so much a part of the history of my country as the concept of equality between the races ... Everywhere where French laws and mores are the rule, there is no racial discrimination. It has not even been forbidden because it is not necessary to do so."²⁷ Similarly, the French General Assembly argued that the issue of discrimination was not serious enough to warrant new laws. It was also argued that such a law would be detrimental to France's image, "by implying that racism was a serious domestic problem."²⁸ Racism therefore continued to be considered, or at least presented, as external to France, to be remedied by a re-commitment to republican values.

²⁵ Ibid., 116–118.

²⁶ Bleich, *Race Politics in Britain and France*.

²⁷ Quoted in Ibid., 126.

²⁸ Ibid., 124–125.

Over the period between 1959 and 1972, political manipulation prevented the law from becoming a reality. While support for the law within the government and political representatives was steadfastly growing, alongside a stronger public awareness of racial tensions in France, the law continued to be resisted. Some politicians stressed the growing need for a *new* law, relating it to a new pervasive racism in France. In presenting a law draft, Senators Gaston Monnerville and Pierre Giraud expressed the following:

[I]t appeared that French penal legislation is not sufficient; it does not relate to new forms of discrimination... Besides the "classical" cases of discrimination...we now have other forms of discrimination more difficult to bring to light and well camouflaged, which are linked to economic development or to new political situations, both on the national level and on the international level. For instance, the refusal to recruit, the abusive dismissal of workers, the refusal to rent, to offer services, the pretended ignorance of a right or the non-recognition of it on racial, ethnic or religious grounds...²⁹

However, legislators continued to maintain the stance that existing legislation sufficiently addressed racism.³⁰ France's commitments to international human rights ultimately became the deciding factor. The International Convention on the Elimination of All Forms of Racial Discrimination (ICERD), which came into force on 4 January 1969, imposed certain obligations on France, which ratified ICERD on 27 August 1971. In addition to stating that State Parties need to ensure that everyone can enjoy a number of civil and political rights, as well as socio-economic rights,³¹ the Convention also states:

States Parties shall assure to everyone within their jurisdiction effective protection and remedies, through the competent national tribunals and other State institutions, against any acts of racial discrimination which violate his human rights and fundamental freedoms contrary to this Convention, as well as the right to seek from such tribunals just and adequate reparation or satisfaction for any damage suffered as a result of such discrimination.³²

²⁹ Quoted in Klein, "The New French Law Against Racism and Anti-Semitism," 90.

³⁰ Ibid 130-131

³¹ United Nations, *International Convention on the Elimination of All Forms of Racial Discrimination*, 1966 Art. 5.

³² Ibid. Art. 6.

In order to implement provisions mandated by the convention, the French government had to make significant changes to its legal system, which did not have any criminal or civil provisions against racial discrimination to date. As a result, the 1972 law became a reality, closely matching the draft bill proposed by MRAP thirteen years prior. Suk and Bleich have both respectively argued that this international commitment was key to instigating legislative reform in France.³³

The 1972 law brought about significant amendments reinforcing previous antiracist provisions. This law once again amended the 1881 free press law and the penal code, expanding it to include provocation to racial hatred, racial defamation and insults aimed at both individuals and groups. The law also criminalized associations and groups that incite racial hatred or discrimination, as well as disseminate literature or theories encouraging or justifying such discrimination and provided for the dissolution of groups that incite or provoke hatred, violence or discrimination.³⁴ In spite of a focus on expressive racism, the 1972 statute did also provide legal sanctions against access racism: “discrimination on the basis of origin or membership or non-membership in an ethnicity, nation, race or religion” in the provision of goods and services was criminalized,³⁵ as well as the refusal of a right or service from public authorities.³⁶ Another key provision introduced by the law was the criminalization of racial, religious, ethnic or national discrimination by employers in hiring and firing.³⁷ The notion of indirect discrimination would remain absent from French legislation until later reforms in 2001.

Overall, the provisions against racial discrimination introduced by the 1972 law did little to curb racial discrimination in employment and in access to goods and services. One of the major problems emerges from the difficulty of proving another’s intention to discriminate, a crucial requisite for criminal litigation. Proving criminal

³³ Bleich, *Race Politics in Britain and France*; Suk, “Equal by Comparison.”

³⁴ Mouvement Contre le Racisme et pour l’Amitié entre les Peuples, *Les lois antiracistes; Loi du 1er Juillet 1972, dite “Pleven”, 1972 Art. 9.*

³⁵ *Loi du 1er Juillet 1972, dite “Pleven” Art 7 (1).*

³⁶ *Ibid.* Art. 6.

³⁷ *Ibid.* Art. 7 (3).

intent is more difficult when dealing with employment or service, where excuses for discriminating can more easily be found.³⁸ Suk argues that the 1972 “law was enacted to fulfil criminal-law objectives: expressing moral condemnation of anti-Semitic propaganda. In 1972, French legislators simply added the prohibition of discriminatory denials of services, goods and employment to this existing criminal law framework for addressing racism. They did not consider the difficulties that could arise from using criminal law to condemn acts, the intentions for which are difficult to discern, and whose victims seek remedies such as compensation, which go beyond the punishment of perpetrators.”³⁹ In the development of the first laws to target racial discrimination, the focus was largely centred on the perpetrators of racial discrimination, rather than on the victims. This, as seen in the previous chapter, significantly affected contemporary forms of antiracism which continue to object to taking into account the experiences of victims of racism.

Following the 1972 law, more antiracist legislation was progressively introduced to further strengthen these legal measures. One key piece of legislation is the 1990 Gayssot law which “explicitly prohibited denial of the Holocaust, as expressed orally in public places, in writing, print, drawings, inscriptions, paintings, emblems, images, or other speech or image sold or distributed or put on display.”⁴⁰ While other laws were passed in the meantime, such as the 1982 labour law providing civil remedies against employment discrimination, the Gayssot law made a big impact on the public scene and stirred controversial debates about government’s role in relation to history, opposing historians, Holocaust revisionists and legislators.⁴¹ It continues to spark controversy to this day, recently submitted for consideration for constitutional review as a *Question prioritaire de constitutionnalité* (QPC – Priority Issue of Constitutionality),⁴² a claim that was rejected by the Cassation Court in May 2010.⁴³

³⁸ Suk, “Equal by Comparison,” 323.

³⁹ Ibid.

⁴⁰ Ibid., 303; *Loi n°90-615 du 13 juillet 1990 tendant à réprimer tout acte raciste, antisémite ou xénophobe*; *Loi du 29 juillet 1881 sur la liberté de la presse*, 1881 Art. 24, Art 24 (bis).

⁴¹ M Artais, “La controverse sur la loi Gayssot,” *Le Monde*, June 4, 1996.

⁴² The 23 July 2008 constitutional reform inserted a new article in the Constitution (art. 61-1) and modified article 62 to allow litigants to directly instigate a review procedure by the Constitutional

What is also notable is the continued attention towards expressive racism and the problems of anti-Semitism in France. Within this context, the denial of the Holocaust is conceptualized as a new reformulation of anti-Semitism.⁴⁴ This relates to Goldberg's argument raised in earlier chapters of the seminal role the Holocaust has had in shaping Western European antiracism. Not only does it have an influence over conceptual approaches to what constitutes racism, but it has also impacted legislative developments.

Developing Colour-Blind Antiracism

This overview of the chief legal provisions against antiracism and anti-racial discrimination in France before the Race Directive underlines the very particular ways in which these laws have been elaborated. France's imbalanced emphasis on expressive racism over access racism, proved to be ineffective in curbing racial discrimination. As Jacqueline Costa-Lascoux has argued, while it succeeded in curbing racist ideologies, this law did not succeed in curbing racial discrimination in everyday life.⁴⁵ The laws in place were more efficient for challenging the rise of extreme right movements and explicit racist expressions, but not adequate for curbing racial discrimination in access to employment, housing, services, etc... While legislators considered the discrimination faced by immigrants was as well, in practice, antiracist laws were more suited to tackle expressive racism, and not racial, ethnic or religious discrimination.

Unlike in the United States or in the United Kingdom where a number of race-conscious policies related to indirect discrimination, ethnic monitoring and positive

Council and to ask for a law to be repealed. This applies to past legislation as well. This was formalized by the 10 December 2009 Organic Law. The Priority Issue of Constitutionality undergoes review by either the Cassation Court or the State Council before being sent to the Constitutional Council for review. For more information see Marc Guillaume, "La question prioritaire de constitutionnalité," *Justice et Cassation. Revue annuelle des avocats au Conseil d'État et à la Cour de Cassation* (2010).

⁴³ Laurent de Boissieu, "La loi sur les crimes contre l'humanité jugée conforme à la Constitution," *La Croix*, May 10, 2010.

⁴⁴ Suk, "Equal by Comparison," 303.

⁴⁵ Jacqueline Costa-Lascoux, "Des lois contre le racisme," in *Face au racisme*, ed. Pierre-André Taguieff (Paris: La Découverte, 1991), 120.

action have been adopted,⁴⁶ race-conscious policies were not considered as appropriate options for challenging racism in France during the elaboration of its antiracist legislation. As Suk points out, the French commitment to race-neutral policies was clearly a response to the Second World War, after which the principle of universalism was concretely introduced into the Preamble of the 1946 Constitution for the first time. The constitutional prohibition of any distinction based on race was a post-war innovation, and marks the growing rejection of the concept of race and of any distinctions based on race. This has been reflected in antiracist legislation since then, in particular the focus on expressive racism and direct discrimination, which in turn reveals this concern for colour-blindness. As explained in a report by the European Information Network on Racism and Xenophobia, "All racist acts are exposed to criminal penalties, but the law is based on a conception of racism in which individuals cannot be categorized. The law thus focuses on analysis of the racist act itself rather than on the situation of the victim. It is a purely punitive law, which punishes the offender for lack of respect for the universal value and dignity of every human being."⁴⁷ The long absence of any notion of indirect discrimination and the refusal of positive action, ethnic statistics and affirmative action is also reflective of this. Republican principles have been imbued in the legislation as an antiracist approach in and of itself and the strict notion of universalism has been internalized into the approach for targeting racial discrimination. As Dobbin explains of the 1972 law, "the core principle [was] that employers should be color-blind rather than race-conscious,"⁴⁸ attributing the "race-blind and individualistic approach" to "France's more centralized political structure."⁴⁹

⁴⁶ Frank Dobbin, "Do the Social Sciences Shape Corporate Anti-Discrimination Practice?: The United States and France," *Comparative Labor Law and Policy Journal* 23 (2002 2001): 829-864; Donna M. Gitter, "French Criminalization of Racial Employment Discrimination Compared to the Imposition of Civil Penalties in the United States," *Comparative Labor Law Journal*, no. 488 (1994); Bleich, *Race Politics in Britain and France*.

⁴⁷ *Analytical Report on Legislation. RAXEN National Focal Point FRANCE*, 9.

⁴⁸ Dobbin, "Do the Social Sciences Shape Corporate Anti-Discrimination Practice?: The United States and France," 837.

⁴⁹ *Ibid.*, 833.

To properly cement this refusal for race-conscious policies or legislation, a provision in the 1978 law on information storage and freedom firmly prohibits the storage of data on ethnicity or race. This law, characterized as an antiracist law,⁵⁰ solidifies the commitment to elaborating antiracist policies and legislation that do not allow for differentiation between French citizens. The effects of this law continue to be felt in contemporary debates on ethno-racial statistics,⁵¹ officially banned in France, even as an antiracist or anti-racial discrimination tool. The logic behind the 1978 law was to reaffirm the universalist principle that certain forms of identification (race, ethnicity) are not welcome in France, claiming that any data collected along these differentiations only serve to reinforce and reify pseudo-scientific racial categories.⁵²

For theorizing French antiracist law, Suk proposes the following: “ways of thinking about social phenomena, such as racism and discrimination, make their way into the meaning of laws that regulate these social practices. [...] French law, insofar as it is understood as a social practice, can be understood as participating in the representation of the past and the perpetuation of its memory. This is especially true of antidiscrimination law.”⁵³ She argues that it is specifically the combination of republican universalism and France’s past with Vichy that has led to the adoption of a colour-blind approach to tackling racism, enabling the development of legal mechanisms directed towards expressive forms of racism rather than providing adequate mechanisms to challenge access racism.⁵⁴

Conceptualizing the law as a “social practice” provides an interesting and useful framework for analysing French antiracist and anti-racial discrimination legislation. Through this lens, the link between historical factors, republican ideology and antiracist legislation becomes clearer. As anti-Semitism was the principal form of

⁵⁰ Bleich, *Race Politics in Britain and France*; Mouvement Contre le Racisme et pour l’Amitié entre les Peuples, *Les lois antiracistes*.

⁵¹ As they have been called in the most recent debates throughout 2009-2010.

⁵² Mouvement Contre le Racisme et pour l’Amitié entre les Peuples, *Les lois antiracistes*; Eddie Bruce-Jones, “Race, Space, and the Nation-State: Racial Recognition and the Prospects for Substantive Equality Under Anti-Discrimination Law in France and Germany,” *Columbia Human Rights Law Review* 39 (2008): 423-470; Bleich, *Race Politics in Britain and France*.

⁵³ Suk, “Equal by Comparison,” 314.

⁵⁴ *Ibid.*, 309.

racism targeted in the development of antiracist legislation, future legislation was shaped accordingly. Effectively, the resulting 1972, 1978 and 1990 antiracist legislations were ill equipped to deal with racist manifestations other than expressive racism. In many ways, antiracist legislation follows the same pattern that antiracist activism has taken, regarding both the type of racism addressed and the reaffirmation of universalism as the appropriate antithesis to racism.

French antiracist and antidiscrimination legislation would only experience significant reinforcement in 2001. This development, as this next section will show, was highly influenced by the 2000 Race Equality Directive.

The Race Directive's Impact on France's Anti-Racial Discrimination Legislation

In 2001, France introduced the first of a number of significant legal and institutional reforms in an attempt to reinforce the legal apparatus to tackle discrimination, including racial discrimination. For the first time, racial discrimination was seen as a major roadblock to achieving equality in French society. These legal changes can be attributed to France's transposition of the EU Council Directive 2000/43/EC (also known as the Race Equality Directive or Race Directive), unanimously passed by all member states of the European Union in 2000. A brief examination of the Directive, including the process by which it came into existence and its implications for France, presents an informative picture of the constant tensions existing between attempts to reconcile the fight against racial discrimination and the limitations posed by French political culture. This next section explores events leading up to the Race Directive both at the national level in France, and at the regional level of the European Union to assess the impact the directive has had on France's newfound commitment to fighting racial discrimination.

Towards the Race Directive

From the 1980s, the EU had expressed growing concern with statistical evidence of a high level of racism, xenophobia and racial discrimination in member states.¹ Eventually, the Treaty of Amsterdam amended the EC Treaty Establishing the European Community in 1997 with the inclusion of Article 13. Article 13 conferred power onto the Council to “take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.”² By the 1970s, most EU member states had outlawed racial discrimination and ratified ICERD but the EU had predominantly focused on problems of racism and ensuring formal equality, not racial discrimination.³ Article 13 and the Race Directive therefore mark an important shift in European social policy.⁴

The predominance of a market integration model (perhaps until recently) over a social citizenship model has restricted European social policy which has tended to remain within the boundaries of integration into the free market.⁵ As Bell notes, this had serious implications for initiatives targeting racism and racial discrimination: “Measures based purely on ethnic and racial integration objectives were unable to find a position in the market-driven state of European social policy, thereby presenting a major obstacle to the development of a comprehensive anti-racism policy.”⁶

¹ Mark Bell, *Anti-Discrimination Law and the European Union* (Oxford: Oxford University Press, 2002).

² “Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities and Related Acts” (Official Journal C 340, November 10, 1997).

³ Bell, *Anti-Discrimination Law and the European Union*, 58–59.

⁴ The EC Treaty Establishing the European Community is now the Treaty on the Functioning of the European Union. The former Article 13 non-discrimination provision is now found in Article 19. See “Consolidated Version of the Treaty on the Functioning of the European Union,” *Official Journal of the European Union* (May 9, 2008) Part Two, Art. 19.

⁵ Bell, *Anti-Discrimination Law and the European Union*, 58–61. Legal expert, Mark Bell, makes the important distinction between two theoretical frameworks for understanding EU policy: the social citizenship model and the market integration model. While the deeper significance of both models is beyond the scope of this research, they do highlight some of the tensions existing in the context of social policy in the EU.

⁶ *Ibid.*, 60.

In the 1980s, the European Commission focused on the question of third country nationals, turning its attention to strengthening immigration controls alongside the question of immigrant integration within member states. At the same time, the European Parliament also began to examine existing EU policy on racism, especially with extreme right parties gaining momentum in Parliamentary elections in the mid-1980s.⁷ The 1985 *Evrigenis* Report⁸ identified racism and xenophobia to be grave problems in Europe, leading to the first “high-level acknowledgement that racism was a matter of EC concern”⁹ with the Joint Declaration against Racism and Xenophobia, signed by the Commission, Parliament and the Council in 1986. Despite voicing commitment to reducing racism, few significant steps were taken at the time to bring about concrete changes.¹⁰

The 1990s witnessed an important shift away in the European policy on racism, which had previously been constrained by European social policy focused on market-integration. Bell identifies three main factors leading to the inclusion of a non-discrimination provision in the Treaty of Amsterdam. Firstly, increased cross-border racism faced by nationals of EU member states in other countries was identified as a growing problem, providing a stronger argument in support of EU intervention because it raised challenges to the proper functioning of the free internal market. Secondly, greater coordination concerning immigration policies within the EU resulted in a stronger control of immigration. To balance such policies, the Council also focused on integrating immigrant populations, a question directly relating to policy on racism. And finally, a transnational lobby against racial discrimination

⁷ Ibid., 60–61.

⁸ Growing concerns over extreme right parties prompted an inquiry by the Committee of Inquiry into the Rise of Fascism and Racism in Europe, culminating in the *Evrigenis Report* in 1985.

⁹ Bell, *Anti-Discrimination Law and the European Union*, 61.

¹⁰ Bell, *Anti-Discrimination Law and the European Union*. The Council challenged initiatives for strong resolutions and action plans by the Parliament and the Commission because of concerns from member states who argued that the European Community had no competency over the treatment of third country nationals. And since, at the time, racism was thought of as related to the question of immigration and thus not pertinent to the functioning of the internal market, it was considered to be outside the realm of EC competency.

emerged in the 1990s, with effective tools for gaining the support of the Council and the Commission.¹¹

Because of the economic foundation and basis of the European Community, it has been crucial for any social policy enacted by the EU to be presented as falling within the gambit of this tradition.¹² This specification is demonstrable in the relative success of one group over another in lobbying for a new approach to racism in the 1990s. As Virginie Guiraudon explains, the European Union Migrants' Forum, a civil society advisory group established in 1990 to propose reforms to be initiated by the Commission, sought to initiate change based on a citizenship platform. The Migrants' Forum attempted to challenge the traditional conception of citizenship by widening ascension to citizenship. Member states opposed this, however, stressing the importance of national sovereignty.¹³

Conversely, the Starting Line Group (SLG), a network comprising of over 300 non-governmental organizations (NGOs) created in 1992, managed to present successful economic-based arguments for fighting discrimination with the support of both the European Parliament and the Commission.¹⁴ Reinforced by another inquiry into racism and xenophobia in Europe that supported action against racism, the *Khan Commission*, the SLG proved successful by appealing to the fundamental principles of the EU.¹⁵ The combined results of strong lobbying and the growing wave in political concern over increasing manifestations of racism in Europe thus contributed to the inclusion of Article 13 into the EC Treaty by 1997 Amsterdam Treaty.¹⁶ As a result of Article 13 conferring power onto the Council to "take action," member states

¹¹ Ibid., 63–72.

¹² Ibid. In principle, the EU functions on a market integration model of citizenship, which supposes that any intervention into the arena of social policy, traditionally left up to individual member states to deal with at the national level, be restricted to matters carrying an impact on the internal market.

¹³ Virginie Guiraudon, "Construire une politique européenne de lutte contre les discriminations: l'histoire de la directive 'race'," *Sociétés Contemporaines*, no. 53 (2004): 11–53.

¹⁴ In this scenario, racism was presented as antagonistic to the free market, as it prevented an efficient freedom of movement within Europe if people of foreign origin were wary of facing racial or ethnic discrimination in other member states.

¹⁵ Guiraudon, "Construire une politique européenne de lutte contre les discriminations," 15–18.

¹⁶ Ibid., 18.

unanimously adopted the Race Directive in 2000, which is legally binding “as to the results to be achieved, upon each Member State to which it is addressed, but shall leave to the national authorities the choice of form and methods.”¹⁷ This leads into a discussion on the factors influencing the adoption of the Race Directive, with a particular focus on France’s role during this process.

Several commentators analyzing the speedy evolution of the Race Directive from draft proposal to unanimously voted binding legislation seem to agree that there was one chief factor contributing to this rapid process: the “Haider factor.”¹⁸ With Jörg Haider’s extreme right Freedom Party entering the Austrian government as a coalition partner in 2000, EU member states reacted by taking a stand against racism. France, especially, spearheaded the movement to move forward quickly with the Race Directive and loudly expressed its disapproval of Haider and the need to counter fascism and racism in Europe.¹⁹

According to Guiraudon, one of the reasons why France’s reaction to Haider was so strong is because he and his party embodied France’s conception of expressive racism. The success of Haider and his political party also stirred up fears concerning the potential of France’s own extreme right movement, the *Front National* (FN). This fear was aggravated with the FN’s success in the first round of the 2002 presidential elections, which highlighted the internal strength of this party. The directive would thus constitute an appropriate response to Haider’s success as well as contribute to a clear reinstatement of equality of treatment.²⁰ The same patterns as with the development of earlier antiracist legislation therefore emerge whereby “extreme” manifestations of racism elicit particularly strong reactions.

¹⁷ *Treaty establishing the European Community*, n.d. Part Five, Title I, Chapter 2, Art. 249.

¹⁸ Geddes and Guiraudon, “Britain, France, and EU Anti-Discrimination Policy”; Guiraudon, “Construire une politique européenne de lutte contre les discriminations”; Joppke, “Transformation of Immigrant Integration.”

¹⁹ Guiraudon, “Construire une politique européenne de lutte contre les discriminations”; Geddes and Guiraudon, “Britain, France, and EU Anti-Discrimination Policy.”

²⁰ Guiraudon, “Construire une politique européenne de lutte contre les discriminations,” 24–25.

France played a key role in making the Race Directive a legal reality because of its public commitment to countering Haïder's political rise in Austria, and to take a firm stance against expressive forms of racism, as manifested by his extreme right party. Because of the far-reaching nature of the directive and the significant legal reforms it would require from France, this support surprised some commentators.²¹ Political factors appear to have been quite influential: after voicing opposition to Haïder and calling for steady European commitment to challenging racism, French representatives could not block or veto the implementation of the directive in its final stages without a fallout.²² Ultimately, France's surprising support for the Race Directive also suggests that France's positioning on racism is primarily reactionary rather than proactive.

However, France's support for the implementation of the Race Directive was not unconditional. French representatives during negotiations of the directive put forward two key stipulations to ensure there would be no rupture with France's Republican tradition. As Bell notes, one of the key points of contention during the directive negotiations rested on the use of the term "race" in the directive.²³ Several countries, including Sweden, Belgium and France, were opposed to including the term in the final drafting of the Directive. They were worried that using this specific term would serve to reify the notion that different biological races exist.²⁴ To counter this controversial point, the final draft of the Directive included a disclaimer, which firmly distances the EU from any belief in anything other than one human race, inserting the following statement in the Preamble of the text: "The European Union rejects theories which attempt to determine the existence of separate human races. The use of the term 'racial origin' in this Directive does not imply the acceptance of such theories."²⁵

²¹ Interview with Guiraudon, interview.

²² Ibid.

²³ Mark Bell, "The Implementation of European Anti-Discrimination Directives: Converging towards a Common Model?," *The Political Quarterly* 79, no. 1 (2008): 37.

²⁴ Adam Tyson, "The Negotiation of the European Community Directive on Racial Discrimination," *European Journal of Migration and Law*, no. 3 (2001): 199-229.

²⁵ Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, 2000/43/EC, 2000 Preamble (6).

In spite of this addendum to the Directive, France later felt the need to reinforce the country's stance on the use of this controversial word by qualifying it in subsequent legislative reforms, referring instead to "real or presumed race."²⁶ The inclusion of the term "ethnic" gave rise to a similar debate and discussion.²⁷

The second demand made by France during Directive negotiations pertained to the issue of using statistical data as proof of direct or indirect discrimination. France firmly opposed imposing or favouring the use of statistical information as the preferred method of proving the existence of indirect discrimination. A compromise was reached in negotiations, resulting in a clause which made the national judiciary responsible for ascertaining the existence of indirect and direct discrimination, while *allowing* for the use of statistical evidence.²⁸ The use of statistical evidence as a tool against racial discrimination and the recurring debates on the topic in France will be examined in much greater detail in Chapter Six.

Reinforcing the idea that France's antiracist policy and action is largely reactionary, some legal or public policy scholars, such as Virginie Guiraudon, have presented the Race Directive as a "top-down" initiative, in the sense that legal reforms were imposed on European member states because of their membership, rather than as a result of national politics. Even French antiracist organizations like SOS Racisme and the LICRA were noticeably absent from the campaign leading up to Race Directive. The Starting Line Group included a number of civil society organizations from other countries like the Belgian Migration Policy Group, but did not feature many French antiracist organizations, especially the most prominent ones. As Guiraudon documents, SOS Racisme did not respond to appeals to participate in the efforts of the Starting Line Group to lobby at the European level:

²⁶ Bell, "The Implementation of European Antidiscrimination Directives: Converging Towards a Common Model?," 37.

²⁷ Bell, "The Implementation of European Anti-Discrimination Directives," 37; Evelyn Ellis, *EU Anti-Discrimination Law* (Oxford: Oxford University Press, 2005), 30–31.

²⁸ Guiraudon, "Construire une politique européenne de lutte contre les discriminations," 28; The Council of the European Union, 2000/43/EC Preamble (15).

In the end, the Starting Line Group, what they did is, basically, they emailed, faxed all sorts of NGOs which are relevant, asked them to sign on. [...] And there were [around] 300 signatories, including the European parliamentary, institutional signatories. But clearly SOS Racisme was not interested in lobbying. They are not interested in “behind the doors,” they are interested in media coups and being in the limelight. [...] Because for them, Brussels, NGOs, it does not interest them at all.²⁹

While some organizations like the Human Rights League and the MRAP now participate at the European Level, it does not seem that French civil society was highly involved in the processes leading up to the legislative reforms, and many largely continue to limit their action to the national level. In an interview, Guiraudon suggests this may be due to the perceived goals of actors within an organization like SOS Racisme, who focus on being in the media and progressing towards political careers, rather than lobbying at a larger scale. These political links appear quite clearly in Serge Malik's *Histoire Secrète de SOS Racisme*.³⁰ In this book, Malik recounts how SOS Racisme served to benefit the political careers of its founders, notably Julian Dray, who was close to François Mitterand who sought ““real” left-wingers and young people whose presence at the Court would demonstrate his humanism and the extent to which he was “in touch with ordinary people and social problems”.”³¹ Gwénaëlle Calvès has confirmed the lack of involvement, noting that very few French associations were involved neither in the process leading up to the directive, nor in the actual negotiations.³² This contrast with their involvement in the legislative process at the national level, which is quite significant, as will be further developed in Chapter Five.

There were other noteworthy absences from the process. In general, only very specific key policy-makers from France were involved in this process at the European level. Mark Bell attributes the low level of involvement from the national level of member states to the rapidity of the directive:

²⁹ Guiraudon, interview.

³⁰ Serge Malik, *Histoire Secrète de SOS Racisme* (Paris: Albin Michel, 1990).

³¹ “Histoire secrète de SOS-Racisme,” *Oulala.net*, February 19, 2005, <http://www.oulala.net/Portail/spip.php?article1697> Accessed 2011-06-25.

³² Calvès, interview.

That's often the way with these European reforms that, particularly in a case like this where the directive was adopted very quickly, so there wasn't really time for the proposal to sort of percolate down into national agendas, so when the commission moved forward the proposal, it may be on the radar of European NGOs and European politicians, but the extent to which it sort of you know would have been discussed within let's say national media or amongst national parliamentarians, [is] probably very, very low.³³

Considering the historical reluctance of enacting stronger antiracist legislation, the current patterns seem to replicate this reluctance, which results in *reactive* changes only. However, the overall lack of involvement from French civil society and government appears to corroborate the theory that the anti-racial discrimination legislative reforms at European level were largely the direct result of a top-down effect.³⁴

Considering the above discussion on how antiracist legislation historically took shape in France, this new legislation must be evaluated to determine its impact on the general conceptualization of racism and racial discrimination in France. France has followed through with the transposition of the directive and implemented a series of changes to the legislative arsenal, but it is also important to question whether the approach to racism has changed at all considering previously examined limitations to earlier laws. While the following chapter will look into the practical implications and implementations of these new laws, this chapter considers some of the sociopolitical theoretical dimensions of the legislative reforms. Before looking at the French transposition of the Directive, this next section considers the contributions and limitations of the Race Directive itself.

³³ Mark Bell, Audio recording, February 26, 2009.

³⁴ Guiraudon, "Construire une politique européenne de lutte contre les discriminations."

The Race Directive

The content of the Race Directive demonstrates a subtle shift in understanding of equality, moving away from formal equality in treatment to a more substantive equality. The directive refers to existing legal human rights framework that already leans towards substantive equality, taking into account the social aim of equality.³⁵ While the first Article of the directive states that the framework has “a view to putting into effect in the Member States the principle of equal treatment,”³⁶ the content of the framework and the forms of discrimination targeted, particularly indirect discrimination, imply a change of direction towards a concern with social practice. Adding to this the specific reference to positive action also demonstrates a more pressing emphasis on ensuring a more substantive equality rather than a formal notion of equality that centers on non-discrimination and equal right.³⁷

To give shape to a more substantive understanding of equality, the directive makes some important legal and policy changes. The Race Directive covers a broad scope of discrimination including employment, vocational training, membership to work-related organizations, education, social advantage, access to goods and service.³⁸ In this context, the Directive states that “the principle of equal treatment shall mean

³⁵ Dagmar Schiek, “A New Framework on Equal Treatment of Persons in EC Law?,” *European Law Journal* 8, no. 2 (2002): 290-314. The Directive specifically refers back to the UN Convention on the Elimination of all Forms of Racial Discrimination (CERD) the Universal Declaration of Human Rights, the UN International Covenants on Civil and Political Rights and Economic, Social and Cultural Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms.

³⁶ The Council of the European Union, 2000/43/EC Art. 1.

³⁷ Schiek, “A New Framework on Equal Treatment of Persons in EC Law?”. The interpretations of equality differs, however, for different types of criteria of discrimination, as highlighted by Bell and Waddington. For more details, see Mark Bell and Lisa Waddington, “Reflecting on inequalities in European equality law,” *European Law Review* 28, no. 3 (June 2003): 349-369.

³⁸ The Council of the European Union, 2000/43/EC Art. 3.

that there shall be no direct or indirect discrimination based on racial or ethnic origin.”³⁹

The Directive goes on to identify four forms of discrimination: *direct discrimination, indirect discrimination, harassment* and *incitement to discriminate*. The inclusion and definition of indirect discrimination in the directive is especially of note since it was not particularly recognized in most EU states beforehand.⁴⁰ In the French context, this is crucial since the transposition of the directive into the national legislation introduced the concept of indirect racial and ethnic discrimination into the French “administrative and judicial order.”⁴¹

According to the Race Directive, direct discrimination exists when “one person is treated less favourably than another is, has been or would be treated in a comparable situation on grounds of racial or ethnic origin.”⁴² Indirect discrimination, on the other hand, “shall be taken to occur where an apparently neutral provision, criterion or practice would put persons of a racial or ethnic origin at a particular disadvantage compared with other persons, unless that provision, criterion or practice is objectively justified by a legitimate aim and the means of achieving that aim are appropriate and necessary.”⁴³

In addition to clearly demarcating these four types of discrimination, the directive also makes crucial changes to the judicial process with respect to the burden of proof. The burden of proof, which was traditionally placed on victims of discrimination, has been shifted onto the defendant.⁴⁴ In relation to the judiciary process, one noteworthy concession is introduced with the directive *allowing* statistical evidence to be used to determine the existence of direct and indirect

³⁹ Ibid. Art. 2.

⁴⁰ Joppke, “Transformation of Immigrant Integration,” 258.

⁴¹ Sophie Latraverse, “Tradition française et politique européenne de lutte contre les discriminations. À la lumière de trois directives européennes récentes,” *Informations sociales* 5, no. 125 (2005): 97.

⁴² The Council of the European Union, 2000/43/EC Art. 2 (a).

⁴³ Ibid. Art. 2 (b).

⁴⁴ Ibid. Art. 8.

discrimination as well as allowing member states to take positive action to redress equality and challenge racial and ethnic discrimination if they are so inclined but not making it compulsory.⁴⁵ Both these measures can facilitate determining cases of indirect discrimination, while positive action can be used to challenge the effects of discrimination.

Finally, the Race Directive tackles the question of implementation and enforceability. The directive stipulates that each member state shall designate an equality body to provide independent assistance to victims, conduct independent surveys on discrimination and publish independent reports on discrimination. This provision implicitly allows member states to choose from one of two options: a body responsible for racial and ethnic equality specifically or one with a broader overarching scope, covering all forms of discrimination.⁴⁶

Limits to the Race Directive

Literature on the Race Directive therefore appears to converge towards a consensus that this legislation symbolizes and enacts concrete and significant changes to traditional European approaches to antidiscrimination legislation, especially in that it requires significant legislative reform for many member states. Despite these numerous positive improvements instigated by the directive, several problematic facets are worth noting.

One cause for concern relates to provisions for third country nationals in the Directive since it “does not cover differences of treatment based on nationality and is without prejudice to provisions governing the entry and residence of third-country nationals and their access to employment and to occupation.”⁴⁷ Ellis and Bell both point out several contradictory aspects of such a provision regarding who can make

⁴⁵ Ibid. Art. 5.

⁴⁶ Ibid. Art. 13.

⁴⁷ Ibid. Preamble (13).

claims against unlawful discrimination because of their nationality. For example, firstly, lawful discrimination based on nationality can also surreptitiously serve to discriminate based on prohibited characteristics.⁴⁸ This nationality provision served to keep the Race Directive from going against Article 12⁴⁹ of the Treaty establishing the European Community, which forbids discrimination on grounds of nationality for nationals of member states only.⁵⁰ Commentators from the legal community have criticized this provision for failing to adequately protect human rights. As Lord Lester remarks, “the blanket exclusion of racially discriminatory provisions governing the entry, residence and treatment of third-country nationals and stateless persons is incompatible with the effective protection of human rights.”⁵¹ Bell also underlines the absence of any provisions in the directive forbidding segregation as a form of discrimination.⁵²

While there are significant improvements to the legal process for bringing discrimination cases to court, there is also a question as to whether the Race Directive is sufficiently far reaching. The hurdles faced during negotiations led to specific concessions which could be interpreted as weakening the overall scope of the directive. This particularly relates to the use of statistical evidence to prove indirect or direct discrimination, as well as to the use of positive action. The Directive gives the opportunity to member states to establish positive action programmes in support of antidiscrimination measures, and *allows* for employing statistical evidence, but it does not impose such measures as a systematic facet of antidiscrimination. While legal repression is extremely important for fighting all types of discrimination, positive action could be argued as necessary for ensuring substantive equality. As the European Network Against Racism underscore in their 2005 report on the implementation of the Directive, the different actions and reforms should be

⁴⁸ Bell, *Anti-Discrimination Law and the European Union*, 82–83; Ellis, *EU Anti-Discrimination Law*.

⁴⁹ Now Article 18 of the Treaty on the Functioning of the European Union. “Consolidated Version of the Treaty on the Functioning of the European Union” Part Two, Art (18).

⁵⁰ Ellis, *EU Anti-Discrimination Law*, 289.

⁵¹ Lord Lester of Herne Hill, “New European Equality Measures,” *Public Law* (Winter 2000): 565.

⁵² Bell, “The Implementation of European Antidiscrimination Directives: Converging Towards a Common Model?,” 38.

considered “minimum requirements” as stated in the Directive, rather than as the ultimate goal.⁵³

While the Race Directive makes significant improvements to fighting discrimination legally, it fails to push member states from taking stronger action to complement the judicial system. Examining how France has chosen to transpose this directive at national legal and institutional levels can allow an exploration of the effects of these limitations. It will also enable a better understanding of what effect the directive has had on the overall fight against racial discrimination in France and to what extent the directive shaped or imposed any constraints on the traditional republican approach to this issue. Consequently, the following section explores the legal and institutional impact of the directive on France.

Transposition of the Race Directive into French Law

Considering the limited antidiscrimination legislation prior to the directives, it is important to now turn towards the transposition of the directive into French law in order to highlight significant legal reforms in the field of antidiscrimination and to evaluate the progression of antiracist legislation within this context.

Since 2001, the French government has taken important steps to transpose the Race Directive that have significantly transformed legal provisions against racial discrimination. As this chapter has noted above, antiracist and anti-racial discrimination law was predominantly criminal before 2001. Racist, xenophobic and anti-Semitic acts were dealt with in terms of criminal law, with a specific focus placed on the act itself rather than the situation of the victim or the effect the act had on the

⁵³ European Network Against Racism, *Response of the European Network against Racism (ENAR). Council Directive implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, 2000/43/EC. Five year report on the application of the Directive: Overview of ENAR's initial assessment*, October 2005.

victim.⁵⁴ However, because of the content of the Race Directive, the French government reinforced civil litigation to anti-racial discrimination within legislation and policy and a number of new laws were enacted to fully transpose the Race Directive. It should be noted that through these legislative reforms, the French government was also transposing the 27 November 2000 Council Directive on Equal treatment in Employment and Occupation which addressed discrimination on other grounds (religion or belief, disability, age or sexual orientation).⁵⁵

The first significant new law relating to fighting racial discrimination is the 16 November 2001 Antidiscrimination Act.⁵⁶ Its name “*loi relative à la lutte contre les discriminations*” (“Law on the fight against discriminations”) is indicative of its wide scope in terms of prohibited grounds of discrimination: the law does not specifically target the elimination of racial discrimination, but rather targets *all forms* of discrimination. This marks the beginning of the process of universalizing discrimination, which systematically recurs both in the implementation of legal mechanisms and in the current focus on diversity. The universalization of discrimination will be examined more closely in Chapters Five and Seven. In passing this legislation, the government was attempting to do several things at once, including transposing the Directive 97/80 on sexual discrimination, transposing some features of the Race Directive and giving a statutory status to certain existing institutions such as the 114/Codac scheme.⁵⁷

The 2001 law expands the scope of French antidiscrimination policy in several key ways. First, it modified the Civil Code by providing a definition for both direct and indirect discrimination. Direct discrimination is defined as “the situation in which, on the basis of belonging or non-belonging, real or presumed, to an ethnicity or race, religion, beliefs, age, disability, sexual orientation or sex, a person is treated less

⁵⁴ *Ibid* 36-37

⁵⁵ The Council of the European Union, *Council Directive 2000/78/EC of 27 November 2000, establishing a general framework for equal treatment in employment and occupation, 2000/78/EC, 2000.*

⁵⁶ *Loi relative à la lutte contre les discriminations.*

⁵⁷ Joppke, “Transformation of Immigrant Integration.”

favorably than another is, has been or will be in a comparable situation.”⁵⁸ The Labour Code was also modified to include these new concepts of discrimination.⁵⁹ However, while there is a clear definition of the former, indirect discrimination was only vaguely defined by this law (a more concrete definition of indirect discrimination was only introduced in 2008).⁶⁰ Furthermore, the two other types of discrimination, as identified in the directive: harassment and incitement to discriminate are included in the new legislation. The Penal Code was also amended to prohibit discrimination, which is defined as “any distinction operated between physical persons”⁶¹ not only on the basis of race or religion. Here discrimination almost goes beyond the original definition of the Race Directive, encompassing any distinction becomes discrimination, not only adverse treatment. The criteria for discrimination in the Labour Code were extended to include real/ascribed origin, physical appearance, name, age and sexual orientation.⁶² The field of discrimination has also been expanded to include all aspects of working life such as internships. However, while the Race Directive targeted more fields of racial discrimination, the 2001 law only covers discrimination in employment.⁶³ Subsequent laws were later passed to supplement the missing fields. In many ways, these laws appear to fulfill the requirements of both of the EC directives, especially in providing a wide scope of antidiscrimination (in terms of criteria).

A significant change that was brought to the judicial process in antidiscrimination matters was the shift in the burden of proof in conformity with the Race Directive, the 2001 law also lifts the burden of proof from resting entirely on victims of discrimination. While under the 2001 law victims still have to provide initial proof to support their case, the defendant is now also required to supply strong

⁵⁸ LOI n° 2008-496 du 27 mai 2008 portant diverses dispositions d'adaptation au droit communautaire dans le domaine de la lutte contre les discriminations (1)

⁵⁹ *Code du Travail*, 2008 L1132-1.

⁶⁰ *Loi n° 2008-496 du 27 mai 2008 portant diverses dispositions d'adaptation au droit communautaire dans le domaine de la lutte contre les discriminations*, 2008.

⁶¹ *Code Pénal*, 2005 Article 225-1.

⁶² *Code du Travail* L1132-1.

⁶³ Joppke, “Transformation of Immigrant Integration.”

evidence showing that no discrimination occurred.⁶⁴ Another noteworthy addition to the legislation relates to the question of *intent*. In cases of both direct and indirect discrimination, defendants can be found guilty of discrimination whether there was clear intent to discriminate or not.⁶⁵

Another significant improvement to the judicial process has been to allow third party associations working on antiracism to file complaints and legal challenges on behalf of victims of discrimination, so long as they have their consent. This increases access to victims in challenging the discriminatory system, which had previously been a problem (as noted above with respect to the Marchandeu Decree). To strengthen further the judicial system concerning discriminations, the legislation also protects from reprisals against any person bringing a complaint or suit against an employer, including protecting against the victimization of witnesses. They are protected from both losing their job, as well as facing other forms of reprisals like pay cuts or demotions.⁶⁶

Antidiscrimination legislation has been supplemented by the 17 January 2002 Social Modernization Act which aimed to address some of the fields of discrimination included in the two Directives (2000/43/EC, 2000/78/EC) that were not met by the introduction of the new antidiscrimination law of 2001.⁶⁷ A December 2004 established the High Authority for the Fight Against Discriminations and for Equality (HALDE), to conform to the directive's requirement for the establishment of an independent body to assist victims of discrimination. The HALDE, which launched its activities in March 2005, was an Independent Administrative Authority (IAA), a body created by the government but meant to remain independent from Governmental or Ministerial authority. However, as its name indicated, it did not concern itself specifically with racial discrimination, but instead covered all forms of

⁶⁴ *Code du Travail* L122-45.

⁶⁵ Latraverse, "Tradition française et politique européenne de lutte contre les discriminations. À la lumière de trois directives européennes récentes."

⁶⁶ *Code du Travail* Article L1132-3.

⁶⁷ *Loi n°2002-73 du 17 janvier 2002 de modernisation sociale*, 2002.

discrimination.⁶⁸ Unlike the body it was replacing – the Group for the Study of and the Fight against Discriminations (GELD) – the HALDE was endowed with more significant powers and was essentially responsible for monitoring the extent of discrimination in France as well as providing assistance to victims of discrimination. The HALDE is now defunct, but its dissolution will be addressed in the following chapter.

Despite the broad field of application of the Race Directive, there remained a dearth of provisions in the public sector. The July 2005 Law (2005-843), however, changed this situation by introducing antidiscrimination provisions in access to public services.⁶⁹ Finally, after the 2005 riots, the French government took further steps to reinforce the antidiscrimination legislation with the March 2006 Equal Opportunities Act.⁷⁰ This law's main objective is to promote employment of youths in at-risk urban areas, enhance equal opportunities and support antidiscrimination measures. In addition to reinforcing the powers of the HALDE, it also legalized "testing" methods used to establish discrimination and created the National Agency for Social Cohesion and Equal Opportunities.⁷¹

France's legal arsenal specifically dealing with racial discrimination was quite limited prior to 2001, since the onus was mostly placed on criminal proceedings for antiracist acts and violence and expressive forms of racism. The Race Directive has led to legal reforms that are more apt to tackle problems of access racism, with legal experts and antiracists largely attributing the legislative developments since 2001 to the Directive. Overall, the importance of the Race Directive on French antidiscrimination law has been significant, especially in leading to the introduction of the notion of indirect discrimination within French law. As political scientist Daniel

⁶⁸ *Loi n.2004-1486 du 30 décembre 2004 portant création de la haute autorité de lutte contre les discriminations et pour l'égalité*, 2004.

⁶⁹ *Loi n°2005-843 du 26 juillet 2005 portant diverses mesures de transposition du droit communautaire à la fonction publique*, n.d.

⁷⁰ LeMonde.fr and AFP, "Jean-Louis Borloo présente son projet de loi sur l'égalité des chances," *Le Monde*, January 11, 2006, http://www.lemonde.fr/societe/article/2006/01/11/le-projet-de-loi-sur-l-egalite-des-chances-reponse-du-gouvernement-a-la-crise-des-banlieues_729520_3224.html Accessed 2011-06-25 11:31:06.

⁷¹ *Loi n°2006-396 du 31 mars 2006 pour l'égalité des chances (1)*, 2006-396, 2006.

Sabbagh notes: “Legally, [the Directive] was very important: the prohibition of indirect discrimination would never have been introduced into French law if there hadn’t been a directive to transpose. Or in any case, that wouldn’t have happened so quickly.”⁷²

The Race Directive has therefore had a big impact on instigating legislative reforms in France, which might not have happened otherwise. In Guiraudon’s analysis of the French context during the time frame between the Treaty of Amsterdam and the 2000 Race Directive, she notes that there continued to be resistance within France to the institution of legal reforms to protect against discrimination, as politicians deemed these unnecessary.⁷³ Even though politicians recognized that nondiscrimination was important for upholding the republican principle of equality particularly with Jospin’s 1997 Government, electoral strategies and concerns amongst civil servants and researchers over the use of statistics and positive action stalled any substantive changes. Effectively, this confirms the impression that the Race Directive has influenced France in a “top-down” manner, which has wider implications for the issues covered in this research.⁷⁴

First of all, a top-down initiated legislative overhaul of existing anti-racial discrimination mechanisms could mean that the legislative reforms were enacted in France without a re-conceptualization or re-think about racism and how racism functions at the national level. The lack of involvement at the European level of most French antiracist organizations has allowed for a new legislative agenda to be established without these organizations re-addressing their conceptions about racism. The changes to anti-racial discrimination and antiracist legislation have thus not been established with reference to any alternative, race critical, analysis of racism. The already established approaches to legally fighting racism and racial discrimination therefore remain intact, which will prove to be problematic in the implementation of new legislation. Essentially building on the already existing antiracist legislative

⁷² Daniel Sabbagh, Audio recording, April 25, 2009.

⁷³ Guiraudon, “Construire une politique européenne de lutte contre les discriminations,” 19.

⁷⁴ Guiraudon, “Construire une politique européenne de lutte contre les discriminations.”

framework, which centers on expressive racism, the new laws and amendments did continue to fight racial discrimination from a colour-blind approach.

This reflects another continuity in the legislative process. Just as republican universalism and republican values in general shaped antiracist legislation from the 1970s onwards, it continues to do so today. The republican framework continues to ensure that French antiracist policies remain colour-blind and race neutral. As seen above, France's principal involvement during the negotiation process of the Race Directive consisted in taking a stand on two points: the use of the word "race" and the use of ethno-racial statistical evidence as a form of evidence of racial discrimination. France's opposition both to the terminology and to statistical measures of racial discrimination is directly linked to the commitment to republican ideology. Since France was successful in ensuring that the final draft of the Race Directive did not contravene these two aspects that are considered as extremely antagonistic to republican values, the transposition of the directive would not impose a race-conscious antiracist legislation. It *allows* for such policies, as with the clause on the use of ethno-racial statistics, but does not *enforce* them.

In effect, there has been important progress marked by the anti-racial discrimination legislative reforms that have taken form in France over the last decade, particularly in terms of legal process. While they theoretically provide more opportunities for victims of racial discrimination to fight racial discrimination, they do not represent a significant shift from the antiracist legislative tradition traced throughout this chapter. Republican approaches to racism are maintained as the legislative approach remains colour-blind with the continued emphasis on *specific* histories over others, demonstrating an overall conceptual continuum.

In retrospect, racial and racist laws under Vichy were seen as marking such a significant break with French republican values that antiracist legislation passed in the decades following the Second World War could only serve to overcompensate in terms of propounding republican values to ensure that Vichy was firmly fixed in

French collective memory. When discussing the relationship between antiracism and republican values, Virginie Guiraudon largely attributes the specific development of French antiracism to historical developments:

There was an antiracism movement that managed to get a law in 1972, which was really about inciting racism, then there was the development of Le Pen and again, [...] new laws banning racist insults, so we've been very much focusing indeed on racist declarations, racist violence, racist actions as opposed to discrimination in the workplace and that's historically the way things developed. There's also a lot of reference to Vichy, the Second World War too. In fact the original antiracist movement was antiracist and against anti-Semitism, meaning MRAP, LICRA, all the NGOs involved. And when SOS Racisme was born, there was also the rise of Le Pen [...] so because of that, it's just the history of the movement, for me, much more than the Republican universalism or whatever that means.⁷⁵

Guiraudon therefore does not appear to acknowledge that the “history of the movement” is imbricated in republican universalism, but as this and previous chapters have shown, the historical developments of antiracist activism and legislation cannot be dissociated from the republican tradition. On the contrary, republican values informed and continue to inform the legal antiracist approach. Despite the obvious influence of the European Union, France's antiracist approach has remained largely intact, especially in its commitment to a colour-blind model.

Conclusion

Over the last decade, the French legislative framework for fighting racial discrimination has experienced crucial changes. Moving away from the more narrow focus on expressive racism, racial discrimination has progressively been incorporated into the antiracist legal apparatus. However, key historical developments defined antiracist legislation in two chief ways that continue to impact the elaboration and implementation of antidiscrimination legislation to this day.

⁷⁵ Guiraudon, interview.

On the one hand, as traced in earlier chapters, the post-war UNESCO efforts to eradicate the notion of biological races, especially with the resounding memory of Vichy, re-ignited a commitment to republican values as a way of ensuring antiracism. The reaffirmation of republican universalism as the solution to racism has determined French antiracist legislation to be steadfastly colour-blind as a result. On the other, historically, antiracist legislation has primarily focused on specific forms of racism, expressive racism, over other forms of racism. While racial discrimination was later included into legislation, the traditional approach to expressive racism directly shaped the development of antiracist legislation to primarily lean towards apprehending racism through criminal litigation. As the following chapters will demonstrate, this historically determined legal approach to fighting racism has significantly impacted the implementation of anti-racial discrimination mechanisms.

Secondly, while minimal antiracist legislation was passed over the last century, anti-racial discrimination legislation has for the most part predominantly been the result of outside influences, rather than a conscious proactive effort from the French government. Antidiscrimination legislation has only been enacted in reaction to outside developments. The 1972 legislation, for example, resulted from international pressures from France's ratification of ICERD. This was also manifested in the events leading to the 2000 Race Directive, without which it is debatable whether France would have strengthened its anti-racial discrimination legislation.

Combined, these two factors result in producing a disjointed antidiscrimination legal apparatus that remains constrained by tradition and political culture. Despite the changes influenced by outside pressures, antiracist legislation is limited by a stronghold of traditional approaches lodged in the republican tradition, leading to implementation roadblocks, which will be addressed in the two following chapters.

Chapter Five: Beyond Civil Society. Practical and Conceptual Problems in the Implementation of Anti-Racial Discrimination Legislation

Introduction

Having just examined the establishment of France's antiracist legal framework, this chapter now seeks to take a further look at the implementation of antiracist legal mechanisms. As highlighted in Chapters Three and Four, both antiracist activism and legislation have been developed according to specific historical events and ideological tensions that shape how racism and racial discrimination, are apprehended. Beyond conceptual challenges of antiracist activism, there are also key institutional and practical challenges that emerge.

The legislative reforms instituted since 2001 had the potential to result in a stronger anti-racial discrimination legislative arsenal especially with the creation of the High Authority for the Fight Against Discrimination and for Equality (HALDE) in 2005, and the provision of more appropriate legal tools to fight racial discrimination in court. However, through interviews with civil society, institutional, and legal actors in France, it becomes increasingly apparent that there are important disparities between legislative reforms and their application in racial discrimination litigation. Legal traditions, political culture and current political dynamics all contribute to threaten the proper implementation of institutional and legal reforms. This is particularly noticeable in the 2011 dissolution of the HALDE, to be replaced by the *Défenseur des Droits* after only six years of service.

This chapter sets out to examine these developments in greater detail, to evaluate the practical implementation of these reforms, and to determine the extent to which they are affected by the republican colour-blind approach to racism. By examining the role of the HALDE up to its eventual demise in May 2011, this chapter firstly evaluates the institutional changes brought about by the legislative reforms. Secondly, it presents three chief problems in the implementation of legal mechanisms – civil versus criminal litigation, the litigation of indirect discrimination, and the problematic place of race in legal mechanisms – to argue that the combination of legal and institutional reforms, while having the potential to greatly improve the legal apprehension of racial discrimination, is mired by conceptual and implementation constraints that limit their efficacy. The absence of race as an element of analysis continues to hinder the antidiscrimination process: not only from long-established legal traditions but also from more recent re-affirmations of a universal, race-neutral, approach to racial discrimination.

The HALDE

Before the 2000 Race Equality Directive, France had no antidiscrimination body as such. While the creation of the HALDE in May 2005 significantly changed the French antidiscrimination scene, the recent upheaval brought on by the dissolution of the HALDE attests to the fragility of antidiscrimination in France. This section examines the institutional reforms brought on by the HALDE in light of inconsistencies caused by the commitment to raceless antiracism and ambiguous political engagement in relation to the fight against racial discrimination.

The Race Directive stipulates that every European member state creates an agency to independently tackle and monitor racial discrimination,¹ leaving it up to individual states to decide between a generalized antidiscrimination body and an

¹ The Council of the European Union, *2000/43/EC* Art. 13.

agency specialized in racial discrimination.² A law adopted 30 December 2004 led to the HALDE's establishment the following spring, rendering it responsible for monitoring the development of racial discrimination in France, providing annual reports and responding to individual complaints of discrimination.³

The HALDE's presence at the national level shifted the antidiscrimination agenda in several ways. For the first time, France had an independent agency solely working on advancing anti-discrimination jurisprudence and providing legal aid to victims of discrimination. Its main roles included responding to possible victims of discrimination, gathering proof in cases of discrimination (as it carries strong powers of investigation), organizing situation testing and providing practical support to victims in pursuing cases through the legal system.⁴ The HALDE also managed situations outside of the legal system by making recommendations, mediating between parties and imposing penal transactions (penalties) on parties determined to be guilty of discrimination.⁵

The HALDE also worked to promote equality, as a preventative measure, coordinating with a number of political, educational and business partners to raise awareness of legislative provisions against discrimination. To this end, the HALDE also conducted training to promote good practice, especially in the business sector.⁶ All the while, the HALDE maintained a strong regional and international presence, coordinating and engaging with the Council of Europe, the European Commission, the United Nations, and the Fundamental Rights Agency, etc...

² Ibid.; Bell, "The Implementation of European Anti-Discrimination Directives" such as the now defunct Commission for Racial Equality in the United Kingdom, which was replaced by the Equality and Human Rights Commission in 2008.

³ *Loi portant création de la haute autorité de lutte contre les discriminations et pour l'égalité.*

⁴ Sophie Latraverse, Deputy Legal Director, "Haute autorité de lutte contre les discriminations et pour l'égalité," Audio recording, April 7, 2009.

⁵ "Missions et pouvoirs," HALDE, n.d., <http://www.halde.fr/Missions-et-pouvoirs,11013.html> Accessed 2011-04-20.

⁶ "Promotion de l'égalité," HALDE, n.d., <http://www.halde.fr/-Promotion-de-l-egalite-.html> Accessed 2011-04-20.

Finally, the HALDE had a key role in making public recommendations and deliberations on companies, legislation and general practices as they relate to discrimination. These could be specific, such as the February 2011 deliberation on height restrictions for voluntary or contractual firefighters,⁷ or more general as with the 26 recommendations made to the government on gender equality, published in March 2011.⁸ More importantly, the HALDE took position on past or planned legislation through its deliberations, as it did with the 20 November 2007 legislation on immigration, condemning certain discriminatory elements found within the law.⁹

An Independent Agency?

In the creation of an antidiscrimination agency, the 2000 EC Race Directive also stipulates that this agency be independent.¹⁰ As a result, the 2004 legislation establishing the HALDE thereby states that “an independent administrative authority for the fight against discrimination and for equality is instituted.”¹¹ Independence, however, cannot be guaranteed just from a declaration, as becomes clear upon further investigation of the HALDE’s functioning.

The HALDE’s independence is an important aspect of this chapter’s evaluation, especially as it relates to the potential impact that republican ideology and general political climate in France has on this institution’s practice. Several measures can contribute to a higher level of independence, as Bell explains: “what you can do is set up a structure and sort of processes to try and protect their independence, so you can do things like, say, ensure that the senior officers in the organizations are not political

⁷ HALDE, “Délibération relative à la condition de taille minimale exigée pour exercer les fonctions de sapeurs-pompiers professionnels ou volontaires N° 2011-46”, February 28, 2011.

⁸ HALDE, “Délibération relative aux 26 propositions de la HALDE au gouvernement en faveur de l’égalité homme/femme 2011-66”, March 7, 2011.

⁹ HALDE, “Délibération relative au caractère discriminatoire de certaines dispositions de la loi n° 2007-1631 du 20 novembre 2007 relative à la maîtrise de l’immigration, à l’intégration et à l’asile n° 2007-370”, December 17, 2007.

¹⁰ The Council of the European Union, 2000/43/EC Art. 13.

¹¹ *Loi portant création de la haute autorité de lutte contre les discriminations et pour l’égalité.*

appointees, or that the budget is for example perhaps provided for a period of several years, perhaps provided by a parliament rather than by government and you know there's several checks and balances you can put in place to make sure."¹²

In interviews, most antiracist organizations across the spectrum generally appeared pleased with the creation and activities led by the HALDE, but it is precisely appointments made by the Government and their impact on the HALDE's management that raised certain concerns among activists. The Human Rights League (LDH) specifically referred to this issue in an interview: "If there is a political independence, for the time being, its mode of designation is nonetheless unsatisfactory because the president of the HALDE is nominated by the President of the Republic, the general director of this authority is nominated by the Prime Minister and the president of the consultative committee, [...] is the president of the national human rights consultative council, who is himself nominated by an instance of power."¹³

Among alternative antiracist organizations, the CRAN and Collectif DOM also expressed certain doubts about the HALDE and its presidency. Interviews with both organizations questioned the nomination of Louis Schweitzer as the HALDE's first president. As Collectif DOM explains, "it is the former president of Renault who heads the HALDE. Everyone knows that Renault was condemned for discrimination in hiring professionals within its firm. Well this man finds himself president of the HALDE. So do you not see the hypocrisy in all this?"¹⁴ The CRAN also expressed dissatisfaction with Schweitzer's role at the head of the antidiscrimination agency.¹⁵ The questionable choice of president for the HALDE raises some concerns about the message this gives out to the public, as well as its potential impact on the HALDE's policies and deliberations.

¹² Mark Bell, interview.

¹³ Ligue des Droits de l'Homme, interview.

¹⁴ Collectif DOM, interview; Agence France-Presse, "Renault condamné pour discrimination raciale," *Libération*, April 3, 2008, <http://www.liberation.fr/societe/010127139-renault-condamne-pour-discrimination-raciale> Accessed 2011-04-24.

¹⁵ Patrick Lozès, President of CRAN, "Interview with Patrick Lozès, President of CRAN."

The fact that a 2008 legal ruling condemned Renault for racial discrimination under Schweitzer's direction of the company,¹⁶ and yet he faced no ramifications in his role as the HALDE's president, highlights two significant elements in the overall official position towards racial discrimination. On the one hand, it reflects the contradictory message from the Government in terms of antidiscrimination policy. Although the Government presents itself as committed to combating racial discrimination, as well as other forms of discrimination, this message is diluted or rid of meaning in situations like this, where there is no serious condemnation of Schweitzer. The fact that he remained in his position for the duration of the five years despite the case against Renault raises doubts as to his capacity to fight discrimination and ultimately reveals a certain level of disregard for an effective antidiscrimination policy.

On the other hand, it raises serious questions about the level of independence the HALDE has as an institution created by the government but required to be independent. Firstly, Schweitzer's continued presidency of the HALDE, in spite of his connections with Renault industries, raises questions about the government's commitment to antidiscrimination, which could be interpreted to reflect a political agenda that does not necessarily conflate with antidiscrimination ideals. This is not an isolated phenomenon, as highlighted with Brice Hortefeux maintaining his position in the Government, despite being found guilty of racial insult.¹⁷ Secondly, it brings forward the possibility that the HALDE, through such appointments, can also have certain questionable ties with big business, and therefore challenges the overall aim of this agency to be independent.

The question of the HALDE's independence only intensified with Jeanette Bougrab stepping in as Schweitzer's replacement in March 2010. The appointment of Bougrab over politician and former SOS Racisme president Malek Boutih by President Sarkozy highlights the tenuous links between independence and political

¹⁶ Agence France-Presse, "Renault condamné pour discrimination raciale."

¹⁷ "Le ministre de l'intérieur, la justice et la morale."

appointments. As a former member of the High Council for Integration (HCI) and member of President Sarkozy's party, the UMP (*Union pour un Mouvement Populaire*), questions can be raised about Bougrab's capacity to be independent from Sarkozy's own political agenda, as well as from the very specific politics of integration espoused by the HCI.

In her new position as president of the HALDE, Bougrab's actions have already highlighted these tensions. The website and weekly publication *Bakchich* led an investigation on the HALDE in the few months following Bougrab's start of tenure. Citing an anonymous internal executive, *Bakchich* reports that Bougrab took direct orders from "Matignon" – the Prime Minister – to stop working on issues relating to Travellers (*gens du voyage*) and Roma. As a result, the HALDE was reportedly putting those types of cases to one side.¹⁸ The HALDE's report on its activities in 2010 appears to reflect this with no deliberations after May 2010 (at least until December 2010) dealing with either Roma or Travelers.¹⁹ This is not necessarily surprising considering Bougrab's support for the rule of law (on immigration and national security), even in the case of the expulsion of Roma in the summer 2010, expressed in an interview on RTL radio station.²⁰ The possibility that she directly responds to the Government in directing the HALDE's activities seriously threatens the independence of the HALDE and emphasizes existing links between political agendas and antidiscrimination.

Another example is Bougrab's decision to reopen the Babyloup case that the HALDE had previously deliberated on concerning a woman working in a privately owned nursery who was fired following her decision to wear the hijab.²¹ While the nursery does not allow religious signs, the HALDE found the termination

¹⁸ Lucie Delaporte, "Roms, la Halde muselée par le gouvernement," *Bakchich*, September 22, 2010, <http://www.bakchich.info/Roms-la-Halde-muselee-par-le,11911.html> Accessed 2010-11-26.

¹⁹ Haute Autorité pour la Lutte contre les Discriminations et pour l'Égalité, *Rapport Annuel 2010* (Paris, France: HALDE, April 2011).

²⁰ "Jeannette Bougrab : 'Je ne suis fan ni de Sardou, ni du Quick hallal'," *RTL.fr*, February 9, 2010, <http://www.rtl.fr/actualites/article/jeannette-bougrab-je-ne-suis-fan-ni-de-sardou-ni-du-quick-hallal-5949847597> Accessed 2010-11-26.

²¹ Stéphanie Le Bars, "Fin de partie sereine à la Halde, après le départ de Mme Bougrab," *Le Monde*, May 12, 2010.

discriminatory, considering that *laïcité* does not require such neutrality in non-public cases such as this.²² However, in October 2010 Bougrab publicly positioned herself in favour of the nursery Baby Loup, essentially contradicting the HALDE's previously held position and advocating instead for the principle of *laïcité* claiming that "it is not an administrative or procedural question, but bears on a fundamental principle of our republic that is *laïcité*."²³ Bougrab's concern for *laïcité* in opposition to internal opinions within the HALDE on whether the nursery was acting outside of the law also brings into question whether another political agenda was driving the HALDE president's actions.

Laïcité cannot be dissociated from the overall emphasis on the republican model of integration advocated by political leaders and by the High Council for Integration (HCI). Considering that the President of the HCI, Patrick Gaubert, supported the nursery as well, there is greater ambiguity over the political independence of the HALDE through the positioning of its president who has close links with both the HCI and the UMP.²⁴ These possible links raise further questions about the HALDE's political independence, underlining the possibility of the HALDE acting in favour of a specific agenda which advocates a specific republican model of integration over the goals of antidiscrimination.

These issues challenge the idea that the HALDE can actually function independently from the government. More specifically, it brings to light the extent to which the HALDE is not only susceptible to internal political positions, but also to the general republican framework as a guiding principle. While the HALDE's structure and scope of activities already reflected a universalist approach, which will be addressed in the following section, a stronger commitment to re-emphasizing republican values

²² Marion Sollety, "Quand le débat sur le voile ressurgit à la crèche," *LeMonde.fr*, November 8, 2010, http://www.lemonde.fr/societe/article/2010/11/08/quand-le-debat-sur-le-voile-ressurgit-a-la-creche_1437195_3224.html Accessed 2010-11-19.

²³ Ibid.

²⁴ Agence France-Presse, "Salariée voilée licenciée: le Haut conseil à l'intégration soutient la crèche", November 10, 2010, <http://www.liberation.fr/societe/01012301475-le-hci-soutient-la-creche-baby-loup-qui-a-licencie-une-salariee-voilee> Accessed 2010-11-21.

has become increasingly apparent since 2010: Bougrab's recent push towards an increased focus on *laïcité* was also renewed by her successor Eric Molinié. This is reflected in the HALDE's March 2011 deliberation on the expression of religious freedom in employment, which recommends increased religious neutrality in private structures in the fields of social, medical-social and infant care.²⁵ By contributing to the debate on religion and neutrality, the HALDE therefore contributes to shaping the discourse on secularism, religion and discrimination, resulting in a narrower conception of *laïcité*, which can be problematic if it is not completely free from particular political influences.

These examples underline two key elements relating to the HALDE's independence: the president of the HALDE is in many ways a political appointee and as such, can greatly influence the whole institution and its direction, like Bougrab seems to have done. Considering that antidiscrimination is a political agenda in and of itself, a minimal "political" agenda might be necessary for an institution like the HALDE in this field. But its lack of independence in its leadership and the apparent absence of structural checks and balances may negate this necessary political agenda. Furthermore, the HALDE is not *able* to attain the politically neutral position it needs to be truly independent and effective, because it is already biased in favour of republicanism in taking a raceless approach to antidiscrimination, as will now be examined.

Universalizing Discrimination

Like most other EU member states,²⁶ France opted for a generalized agency as opposed to one specifically responsible for racism and racial discrimination.²⁷ Examining the process by which the HALDE was established as a generalized

²⁵ HALDE, "Délibération relative à l'expression de la liberté religieuse au travail n. 2011-67", March 28, 2011.

²⁶ Mark Bell, interview.

²⁷ *Loi portant création de la haute autorité de lutte contre les discriminations et pour l'égalité.*

antidiscrimination body, this next section argues that this decision mirrors the recurring tendency to structure antidiscrimination action according to republican universalism – globally – effectively limiting the breadth of antiracist action.

One of the leading factors contributing to this decision appeals to an attempt to treat all forms of discrimination on an equal basis. As explained in his book *Les discriminations en France*, former HALDE president Louis Schweitzer states, “One question remains: among these eighteen types of discrimination, are some more serious than others? My answer is clear: no. We could justify privileging certain discriminations for questions of efficiency or visibility. But my conviction, reinforced by experience, is that it is essential that only one institution handle all the discriminations, without exception.”²⁸ This approach is applauded by some actors as beneficial to analyzing and treating the problem of discrimination. For example, Jean-Pierre Amadieu, director of the Observatory for Inequalities, stresses how criteria other than race or gender contribute to producing inequalities in society and that it is important to consider these other criteria to strengthen anti-discrimination action.²⁹ According to this perspective, a generalized body then allows analysis of the various factors that contribute to causing inequalities and social disparity.

The process by which the HALDE was created as an independent administrative authority responsible for 18 criteria of discrimination has been characterized by Vincent Chappe as the “universalization of the fight against discrimination.”³⁰ The attempt to place all forms of discrimination on the same level as expressed above by Schweitzer appears to support this argument. Similar to mainstream antiracist organizations’ commitment to republican values, the HALDE is manifestly shaped in accordance with the republican framework. Chappe’s research into the establishment of the HALDE as well as into political and administrative

²⁸ Louis Schweitzer, *Les Discriminations en France* (Paris: Robert Laffont, 2009), 49.

²⁹ It is important to note, however, that Amadieu is also a staunch opponent of ethnic or diversity statistics, as well as the use of the concept of race.

³⁰ Vincent Chappe, “La construction publique du problème des discriminations à travers la genèse de la HALDE: la création d’un consensus a minima.” (Institut d’études politiques, 2007), 81.

debates preceding the agency's creation emphasizes the overall determination to frame this antidiscrimination agency in compliance with the dominant political culture.³¹ By the very nature of its creation, the HALDE was doomed to lack the ability to use race. But the model by which the HALDE was created goes beyond the colour-blind approach to racism in the sense that racelessness is further compounded by the refusal to focus only on racial discrimination.

Chappe's research highlights how the question of the HALDE's competencies concerning discrimination criteria is also an attempt to abate concerns over communitarianism and to remain within the bounds of the republican tradition. This concern is rooted in the dominant colour-blind and neutral approach to antiracism, and subsequently to anti-racial discrimination. Chappe cites an administrator who expressed apprehension that creating a specialized agency (or agencies) instead of a generalized one would lead to the "segmentation of discriminations, with a certain communitarianism."³² The overall fear is that marking distinctions between different forms of discriminations would lead to an overflow of victims, and more importantly demarcate *groups* of victims who identify along ethnic or racial lines, within the public arena. Alternatives to a general agency would supposedly allow "a political construction of victims of ethnic discrimination as established actors in the public arena."³³ The attempt to develop a universal approach to discrimination is therefore replicated in the establishment of the HALDE. More worryingly, this concern expressed by the anonymous administrator reflects a greater attempt to prevent victims of discrimination from taking an active voice in antiracism. From this prism, the HALDE thus becomes part of a wider mechanism to ensure management and control over how antiracism is conducted; in this perception of antiracism, little weight is given to the perspective of victims of racism.

³¹ Ibid., 87–89.

³² Anon. Quoted in Ibid., 87.

³³ Ibid., 87.

This echoes the consistent semantic blurring of the distinctions between different forms of discrimination: mainstream media progressively stop referring specifically to “ethnic” or “racial” discrimination, now generally replaced with the generic “*discriminations*.”³⁴ The choice therefore made to create the HALDE as a general antidiscrimination body falls in line with the universalist approach to racism outlined in previous chapters (in the legal protection against racism and in antiracist civil society action). Although the HALDE’s creation is a result of an increasing interest in fighting racial discrimination, as well as other forms of discrimination, its implementation manifests an approach to the issue of racism as part of a wider issue, rather than a specific problem. Therefore the HALDE, although a symbol of change manifesting a significant undertaking of the challenges posed by racism, especially bearing in mind that the race directive was largely influential in imposing its very establishment, is significantly molded to fit within the already established colour-blind antiracist regime. This implementation however, goes beyond the colour-blind antiracist regime by equating all types of discrimination. While the colour-blind approach to antiracism rests upon a vision of universalism that does not incorporate the notion of race, the universalist implementation of the HALDE’s responsibilities with regards to discrimination takes the notion of universalism one step further by putting all discriminations on the same level, and as a result, equating all types of differences.

For these reasons, the universalization of discrimination, although applauded by some actors, has also raised some opposition. Several antiracist organizations like the CRAN and academics such as Pap Ndiaye find it disappointing that the HALDE has a general mandate rather than a more narrow focus that would prioritize the issue of race. As Ndiaye observes,

In France, racial discrimination drowns amongst seventeen other criteria, and in a way we could consider that in official discourse, certain criteria have more importance than others, particularly generalized criteria that seem to touch the entire population, for example being sick, or old. Everyone can potentially be ill and everyone will be old,

³⁴ Ibid., 88.

so the fact that these criteria can be generalized is more important than racial discrimination, because when you're white, you'll never face the problem of racial discrimination, and in this movement, racial discrimination finds itself a bit relativized, or even mistreated.³⁵

As Ndiaye's statement reflects, it is problematic to equate all forms of discrimination, because there are some crucial differences in the mechanisms at the root of different discriminations, particularly in the case of racial discrimination. Racial discrimination is a manifestation of racism that affects *particular* groups of the population, whereas some other forms of discrimination have the possibility of affecting all of the population (age or handicap, for example). Racism, on the other hand, is a much more selective problem, that targets specific groups; considering the significant role of *power* in the mechanisms of racism and therefore in determining who is racialized, it is likely that within a particular national-historical context, some groups are more likely to be the targets of racism. Considering the historical contextualization of racist practice in France in Chapter Two, this can be considered to be the case for France. Several different groups can be affected by racism at the same time, just as racial discrimination can be combined with other criteria of discrimination (race and gender for example).

The specificity of racism, in the way that it targets racialized minorities rather than all of the population, cannot adequately be countered within a generalized agency. The HALDE's annual reports themselves reflect the specificity of racism. Even though the HALDE deals with all forms of discrimination on an equal level, the numbers inform us of the preponderance of racism. The 2009 annual report published by the HALDE, for example, shows that discriminations based on origin (there is no specific reference to race, only origin, which could apply to nationality as well as race or ethnicity) is the most frequent type of discrimination experienced by people who brought their case to the HALDE (28.8% of all claims).³⁶ There might therefore be an imbalance in the focus of the HALDE, whereby an equal focus on all discrimination

³⁵ Ndiaye, interview.

³⁶ Haute Autorité pour la Lutte contre les Discriminations et pour l'Égalité, *Rapport Annuel 2009* (Paris, France: HALDE, April 2010), 15.

means a relatively frequent form of discrimination such as race actually receives a disproportionately small amount of resources.

Beyond the concerns over communitarianism and not producing a hierarchy of discriminations, another argument in favour of a generalized agency relates to the question of *intersectionality*. The HALDE's Deputy Legal Director Sophie Latraverse, along with legal and political policy scholars (Bell, Guiraudon), claims that the HALDE can provide a better space for handling questions of intersectionality³⁷ precisely because it has such a wide gambit. When faced with a victim or case that would deal with gender *and* race concurrently, the HALDE would be better suited for thinking about and acting on this case in more depth, instead of simply focusing on either race or gender.³⁸

However, while an anti-discrimination agenda that takes into account issues of intersectionality is obviously important in this field, no clear practical implications of this emerged during any of the interviews, including with Latraverse. The lack of practical approaches to tackling intersecting discriminations can perhaps be attributed to constraints posed by French law when dealing with discrimination litigation. The Human Rights League, for example, explains the need to improve the litigation process, "There are still certain domains in which we can surely improve. It is precisely on multiple discriminations, because we can see that often, several parameters arise in a discriminatory experience. At the same time, of course, there can be a domino [effect] with foundations that are rooted in sexism, racism, homophobia, and that each time different parameters are going to combine and French law requires

³⁷ Recent literature shows how theory of intersectionality is increasingly being incorporated into policy at the European level. See for example EWL, *Religion and Women's Human Rights Position paper of the European Women's Lobby* (European Women's Lobby, May 27, 2006); Nira Yuval-Davis, "Intersectionality and Feminist Politics," *European Journal of Women's Studies* 13, no. 3 (2006): 193-209; *Integrating a Gender Perspective into the EU Immigration Policy* (European Women's Lobby, May 2004); Johanna Kantola and Kevät Nousiainen, "Institutionalizing Intersectionality in Europe," *International Journal of Feminist Politics* 11, no. 4 (2009): 459-477.

³⁸ Sophie Latraverse, Deputy Legal Director, "Haute autorité de lutte contre les discriminations et pour l'égalité"; Mark Bell, interview; Guiraudon, interview.

one to be chosen to act upon this.”³⁹ According to this interview, there are legal constraints that hinder a legal apprehension of more than one criterion of discrimination. If only one criterion can be chosen for legal action, it makes it difficult to bring an intersectional analysis into the legal application of anti-discrimination law. A recent study of the jurisprudence of the State Court and Highest Court of Appeal (*Conseil d’Etat* and *la Cour de Cassation*) in employment antidiscrimination underscores that these high courts have been fairly “silent” on multiple discriminations.⁴⁰

Also important to bear in mind are the financial constraints placed on this agency at its inception, which appear to have influenced this decision. As Mark Bell notes, a generalized body served to reduce the amount of bureaucracy that accompanies the establishment of such agencies.⁴¹ Furthermore, having several specialized agencies, instead of one, would divide the allocated budget by the number of agencies. In the end, it was not even debated. Latraverse, having experienced the creation of the HALDE from within as a former member of the GELD, implies that in the end, this issue was not really debated: “was it a choice? The question was never asked. No.”⁴² Other research, as outlined above, does nonetheless indicate that there were political concerns beyond those of budget constraints.

Whether the final decision to establish the HALDE as a generalized antidiscrimination body is due to an underlying commitment to the already established republican model of antiracism, to budgetary limitations, or to a combination of both, the HALDE does invoke the image of the “universalization of discrimination.” Thus, instead of a specialized agency focusing on questions of racism and racial discrimination, the HALDE was created with a very wide scope. In fact,

³⁹ Ligue des Droits de l’Homme, interview.

⁴⁰ Lucie Cluzel-Metayer and Marie Mercat-Bruns, *Discriminations dans l’emploi. Analyse comparative de la jurisprudence du Conseil d’Etat et de la Cour de cassation.*, Études & Recherches (Paris: La documentation Française, 2011), 103.

⁴¹ Mark Bell, interview.

⁴² Latraverse previously served on the Group for the Study of and Against Discrimination (GELD), which preceded the HALDE.

eighteen types of discrimination fall within the gambit of the HALDE: age, sex, origin, family situation, sexual orientation, mores, genetic characteristics, real or supposed membership to an ethnicity, a nation, a race, physical appearance, handicap, state of health, pregnancy, patronym, political opinions, religious convictions, union activities.⁴³

The Implementation of the new legal mechanisms

The HALDE and Civil Society Actors

Because of the strong presence of antiracist organizations as leading actors in the anti-racial discrimination field, the HALDE has established links with civil society actors and regularly works in conjunction with antiracist organizations. Prior to the inception of the HALDE, antiracist civil society associations proved themselves to be leading actors in bringing racial discrimination cases to court. This is largely due to specific historical developments: while drafting the bill that would later become the 1972 antiracist legislation, the MRAP lobbied for antiracist organizations to be granted powers to instigate criminal proceedings because of the government's presumed failure to do so adequately.⁴⁴ Since then, antiracist organizations have taken the reins and worked hard to expand the jurisprudence as well as consistently pushing to improve legislative mechanisms.

Aside from the LDH, which has a more general focus, and thus has a wider scope of anti-discrimination, the three other mainstream antiracist associations, SOS Racisme, MRAP and LICRA, all specifically focus on race-related forms of discrimination. This can involve anti-Semitism, discrimination based on nationality, real or supposed ethnicity and origin. The legal work that these associations carry out

⁴³ “Êtes-vous victime ? - HALDE”, n.d., <http://www.halde.fr/Etes-vous-victime.html?page=article> Accessed 2010-03-25.

⁴⁴ Bleich, *Race Politics in Britain and France*.

is of a varied nature, ranging from supporting victims in litigation, training and awareness building and lobbying for new laws.

These antiracist organizations have been able to participate in legal proceedings due to the legislative changes made in antiracist and anti-discrimination legislation. Since 2001, antiracist organizations that have been established for at least five years and who specifically work on problems of racism are now legally able to constitute themselves as civil parties in racial discrimination court cases in both civil and criminal proceedings with the permission of the supposed victim of discrimination.⁴⁵ This legal provision has two clear benefits. First of all, through this status of civil party, antiracist organizations can provide more in-depth and thorough support to victims of racial discrimination during the litigation process. One of the problems raised by most of the antiracist organizations contacted for this research is the reluctance of victims of discrimination to pursue legal action. By providing a support system, both emotionally and practically, antiracist organizations can help victims overcome whatever apprehension they may have.⁴⁶

Secondly, the participation of antiracist organizations as civil parties can prove advantageous for cases through the pressure that their involvement can bring to a high profile case. The LDH, for example, does not partake in as many legal actions as MRAP, LICRA or SOS Racisme, but specifically chooses cases in which their symbolic presence can positively influence a case: “We prefer an action, a method of constituting ourselves (as) civil parties. We do it in a symbolic manner, in areas where truly, first with the agreement of the concerned parties, but at the same time, where we know it can carry a symbol on the legal action, or on the judgment that we won’t receive, that would lead to an international decision at the European court notably,

⁴⁵ *Loi relative à la lutte contre les discriminations.*

⁴⁶ SOS Racisme - Pôle Anti-discrimination, interview.

allowing French law to evolve.”⁴⁷ For example, the MRAP described past joint actions between themselves, SOS Racisme and the LICRA against Le Pen.⁴⁸

In bringing support to victims during litigation, the MRAP, SOS Racisme and LICRA each have a specific sector of their organization dedicated to legal services. The process is quite similar among these organizations, with some small variations. Generally, it is launched when victims of discrimination contact the organization of their choice and make a claim of discrimination. The legal service then has the task of evaluating whether the reported situation is a case of racial discrimination or not, and whether there is sufficient evidence. If these two criteria are met and the organization decides to take on the case, then the wheels are set in motion to ensure the victims have a strong case to go to court.⁴⁹

Depending on the human and financial resources of the organization, the level of involvement can vary. The MRAP, for instance, does not have the resources to carry out investigations for victims of discrimination, which are crucial to the legal process, especially in criminal litigation. They can sometimes carry out testing operations to catch a racial discrimination case on record, but they generally cannot assist the victims with gathering most of the evidence, pointing them instead to the HALDE and to *inspecteurs du travail* (work inspectors) who have powers of investigation.⁵⁰ However, the MRAP can provide guidance on the necessary evidence and the process of launching a case. Once the victim has the requisite evidence, the MRAP can direct them towards lawyers specializing in antiracist legislation and procedure. The assistance provided by SOS Racisme is quite similar to the MRAP’s but a major point of difference is that with its higher profile and greater resources, SOS Racisme can

⁴⁷ Ligue des Droits de l’Homme, interview.

⁴⁸ Mouvement Contre le Racisme et pour l’Amitié entre les Peuples - Service Juridique, “MRAP.”

⁴⁹ Ibid.; SOS Racisme - Pôle Anti-discrimination, interview; Ligue Internationale Contre le Racisme et l’Antisémitisme, “LICRA.”

⁵⁰ Mouvement Contre le Racisme et pour l’Amitié entre les Peuples - Service Juridique, “MRAP.”

generally offer more assistance to victims of racial discrimination, discovering evidence to support their legal case.⁵¹

As recognized leading actors in antidiscrimination (by mainstream media, political actors and the general population), *mainstream* antiracist organizations are also implicated in the more political aspect of legislative reform. Since these organizations do participate heavily in racial discrimination litigation, this particular perspective allows them to situate themselves as knowledgeable actors. From their involvement in litigation as civil parties or simply through the guidance they provide victims of racial discrimination, antiracist organizations are in a position to examine which aspects of the legislative process hinder successful court proceedings.

The HALDE works in conjunction with these antiracist organizations, in two chief ways. Firstly, each mainstream antiracist organization (LDH, SOS Racisme, MRAP and LICRA) has a representative who sits on the HALDE's consultative committee (or scientific committee). This committee serves to build dialogue between the HALDE and the civil society, and to develop joint actions and campaigns. For example, the HALDE has worked closely with SOS Racisme over the last few years in promoting testing as a tool for winning court cases.⁵²

Secondly, the HALDE and antiracist organizations can work together on cases that are going to court as the HALDE has stronger powers of investigation than antiracist associations, in addition to being able to participate in the actual litigation. The involvement of the HALDE can help solidify a case of discrimination, especially considering its investigatory powers can be used to glean crucial information for court cases.⁵³

⁵¹ SOS Racisme - Pôle Anti-discrimination, interview; Mouvement Contre le Racisme et pour l'Amitié entre les Peuples - Service Juridique, "MRAP."

⁵² Sophie Latraverse, Deputy Legal Director, "Haute autorité de lutte contre les discriminations et pour l'égalité."

⁵³ Ibid.

Together, the HALDE and mainstream antiracist organizations are the leading actors in bringing discrimination cases to court. However, there are several problems with the implementation of antidiscrimination laws that render litigation more difficult, especially in the case of racial discrimination.

Significant changes were brought about by the Race Equality Directive to facilitate the process by which alleged victims of racial discrimination can pursue legal action, as seen above. However, the practical applications of these legislative reforms demonstrate some of the difficulties that remain in litigating racial discrimination cases in employment, despite the changes brought about by the Race Equality Directive. There are three main issues that will be examined: a) civil versus criminal litigation, b) no legal remedy for indirect discrimination in practice and c) litigating racial discrimination without the concept of race.

Civil Versus Criminal Litigation

To bring discrimination cases to court, there are two possible routes: civil or criminal litigation procedures. A closer examination of the implications of these two routes for litigating discrimination cases allows for a better understanding of some of the practical problems in the implementation of reforms in legal anti-racial discrimination mechanisms. Comparing the two approaches will highlight the significant constraints limiting the development of anti-racial discrimination case law. While reforms to civil litigation offer an easier route to establishing cases in court, legal and antiracist traditions centered on narrow conceptions of racism, as explored in Chapter Four, favour criminal litigation in spite of serious procedural limitations.

In France, there has been a long-standing tradition of attacking racial discrimination through criminal litigation rather than through civil courts. As seen in Chapter Four, the criminal litigation route was heavily influenced by the antiracist legal tradition that criminalized expressive forms of racism, developing from the

specific historical context of Vichy. However, recent reforms in legislation have shifted this balance by making civil litigation more accessible to victims of discrimination. The Race Directive played a significant role in facilitating litigation in civil courts by shifting the burden of proof onto the defender, stating that “[t]he rules on the burden of proof must be adapted when there is a *prima facie* case of discrimination and, for the principle of equal treatment to be applied effectively, the burden of proof must shift back to the respondent when evidence of such discrimination is brought.”⁵⁴ Prior to these changes, plaintiffs were required to prove that an unlawful discrimination had occurred, but the legislative changes have shifted the burden of proof onto the alleged discriminator, in the case of both direct and indirect discrimination. In the French transposition of the Race Directive into civil legislation, the plaintiff first has to prove that disparate treatment has occurred, but it is then up to the defendant to demonstrate or to prove that this disparate treatment had an objective reason behind it, and that no discrimination has happened.⁵⁵

Despite the European and national efforts to render civil litigation more attainable to victims of discrimination by shifting the burden of proof, there is a continued reliance on criminal litigation. Antiracist associations who have played a key role in assisting victims in legal cases have predominantly opted for criminal rather than civil litigation. SOS Racisme, one of the leading antiracist organizations participating in such cases, favours the criminal route rather than the civil.⁵⁶ Their important presence on the antiracist scene has led to an overwhelming tendency to seek criminal litigation rather than civil in racial discrimination cases. As Sophie Latraverse explains, “today, this criminal reflex, is in every, in all subjects, but from the moment where the only discourse on recourse in discrimination has been carried by

⁵⁴ The Council of the European Union, 2000/43/EC Art. 8.1.

⁵⁵ *Code du Travail*, 2001 L122-45.

⁵⁶ Julie Chi-Hye Suk, “Procedural Path Dependence: Discrimination and the Civil-Criminal Divide,” *Washington University Law Review* 85 (n.d.): 1315-1371; Sophie Latraverse, Deputy Legal Director, “Haute autorité de lutte contre les discriminations et pour l’égalité.”

SOS Racisme, you have the monopoly of discourse on recourse.”⁵⁷ Today, the LICRA and the MRAP also lean towards this type of litigation.⁵⁸

Vice President of SOS Racisme, Samuel Thomas, has argued in favour of penal procedures rather than civil procedures because of the implications of a criminal case. According to legal expert Julie Suk, this is due to “a widespread view amongst policymakers, activists, and academics that the nature of racial discrimination is inherently criminal.”⁵⁹ Therefore, “[r]acial discrimination cases are more often brought in criminal proceedings rather than civil proceedings because of the understanding that racial discrimination warrants the symbolic condemnation that only a criminal conviction can carry.”⁶⁰ An interview with SOS Racisme’s Legal Services confirms Suk’s observation:

It is especially penal, because it has always been the case, particularly regarding lawsuits. Lawsuits usually go directly to penal [courts]. Even if there is maybe more to gain in the civil or administrative [courts] than in the penal, the victims want the facts to be acknowledged, want the person to be declared guilty in the end [...]. For our association, penal is the way to show people that it is a crime. It’s here to hurt, that’s why here, we prioritize criminal law for racial discrimination.⁶¹

SOS Racisme thus rejects the private negotiations or financial settlements that can result from civil procedures, in favour of public proceedings, which would lead to the public condemnation of employers who discriminate. This would in turn have a wider effect on the population, in dissuading people and employers from discriminating. What the interview quote also shows, however, is that SOS Racisme’s approach is also in part attributable to tradition, that “it has always been the case.” There is thus a certain refusal to go against the traditional approach, even if civil litigation can offer more remedies to victims of discrimination. Despite acknowledging that victims have more to gain in terms of damages or restitution, SOS Racisme is committed to leading

⁵⁷ Sophie Latraverse, Deputy Legal Director, “Haute autorité de lutte contre les discriminations et pour l’égalité.”

⁵⁸ Ligue Internationale Contre le Racisme et l’Antisémitisme, “LICRA”; Mouvement Contre le Racisme et pour l’Amitié entre les Peuples - Service Juridique, “MRAP.”

⁵⁹ Suk, “Procedural Path Dependence,” 1333.

⁶⁰ Ibid.

⁶¹ SOS Racisme - Pôle Anti-discrimination, interview.

penal proceedings.⁶² As Suk underlines, this criminal understanding of racial discrimination is a reflection of the historical evolution of colour-blind antiracist legislation in France, heavily reliant on criminal liability.⁶³

It also displays a willingness to reaffirm that racism is against the tradition of the republic by emphasizing its criminal nature. By criminalizing racism in this way, the public condemnation of racism reinforces the image of a universalist France. The criminal litigation of cases of racism or racial discrimination also reflects the general tendency to focus on perpetrators of racism rather than on the victims. As was already established in Chapter Three, this continued refusal to focus on victims as well as perpetrators of racism also implicitly refuses to acknowledge race, since a victim-based approach is interpreted as leading to *communautarisme* and therefore as conflicting with republican ideals.

In examining civil and penal procedures, it becomes clear that there are some significant benefits and drawbacks to litigating in either criminal or civil courts. In both types of litigation, evidence in discrimination cases is extremely significant in preventing counter-lawsuits against the original plaintiffs. It is such a problem that one of the challenges that arises in bringing racial discrimination cases to court is the threat of reprisals. If organizations participate in a case that results in a loss because of a lack of proof, the defendant can then countersue the plaintiff(s) for defamation. The accusation of racism is thus seen as tarnishing one's reputation – defamation – which can give grounds to a subsequent lawsuit. The MRAP describes this possibility as a serious threat to their activities, and contributes to their cautiously choosing cases that have sufficient proof to prove elements of racial discrimination.⁶⁴

⁶² Ibid.

⁶³ Suk, "Procedural Path Dependence."

⁶⁴ Mouvement Contre le Racisme et pour l'Amitié entre les Peuples - Service Juridique, "MRAP."

Criminal courts generally take a more liberal approach to evidence and carry stronger powers of discovery, but criminal litigation remains limited by its very nature:

Criminal sanctions against discrimination are tightly circumscribed both by the definition of the offence itself and by the rules of criminal procedure, which require proof of racist intent for an act that would otherwise be entirely lawful (e.g. a choice of tenant or employee) to be declared unlawful. It is of the nature of such acts that intent cannot typically be inferred from the decision, and even when direct proof of, say, racist prejudice is available, its specific contribution to the questionable act is extremely difficult to assess, and often obscure even to the perpetrator.⁶⁵

One big obstruction for victims of discrimination is providing sufficient evidence to prove their case. It can be quite difficult for victims of discrimination to prove they were discriminated against, because it is generally the defendant who holds the requisite information. Since most racial discrimination cases go through criminal litigation, this problem is amplified by the requirement to prove criminal intent, that there was a deliberate intention to discriminate.⁶⁶ SOS Racisme explains this problem: “[discrimination] is always difficult to prove because obviously, a colleague is not going to testify for you because he’ll risk his job, there you don’t have any testimony. And without testimony, with a minimum of proof, you cannot go in front of a court.”⁶⁷

One method that has recently emerged as a valuable tool for providing evidence of racial discrimination (and can also be used for other forms of discrimination) is the method of testing, also known as the “test of discrimination” or “situation testing.”⁶⁸ Situation testing is a method to gather evidence by which two identical profiles are presented to the potential discriminator, with the exception of one characteristic. This method can be used to determine whether a club discriminates in who it allows to frequent the establishment or whether an employer discriminates against applicants based on their name, presumed origin, address, etc... One of the most common usages of this testing method is through the use of CV testing: two identical CVs are sent out to a potential employer (with equal level

⁶⁵ *Analytical Report on Legislation. RAXEN National Focal Point FRANCE*, 12.

⁶⁶ *Analytical Report on Legislation. RAXEN National Focal Point FRANCE*.

⁶⁷ SOS Racisme - Pôle Anti-discrimination, interview.

⁶⁸ *Loi pour l'égalité des chances*.

qualifications and experience) with one difference, usually the name of the candidate or the geographical location.⁶⁹

SOS Racisme has pioneered this method of gathering evidence and successfully brought it into the mainstream as an acceptable form of evidence in penal proceedings. Sophie Latraverse attests to SOS Racisme's important role regarding testing, "[testing] are methods that SOS Racisme initiated in France [...]. SOS Racisme is at the origin of the Cassation⁷⁰ jurisprudence, which recognizes testing as a valid method of proof in penal matters of discrimination. This led to an amendment of the penal code, article 225-3, that provides that testing is admissible in matters of discrimination, so that's an important progress."⁷¹ As a result of this, the HALDE and SOS Racisme now work together on improving the methods of testing, used on individual cases as well as on large-scale operations. Not only has testing been legalized,⁷² but this method is now appropriated by potential victims of racial discrimination, who are starting to show initiative and set-up their own testing. Therefore antiracist organizations can also play a role in reforming the legal process, in addition to their support to victims.

Despite the admissibility of testing as a valid form of evidence, it remains important to follow the procedures outlined by legislation and judges, or else a test could still run the risk of being rejected. While testing can be a useful tool for establishing situations of discrimination, their potential success in criminal courts also requires cooperation with officials (police, bailiffs) to corroborate the evidence provided by testing through their own, more formal, investigations.⁷³

⁶⁹ Frédéric Burnier and Brigitte Pesquié, "Test de discrimination et preuve pénale," *Horizons stratégiques. Revue trimestrielle du Centre d'analyse stratégique*, no. 5 (n.d.): July 2007.

⁷⁰ French Supreme Court of Judicature

⁷¹ Sophie Latraverse, Deputy Legal Director, "Haute autorité de lutte contre les discriminations et pour l'égalité."

⁷² *Loi pour l'égalité des chances.*

⁷³ Burnier and Pesquié, "Test de discrimination et preuve pénale."

The principle of the presumption of innocence accompanied by the principle of criminal intent, necessary in any criminal case, make it very difficult for criminal cases of racial discrimination to be proven. Furthermore, despite penal procedures allowing for illicitly obtained evidence, such as those resulting from testing operations often conducted by antiracist organizations (recordings especially), this is often not sufficient. The onus of proof is placed primarily on the plaintiff, who must prove, a) a discriminatory behaviour, and b) the intention to discriminate wrongfully.⁷⁴

In civil courts, while the burden of proof has been reversed, several complications remain in this type of proceeding. The defendant is required to prove that any disparate treatment of employees was justified and objective, but it is required of the plaintiff to prove that a disparate treatment has occurred in a first instance.⁷⁵ Secondly, there are key obstacles to obtaining evidence in civil litigation that do not pose as many problems in criminal proceedings. As Suk explains, the judge is limited in his powers of investigation, making it difficult to unearth more evidence in any given case: "Parties cannot compel discovery of evidence in the adversary's hands to acquire evidence that would prove the elements of one's own case."⁷⁶ The judge, for example, cannot demand any party to provide documents or proof that would prove the other party's case.

This is quite an important difficulty considering how employers tend to have most pertinent documentation in their possession (especially in cases where the plaintiff was allegedly discriminated against during the hiring process). Despite a specific provision in the Race Equality Directive which stipulates that the *juge d'instruction* (investigating judge) can compel discovery of some evidence,⁷⁷ this has yet to be properly implemented in the civil courts.⁷⁸

⁷⁴ Ibid.

⁷⁵ *Code du Travail* Article L122-45.

⁷⁶ Suk, "Procedural Path Dependence," 1335.

⁷⁷ The Council of the European Union, 2000/43/EC Art. 8.2.

⁷⁸ Suk, "Procedural Path Dependence."

In general, there is a serious lack of knowledge in the application of legislative reforms. For the reforms in both civil and criminal codes to be effective, it is equally important for legal officials to be aware of the legislative changes and to apply them. Both the HALDE and antiracist organizations are quite active in expanding the legal field of racial discrimination and racism more generally. One of the recurring impediments in providing justice to victims of racial discrimination is the lack of specialized knowledge on the part of legal actors. This is one of the main reasons for which antiracist organizations assist victims of racial discrimination, because they work with lawyers and magistrates that are specifically trained to deal with discrimination cases. As demonstrated in Chapter Four, legislation pertaining to racial discrimination, rather than other manifestations of racism, has only properly taken shape since the 2000 Race Directive was transposed into French law in 2001. These antiracist organizations themselves had to adapt to the new legislation to provide assistance with new claims of discrimination, as evidenced by this following quote by the LICRA: “our lawyers from our legal service were thus faced with this new challenge that was discrimination, and try to follow the victims of discrimination on these questions, with several difficulties.”⁷⁹

The relative newness of antidiscrimination legislation in France can become problematic if the laws are not properly enforced by the various legal actors. Antiracist organizations thus work to promote a wider understanding of the new laws as a basic requirement of making any advances in the racial discrimination jurisprudence. This is a widespread problem, acknowledged by various organizations. The LICRA explains this necessity: “It is necessary that the magistrates have knowledge in antidiscrimination laws and an awareness of this cause, and a decent familiarity with the subject, which in my opinion is not necessarily the case today. And we are investing a lot on training magistrates.”⁸⁰ Or again, as the CRAN notes, “today, the judiciary is not trained enough. There is no confidence in the judicial system.

⁷⁹ Ligue Internationale Contre le Racisme et l'Antisémitisme, “LICRA.”

⁸⁰ *Ibid.*

When there are convictions, people are not sentenced enough.”⁸¹ The lack of specialized knowledge and training in antidiscrimination law can thus have a disparate effect on the level and significance of convictions for racial discrimination, as well as have the perverse effect of discouraging victims of discrimination from taking legal measures out of mistrust in the legal system.

To address some of these concerns, various antiracist organizations organize legal training as part of their overall activities. In December 2007, for example, the LICRA signed a convention in coordination with SOS Racisme, the Ministry of Justice and former Minister of Justice Rachida Dati, to provide training and build awareness among judges and lawyers so they can develop their knowledge of antidiscrimination legislation and legislative process. This specific convention involved providing training to future magistrates at one of the leading French judiciary schools located in Bordeaux.⁸² A new study suggests that influence by the Higher Courts has led to judges increasingly applying their powers of investigation in discrimination cases.⁸³

Donna Gitter’s comparison between American and French legal anti-racial discrimination procedures provides a useful analysis of the consequences of criminalizing racial discrimination, rather than seeking civil remedies. While her analysis focuses on the 1972 statute, the points she raises remain useful since the principles of criminal litigation remain unchanged. Gitter argues that criminal litigation is not particularly effective because of the high standard of proof required of plaintiffs, in addition to the little control they have over the litigation process. Valuing deterrence over compensation for the victims takes away from their potential need to have the situation remedied.⁸⁴

⁸¹ Patrick Lozès, President of CRAN, “Interview with Patrick Lozès, President of CRAN.”

⁸² Pierre Fournel, “Ligue internationale contre le racisme et l’antisémitisme,” Audio recording, April 15, 2009.

⁸³ Cluzel-Metayer and Mercat-Bruns, *Discriminations dans l’emploi. Analyse comparative de la jurisprudence du Conseil d’Etat et de la Cour de cassation.*, 101–102.

⁸⁴ Gitter, “French Criminalization of Racial Employment Discrimination Compared to the Imposition of Civil Penalties in the United States.”

In her overview of French antiracist and antidiscrimination legislation, Suk underlines how the tendency to pursue criminal procedures can be linked back to antiracist legislation having historically been codified as a criminal offense as outlined in Chapter Four. As such, incitement to hatred of a particular religious, ethnic or racial group was criminalized and set the scene for subsequent antidiscrimination legislation.⁸⁵ While a 1982 statute opened the route for victims of racial discrimination to pursue civil procedures,⁸⁶ antidiscrimination had already been established as a criminal procedure in practice. As a result, the focus on victims of racial discrimination that civil procedures can offer is overlooked for criminal procedures that target the perpetrators of racism, at the detriment of victims.

Since its creation, the HALDE worked to promote civil litigation and to develop further judicial expertise in this matter because of the general tendency in France to seek criminal actions against racial discrimination. The HALDE appeared to increasingly move towards civil litigation because it offers a greater avenue for victims of discrimination seeking redress. Legislative changes precipitated the reversal of proof, now placed on defendants, rather than on plaintiffs, theoretically make it easier to prove discrimination. Proving discrimination is further facilitated by the fact that it is not necessary to prove criminal intent to discrimination in civil litigation. While there are roadblocks within both civil and criminal litigation processes that make it difficult to win court cases, civil litigation does not carry such a strong burden of proof as criminal litigation does. In addition to giving more control over the litigation process to victims, it also offers them more in terms of results (financial retribution for example). Therefore, the HALDE promotes civil litigation and focuses on expanding the jurisprudence because it considers this path to be a more effective system due to the recent legal changes shifting the burden of proof from the discriminated party to the alleged discriminator.⁸⁷

⁸⁵ Suk, "Procedural Path Dependence."

⁸⁶ *Loi n°82-689 du 4 août 1982 relative aux libertés des travailleurs dans l'entreprise*, 1982.

⁸⁷ Sophie Latraverse, Deputy Legal Director, "Haute autorité de lutte contre les discriminations et pour l'égalité."

According to Latraverse, this position taken by the HALDE was met with some reticence by antiracist organizations that traditionally were inclined towards criminal litigation. SOS Racisme, in particular, has had a long tradition of pursuing criminal proceedings in racial discrimination cases, and it perceived the HALDE's creation and manner of dealing with victims of discrimination to challenge this tradition.⁸⁸ Samuel Thomas, the Vice President of SOS Racisme, has criticized the HALDE's interventions in mediations and resolutions outside of the courts, claiming that it takes away from the impact that a criminal conviction could have. According to Thomas, the HALDE's approach therefore removes the *criminal* aspect of racial discrimination.⁸⁹

Litigating racial discrimination cases can be problematic in both civil and criminal courts. Criminal courts are more liberal in the type of evidence allowed, but racial discrimination remains difficult to prove. On the other hand, civil procedures have seen a reversal of the burden of proof but the discovery of evidence and the powers of the judge remain limited, mainly from little knowledge of how to apply the legislative reforms.

On a more theoretical level, criminal litigation is favoured by antiracist organizations because of the message that a successful case in these proceedings sends out: that racial discrimination or racism is criminal and morally reprehensible. This route offers a condemnation by the Republic itself. In contrast, civil proceedings offer more in terms of remedies to the victims, especially in terms of financial settlements.⁹⁰ Successful cases in civil courts can therefore also (as well as criminal cases) serve as a deterrent.

⁸⁸ Ibid.

⁸⁹ Suk, "Procedural Path Dependence."

⁹⁰ Ibid.

The HALDE's 2009 report corroborates another study reveals that the jurisprudence in discrimination cases is growing.⁹¹ However, this debate about criminal versus civil litigation highlights important elements. It underlines the continued influence that mainstream antiracist organizations have in carrying the antiracist message. The HALDE has obviously made an impact and shifted the status quo, widening the legal options available to victims of discrimination. However, it also highlights how conceptual approaches to antiracism shape practical approaches. Finally, this comparison has allowed a better understanding of the existing constraints in legally challenging racial discrimination. Both civil and penal litigation have significant drawbacks that ultimately pose an obstacle to a strong implementation of antiracist legislation, which continues to be heavily informed by a legal tradition based on a raceless approach. The raceless approach also affects the challenges to indirect racial discrimination, as the next section will show.

Indirect Discrimination

Indirect discrimination poses a serious problem in the French context and is severely hindered by the refusal to incorporate the concept of race as a tool to combat racial discrimination. As seen above, the notion of indirect discrimination only recently appeared in French legislation in 2001,⁹² as a direct result of the 2000 EU Race Equality Directive.⁹³

The introduction and strengthening of this notion does not necessarily result in an effective way of legally challenging indirect racial discrimination, as there are

⁹¹ Cluzel-Metayer and Mercat-Bruns, *Discriminations dans l'emploi. Analyse comparative de la jurisprudence du Conseil d'Etat et de la Cour de cassation.*; Haute Autorité pour la Lutte contre les Discriminations et pour l'Égalité, *Rapport Annuel 2009*.

⁹² LOI n° 2008-496 du 27 mai 2008 portant diverses dispositions d'adaptation au droit communautaire dans le domaine de la lutte contre les discriminations (1)

⁹³ While the concept was introduced in 2001 with the antidiscrimination legislative reforms, the European Commission noted some oversights in the French transposition of three EU equality directives (2000/43/EC, 2000/78/EC, 2000/73/EC). A 27 May 2008 law (Law 2008-496) made the appropriate changes and strengthened the notion of indirect discrimination.

significant conceptual obstructions. One of these is the traditional preference of penal procedures over civil procedures which has serious implications for the concept of indirect discrimination since the conceptualization of racial discrimination as a criminal offense implies that there is a criminal intent behind the discrimination, or as a precursor to the discrimination.⁹⁴

One of the innovative aspects introduced in the legislation and in the definition of indirect discrimination is that it is not necessary for there to have been *an intention* to discriminate for there to be indirect discrimination (this is also true for civil procedures relating to direct discrimination). Unsurprisingly, there have been very few cases of indirect racial discrimination litigated in courts. The jurisprudence regarding indirect discrimination is generally negligible: a fact that has been emphasized by some antiracist organizations like the MRAP. In the words of MRAP activists: “In France, there is no jurisprudence in indirect discrimination. If you go look, you will find no application [of this].” This is confirmed by Cluzel-Metayer and Mercat-Bruns’ recent study on the jurisprudence of the State Council and High Court of Appeals.⁹⁵

This judicial lacuna can partly be attributed to the procedural tradition: because intent is a crucial element of criminal procedure, it is almost paradoxical to include indirect discrimination in this type of procedure. This is further aggravated by the burden of proof resting on plaintiffs in criminal procedures. The definition of indirect discrimination, however, does not require intent, and can instead emerge from an apparently neutral practice. This explains why, even if it is present in the Work Code (*Code du Travail*), the notion of indirect discrimination does not actually appear in the criminal system, as the latter relies on intentionality.⁹⁶

⁹⁴ *Analytical Report on Legislation. RAXEN National Focal Point FRANCE.*

⁹⁵ Cluzel-Metayer and Mercat-Bruns, *Discriminations dans l’emploi. Analyse comparative de la jurisprudence du Conseil d’Etat et de la Cour de cassation.*

⁹⁶ Calvès, interview.

In this respect, the traditional deviation towards criminal procedures might have the effect of limiting action on indirect discrimination. For SOS Racisme, it explains why there is no jurisprudence: “it is characteristic of indirect discrimination, it is seen as not being a phenomenon, where it’s not an act or phenomenon that has a discriminatory purpose. It is not a discrimination [...] precisely, there is no jurisprudence. It is characteristic, it is characteristic of that.”⁹⁷ The lack of jurisprudence on indirect discrimination is thus perceived as being caused by the very nature of discrimination of this kind.

This attitude, although probably directly linked to SOS Racisme’s particular focus on criminal litigation with regards to racial discrimination, puts forward the image that indirect discrimination is not something that should be or is challenged through legal avenues. In the interview conducted with SOS Racisme, a strategy was described whereby SOS Racisme challenges indirect discrimination in combination with their actions on direct discrimination. Targeting the recruitment processes of a company, for example, by trying to rid certain aspects of the process that can lead to discriminate one group more than the other (such as asking questions about languages spoken at home, etc...)

Another conceptual impediment relates to the problem of challenging indirect discrimination within the framework of republican values. Political scientist and expert on antidiscrimination policy Daniel Sabbagh explains some of the tensions:

The fact is that there is some uncertainty about what this implies as a practical matter, and when one starts to try dispelling that uncertainty, the consensus disappears. Of course, this is much more visible as far as race and ethnic origin are concerned, because regarding sex [gender], we have the system of categories. We have gender-based statistics, so if we don’t use them, this means that there is no political will to use them. We cannot say ‘the data is not available’. In the case of the ethno-racial criteria, the data is not directly available, and the idea that there is a contradiction between, on the one hand, the fact of having prohibited indirect discrimination, and on the other hand, the fact of not having a system of categories that allows one to enforce this prohibition, that contradiction is not really perceived by that many people yet. Legal experts are aware of it, and so are those who are professionally interested in

⁹⁷ SOS Racisme, interview.

discrimination-related issues, but in France we are nonetheless in a situation where we have enacted a law in 2001 that, to be enforced, requires comparisons between data that we don't have. And not only do we lack this data but we deliberately made a political decision not to collect it, or only through imperfect and indirect means, using various proxies such as the consonance of one's name or the birth-place of one's parents... And, by the way, I do not mean this to sound like an indictment of that reluctance.⁹⁸

Sabbagh's statement explains one of the fundamental problems of attempting to apprehend indirect racial discrimination in the French republican context: the absence of statistical data taking into account different ethno-racial minorities or groups ultimately makes it very difficult to prove indirect discrimination. As Mark Bell explains, this is linked to the very concept of indirect discrimination is:

Indirect discrimination is by its nature recognizing measures that discriminate, that place groups at a particular disadvantage, so inherent is that in that (it) is the acceptance that there are groups that can be defined by reference to ethnicity or racial origin in the language of the directive and I suppose that's where you see most clearly a tension between the sort of Republican model which would tend to deny the existence of ethnic groups and indeed it's maybe notable that when France initially implemented the race directive, I think that was in 2001, if I remember right which was very quick, I mean it was one of the first member states to actually change this legislation but it didn't put in a definition of indirect discrimination and although it referred in its legislation to discrimination whether direct or indirect, it didn't define indirect discrimination. It's only more recently that it went back and actually put the definition of indirect discrimination into the legislation. So there was a reluctance there.⁹⁹

Therefore, even if there is proper inclusion of this notion of indirect discrimination in French legislation, there is further question of whether this notion is even applicable without the necessary data, as seen in the previous chapter. Aside from the contentious issue of ethnic statistics, it is possible to conclude that there are clear tensions between the republican model of universalism and the apprehension of indirect discrimination.

This tension is also exposed in the study by Cluzel-Metayer and Mercat-Bruns. In their analysis of employment antidiscrimination jurisprudence, they argue that there is significant trouble in proving indirect discrimination, putting both victims and

⁹⁸ Sabbagh, interview.

⁹⁹ Mark Bell, interview.

legal actors in a difficult position. They attribute the lack of jurisprudence in indirect discrimination to the application of the principle of equality in the French legal system. According to them, the principle of equality in public law strongly implies that above all else, rules should apply universally to all. This is precisely problematic for indirect discrimination where informally applied rules can hide specific discriminations. In applying this principle alongside nondiscrimination, judges have therefore focused more on whether a practice or rule is applied universally in similar situations as opposed to its effects.¹⁰⁰

Even the HALDE does not appear to handle or target many cases pertaining to indirect discrimination. This is due in large part to their mandate of responding to individual victims' complaints, but an interview with the HALDE's Deputy Legal Director underlines a perception of indirect discrimination centered on easily comparable situations, and therefore a vision that does not necessarily encompass racialized minorities as they cannot belong to any comparable groups within the republican framework. When giving examples of indirect discrimination, the HALDE's Sophie Latraverse spoke of migrants and foreigners who are excluded from access to certain services or rights:

These are indirect discriminations which are not proven by statistical proof, they are indirect discriminations based on the exclusion of certain people from the implementation of a rule excluding rights. In matters of racial discrimination, well, there are some, meaning, in terms of unequal salaries, discrimination in hiring, discrimination based on age, racial discrimination, we are still very much in direct discrimination. It is more discriminations regarding migrants, you can have indirect discrimination, along residence criteria, things like that. But there, we are more in the non-anticipated effect, but in fact, indirect discrimination allowed an analysis technique based on comparison that can be used in all cases.¹⁰¹

This position could be indicative of the difficulties in establishing disparate treatment between racial or ethnic groups, whereas groups that are easily determined based on their nationality or residential status (as in the above example) are easier to identify. While she confirms the need for finding alternative ways of detecting indirect

¹⁰⁰ Cluzel-Metayer and Mercat-Bruns, *Discriminations dans l'emploi. Analyse comparative de la jurisprudence du Conseil d'Etat et de la Cour de cassation.*, 19–26, 103.

¹⁰¹ Sophie Latraverse, Deputy Legal Director, "Haute autorité de lutte contre les discriminations et pour l'égalité."

discrimination, the jurisprudence remains quite limited. In addition to conceptual constraints established by a particular interpretation of equality in the legal system, there are also problems in establishing disparate treatment and proving indirect discrimination. The refusal of race once again manifests itself here, quite significantly in preventing litigation against indirect discrimination in cases where more substantial proof is needed. While there are general issues with redressing equality caused by indirect discrimination, especially when competing interests are prioritized (such as business interests), the issues discussed here are specific to France's raceless approach.¹⁰²

No Place for Race in the Law?

So far, this chapter has shown that there are significant procedural impediments preventing a greater development of jurisprudence related to racial discrimination. Challenging indirect racial discrimination in the courts is particularly handicapped by the traditional recourse to penal courts over civil litigation, resulting in very little (if any) jurisprudence. Part of this problem is attributable to the antiracist tradition in France, according to which particular circumstances and attitudes towards racism that have led to this context. The raceless approach to antiracism often reappears in this discussion because it ultimately plays a significant role in framing the implementation of anti-racial discrimination mechanisms, even if indirectly. From a race critical perspective, however, it is important to examine the impact that the colour-blind legislative approach has on racial discrimination jurisprudence and the more direct impact of the refusal of race.

A number of difficulties arise from broaching the issue of racial discrimination whilst avoiding the concept of race. Already, the general attitude which consists of refuting the very existence of "race" as a social reality in France has resulted in a general avoidance of the term: racial discrimination must be challenged without

¹⁰² Sandra Fredman, *Discrimination Law*, Clarendon Law Series (Oxford: Oxford University Press, 2002), 112.

reference to race. An example of this tendency is manifest in the HALDE's annual reports where tables describing the HALDE's activities in relation to different criteria of discrimination, only refer to "origin," "religious beliefs," "physical appearance" and "genetic characteristics" while there is very little mention of "race" throughout the report, aside from citing actual antidiscrimination legislation that makes use of the concept for prohibitive measures.¹⁰³

A November 2007 Constitutional Council ruling further complicates the place of race in French antidiscrimination law.¹⁰⁴ The ruling itself has specific repercussions on the ethnic statistics debate, as will be seen in the following chapter, but it also has significance for the overall issue of how race fits into the legal process. The Constitutional Council decision examined a legislative bill on immigration control introduced into Parliament in 2007, tacking on an amendment on "studies on the measurement of the diversity of origins."¹⁰⁵ The HALDE's Sophie Latraverse explains the legal implications of this ruling:

In France, race doesn't exist. Right, there is nothing to be done. [...] so, ethnic origin neither, and that is the 15 November 2007 decision of the Constitutional Council smashing the new Hortefeux law project on immigration, discussion allowing studies on ethnic origin. [The Constitutional Council's] argument is to say ethnic origin doesn't exist. And to measure, to conduct interesting measures in order to fight against discrimination based on origins, you need to rely on objective data. This notion is very important. And so it's the first decision – while there was a taboo on race, there was no decision, there were no texts in France. There was the constitution which prohibits discrimination based on race, so race exists as such. The first text is the Constitutional Council decision. And so, to measure or to conduct studies, even if it's to fight discrimination, you cannot rely on subjective concepts. Race and ethnic origin being subjective concepts, the [Hortefeux] law is illegal. The only existing objective concepts are nationality and language: parents' nationality, the person's nationality if they aren't French. You can be French with parents of mixed nationality, or language can be analysed, it's a more objective thing.¹⁰⁶

A number of issues are raised by this assessment of the law by the HALDE.

¹⁰³ Haute Autorité pour la Lutte contre les Discriminations et pour l'Égalité, *Rapport Annuel 2009*.

¹⁰⁴ Conseil Constitutionnel, *Décision n° 2007-557 DC du 15 novembre 2007*, n.d.

¹⁰⁵ *Loi n° 2007-1631 du 20 novembre 2007 relative à la maîtrise de l'immigration, à l'intégration et à l'asile*, 2007.

¹⁰⁶ Sophie Latraverse, Deputy Legal Director, "Haute autorité de lutte contre les discriminations et pour l'égalité."

Serious constraints are placed on the implementation of anti-racial discrimination legislation from the conceptual limitations posed by the denial of race. For the first time, the French courts have taken a decision imposing the republican rejection of race onto the legal system. It no longer (only) impacts socio-political debates but (also) now affects the legislative process; as Latraverse goes on to explain:

In France, there has always been a very large protection based on theory of equality and not on the principle of discrimination, covering non-nationals. And when they transposed [the Directive] in 2001, they included nationality in the prohibited discrimination criteria. National origin, ok? But in correcting in 2007, they removed national origin, meaning – but it's not in every text that they removed it – so there, it's really a mess. So the penal code still covers national origin, because if then, since race and [ethnic] origin don't exist, you can't prove based on nonexistent concepts, so we still need a base to prove inequality of treatment ok, however, with national origin, we used to compare people based on their surnames, because the patronym... so in France, we have made substitutions to race, to ethnic origin, to compensate. Namely, the patronym, the physical appearance and the national origin. These are not only euphemisms, they are bypasses. And if you remove the bypasses the juridical framework no longer works because I won't be able to prove anything anymore. I can't prove inequality of treatment based on race if race doesn't exist, ok? And so in amending in 2007, they removed national origin in certain texts, namely in prohibition that goes beyond the Work Code, so access to social security, education, all the things that are outside the 2000-78 Directive. So here we have a problem.¹⁰⁷

It thus becomes increasingly evident that the taboo of race has permeated the legislative system and effectively limited the ways in which racial discrimination is legally apprehended. The HALDE, the main antidiscrimination body in France, itself is limited to dealing with cases of racial discrimination by skirting around the issue of race, and by using alternatives, so-called “objective” data like surnames, nationality, parents' nationality. Through the restrictions placed on the legal system, the impossibility of a race conscious approach to racism and racial discrimination begins to appear as cemented in the legislation.

The “discomfort” towards race manifest in mainstream antiracist organizations already played a role in influencing the types of activities and campaigns they led, as well as their general conceptualization of what racism consists of, resulting in a very

¹⁰⁷ Ibid.

limited and narrow approach to racism that neglected the effect of racism on a large part of the racialized population. With the legal enshrinement of this taboo, the implications on the judicial process are just as problematic. Not only are lawyers and the HALDE limited to close approximations of race by using surnames, physical appearance and origin, but this last approximation (nationality) has been removed in most legal texts at the time of the redefinition of discrimination in 2008.¹⁰⁸ As Latraverse explains, this means that one of the main ways of approximating race – national identity – has been excluded as a criterion for discrimination in many legal texts relating to discrimination in social services, education, etc...

In terms of a wider impact on the general atmosphere surrounding racial discrimination, this is doubly problematic. In an attempt to legislate on the contentious question of race, enshrined into law as a “subjective” and therefore illegal concept for jurisprudence, lawyers and activists are pushed towards a culture of euphemisms. In this sense, the Constitutional Council’s decision solidifies mainstream approaches, as SOS Racisme and similar antiracist organizations already preferred to examine one’s surname or parents’ nationality when dealing with cases of racial discrimination or in their testing campaigns. Legally, however, it is not just a question of euphemizing race, it is a question of finding loopholes to bring cases of racial discrimination to court effectively and prove such cases, without the notion of race. Patronymic methods and methods based on physical appearance or national origin can be applicable in some cases but ultimately, they cannot fully address the experiences of all victims of racial discrimination, especially now that national origin has been removed from the equation in a number of texts.

The work code prohibits discrimination in hiring procedures and employment-related processes based on “origin, sex, mores, sexual orientation, age, family situation or pregnancy, genetic characteristics, belonging or non-belonging, real or presumed to an ethnicity, a nation or a race, political opinions, union or mutual activities, religious

¹⁰⁸ *Loi n° 2008-496.*

beliefs, physical appearance, family name or health or disability.”¹⁰⁹ Conversely, the Civil Code defines direct discrimination as following: “Constitutes a direct discrimination the situation in which , on the basis of belonging or non-belonging, real or presumed, to an ethnicity or race, religion, beliefs, age, disability, sexual orientation or sex, a person is treated less favorably than another is, has been or will be in a comparable situation.”¹¹⁰

There is thus a disconnect between the prohibited forms of discrimination in different French legal texts. While “race” appears in both definitions as a prohibited criterion of discrimination, the Constitutional Council decision of November 2007 limits the extent to which this notion (along with that of ethnicity) can be employed, as it is restricted to the category of “subjective data.”¹¹¹

Beyond the legal difficulties that this can lead to, as confirmed by the interview with the HALDE, the decision also has the potential to influence the overall discourse surrounding victims of discrimination. The approximations “necessary” to avoid subjective notions of race or ethnicity rely on other categories such as surname and origin, or even parents’ origin, and therefore contribute to a superficial assessment of racial discrimination. Furthermore, it partakes in the discursive reduction of racialized minorities as outsiders to France, as different to “Frenchness.” Stressing the exterior nature of victims of discrimination (from their exotic-sounding name to their supposedly foreign origin), it reinforces the idea of who is or is not French while externalizing the problem of racial discrimination as touching foreigners, or simultaneously relegating victims of racial discrimination to a status of foreigner. More disconcerting, however, is the fact that it makes it even more difficult to target the racial discrimination experienced by second and third generation migrants or minorities who have French-sounding names.

¹⁰⁹ Article L1132-1

¹¹⁰ LOI n° 2008-496 du 27 mai 2008 portant diverses dispositions d'adaptation au droit communautaire dans le domaine de la lutte contre les discriminations (1)

¹¹¹ Conseil Constitutionnel, *Décision n° 2007-557 DC du 15 novembre 2007*.

Epilogue: The HALDE, a Short-Lived Agency

Overall, it appears that the HALDE's presence as an antidiscriminatory body has improved the context of fighting discrimination bringing a great deal of visibility to the problem of discrimination in France and raising awareness of the current legislative framework. The HALDE's 2009 annual report indicates that the number of claims has risen to 10,545 from 1,410 in the agency's first year of activity. With a high profile advertisement campaign and a variety of activities, the HALDE appears to have penetrated the public consciousness as a resource for victims of discrimination.¹¹² These numbers are often cited to defend the HALDE's very existence, which has become a great point of contention among politicians and legislators.

The HALDE's questionable independence from government influence and its establishment according to a universalizing of discrimination indicate that, even though it reinforced the legal arsenal for combating racial discrimination, it nonetheless did not challenge the ideological and conceptual approach to racism in a very significant way. The HALDE has made important strides in ensuring that there is a strong recourse for victims of discrimination, in promoting equality in a number of sectors and in influencing a gradual shift towards civil litigation. The two issues of independence and universalizing discrimination, however, remain important for contextualizing the HALDE's establishment and subsequent work in relation to other sector activities (civil society antiracism, governmental approach, soft-measure antidiscrimination).

This chapter shows that in its development and progression, the HALDE increasingly seemed to be imbued with a specific political agenda. This is especially evident in recent developments concerning *laïcité* and the positions it has taken. Unfortunately, there will no longer be an opportunity to assess this link, as the HALDE

¹¹² Haute Autorité pour la Lutte contre les Discriminations et pour l'Égalité, *Rapport Annuel 2009*.

has will be replaced by the rights ombudsman *Défenseur de Droits* (Defender of Rights) in May 2011.¹¹³

This development has been precipitated by a number of political complaints about the HALDE. While current President of the *Front National* Marine Le Pen holds the expected position that the HALDE (along with other antiracist organizations) is “totalitarian”¹¹⁴ because of its deliberations and opinions on discriminatory legislation and practices, criticisms have also been raised by more central, mainstream politicians and actors. Part of the criticism arises out of the review of the HALDE’s budget and expenses under previous president Louis Schweitzer, with the Court of Auditors calling into question the HALDE’s high expenditures on rent and communication. The handling of complaints has also been criticized. Out of 10,734 claims, 7,231 claims were rejected, 1,043 were reoriented towards more competent agencies and only 1,752 claims were actually handled and worked on by the HALDE.¹¹⁵

While some politicians such as Deputy Véronique Besse had called for the HALDE to be disestablished,¹¹⁶ others had proposed a law that would bring the HALDE, along with several other IAA’s under the tutelage of the Defender of Rights. This law was enacted in March 2011, and so the HALDE is now defunct. Aside from the fact that France already has a human rights ombudsman (the National Consultative Commission on Human Rights – CNCDH), this new development raises more questions about independence and competence. The fact that the HALDE’s remit will be taken over by this new agency, as will that of the Republic’s Mediator, the Defender of Children and the National Commission on Security Ethics,¹¹⁷ has serious implications, and there is a real danger that racism will be buried further under all the other issues falling under the scope of this new IAA. More importantly, the establishment of this

¹¹³ *Loi organique no 2011-333 du 29 mars 2011 relative au Défenseur des droits*, 2011.

¹¹⁴ Agence France-Presse, “Marine Le Pen trouve la Halde totalitaire,” *Le Figaro*, October 16, 2010, <http://www.lefigaro.fr/flash-actu/2010/11/16/97001-20101116FILWWW00575-marine-le-pen-trouve-la-halde-totalitaire.php> Accessed 2010-11-19.

¹¹⁵ Haute Autorité pour la Lutte contre les Discriminations et pour l’Égalité, *Rapport Annuel 2009*, 19.

¹¹⁶ Samuel Laurent, “La Halde perd sa tête, avant de disparaître?,” *Le Monde.fr*, October 17, 2010.

¹¹⁷ *Loi organique no 2011-333 du 29 mars 2011 relative au Défenseur des droits*.

new agency, as a replacement to the HALDE only six years after the latter was established, once again raises a question about the ambivalent commitment the Government displays towards fighting racism, particularly in light of the human and financial resources invested in the HALDE in the first place, in the end, these efforts seem too short-lived to properly evaluate its body of work. This potential issue will have to be revisited over the first few years of the Defender of Right's work.

Conclusion

In the application of legislative reforms since 2001, following the 2000 Race Equality Directive, there have been significant changes to French antidiscrimination mechanisms. The HALDE was established as a resource for victims of discrimination, and while there are significant issues surrounding its independence and generalized approach to discrimination, it nonetheless contributed to increasing the jurisprudence in discrimination, including racial discrimination. Similarly, several important advances were made in legal mechanisms with situation testing now accepted as admissible evidence in criminal courts and the facilitating of civil litigation.

There are however, in spite of these advances, crucial constraints within the legal system that continue to limit the number of racial discrimination cases. As this chapter has shown, these constraints are linked to both practical implementations within the civil and criminal litigation, but also to conceptual limitations in the incorporation of antiracism into law. In addition, the final section has highlighted how the republican universalist approach that negates race is complemented by legal complications surrounding the permitted uses of "race" as a legal notion. This complexity is further compounded by the impenetrability of indirect discrimination as an employable legal tool.

The HALDE's disappearance, replaced by the Defender of Rights, ultimately indicates the continued difficulty in apprehending discrimination. While the

mechanisms are in place to allow for increased protection against racial discrimination, problems in implementation, either institutionally (as in the case of the HALDE) or practically, continue to reflect an incapacity to fully commit to fighting racial discrimination through legal channels. What might result from the institutional reshuffling that has led to the establishment of the Defender of Rights is a greater turn towards antiracist organizations. As consistent and well-established actors in the field, mainstream and perhaps even alternative antiracist organizations might see their activities increase with the dissolution of the HALDE, which will leave its mark.

Chapter Six: Tracing the Debate on Ethnic Statistics. A Case Study of French Anti-Racial Discrimination

*"In French public inquiries, it is currently less difficult to ask someone specifically about their private life than to ask them their religion or skin colour."*¹

Introduction

So far, this research has highlighted how republican approaches to fighting racism struggle because of their commitment to fighting racism without acknowledging race. Within major strands of antiracist activity – civil society activism and judicial action – is a key failure to address racism, compounded by the dilution of race. Central to the problem of racial discrimination in France is the search for antidiscrimination tools that are perceived as compatible with the republican model and its values. The debate on ethnic statistics – a tool for measurement and analysis that includes racial or ethnic referentials, components or categories – as a potential antidiscrimination tool reflects the tensions obvious within each of these strands providing a case study for understanding the process by which race eventually always becomes obfuscated.

This chapter examines the debate on introducing ethnic statistics in France as a case study for observing the polarizing effects created by the republican race-neutral approach to racial discrimination. The ongoing and recurring debates on ethnic statistics highlight both the main contradictions in contemporary approaches to racism in France – particularly through the exposition of significant practical and legal constraints in challenging racial discrimination – as well as the procedural and ideological roadblocks to the conceptualization and implementation of strong antidiscrimination measures.

¹ Monique Meron, "Statistiques Ethniques: Tabous et Boutades," *Travail, genre et société*, no. 21 (April 2009): 55.

This debate can provide insight into the intersection of ideology and praxis, the intersection of immigration and antidiscrimination, and the intersection of law and implementation. Through this chapter, it becomes increasingly evident that the fight against racism is thwarted by unaligned ambitions across polarized camps that fail to reach a significant compromise allowing for any significant change. Competing agendas and clashing ideologies have led to a convoluted debate that is rife with misrepresentations but has not yet resulted in a denouement.

This chapter first examines the ideological and practical arguments permeating the ethnic statistics debate and then situates the debate within the legal framework. It then argues that, in spite of the fact that the issue of race has been propelled into the public domain through debates on ethnic statistics, the antidiscrimination agenda remains cemented in its rejection of race, and thereby continues to manifest significant limitations in adequately addressing the extent of racial discrimination present in French society. While ethnic statistics have emerged as a key point of debate within the context of antidiscrimination, this debate has not so far resulted in any viable policies to date. It is a prime example of French interpretations of the legal apparatus examined in the two last chapters, which continues to reflect tensions in the republican approach to antiracism.

Semantics play an important role in these debates, as with most questions concerning racism and racial discrimination in France. Just as race and ethnicity are contested categories and concepts, the very concept of ethnic statistics poses challenges within French debates. Ethnic statistics are often spoken about quite generally in the debates, with common reference to *racial or ethnic indicators* in statistics, for research purposes but also for use by companies and the Government. This chapter will refer to ethnic statistics as the most common reference to statistics that contain ethno-racial elements, particularly in relation to fighting racial discrimination. It is worth noting that the matter is further complicated by the recent shift towards speaking of “diversity statistics,” which will also be addressed later in

this chapter. Despite the semantic shift that has led to “diversity statistics” replacing “ethnic statistics” in the prevalent discourse, I consider diversity statistics to represent only a euphemistic alternative to ethnic statistics and will therefore employ the latter, unless the discussion warrants otherwise.

Key Issues in the Ethnic Statistics Debate

Tracing the evolution of the debates on ethnic statistics in France, many elements elucidate key structural and ideological problems in French antiracism and anti-racial discrimination practice. Examining common arguments both for and against ethnic statistics, this chapter will highlight the continued conceptual blockage concerning race relations in France. Firstly, the debate on ethnic statistics highlights the weakness of anti-racial discrimination tools resulting from a raceless approach. Secondly, the debate also underscores the tensions and diverging political agendas that produce significant inconsistencies and contradictions in the fight against racial discrimination. Finally, the debate demonstrates the process by which race continuously becomes obfuscated due to ideological posturing, which simultaneously reinforces racializing dynamics that only further cement the stigmatization of ethno-racial minorities. These three principal elements of ethnic statistics debates often play out in unison, with ideology dictating practical arguments and positions.

At the root of the debate on ethnic statistics is a fundamental struggle to determine the most appropriate approach and method to fighting racism and racial discrimination. As I have already shown throughout this research, there are significant conceptual conflicts informing activist, legal and political approaches to these issues. The dominant approach to date has maintained a steadfast commitment to fighting racism from a colour-blind, raceless, universalist perspective, based on an understanding of racism as a) manifested in extreme right movements, and b) external to the French context, where the Revolutionary tradition ensures equality. In the re-

articulation of antiracism to accommodate the recent concern for racial discrimination, the conceptualization of racism was not accordingly adapted, which still manifests in these debates. This becomes increasingly evident in the inconsistencies prevalent in the debates, which will be addressed throughout this chapter.

The Emergence of the Debate

The CRAN and its leaders, Patrick Lozès and Louis-Georges Tin, take responsibility for bringing the discussion of ethnic statistics to the forefront of the French public scene.² But in many ways, the debate precedes the CRAN's intervention, and first surfaced from within academic circles in the 1990s. As seen previously, social scientists were turning their attention to immigrant populations in France, especially in relation to their integration into French society from the 1980s. One of the difficulties that arose for these researchers was the dearth of statistical information needed to conduct large-scale surveys and studies on immigrants, especially second-generation immigrants who hold French citizenship. Michèle Tribalat's 1992 study entitled "Geographic Mobility and Social Insertion" (*Mobilité Géographique et Insertion Sociale*) inadvertently launched the debate on ethnic statistics when Tribalat was subsequently criticized for introducing ethnic categories, derived from information concerning participants' place of birth, their parents' place of birth and their mother tongue.³ Tribalat's study is especially problematic, not necessarily in its use of "ethnic categories" but in the way that these categories were used to reinforce the very notion of "*français de souche*" ("native French") previously utilized by the *Front National* and the extreme right. As Hervé Le Bras has argued, by defining a "*français de souche*" as anyone who cannot trace any foreign lineage in four generations (this definition was

² Patrick Lozès, President of CRAN, "Interview with Patrick Lozès, President of CRAN"; Louis-Georges Tin, "Who is Afraid of Blacks in France? The Black Question: The Name Taboo, the Number Taboo," *French Politics, Culture & Society* 26, no. 1 (Spring 2008): 32-44.

³ Patrick Simon, "The Choice of Ignorance," *French Politics, Culture & Society* (n.d.); Alain Blum and France Guérin-Pace, "From Measuring Integration to Fighting Discrimination. The Illusion of 'Ethnic Statistics'," *French Politics, Culture & Society* 26, no. 1 (Spring 2008): 45-61.

amended in a later study, but remained problematic), Tribalat's study was reinforcing a limited racialized idea of Frenchness, whilst projecting "foreignness" onto several generations of French citizens.⁴ Another controversy followed in 1998 when researchers and politicians requested that questions pertaining to immigrants' backgrounds be introduced into the 1999 census in order to quantify immigrants' levels of integration. This debate yielded no results, and the census remained unchanged.⁵

The debate on ethnic statistics resurfaced in 2004, taking on a new dimension and focus: antidiscrimination. This marked a significant shift from a debate that had previously focused on the question of immigration and integration, as highlighted by Éric Fassin.⁶ While Tribalat's research focuses on the integration of immigrants into French society, it did not take into account the experience of racism or discrimination. This relates back to the previous conceptual focus on the integration of immigrants and the republican model of integration, rather than racism, as the basis for analyzing and interpreting race relations. It is only with the "French invention of discrimination"⁷ that there was a noticeable shift away from this focus. With growing concern over racial discrimination (traced in previous chapters) that manifested in legislative reforms, governmental action and the burgeoning diversity agenda, the debates have turned to the contributions that statistics can bring to fight racial discrimination.⁸ Since then, the issue of ethnic statistics has regularly surfaced as a hot media topic (in 2007, 2009, 2010) with a variety of political, activist, media and academic figures intervening to participate and advocate for their positions.

While national statistics bodies and academic researchers have slowly integrated previously contentious information on nationality, place of birth and

⁴ Hervé Le Bras, "Les Français de souche existent-ils ?," *Quaderni*, no. 36 (1998): 83-96; Hervé Le Bras and Sandrine Bertaux, *L'invention des populations: biologie, idéologie et politique* (Paris: Odile Jacob, 2000).

⁵ Blum and Guérin-Pace, "From Measuring Integration to Fighting Discrimination," 46.

⁶ Éric Fassin, "Statistiques raciales ou racistes? Histoire et actualité d'une controverse française," in *Les nouvelles frontières de la société française*, ed. Didier Fassin (Paris: La Découverte, 2010), 431-432.

⁷ Fassin, "L'invention française de la discrimination."

⁸ Blum and Guérin-Pace, "From Measuring Integration to Fighting Discrimination."

parents' place of birth as measureable data into surveys and research, strong restrictions remain on using any ethno-racial indicators in public statistics. Social science researchers such as Patrick Simon and Michel Wieviorka challenge this constraint, arguing for the introduction of ethnic indicators because there are growing concerns that the currently allowed criteria for approximating race (nationality, patronym, place of birth, parents' place of birth) are not sufficient to quantify and measure the extent of racial discrimination in France. In effect, the absence of any statistics that take into account ethnicity or race leaves a significant gap in the assessment of racial discrimination in a number of fields.⁹ Advocates of ethnic statistics are taking a different approach to racial discrimination, in which the experience of victims is crucial, both on a conceptual level (denying them the power to have a voice in the challenge of racism) and on a practical level, as the absence of their voice only results in limited analyses.

*"Discrimination is not measured, it is fought"*¹⁰

In an interview, legal scholar Gwénaëlle Calvès summarily expressed her opposition to ethnic statistics with the statement that discrimination is not something to be measured, but something to be fought. In many ways, this perception is emblematic of how racism continues to largely be considered in relation to perpetrators of racism, rather than to their victims. This position needs to be recontextualized in relation to the prevalent ideological position that frames the debate.

In interviews with antiracist activists, much of the opposition to ethnic statistics presented as ideological, and focused on the necessity to protect the Republican model against measures that challenge the idea of universalism:

⁹ Patrick Simon, "Le Role des statistiques dans la transformation du système de discrimination," *Séminaire*, November 4, 2005, <http://seminaire.samizdat.net/Le-role-des-statistiques-dans-la.html> Accessed 2011-06-28.

¹⁰ Calvès, interview.

There is a principled position that is shared by the majority. [...] today, there is a situation in France where it is possible to measure the question of diversity, via the patronym, etcetera, the origin, that is to say, there are existing measures and the idea of venturing into the field of subjective criteria, like for example, the feeling of belonging or the idea of defining ethno-racial criteria does not correspond first, to the history of the French republic and second, for us, it does not correspond to the integration model. – LICRA¹¹

I am against [ethnic statistics], because we are in a secular [laïc] country, we are in a country where [...] the slogan of the republic is liberty, equality and fraternity, and I remain convinced that wanting to count blacks on one side and whites on the other, where are you going to put the Métis? – Collectif DOM¹²

France, having a republican universalist state ideology that says we do not, in any case, make a difference between the origin of our citizens, France has up to date forbidden any collection of data linked to ethnic origins. – MRAP¹³

Consensus against ethnic statistics is thus determined by France's unique history and political culture, presented as universalist through time, echoing the reticence towards race.

The ideological arguments deployed in this debate once again centre on the incompatibility of republican values with the concept of race, stressing that any type of ethnic statistics will reify the notion of race and produce a flawed image of French society as divided into groups. This argument is present in the Human Rights League's (LDH) statement that "There is no need, as everyone suggests, for ethno-racial referentials in the general census of the population because there is no ethno-racial in France. It doesn't exist; we don't have that culture."¹⁴ This reasoning is similar to the petition against ethnic statistics entitled "Republican Engagement Against Discriminations" where it was expressed that "a unique classification would necessarily be reductive and inappropriate. It would invent groups that do not exist, create distinctions where there is reconciliation, suggest homogeneity where there is diversity, build boundaries where there is continuity."¹⁵ The petition unites trade

¹¹ Ligue Internationale Contre le Racisme et l'Antisémitisme, "LICRA."

¹² Collectif DOM, interview.

¹³ Mouvement Contre le Racisme et pour l'Amitié entre les Peuples - Service Juridique, "MRAP."

¹⁴ Ligue des Droits de l'Homme, interview.

¹⁵ Jean-François Amadieu et al., "Engagement républicain contre les discriminations," *Libération*, February 23, 2007.

unionists, academics and activists, emphasizing the raceless antiracist tradition that interprets any racialized reading of French society as discriminatory in itself.

This argumentation is a key point of contention in issues of race and racism in general, often recurring in discussions over whether to use the concepts of race or ethnicity themselves. The dangers of racial classifications have been evidenced by a number of historical events and periods, such as the Holocaust and racial segregation in the United States and South Africa under Apartheid to name just a few, again externalizing racism. Yet, in the context of the French debate on ethnic statistics, this argument is problematic in the sense that it is often based on the assumption that racial divisions do not already exist and that the *statistics* would be instituting them. Racism continues to be largely perceived as an aberration, with the claim that “it would invent groups that do not exist.” This is therefore a problem in acknowledging the deep rootedness of racism in French society.

This ideological opposition to ethnic statistics, rooted in the republican universalist approach, also shapes practical arguments against them. Blum and Guérin Pace, articulate this link clearly:

For those who oppose this data collection, the construction of purportedly ethnic statistical categories does not have any scientific basis. This is so because, on one hand, an ethnic group is not an objective entity; and on the other hand, even if such statistics were collected they would be of no help for measuring discrimination, since the latter is a complex process that cannot be reduced simply to the victim’s appearance.¹⁶

Although they express practical arguments against ethnic statistics here, Blum and Guérin-Pace’s position is heavily informed by a traditional republican approach to racism prevalent in antiracist activism, as seen in Chapter Three. Two important questions are raised in the above statement: the question of whether race and ethnicity are objective or subjective categories, and the question of whether the experience of racism and racial discrimination can be determined. Blum and Guérin-Pace deny the objectivity – and therefore potential object of scientific analysis – of

¹⁶ Blum and Guérin-Pace, “From Measuring Integration to Fighting Discrimination,” 46.

ethnicity based on their belief that there is no definition of it in France; the supposed ethnic groups that researchers would derive for their studies would merely consist of approximations based on geographic origins or derived from France's colonial empire.¹⁷ As we will see below, this distinction between objective and subjective categories will prove crucial to the debate, especially as it was legally enshrined by the Constitutional Council in 2007.

The second question raised by Blum and Guérin-Pace relates to the question of how to determine the experience of racial discrimination and the authors' overall approach to racism. This position challenges the method of self-identification (as belonging to a group, or feeling racially discriminated against) advocated by the pro-ethnic statistics lobby, rejecting the assumption that people can adequately evaluate whether they have been victims of racism or whether they belong or are perceived as belonging to a particular ethno-racial group. This was reflected in an interview with Jean-François Amadiou, who expressed doubt over whether people can actually know whether they have been discriminated against: "If you ask people, people cannot, by definition [of sociological research] answer the question of discriminations. It is up to the researcher to determine it."¹⁸ Along the same line, Blum and Guérin-Pace argue that discrimination cannot be measured through the self-perception of individuals, as it is unreliable data derived from people who cannot be aware of all the dynamics at play in a situation of discrimination, but also because it ultimately requires the researchers to define categories—not the surveyed individuals.¹⁹

This position denies victims the capacity of self-identification or to express their experiences of discrimination, and is endemic to the limited approach to racism already identified among mainstream antiracist activists. As a result, this position also argues against focusing antidiscrimination tools (including measurement tools) on the victims of discrimination, instead looking at the perpetrators. The LICRA, for example,

¹⁷ Ibid., 51.

¹⁸ Jean-François Amadiou, Director, "Observatoire des discriminations."

¹⁹ Blum and Guérin-Pace, "From Measuring Integration to Fighting Discrimination," 52–53.

argues that a focus on victims of discrimination is pernicious because it shifts the focus away from implementing the law and dilutes the message that discriminators are morally wrong:

From the moment we say ok we legalize the idea of doing ethnic statistics on ethno-racial criteria, it opens a box, a Pandora's box that is very dangerous for French society. And, exactly, the idea of focusing the investigation on the victim, because in the end, we're asking the victim to self-define to fight against discrimination, rather we think the opposite. I find this reasoning pernicious. The idea would rather be to direct the investigation on the authors of discriminations more than on the victims. Here, we are concentrating on the victims while today we have problems: that the authors are not condemned. Let's start with enforcing the laws that exist.²⁰

This position echoes that of SOS Racisme, whose petition against the inclusion of an amendment on statistics in the controversial 2007 immigration law stated "I refuse to accept that the focus and investigation rest on victims rather than on perpetrators of discriminations."²¹ According to this position, it is logically incoherent to focus antidiscrimination on victims of discrimination rather than the perpetrators, as this would diminish the focus on the criminal aspect of discrimination.

While there is potential value in focusing on the mechanisms by which discriminators create situations of inequality, it does not however logically follow that victims of discrimination should not be included in the analysis of racist mechanisms, as is advocated by minority-based antiracist activists. Conversely, it is problematic to portray focusing on victims of racial discrimination as dangerous or pernicious, since this is arguably a key aspect of addressing racism. Going back to the discussion of antiracism activism in earlier chapters, attempts to efface the experiences of victims of racism misdirects antiracist focus, especially when it is coupled with a vision of racism that relies on the tenuous link between racism and individual prejudice. Not only is it paternalistic to dismiss the capacity of individuals to recognize whether they are discriminated against or not, it also prevents the development of an analysis of racist

²⁰ Ligue Internationale Contre le Racisme et l'Antisémitisme, "LICRA."

²¹ Cited in Émilie Rive, "« Fiche pas mon pote », " *l'Humanité.fr*, November 5, 2007, http://www.humanite.fr/2007-11-05_Societe_-Fiche-pas-mon-pote Accessed 2010-08-30 .

mechanisms that take into account the lived experience of racialized minorities or individuals.

This reasoning also relies on a narrow conception of racial discrimination: Blum and Guérin-Pace define discrimination as “the result of an interaction between two persons, one of whom ascribes positive or negative features to the other based on criteria that are projections of some kind.”²² This assessment of what discrimination consists of is only applicable to direct discrimination, and does not take into account the complexities of indirect discrimination. Most importantly, it does not take into account that indirect discrimination does not require any intent on the part of the discriminator, nor does it consider forms of systemic discrimination. Proponents of ethnic statistics are specifically targeting those processes that are less obvious than direct forms of discrimination, and are instead embedded in a number of practices and rules that put some groups at a disadvantage compared to others.

From these arguments, it becomes clear that practice is heavily informed by ideological positioning. The resistance to incorporating the racialized experience of victims of racism comes from the fear that these would result in the solidification of identities in the form of communities: the republican fear of *communautarisme*. But this rejection of establishing ethno-racial statistics based on self-identification or a sentiment of belonging (because there are supposedly no races in France) is another manifestation of the refusal to properly address the way French society has functioned and continues to function according to racialized dynamics. The established distinction between objective and subjective data (for measuring discrimination) further entrenches this perspective. The first hand experiences of the racialized are dismissed as subjective, and therefore not appropriate for quantifying and analyzing the experience of racism.

²² Blum and Guérin-Pace, “From Measuring Integration to Fighting Discrimination,” 52.

As a result, academic and activist opponents to ethnic statistics favour the use of alternative methods currently in place that are supposedly based on objective elements and perceived to correlate to a republican approach to racial discrimination. Situation testing is one of the chief methods currently employed and widely gaining importance largely due to SOS Racisme's influence, making a significant impact as a legitimate method of proving racial discrimination in criminal procedures.²³ Testing can prove racial discrimination in various situations and has proved successful in showing evidence of racial discrimination in a number of cases.²⁴ It is also argued that current forms of "legal" data that employers and researchers have access to (patronyms, nationality, place of birth, and sometimes nationality and parents' birth place) are sufficient for large-scale research on discrimination. These criteria are considered to provide ample indication of discrimination based on origin, and therefore it is argued that additional information along ethno-racial indicators is not required.²⁵ Antiracist organizations like SOS Racisme and LICRA actively support this approach.²⁶

However, the alternative methods to ethnic statistics currently in use are not immune to practical and ideological limitations. Testing, for example, while useful for determining discrimination and targeting specific criteria, cannot be applied on a large-scale basis.²⁷ Amadieu, (*Observatoire des Inégalités*) who is often solicited to conduct testing situations and is himself a very strong opponent of ethnic statistics explains the major weaknesses of testing:

There are two inconveniences to testing, [...], the main one is that obviously it only elucidates one part of the process, the CV. [...] It is very complicated to do, methodologically, it is not simple, and it is very expensive. We cannot do this on a large

²³ *Loi pour l'égalité des chances.*

²⁴ Burnier and Pesquié, "Test de discrimination et preuve pénale."

²⁵ SOS Racisme, interview; Ligue Internationale Contre le Racisme et l'Antisémitisme, "LICRA"; CARSED, *À propos du rapport du COMEDD*, n.d.; Alain Blum, France Guérin-Pace, and Hervé Le Bras, "La statistique, piège ethnique," *Le Monde*, November 10, 2007.

²⁶ SOS Racisme, interview; Ligue Internationale Contre le Racisme et l'Antisémitisme, "LICRA."

²⁷ Pierre-Yves Cusset, "La discrimination et les statistiques 'ethniques': éléments de débat," *Informations sociales* 4, no. 148 (2008): 109.

scale, so in reality with recruitment, you are condemned to only determine the status of the CV with testing.²⁸

Testing is therefore limited in its narrow focus on particular types of processes, and as a result cannot be generalized to shed light on other decision-making practices or activities within various sectors. Too limited as a stand-alone method of measuring discrimination, testing needs to be complemented by large-scale surveys or research.²⁹ In 2006 and 2007, the HALDE attempted to produce wide-scale testing, targeting a number of large French firms. However, the 2007 large-scale testing, conducted through the *Observatoire des Discriminations*, has been plagued with much critique over the methodology of the research and the reliability of the research results.³⁰ Broadening the scope of testing thus remains problematic and reveals some of the constraints of this method, beyond proving direct forms of discrimination under very specific circumstances. It is thus unable to provide detailed statistical information on racial discrimination and its impact in different sectors. This method cannot address forms of indirect discrimination, nor does it provide large-scale statistical information reflecting the racialized experiences of victims.

Arguments in favour of ethnic statistics stress the overall difficulty in legally apprehending racial discrimination because these tools are ill equipped to address key issues. Already, Chapter Four has highlighted the relative newness of legal mechanisms to challenge racial discrimination in the courts of law, and Chapter Five examined the general problems faced by individuals trying to prove racial discrimination and win court cases. It is thus argued by proponents of ethnic statistics that in addition to a strong legal arsenal, it is crucial to have statistical tools to quantify racial discrimination in various areas (employment, housing, education, etc.) in order to attack the problem structurally before cases are brought forward. As Lozès and Wieviorka explain:

With diversity statistics, we could see in a very clear, quantified and global way, the

²⁸ Jean-François Amadieu, Director, "Observatoire des discriminations."

²⁹ Cusset, "La discrimination et les statistiques 'ethniques': éléments de débat," 109.

³⁰ Schweitzer, *Les Discriminations en France*, 110–112.

gap that exists in career development in certain firms between people emerging from diversity and other employees, at an equal starting level of skill. These gaps suggest that a problem exists, surely linked to a form of discrimination, more or less subtle. With these numbers, it no longer rests on people emerging from diversity to prove discrimination they have been subject to, which is usually impossible, but it is, on the contrary, up to the firm to explain itself on this inequality, and to take the necessary measures to correct it (DRH training, awareness building campaigns, etc.).³¹

These arguments display some of the frustrations existing with regards to the antidiscrimination legal system, which is only slowly being developed. Instead of relying on the current limited system, organizations such as the CRAN along with academics such as Simon and Wieviorka urge public and private actors to proactively institute a system that takes a stronger approach to curbing racial discrimination at deeper, structural levels. This approach would also allow for a less individualized approach to discrimination by taking into account discriminatory practices on a wider scale.³²

Indirect discrimination is especially of concern here. Since it consists of apparently neutral policies that can disadvantage a particular group disproportionately, it can be extremely difficult to prove, as established in Chapter Five. It is often argued that indirect discrimination *requires* statistical tools to be apprehended. As Patrick Simon explains:

By its very nature, indirect discrimination calls upon statistical reasoning. Rather than extending the traditional range of legal sanctions applicable to discriminatory acts, the issue with indirect discrimination is to inspect all apparently neutral procedures and practices in order to identify their possible discriminatory consequences and, subsequently, to promote equality actively. The role of statistics is thus decisive.³³

Simon distinguishes between the types of actions required to fight indirect discrimination as opposed to direct discrimination. It is increasingly argued that the current available mechanisms and tools are not refined enough to pose any sort of challenge to indirect forms of racial discrimination. Testing, for example, only serves

³¹ Patrick Lozès and Michel Wieviorka, *Lutte contre le racisme et le communautarisme*, Rapport au Ministre de l'Intérieur, de l'Outre-Mer et des Collectivités Territoriales et au Ministre des Affaires Étrangères et Européennes (Paris, 2010), 50–51.

³² Ibid., 51; Tin, "Who is Afraid of Blacks in France?," 40.

³³ Patrick Simon, "The measurement of racial discrimination: the policy use of statistics," *International Social Science Journal* (2005): 13.

to target direct forms of racial discrimination on a case-by-case basis because it is an un-generalizable tool.³⁴ Ethnic statistics could help build the caselaw to address the little jurisprudence on indirect discrimination identified in the previous chapter. Using the example of the United Kingdom, Stavo-Debaugue shows how statistics are not only necessary for establishing indirect discrimination, but can result in a stronger mobilization against discrimination, benefit the monitoring of discrimination and increase penalties against perpetrators, without resulting in positive discrimination.³⁵

This link between indirect discrimination and statistics has been stressed in interviews with academics, working both within and outside the French context, by antidiscrimination, legal and policy experts, such as Daniel Sabbagh (see Chapter Five), Marie Mercat-Bruns, Mark Bell and Virginie Guiraudon:

Testing on the larger scale is still going to be ok. They do so many CVs – again, take the CV, but that doesn't show the extent of indirect discrimination, so when they say "oh we don't need statistics, all we need is testing," testing is never going to get you very far, as far as indirect discrimination is concerned. So it's still an idea of ways to face racism basically rather than trying to understand that there might be more veiled, more discreet ways of discriminating, of treating differently, not just not liking other people.³⁶

New tools therefore need to be elaborated or considered to expand the jurisprudence on indirect discrimination, which is where ethnic statistics can come to prove useful.

There are evidently practical questions that arise as to how such statistics can be used to further research on racial discrimination or to institute systems of ethnic monitoring that can break patterns of discrimination in public and private sectors. However, taking into account the everyday experiences of those who are racialized can contribute to improving antidiscrimination tools and identifying key areas where racial discrimination is predominant. Ultimately, it is only through these first-hand

³⁴ Jean-François Amadiou, Director, "Observatoire des discriminations."

³⁵ J Stavo-Debaugue, "Mobilising statistical powers for action against discrimination: the case of the United Kingdom*," *International Social Science Journal* 57, no. 183 (2005): 43-55.

³⁶ Guiraudon, interview.

accounts that the myth of a raceless France can be broken: the lived experience will illuminate the ways in which France does not function along universalist lines, and in doing so, will contribute to challenging the status quo. Taking into account the lived experience of veiled women could have prevented the ban of the *hijab* in schools, for example, but their voices were ignored by the Stasi Commission.³⁷

Most importantly, arguments in favour of ethnic statistics are grounded in the perceived *invisibility* of racialized experiences in France. The constraints imposed on public statistics have meant that, while current types of research and surveys can give a relatively decent measure of racial discrimination faced by people based on their nationality or that of their parents, other groups are systematically ignored or rendered invisible by these surveys. French citizens originating from French overseas territories, the DOM-TOM, are a prime example of this problem. Such citizens are often overlooked by statistics as they have been French citizens for generations and often hold “French sounding names.” Because of current restrictions, research studies cannot take them specifically into account, thereby overlooking their experiences as racialized minorities in France.³⁸ In this respect, the CRAN has proved to be significant beyond bringing an alternative voice within antiracist civil society. Its campaign for ethnic statistics marks the refusal to be considered invisible within colour-blind France.

Similarly, the current statistical apparatus is sure to overlook many more racialized experiences as generations of migrants evolve. Some allowances have already been made to compensate for this, including widening the scope of surveys to ask questions about the participants’ and their parents’ place of birth. This was specifically introduced with the realization that second generation immigrants generally hold French citizenship, and thus will not appear as “of foreign decent” in statistics unless a change is made to assess one’s country of ancestral origin. However,

³⁷ Weil, *La République et sa diversité*.

³⁸ Ndiaye, interview; Sabbagh, interview; Patrick Lozès, President of CRAN, “Interview with Patrick Lozès, President of CRAN”; Simon, “The Choice of Ignorance”; Patrick Simon, “Les statistiques, les sciences sociales françaises et les rapports sociaux ethnique et de ‘race’,” *Revue française de sociologie* 49, no. 1 (n.d.): 153-162.

as the second and third generations get older, even this method of approximating someone's "foreign" status will become insufficient to trace the experiences of minorities in France.³⁹

In this sense, ethnic statistics (as currently argued) do not aim necessarily to divide French society into ethno-racial groups that do not already exist: they are attempting to make sense of the *existing* ethno-racial divisions in French society in order to address them through targeted public action. Overlooking the racialized dynamics that are so deeply ingrained in French social fabric and institutions directly linked to France's imperialist history (as seen in Chapter Two) allows participants in this debate to warn of the threat posed by ethnic statistics to the supposedly raceless France. In doing so, however, they miss the existing marginalization of minorities through systemic racialization and subjugation in a France where there is in fact an ethno-racial element at play.

Not only does an ethno-racial element exist in France, it is also very pervasive in current "acceptable" methods employed to quantify and analyse racism and racial discrimination, contrary to what is suggested by opponents to ethnic statistics. The patronymic method, so highly valued by antiracist organizations and opponents of ethnic statistics and used in testing methods, is not immune to a racialized or ethnicized vision of society. On the contrary, the patronymic method is problematic in itself.⁴⁰ Not only does it neglect the experiences of people who change their names – for example from North African sounding names to "European" sounding names – it cannot take into account the racism addressed towards French citizens from the DOM/TOM as they are just as likely to have "European" sounding names while experiencing racism because of their skin colour. Similarly, knowing the context of racism in France, it is just as possible that North African parents give their children names other than Arabic-sounding names. Thus, on a practical level, the patronymic method can be problematic and unreliable as a quantifying measure.

³⁹ Simon, "The Choice of Ignorance."

⁴⁰ Yazid Sabeg, "La mesure statistique de la diversité et des discriminations ethniques," *Esprit* (May 2009): 29-49.

Furthermore, this patronymic method is not devoid of ethnic or racial elements. The very basis of this method requires establishing a distinction between names that sound "French" and names that are "foreign" sounding. This relies on a vision of society that sees difference between people, and an understanding that particular groups in French society are specifically targeted by racial discrimination. Testing methods also rely on this type of consideration, especially those that require actors—an antiracist organization sending a "black" and a "white" actor to a club for example—will have had to operate along racialized reasonings to establish which groups are prone to experience racial discrimination and which are not. Patronym-based methods or testing are thus valued by antiracist activists as devoid of any reference to race or ethnicity, and thereby upholding the republican ideals whilst fighting racism, but they nonetheless manifest a racialized vision of society. In a way, they can even be seen to reify contentious ideas of what is considered French and what is considered foreign, reinforcing the question of origins. Through these forms of proxies, the racial becomes muddled: names as proxy for race and skin colour as proxy for race, but simultaneously being reconstructed as belonging to that which is foreign.

The Committee for the Measure of Diversity and the Evaluation of Discriminations, which was established by Sabeg to examine the possibility of instituting ethnic statistics (Comedd) in March 2009,⁴¹ also raises this point in its report, looking at the accepted methods of research based on nationality, place of birth, etc. It argues that these methods ultimately result in an ethnic approximation taking into consideration geographic origin, nationality and culture.⁴² Effectively, a situation testing where two candidates are presented to a potential employer, one with a "French" sounding name and the other with a "Moroccan" sounding name, there is most likely an approximation taking place. Say the "Moroccan" candidate is born in Paris, of French citizenship: what sets him aside from the "French" candidate is the

⁴¹ Yazid Sabeg, *Programme d'action et recommandation pour la diversité et l'égalité des chances* (Commissariat à la diversité et à l'égalité des chances, May 2009).

⁴² COMEDD, *Inégalités et discriminations. Pour un usage critique et responsable de l'outil statistique*. (Comité pour la mesure de la diversité et l'évaluation des discriminations présidé par M. François Héran, n.d.).

assumption that his “Moroccan” name reflects his Muslim and North African culture. Not only does this methodology require assumptions that certain cultures or ethnicities manifest in certain ways, it also relies on and perpetuates ideas that there is such a thing as Frenchness which can be contrasted with that which is not French.

The Alternative Commission of Reflection on “Ethnic Statistics” and Discrimination (Carsed),⁴³ established to counter the aims of the Comedd, has refuted this claim, stating that this argument is based on a European notion of ethnicity that does not apply to France, and that all this information is garnered through objective facts that cannot be contested.⁴⁴ But as has already shown, not only does France have a long history of racialized societal and political relations, but it also functions along ethnic and cultural conceptions that are rife with racial connotations.

Even supposedly objective data can lead to differentialist views of French society. The constant reliance on nationality and place of birth, especially with the introduction of parents’ place of birth or one’s former nationality, for lack of any other type of data processing methods, reflects an image of French society that only functions by dividing people based on the French/Foreigner dichotomy. Perhaps imbuing research and statistics with a dose of “race consciousness” would allow French society to move forward from this type of analysis based on the constant reaffirmation of “true Frenchness” versus “immigrant Frenchness.” This could manifest in a more inclusive methodology that would take into account the experiences of racialization and racism that were not based solely on immigration.

Arguments in favour of ethnic statistics have greatly contributed to ensuring that the issue of race is included into the debate. By stressing that acceptable criteria

⁴³ The controversy caused by ethnic statistics is reflected in the creation of a counter-committee, the Alternative Commission of Reflection on “Ethnic Statistics” and Discrimination (Carsed), led by strong opponents of ethnic statistics. They felt that the Comedd was biased from the onset, saturated by individuals who were pro-ethnic statistics. As explained in interviews with Calvès, interview; Jean-François Amadiou, Director, “Observatoire des discriminations.” The Carsed and the Comedd therefore encapsulate two chief opposing sides in the debate, which will be examined more closely in the next section.

⁴⁴ CARSED, *À propos du rapport du COMEDD*.

of evaluation are insufficient to incorporate the experience of racism into research, they are effectively taking a perspective that thinks of racial discrimination in terms of constructed race rather than immigration and origin.

Objective of Ethnic Statistics: From Ethnic Statistics to Diversity Statistics

*"It is in fact that this debate hides another: not "for or against?" but "to what end?""*⁴⁵

Beyond the practical and ideological arguments deployed for and against the use of ethnic statistics, it remains important to examine the objectives of introducing such measures in France. By questioning the aims of ethnic statistics, as well as the intentions behind the debates themselves, more inconsistencies arise.

Positive discrimination is the recurring red flag raised against ethnic statistics as the inevitable source of inequalities to come from such measures. The Carsed doubts the antidiscriminatory goal of ethnic statistics and warns that the only potential use of these statistics is to pave the road for introducing ethno-racial positive discrimination.⁴⁶ Re-emphasizing the contrast between "Anglo-Saxon" multicultural policies and the republican tradition, the opposition forebodes unlimited minority-based political action. For example, cautioning against Patrick Lozès' intentions in advocating ethnic statistics, Amadiou states, "All that he wants, is that obviously we can lay everything on the table, and that there is positive discrimination, and he wants to count. He doesn't care [about discrimination]."⁴⁷ Or again, in its response to the Comedd's proposal that statistics could contribute to annual appraisals of racial discrimination in various sectors (namely in employment), the Carsed prophesizes that the objective is to institute quota-based positive discrimination:

⁴⁵ Éric Fassin, "Comptage ethnique : un débat confus et paradoxal," *Le Monde*, April 17, 2009, sec. Point de vue, http://www.lemonde.fr/idees/article/2009/04/17/comptage-ethnique-un-debat-confus-et-paradoxal-par-eric-fassin_1181999_3232.html Accessed 2011-05-21.

⁴⁶ CARSED, *À propos du rapport du COMEDD*.

⁴⁷ Jean-François Amadiou, Director, "Observatoire des discriminations."

A third dividing line concerns the establishment of an annual evaluation of diversity, based on the model of evaluations concerning gender equality in the workplace, as the report proposes. Here again, such an evaluation does not say anything of discriminations and their evolution. Here again, it only makes sense in relation to politics of “ethnic” dosage, where group realities prevail over individual experiences.⁴⁸

These accusations of wanting to suffuse France with positive discrimination policies are emphatically denied by proponents of ethnic statistics, and the issue appears nowhere in the Comedd final recommendations. As the report states, “Measuring the gaps between the ideal and reality, between formal rights and real rights, does not determine the type of political action that would allow to reduce them. Shedding light on the action is never but an advisory gesture. This does not in itself imply any favourable take on “positive discrimination” measures.”⁴⁹ Positive action and positive discrimination are not identical and require distinction in these debates. These types of amalgamations are unfortunately very prominent in these debates, but never really address the issue of whether such measures would improve the situation in France. Instead, policies are associated with the American or “Anglo-Saxon” context and dismissed on that basis. But, in the case of ethnic statistics, positive discrimination would not be an automatic result, even though many opponents present it as such.

Instead of amalgamating ethnic statistics with their potential use, it can be more useful to take into account the negative impact of their current usage. Contrary to mainstream belief, the ban on ethnic statistics is not comprehensive as there are currently a number of derogations to this rule, as will be seen below. One problematic example, raised only in two interviews (with the LICRA and the CNCDH) is the ethno-racial, religious or cultural indicators currently used to build police files used to catch criminals.⁵⁰ These types of files were at the centre of the 2010 furore over the sanctioned use of ethno-racial police files to serve the expulsion of Roma in line with an increasingly restricted immigration policy.⁵¹ This example attests to the dangerous

⁴⁸ CARSED, *À propos du rapport du COMEDD*.

⁴⁹ COMEDD, *Inégalités et discriminations*, 157.

⁵⁰ Ligue Internationale Contre le Racisme et l'Antisémitisme, “LICRA”; Michel Forst, Secretary General, “Commission Nationale Consultative des Droits de l'Homme,” Audio recording, April 19, 2009.

⁵¹ Fressoz, “La polémique monte autour de l'expulsion des Roms.”

manipulation of ethnic statistics to entrench inequalities further and advance a particular political agenda rather than to reinforce antidiscrimination tools.

Statistics can also easily be manipulated to advance nefarious stereotypes of minority groups if mishandled. An example is journalist and weekly guest on the show *On n'est pas couché* Eric Zemmour – reknown for his controversial statements – and his highly publicized support for ethnic statistics in the hopes that they would indicate that black overrepresentation in French prisons is linked to the fact that blacks are more likely to be criminals, rather than due to socio-economic factors or police profiling. Even ardent advocates of ethnic statistics like the CRAN find this type of analysis dangerous.⁵²

Concern over the objectives of ethnic statistics is even stronger in light of President Sarkozy's 30 July 2010 speech on security, in Grenoble, during which he expressed his desire to revoke French citizenship for any "person of foreign origin" who threatened a police officer or other public figure.⁵³ Until the elaboration of legislative proposals, it was unclear how this would be determined, but proposals were made to revoke citizenship of French citizens naturalized for ten years or less who committed crimes against persons with State authority (notably the police).⁵⁴ This issue, controversial on several levels, appears to establish clear-cut lines to define different degrees of Frenchness. Reinforcing the controversial notion of "*française de souche*" this is an attempt to reinforce the idea of Frenchness based on ethno-racial attributes passed down from generation to generation. Newly naturalized citizens cannot be included in this conception of what it means to be French. The arbitrary ten-year designation and the legislative proposals themselves confirm that French citizenship does not equate Frenchness, at least in the eyes of President Sarkozy and

⁵² Phillipe Gras, "La polémique soulevée par Éric Zemmour parle des statistiques ethniques," *LePost.fr*, n.d., http://www.lepost.fr/article/2010/03/27/2007161_la-polemique-soulevee-par-eric-zemmour-parle-des-statistiques-ethniques.html Accessed 2010-08-30.

⁵³ President Nicholas Sarkozy. *Address*. Grenoble, France 30 July 2010

⁵⁴ Olivier Bobineau, "« Déchéance de la nationalité » ou ne plus être né...", *SaphirNews.com*, n.d., http://www.saphirnews.com/Decheance-de-la-nationalite-ou-ne-plus-etre-ne_a11896.html Accessed 2010-11-26.

certain legislators. Universalism is once again conditional, its lines redefined according to political motivation. While this law is now being reconsidered, abandoned by the President's party,⁵⁵ the discursive dichotomies between French and Foreign has in the meantime become further entrenched as social realities.

These examples all highlight the potentially dangerous use of ethnic statistics, which could be used to implement such forms of discriminatory policies. However, they also make the assumption that ethnic statistics imply a State-led repository of ethno-racial identification, which has not in any way been proposed. Framing the ethnic statistics debate in this way is not necessarily useful either. While the dangerous usage of ethnic statistics can be staved off by the *anonymous* collection of statistics, as is proposed, to minimize the risks involved of misuse, there is no discussion of challenging current legally acceptable uses of "sensitive" data like race or ethnicity by creating a national repository of such data. As such, the permitted derogations to the rule are not even considered or challenged by those using republican arguments against ethnic statistics. In many ways, this reflects the absurdity of the debate on ethnic statistics, where the realities of the law are often ignored because republican ideology has nearly rendered the legislative realities moot. Only the 2007 Constitutional Council decision will lead to a serious evaluation of the law, but that is most likely because the decision legally reinforces the dominant ideological position.

The pressure of universalism has also contributed to a significant semantic shift in the debate, from a focus on ethnic statistics to diversity statistics since 2006, approximately. This was made particularly evident with an amendment on ethnic statistics that was tacked onto an already controversial immigration bill which proposed to introduce DNA testing for family reunification.⁵⁶ The amendment in

⁵⁵ lefigaro.fr, "La déchéance de nationalité ne sera pas étendue," *Le Figaro*, March 8, 2011, <http://www.lefigaro.fr/actualite-france/2011/03/08/01016-20110308ARTFIG00535-la-decheance-de-nationalite-ne-sera-pas-etendue.php> Accessed 2011-05-21.

⁵⁶ *Loi n°2007-1631 du 20 novembre 2007 relative à la maîtrise de l'immigration, à l'intégration et à l'asile*, 2007 Art. 13.

question sought to introduce statistics for the “measurement of the diversity of people’s origins, of discrimination and of integration,”⁵⁷ proposing three objectives of statistics that do not necessarily correlate in a positive way. The overlapping themes of immigration, government policy and ethnic statistics are thus actively interwoven into the debate. Chapter Seven will argue that the ambiguous utilization of the concept of diversity has resulted in the deceptive infusion of diversity policies that do not strengthen anti-racial discrimination. The shift to diversity statistics needs to be considered in relation to this.

The wording of the amendment that associates statistics with the measurement of diversity reflects the gradual shift to a new focus on diversity statistics. Patrick Lozès claims that the CRAN was responsible for shifting the debate linguistically:

Diversity statistics. We used to say ethnic statistics, and so it was us first who changed the denomination. [Ethnicity] is not really pertinent in the French concept, where races don’t exist, but there had been a phenomenon of racialization, but ethnicities, in the French context, it’s not really pertinent, not pertinent at all. What are ethnicities? Is there a black ethnicity in France? Is there an Arabo-Maghreban ethnicity? All the people who are victims of discrimination, is that an ethnicity? So you see, so we said it’s not ethnic statistics but those who want to scare continue to use this expression.⁵⁸

Conceptually, the CRAN employ the term “diversity” as a way to balance the difficulties in speaking in terms of racialized experiences within the universalist framework. In this context, diversity becomes a more acceptable way of discussing statistical tools considered to be contrary to republican values. “Diversity” is not as frightening as “ethnic.”

This semantic shift has operated very efficiently, and permeated much of the debate, to the point where most protagonists only refer to diversity statistics. Examples ranges from the National Commission for Data Processing and Liberties’ (CNIL) contributions to the debate, to the vues of academics like Patrick Simon. This vision of “diversity statistics” has even been taken on by the Government, as

⁵⁷ Ibid. Proposed Art. 63.

⁵⁸ Patrick Lozès, President of CRAN, “Interview with Patrick Lozès, President of CRAN.”

evidenced by Yazid Sabeg's nomination to the position of Equal Opportunities Commissioner in 2008 and the fact that his responsibility to investigate the possibility of measuring diversity led to the establishment of the Comedd. Sabeg's role in the shift towards diversity policies is explored in greater length in Chapter Seven.

But this last point – Sabeg's nomination – also reflects the appropriation of the debate on ethnic statistics by the government. In a December 2008 speech at *l'École polytechnique*, President Sarkozy outlined his intentions with regards to ethnic statistics:

France needs to adopt statistical tools to measure its diversity, because, again, while I have closed the ethnic and religious gate, it remains difficult to organize our diversity without giving ourselves the means to measure it and to target social promotion and real equality without providing criteria to see if they improve, to identify delays, to measure progress. These instruments should rest on objective and incontestable methods. They should not translate into an ethnic reading of our society.⁵⁹

A few days after this speech, Sarkozy appointed Sabeg to the role of Commissioner for Diversity and Equal Opportunities and in March 2009, Sabeg established the Comedd to examine the possibility of instituting ethnic statistics.⁶⁰ These developments suggest a growing ambiguity in the gradual shift to diversity statistics. Combined with growing governmental interest and management of the issue, the semantic shift indicates a possible dilution of the initial aims of strengthening anti-racial discrimination through the institution of ethnic statistics.

The nomination of Sabeg, who has been highly involved in the promotion of diversity policies in the business world, points to more established imbrications of politics and business and the situation is further complexified by the involvement of activists and academics. The Comedd's mission statement, for example, was dictated by the afore-mentioned speech by President Sarkozy, thereby already limiting the scope of the commission so that it does not “translate into an ethnic

⁵⁹ President Nicholas Sarkozy. *Education Speech*. l'École polytechnique, France 17 Decembre 2008

⁶⁰ Sabeg, *Programme d'action*.

reading” of French society. As a result, the Comedd has called for the generalization of employing origin/nationality (including that of parents) and patronyms as the main way of mapping out discriminations, and only suggests the use of self-declarative forms of subjective identification.⁶¹ The transition from ethnic to diversity statistics can therefore be problematic if diversity policies do not actually function to strengthen antidiscrimination, but instead serve a specific political agenda.

The debate increasingly seems to go around in circles, but progressively, the dominant republican position shows its force and sidelines the racial element of the debate, whilst simultaneously creating a wider gap between Frenchness and *foreign* Frenchness by emphasizing these problematic categories based on origin. While proponents of ethnic statistics initially attempted to bring the issue of race front and center, the gradual shift in the debate has resulted in race once again being circumvented and replaced by a debate focused on immigration.

Contextualizing the Ethnic Statistics Debate within the Legal Framework

Considering the controversy surrounding ethnic statistics, it is crucial to have a clear understanding of the actual legal constraints in this area. The view that ethnic statistics are illegal in France is largely correct from a legal standpoint, but there are some important nuances within the law that are often absent from the debate and overlooked by opponents to collecting this data. What this section will also show, however, is that the debate on ethnic statistics has reinforced the raceless legislative approach to fighting racial discrimination by making the place of race in the law manageable only through approximations.

⁶¹ COMEDD, *Inégalités et discriminations*, 215–216.

Ethnic Statistics within the National Legal Framework

Opposition to ethnic statistics has been a constitutive element of French antiracism without races, going beyond the specific interpretation of Article 1 of the 1958 Constitution and inscribed into further legislation, as seen in Chapter Four. The 1978 Act on Data Processing, Data Files and Individual Liberties protects “sensitive” data under the supervision and control of the CNIL, an independent administrative authority responsible for protecting individual data privacy and personal and public liberties.⁶² While there are a few exceptions to gathering such data, the 1978 act overwhelmingly prevents gathering and storing statistical information that includes such sensitive data.⁶³ This law was retrospectively interpreted as an antiracist law,⁶⁴ because there are special provisions for data pertaining to racial or ethnic origins (among others), considered “sensitive.” This general refusal to use ethnic statistics reflects the general universalist approach to antiracism.

The law legislates against “[t]he collection and processing of personal data that reveals, directly or indirectly, the racial or ethnic origins, the political, philosophical, religious opinions or trade union affiliations of persons, or which concern their health or sexual life, is prohibited.”⁶⁵ In the original 1978 Act, only “racial origin” was mentioned, but a 2004 amendment added the category of “ethnic origin” to this article.⁶⁶ The supposedly “objective” criteria often used to infer the extent of discriminations — patronym or physical appearance — do not appear in this list.⁶⁷ Contrary to popular belief, this ban is not comprehensive. In fact, there are ten derogations to this principle, implying that “ethnic statistics” or data are not entirely illegal, but rather subject to certain conditions, as outlined in the law. Several of the derogations are of particular relevance here and include:

⁶² Act n. 78-17 of 6 January 1978 on Data Processing, Data Files and Individual Liberties, 1978.

⁶³ Ibid.

⁶⁴ Mouvement Contre le Racisme et pour l’Amitié entre les Peuples, *Les lois antiracistes*.

⁶⁵ Act n. 78-17, 8-I.

⁶⁶ Act n. 78-17.

⁶⁷ COMEDD, *Inégalités et discriminations*, 82.

Processing that is necessary for the establishment, exercise or defence [sic] of a legal claim.⁶⁸

Statistical processing carried out by the National Institute of Statistics and Economic Studies (INSEE) or one of the statistical services of Ministries in conformity with Act No. 51-711 of 7 June 1951 relating to obligations, co-ordination and confidentiality as regards statistics, following an opinion of the National Council for Statistical Information (CNIS) and in accordance with the conditions provided for in Article 25 of this Act (*authorisation by the CNIL*)⁶⁹

Likewise, an automatic or non-automatic processing shall not be subject to the prohibition provided for in Section I when it is justified by the public interest and authorised within the conditions stipulated in Section I of Article 25 (*authorisation by the CNIL*) or in Section II of Article 26 (*authorisation by a decree in Conseil d'Etat after a reasoned and published opinion of the CNIL*).⁷⁰

If the personal data mentioned in Section I are, within a short period of time, to be subject to an anonymisation procedure which the “Commission nationale de l’informatique et des libertés” has earlier approved as complying with the provisions of this Act, the Commission may authorise certain categories of processing according to the conditions stipulated in Article 25 (*authorisation by the CNIL*), taking their purpose into consideration and Chapter X (*processing of personal medical data for the purposes of evaluation or analysis of care and prevention practices or activities*) shall not apply.⁷¹

Therefore, as the Comedd stresses after an overview of the CNIL’s jurisprudence, “contrary to widespread belief, there doesn’t exist an absolute prohibition of processing statistics with ethno-racial data in France, so long as they don’t appear in personal management files affecting people’s fate and that their goal is to understand the magnitude and mechanism of discriminations.”⁷² Under certain conditions – objective of the research, public interest, anonymity or explicit consent of participants, and the potential exercise of justice – it is thus theoretically possible to carry out statistical research that takes into account ethno-racial dimensions or characteristics to strengthen antidiscrimination cases, especially those relating to indirect discrimination, although such cases are rare.

⁶⁸ Act n. 78-17, 8-II-5.

⁶⁹ Ibid., 8-II-7.

⁷⁰ Ibid., 8-IV.

⁷¹ Ibid., 8-III.

⁷² COMEDD, *Inégalités et discriminations*, 90.

As it happens, several large-scale research projects have been authorized by the CNIL to include questions pertaining to ethno-racial (or religious) elements. For example, the joint research of INED and INSEE on the trajectory of migrants (*Trajectoires et origines des migrants et de leurs descendants*) incorporated questions on skin colour (both self-perception and declaration of the perception of others), religion and self-perception of origin.⁷³ Similarly, the CRAN conducted a survey, via a third-party pollster, of blacks in France, asking questions regarding perceived skin colour and discrimination.⁷⁴ “Ethnic” or community-based questions are also present in the census of the French Overseas Collectivity (COM) of New Caledonia (former overseas territory, changed with the 2003 constitutional reform). Although criticized by former President Chirac for their apparent denial of French universalism, census questions distinguishing between “communities of belonging” were deemed crucial to understanding social dynamics and key factors contributing to different socioeconomic statuses in the collectivity.⁷⁵

The legality of ethnic statistics thus depends upon certain precise conditions and the approval of the CNIL, which is why the CRAN’s survey of French blacks did not raise any legal concerns. Many commentators accused the CRAN of conducting an illegal survey because questions were posed on skin colour and how participants felt in terms of skin colour and discriminations.⁷⁶ However, as Lozès clarified, there was nothing illegal about the survey because it was conducted through a private, third party private pollster, all results were anonymous and more importantly, no individual records were created or kept following the survey.⁷⁷ This survey raises the additional point that there are discrepancies in the treatment of private and public statistics. Private companies can conduct polls and surveys like the CRAN’s because they have slightly more freedom than institutions collecting public statistics. However,

⁷³ Simon, “The Choice of Ignorance”; COMEDD, *Inégalités et discriminations*.

⁷⁴ Tin, “Who is Afraid of Blacks in France?”; Patrick Lozès and Bernard Lecherbonnier, *Les Noirs sont-ils des français à part entière?, à dire vrai* (Paris: Larousse, 2009).

⁷⁵ COMEDD, *Inégalités et discriminations*, 134–135.

⁷⁶ Patrick Lozès, President of CRAN, “Interview with Patrick Lozès, President of CRAN”; Tin, “Who is Afraid of Blacks in France?”.

⁷⁷ Patrick Lozès, President of CRAN, “Interview with Patrick Lozès, President of CRAN.”

private research is limited by restricted access to data sets that public institutes (like the INSEE) have access to.⁷⁸

If ethno-racial statistics are legal under certain conditions, then what is the controversy about? Despite derogations to the general rule, ethnic statistics are neither straightforward nor the norm. The context of raceless antiracism is so influential that it limits meaningful research that documents discriminatory practices: ideological concerns for a strict universalism directly impact the application of the law and prevent researchers from accessing these methods. Some social scientists, spearheaded by demographer Patrick Simon, claim that it remains quite difficult to conduct research based on ethnicity or race, even when the CNIL conditions are met. Simon explains that constraining legal requirements to receive authorization from the CNIL prior to any research targeting “sensitive data,” coupled with the general atmosphere of reticence towards race, results in very few surveys that take into account or enquire about race or ethnicity.⁷⁹

It therefore becomes increasingly evident that a very specific universalist image of the Republic not only shapes legislation and policy, but also has a negative impact on the interpretation and implementation of existing legal policies. Perceived as contrary to republican principles, obstructions are erected to defend a vision of universalism that never takes race into account. Even if ethnic statistics have been possible, they remain largely untenable within the republican framework.

As a result of increased pressure for ethnic statistics, the CNIL also engaged in the debate by forming two working groups in 2005 and in 2007 to evaluate the arguments and consolidate a clear position. From 2005 when the CNIL reiterated that ethno-racial data cannot figure in employer records, a noticeable shift occurred.⁸⁰ It subsequently published ten recommendations on measuring diversity in 2007 ([Appendix 2](#)), concluding that significant changes needed to be made in French

⁷⁸ COMEDD, *Inégalités et discriminations*.

⁷⁹ Simon, “The Choice of Ignorance,” 19.

⁸⁰ Anne Debet, *Mesure de la diversité et protection des données personnelles* (CNIL, May 15, 2007).

statistics to better understand how French society has evolved, especially to improve the fight against discrimination.⁸¹ While maintaining its overall stance against a national ethno-racial repository, the CNIL opened the door for studies that incorporate questions on “subjective” data, i.e. the feeling of discrimination and the criteria of discrimination (including physical appearance and name). The CNIL nonetheless maintained its position on employer records, excluding the possibility of ethnic monitoring like in the United Kingdom.⁸² Throughout this period, the HALDE continued to oppose any type of ethno-racial classification, and upheld that current measures were sufficient.⁸³

The 2007 Constitutional Council Decision

From the CNIL, the Comedd and the Carsed, the ethnic statistics debate continued to develop without any significant re-evaluation of current legislation, but this changed with a key Constitutional Council decision in 2007. Following the CNIL’s recommendations, the aforementioned legislative bill on immigration control was introduced to Parliament in 2007, tacking on an amendment on “studies on the measurement of the diversity of origins.”⁸⁴ Following adjustments in the Senate, it was put forward to the Constitutional Council due to the controversy surrounding the amendment on measuring diversity and another amendment concerning DNA testing for family reunification. Many antiracist organizations positioned themselves against the legislation both because they opposed DNA testing, which was deemed discriminatory, and because they were concerned that the amendment on diversity created the possibility of using ethnic statistics.⁸⁵ At this point, the HALDE maintained its opposition to official ethnic statistics, but loosened its opposition to studies

⁸¹ Ibid.

⁸² Ibid. Recommendation (3).

⁸³ Simon, “The Choice of Ignorance,” 19.

⁸⁴ *Loi n° 2007-1631 du 20 novembre 2007 relative à la maîtrise de l’immigration, à l’intégration et à l’asile.*

⁸⁵ Rive, “« Fiche pas mon pote ».”

employing ethno-racial categories. The CNIL meanwhile supported the proposed bill, especially in light of its recommendations.⁸⁶

While the Constitutional Council did not find the bill unconstitutional (including the amendment on DNA testing), it subsequently decided that the amendment concerning statistics was both inappropriately included in the legislation on immigration (“*cavalier législatif*”), and also unconstitutional in itself. The Constitutional Council took its decision even further by qualifying objective and subjective data, adding that data collection employing race or ethnic origin was also unconstitutional, considering it a violation of Article 1 of the 1958 Constitution. The statement reads as follows:

Although the processing of data necessary for carrying out studies regarding the diversity of origin of peoples, discrimination and integration may be done in an objective manner, such processing cannot, without infringing the principle laid down in Article 1 of the Constitution, be based on ethnicity or race.⁸⁷

This decision therefore indicates that processing data based on objective criteria in studies related to discrimination is acceptable, but that such processing cannot rely on ethnicity or race.

This decision has left many people questioning the future of ethnic statistics in France. As the highest legal authority, the Constitutional Council decision has significant consequences for research related to race or ethnicity. The Constitutional Council published a comment in the *Cahiers du Conseil Constitutionnel*⁸⁸ in March 2008, including an amended version of the above decision, that specifies:

However, the Council did not determine that only objective data can be processed: the same applies to subjective data, such as those based on the “feeling of belonging”. On the other hand, the *a priori* definition of an ethno-racial referential would be contrary to the Constitution. Such is the constitutional limit set by the 15 November 2007 decision.⁸⁹

⁸⁶ Simon, “The Choice of Ignorance,” 20.

⁸⁷ Conseil Constitutionnel, *Décision n° 2007-557 DC du 15 novembre 2007*.

⁸⁸ A publication incorporating the Council’s comments, decisions and other related articles to the Constitutional Council’s jurisprudence.

⁸⁹ *Cahiers du Conseil Constitutionnel* (Conseil Constitutionnel, 2008), 13.

This comment only seems to have added to the overall confusion over what is or is not legal in terms of ethnic statistics. It appears that subjective data *may* be used, but not for the study or measurement of discrimination, diversity of origins or integration. Only objective data (such as nationality or country of origin) can be used to study or measure discrimination, diversity of origins or integration. Examining the CNIL's subsequent interpretation of the decision in deciding whether research projects or surveys were within the law, the Comedd distinguishes between ethno-racial *data* and the establishment of an ethno-racial *referential* or *repository*. It esteems that for the CNIL, "ethnic data would be unlawful in research that studies ethnic discriminations, but lawful in those that do not study them."⁹⁰ This would appear to negate the original point of ethnic statistics as an effective tool for measuring racial discrimination. From this information, the Comedd concludes that the Constitutional Council decision and additional comments do not completely close the door on the use of subjective data, including ethno-racial data, but that the decision severely limits their use.

The Carsed, however, has denounced this interpretation, disregarding it as a misrepresentation of the Constitutional Council's decision.⁹¹ In the Carsed's response, opponents to ethnic statistics make the following statement:

The [Comedd] report also maintains confusion when it multiplies pseudo legal arguments to try and demonstrate that a commentary in the *Cahiers du Conseil Constitutionnel*, anyway without legal value, would allow the Constitutional Council's 15 November 2007 decision to express the contrary of what it says. This decision clearly clarified that processing with the goal of measuring diversity or integration cannot rely on subjective variables, such as skin colour, but also – the feeling of belonging. It must be taken into account.⁹²

The Comedd's interpretation of the Constitutional Council's decision is thus not shared by everyone, but perceived instead to be giving legal weight to something that should have none. Adding to this discussion, the CNIL conveyed its own interpretation in its 2008 annual report: "While this ruling definitely appears to prohibit the creation of

⁹⁰ COMEDD, *Inégalités et discriminations*, 126.

⁹¹ CARSED, *À propos du rapport du COMEDD*.

⁹² Ibid.

any ethnic/racial master record in France, which is in line with the wishes of CNIL, it however keeps open the question of what type of research can be carried out today in order to assess and measure diversity, discrimination and integration. A response to this open question would be of utmost interest to the research community.”⁹³

Overall, more questions are raised by the Constitutional Council’s decision and subsequent commentaries as to what is actually legally possible. Ethnic statistics could now only be possible with an amendment to the constitution, as suggested by Amadiou.⁹⁴ But as the Comedd report points out, the CNIL’s decisions on using ethno-racial data and enquiring about participants’ “sentiment of belonging” has not completely stamped out their use, and instead primarily focused it on studies unrelated to the study of diversity, discrimination and integration.⁹⁵ This would appear to go completely against the original antidiscriminatory aims of instituting ethnic statistics.

One thing is clear however: the Constitutional Council has confirmed that it considers any master reference or pre-defined referential to ethno-racial difference as contrary to Article 1 of the Constitution. The taboo of race is no longer an interpretation of the first article rooted in France’s history during the Second World War. Instead, it has now been rendered official by the Constitutional Council.

The previous chapter has already raised several key problems with applying the antidiscrimination framework following this Constitutional Council decision. What results is a systematic system of approximation re-centred on objective data and excluding race from the process. In this respect, the debate on ethnic statistics seems to have come full-circle, re-establishing immigration as the focal point of the overall debate on racism. As Fassin has pointed out, the very addition of an amendment on

⁹³ CNIL - Commission nationale de l’informatique et des libertés, *CNIL 2007 Annual Activity Report* (CNIL, 2008), 6.

⁹⁴ Jean-François Amadiou, “Vraies et fausses solutions aux discriminations,” *Formation emploi*, no. 101 (March 2008): 102.

⁹⁵ COMEDD, *Inégalités et discriminations*, 142–143.

the use of ethnic statistics as tools for the measure of discrimination onto an immigration bill marks symbolic imbrications of two very contradictory agendas.⁹⁶ By excluding race and ethnic origins from the category of objective data, matters relating to racism and racial discrimination are as a result reduced (once again) to the question of origins. Not only has this precedent been shown to raise significant difficulties in legally challenging racial discrimination, it also starts to shed light on the influence of competing agendas.

Considering the rise of the *Front National* (FN), now headed by Marine Le Pen and posing a serious threat in upcoming presidential elections,⁹⁷ the question of immigration is of special importance. The FN's unabashed criticism of Islam in France and its xenophobic positions against immigration as a threat to the "French people" put immigration and Islam at the front of political debates. This manifested recently in Marine Le Pen's comparison of Muslim prayers in the streets of Lyon to an "occupation."⁹⁸ The continued focus on immigration in the media and political debates, including those on racism and racial discrimination, must be contextualized within the wider framework of political strategies for re-election. As the debates on national identity in 2009-2010, on the burqa in 2010, and on the place of Islam in France in 2011 indicate, the FN's campaign proves successful in framing politics as Left and Right politicians follow suit and position themselves on these issues.

The anti-racial discrimination debate is in fact riddled with inconsistencies when the dominant methods of measurement rely on the problematic distinctions between "*français de souche*" and Other. Nonetheless, the interlinking of immigration, diversity and antidiscrimination through the debate on ethnic statistics cannot solely be attributed to the FN's rise. The government's appropriation of the ethnic statistics

⁹⁶ Fassin, "Statistiques raciales ou racistes? Histoire et actualité d'une controverse française."

⁹⁷ LeMonde.fr and Agence France-Presse, "Un nouveau sondage illustre la dynamique Marine Le Pen," *Le Monde*, March 5, 2011, http://www.lemonde.fr/politique/article/2011/03/05/un-nouveau-sondage-illustre-la-dynamique-marine-le-pen_1489056_823448.html Accessed 2011-06-06.

⁹⁸ lefigaro.fr, "Islam et Occupation : la provocation de Marine Le Pen," *Le Figaro*, December 12, 2010, <http://www.lefigaro.fr/politique/2010/12/11/01002-20101211ARTFIG00475-islam-et-occupation-la-provocation-de-marine-le-pen.php> Accessed 2011-06-24 09:58:46.

debate – and subsequent transformation to diversity statistics – solidifies the link between a specific immigration agenda that poses increasing limits on migration and burgeoning economic interests where “diversity” and “diversity statistics” are offered as counter-measures to a discriminatory agenda. What is problematic however, is how this political agenda faces limited constraints by institutional checks while antidiscrimination does. The 2007 Constitutional Council decision exemplifies these tensions by only limiting the possibility of diversity statistics within the context of antidiscrimination.

Beyond the National Debate: International Reactions and Contributions

So far, this chapter has traced the ethnic statistics debate at the national level but it now contextualizes this debate in relation to international commitments. This last section shows how despite the many claims made about France’s unique republican approach as an excuse against using ethnic statistics, actors cannot consider the French case in isolation from its international commitments, even though these are largely ignored. This case study of the ethnic statistics debates highlights the wider influences that can contribute to further improvements to fighting racial discrimination.

The French republican position on ethnic statistics has garnered heavy criticisms from human rights activists both within and outside of France. The French human rights ombudsman, the CNCDH, has expressed that France’s position on ethnic statistics is not tenable at the international level. In an interview, the CNCDH’s Michel Forst explained that the Commission has been quite disappointed in the general animosity towards statistics, and that the tools would be quite welcomed by them:

And then the second subject is the question of ethnic statistics, or the counting, rather in fact, or measures that allow to quantify, to measure diversity and discriminations, where here we think that we should actually put in place a true tool that allows to

measure diversity, to measure discriminations. So, with all practical precautions of course, but here too, when France responds to the United Nations committee, to CERD, that France does not have statistics, well in fact, that's not a response. How to measure, how to count if we don't have an instrument of measure, and how to fight against a phenomenon if we are incapable of quantifying it? And here, we find those responses a little short at this time.⁹⁹

Yes there is a debate with Yazid Sabeg that is on one side, but at the same time, there is a strong resistance from for example antiracist organizations, from SOS Racisme, from the LICRA. A certain blockage on the subject that I find regrettable.¹⁰⁰

Similar reactions are heard from Régis de Gouttes, the French representative to the Committee on the Elimination of Racial Discrimination (CERD). CERD has previously criticized France's limited statistical tools to combat racial discrimination. In response to France's 2005 State Report, the Committee made the following remark and recommendation to France with regards to statistics:

While it takes note of the establishment of an Observatory for Immigration and Integration Statistics in July 2004, the Committee shares the view expressed by the Court of Audit in the above-mentioned report that efforts to combat discrimination have suffered and still suffer from inadequate statistical coverage. The Committee recalls its general recommendation XXIV concerning article 1 of the Convention, as well as its general recommendation XXX on discrimination against non-citizens, and invites the State party to harmonize and refine its statistical tools to enable it to draw up and implement a comprehensive and effective policy to combat racial discrimination.¹⁰¹

In an interview, Régis de Gouttes further explained CERD's perspective:

So here, the position of our committee is very clear, we are very favourable, not only favourable, but we consistently ask it of states, to establish racial-based statistics, racial and ethnic on racial and ethnic discriminations. We ask them constantly because we say if truly, the way, if we want to really analyse, evaluate the situation of a country, we need statistical data, and so we ask them consistently. But we have received much resistance, because there are many states, including France, that up to now in any case, say no, our legislation, our principles, they are opposed because we see a phenomenon of stigmatization in them. But at the same time, for a committee like ours, how not to, how not to ask for ethnic and statistical data? So what we say is that, of course, there are assurances in any case, especially anonymity, voluntary, meaning on a voluntary basis: declaring membership to so and so group only if you want to. So anonymity and voluntary. If these two conditions are combined, we say

⁹⁹ Michel Forst, Secretary General, "CNCDDH."

¹⁰⁰ Ibid.

¹⁰¹ Committee on the Elimination of Racial Discrimination, *Consideration of Reports Submitted by States Parties Under Article 9 of the Convention. Concluding observations of the Committee on the Elimination of Racial Discrimination. FRANCE* (CERD, April 18, 2005), 2.

you should orient yourself towards this solution, but having said this, it is not at all the position of my country up to date.¹⁰²

At the international level, France's human rights commitments appear at odds with the dominant position with CERD on the use of ethnic statistics. Increasingly, pressure is applied on France to change its position and incorporate these tools to strengthen antidiscrimination action and policy. Concerns at the European level also stress the importance of statistical evidence, but are nonetheless more in line with France's approach. The June 2010 report on France published by the European Commission against Racism and Intolerance (ECRI) applauds the debate on ethnic statistics, as well as the Constitutional Council's decision on the matter. ECRI recommends that France:

Envisages collecting data broken down according to categories such as ethnic or national origin, religion, language or nationality, so as to identify manifestations of discrimination, while ensuring that this collection is systematically carried out in accordance with the principles of confidentiality, informed consent and individuals' voluntary self-identification as members of a particular group.¹⁰³

ECRI's position reinforces the distinction between objective and subjective data, but does suggest that subjective data relating to the feeling of belonging to be taken into account.

In a recent report entitled "Measuring Discrimination. Data Collection and EU Equality Law," the European Network of Legal Experts in the Non-Discrimination Field explored the compatibility of data collection with European law. This report found that the realization of equality of treatment in practice – and thus substantive equality, or "real" equality – requires substantial data. This data is valuable for legal proceedings, internal monitoring, and more importantly, for the analysis of the causes of discrimination. In its analysis of compatibility, this report concludes that not only is this data necessary, but that its collection does not contravene privacy laws, notably Article 8 of the European Convention on Human Rights, Article 17 of the ICCPR and the EU Data Protection Directive, because it has legitimate aims of antidiscrimination

¹⁰² Régis De Gouttes, French Representative to CERD, "Committee on the Elimination of Racial Discrimination," Audio recording, April 14, 2009.

¹⁰³ European Commission Against Racism and Intolerance, *ECRI Report on France (fourth monitoring cycle)* (Council of Europe, June 15, 2010), 45.

and conforms to the principle of proportionality.¹⁰⁴ This would imply that at the regional legislative level, it would not be problem for France to measure discrimination using statistical data.

With regards to statistics, the Race Directive *allows* for their use as evidence to prove discrimination (particularly indirect discrimination): “The appreciation of the facts from which it may be inferred that there has been direct or indirect discrimination is a matter for national judicial or other competent bodies, in accordance with rules of national law or practice. Such rules may provide in particular for indirect discrimination to be established by any means including on the basis of statistical evidence.”¹⁰⁵ Placing the impetus on member states to opt for ethnic statistics or not to, the directive does not impose such measures for combating racial discrimination, but it opens up the path for member states to do. The French government is therefore within its rights to refuse the institution of ethnic statistics, but it also faces increasing pressures to change its position against them. France’s debate on this issue, however, should not be isolated from this wider legal and political framework, which needs to be brought into the discussion rather than ignored.

Evolution and Consequences of the Debate

Examining the arguments on both sides of the debate on ethnic statistics, it becomes increasingly apparent that there continues to be great contention over the use of ethnic statistics in France. Despite the fact that ethnic statistics are far from becoming a widespread antidiscrimination tool in France, especially in the private sector, proponents of ethnic statistics are generally happy that, at the very least, the terms of the debate have changed. It would have been nearly impossible to discuss introducing ethnic statistics twenty or even ten years ago. With memories of the Vichy government still prevalent, it seemed improbable that ethnic statistics would even be considered;

¹⁰⁴ Measuring Discrimination. Data Collection

¹⁰⁵ The Council of the European Union, 2000/43/EC Preamble (15).

many republicans would claim that they are too reminiscent of the Vichy Government keeping records of Jewish French citizens.

Today, there has been a noticeable shift in the debate in favour of those policymakers and researchers advocating the use of ethnic statistics. Human resources consultant Khalid Hamdani explains his own change in attitude: “Having hesitated for a long time on the question of ethnic and racial enumeration, and after over ten years of working in the field to reduce discriminations in access to employment, I am convinced that an evolution of our statistical system is not only necessary, but urgent.”¹⁰⁶ Another notable change of opinion is that of sociologist Dominique Schnapper who has always expressed strong commitment to republican values and universalism as the ideal for French society and French political culture. Yet, while remaining reticent and worried about some of the perverse effects of ethnic statistics, Schnapper also acknowledges that ethnic statistics may have to come into place out of respect for the democratic will of the people:

My reticence is accompanied by the strong sentiment that adopting ethnic categories, that, in a society that values scientific reason, appears necessary to “scientifically” consecrate the existence of discriminations and give antiracist activists and policy makers fighting mechanisms founded in reason – in sociological reason – is inevitable in so far as it participates in the democratic process.¹⁰⁷

My personal sentiment that has always been [to be] reticent because I was more sensible to the inconveniences, meaning, to the dangers of assigning people to their origin, than to the advantages of fighting discriminations, because I think that the fight against discriminations, it is included in the idea of citizenship. If citizenship were respected, there wouldn’t be discriminations and there wouldn’t be any sociology of interethnic relations. So I would like, if you want, I would like that there wouldn’t have been a need for ethnic statistics, meaning that my sentiment, the state of feeling is that if the republic were true to itself, there wouldn’t be a need for ethnic statistics, because we wouldn’t have to measure discriminations. But I note the fact that social reality does not conform to the republican idea and that democratic aspiration leads in a way that seems to me inevitable, irresistible, that we establish forms of ethnic statistics.¹⁰⁸

¹⁰⁶ Hamdani, “Visible pour les discriminations, invisibles pour les statistiques,” 35.

¹⁰⁷ Dominique Schnapper, “Les enjeux démocratiques de la statistique ethnique,” *Revue française de sociologie* 49, no. 1 (2008): 139.

¹⁰⁸ Dominique Schnapper, April 2, 2009.

Schnapper's sway in opinion reflects a significant change; her past positions and writings have always indicated a strong commitment to republican values, and she would probably be expected to be one of the last people to concede to the important push towards ethnic statistics. And yet, this evolution seems irreversible too. As Pap Ndiaye comments: "I think that we are getting to it progressively, that we have made progress over a few years, that today, many people recognize that it is useful while ten years ago, it was impossible to discuss it. So progress has incontestably been made, but there is plenty of resistance from the side of more conservative republicans, SOS Racisme, and that world."¹⁰⁹

The CRAN generally congratulates itself on both making the debate acceptable, and making it evolve as it has:

I think that things have evolved. [...] the changes are much more recent to that, that's what I meant. Just three years ago, at the time of the CRAN's birth, when you spoke of diversity statistics, well it was irrelevant, completely taboo, and today, we, with the CRAN, you couldn't take that away from us, because the debate on statistics, it is us that carried it forward. Once we were created, we said we will measure diversity. Everyone said but what is that, we're going to measure discriminations, how awful! Diversity statistics, ethnic statistics we would say back in the day, and so, it is us first who changed the denomination.¹¹⁰

Tracing back the debate on ethnic statistics in France, it is clear that it had already started in the late 1990s, largely spearheaded by academics and researchers who pushed the republican boundaries with "daring" but also problematic studies that began to introduce contentious categories in research. Throughout, these debates were usually fuelled by controversies surrounding the choices made by some researchers to include questions related to ethnicity and/or race into their studies. It seems that the combination of various factors, including the growing public concern for racial discrimination, the appearance of diversity politics from 2004 onwards as well as the creation of the CRAN all contributed to the re-ignition of the ethnic statistics debate on a much greater scale. This change is so marked for France that even some opponents of these measures, such as the antiracist association LICRA,

¹⁰⁹ Ndiaye, interview.

¹¹⁰ Patrick Lozès, President of CRAN, "Interview with Patrick Lozès, President of CRAN."

applaud that the debate is happening, as it brings the issue of racial discrimination to the forefront of public attention.¹¹¹

Whilst this debate has evolved significantly and brought the issue of racial discrimination to national prominence through heavy media attention, it also must be noted that the recent shift towards diversity statistics indicates that the debate has veered off-course. The appropriation of the debate by politicians and the aggregation of different agendas espoused by activists, academics and business actors have notably transformed the discussion to the point where the original goal of anti-racial discrimination becomes lost as competing political agendas dominate resulting in doors closing on the possibility of ethnic statistics as an antidiscrimination tool.

Conclusion

What Future for Ethnic Statistics in France?

This recurring debate ignites many passions in France, and has created a deep schism between those in support of and those against ethnic statistics. What results is a confused debate within which a number of amalgamations permeate the public sphere through jumbled media representation. Supporters of ethnic statistics are accused of wanting to establish ethno-racial positive discrimination or a State-led, macro ethno-racial referential, holding files on anybody and everybody that would indicate their ethnicity, culture, religion or race. Ultimately, this results in an accusation of racism, because to want to see race is racist in itself according to a narrow reading of republican values. This view has been solidified by the 2007 Constitutional Court decision, which has cast doubt over the possibility of ethnic statistics contributing to fighting racial discrimination. Ironically, it seems to have left room for the use of subjective data so long as it does not relate to the measurement of diversity, integration or discrimination.

¹¹¹ Ligue Internationale Contre le Racisme et l'Antisémitisme, "LICRA."

Despite the strong opposing arguments, the two positions are far from set in stone. While most antiracist organizations have publicly positioned themselves against ethnic statistics, interviews with these organizations also indicated *internal* divisions, with a number of activists supporting such indicators.

A number of perspectives have been presented in this chapter: both practical and ideological arguments come to play in this debate. As a case study, it brings to light the tensions inherent in a “raceless” approach to antiracism: not only are there significant legal constraints to apprehending racial discrimination within the justice system, but there remain conceptual obstacles preventing an evolution in the republican antiracist stance. While this debate can be considered a step forward for France in the sense that it challenges the republican tradition and brings the issues to the forefront, it also demonstrates that republican antiracism continues to perceive racism in terms of immigration, refusing to incorporate the perspective of victims into this approach.

Practically, not much has actually changed: it appears that the debate is still going strong, but not resulting in any significant changes to the implementation of anti-racial discrimination tools. The 2007 Constitutional Council decision actually appears to have limited the range of these tools, since the qualification of ethnicity and race as subjective data has had serious implications beyond the debate on ethnic statistics. True to republican values, anti-racial discrimination therefore continues to be the result of approximations and this long-standing debate, while hugely significant considering the context of French political culture, is ultimately still just a debate.

Chapter Seven: Diversity, an Effective Antidiscrimination Tool?

Introduction

Following his ascent to the French presidency, Nicolas Sarkozy launched a committee in 2008 with renowned French lawyer and politician Simone Veil at the helm to consider including the Republic's newfound interest in promoting diversity in the constitution. One of the committee's goals was to decide whether "it is necessary to render possible new integration politics, further benefiting the diversity of French society to promote the real respect of the principle of equality."¹ This request and subsequent inquiry mark a significant change on the French public scene, in which the discourse of *diversity* as an antidiscrimination tool has come to take a prominent position.

Previous chapters have traced how the French "invention of discrimination"² instigated a newfound national focus on the problems of discrimination. Racial discrimination has been taken on board by politicians and academics as a key problem in French society,³ but is generally considered only one of many problems of discrimination, including on the grounds of gender, sexuality, health, religion, nationality, age, etc... With racial discrimination becoming a serious issue of public concern from 2000 onwards, new actors emerged onto the public scene to present a new way of combating racial discrimination, employing the language of "diversity."

The introduction of the concept presented an "easy," comfortable way of discussing the aims of an integrated, cohesive society, without the accusatory tone

¹ Comité de réflexion sur le préambule de la constitution, *Rapport au Président de la République*, December 2008, 5.

² Fassin, "L'invention française de la discrimination."

³ Geisser and Soum, *Discriminer pour mieux régner*.

that antiracist or anti-discriminatory, and generally more repressive measures take: diversity has become a slogan and a *voluntary* measure that institutions, businesses, universities can take up, without tackling the perhaps more negative aspects of antidiscrimination. Facing up to accusations of racial discrimination, often highly visible in the media with court cases, is to be avoided. The legal repression of racial discrimination and other forms of discrimination is perceived as much more negative than the discourse of diversity, which presents actors as actively promoting antidiscrimination.

Appropriating the American style language and approach to diversity management, the drive towards enhancing diversity within French corporations has grown quite rapidly, transforming the antiracist and anti-racial discrimination scene. Where antiracist associations and public actors were once seen as the key players in this field, supplemented by reinforced legal mechanisms, the emergence of *diversity* introduces new actors and new approaches, but has significant implications for the fight against racial discrimination.⁴

This chapter seeks to explore this shift towards “diversity” to assess how the introduction of this concept impacts the overall fight against racial discrimination in France. This chapter will thus examine the rationale behind diversity policies, the types of actions they imply and their implementation, through an extensive analysis of diversity policies in the private and public sectors. Through this analysis, this chapter will argue that diversity measures, while carrying an initial potential to provide a way of getting around the constraints posed by republican universalism regarding questions of race, gradually transition into a problematic approach that diverges from the original goal of challenging racial discrimination. Although diversity policies initially emerge to target racism and racial discrimination, they undergo a process of universalization – similar to other areas of anti-racial discrimination – that results in pushing race aside to prioritize other forms of

⁴ Laure Bereni, “‘Faire de la diversité une richesse pour l’entreprise’ La transformation d’une contrainte juridique en catégorie managériale,” *Raisons Politiques*, no. 35 (August 2009): 8-106.

exclusion, whilst reinforcing certain discriminatory practices at the same time. Through this process, diversity policies are also gradually appropriated into the realm of politics, further constraining their potential impact. After firstly examining the emergence of diversity in France primarily within the private sector, this chapter evaluates the implementation of diversity policies in private and public sectors to demonstrate the extent to which diversity remains a very “fuzzy” concept in its application.

The Emergence of Diversity on the French Antidiscrimination Scene

Diversity: A Tool for Equality?

Before 2004, “diversity” in France usually referred to “cultural diversity” (*diversity culturelle*), a Government policy to protect French art and culture from international markets.⁵ From January 2004, however, the concept re-emerged taking on a new meaning relating to equality, racial discrimination, and the multicultural fact of France.⁶ Previously, diversity concerns influenced the policies of elite schools like the Institute of Political Sciences of Paris (“Sciences Po”) and *Club Averroes*, a network of media professionals lobbying for increased diversity in the communication sectors and the media, but it only resonated as a hot topic due to the influence of leading businessmen Claude Bébéar and Yazid Sabeg.

Businessmen Bébéar and Sabeg have appeared as key figures through their active lobbying for diversity policies in the private sector, triggered by the publication of several reports concerning racial discrimination in French

⁵ Former Minister of Culture and Communication, Catherine Tasca explains “It’s a policy that consists in protecting cultural protection from only market forces and in asserting the right of States to establish support mechanisms for their culture to find its place on the planet, even if these mechanisms should interfere with free competition.” Cited in Bertrand De Saint Vincent, “Catherine Tasca: «On joue sur les mots en opposant exception et diversité culturelle»,” *Le Figaro Magazine*, February 9, 2002.

⁶ I surveyed all headlines containing the word “diversity” from 1990 to 2010, including both online and printed versions of *Le Monde*.

corporations. In January 2004, Sabeg and Laurence Méhaignerie published the report “The forgotten of equal opportunities. Participation, plurality, assimilation... or withdrawal?”⁷ and later that year, in November 2004, Bébéar published a related report entitled “Corporations in France’s Colours. Visible Minorities: Taking on the challenge of access to employment and of integration in the corporation.”⁸ Both reports were published by the *Institut Montaigne*, an independent think tank established in 2001 by Bébéar that has largely contributed to introducing the “diversity” agenda to the private sector.⁹ These reports target the particular issue of racial discrimination in employment and more specifically in the private sector.

While this initiative is predominantly business oriented and led, it also reflects increasing government interest in the question, with business and public actors reciprocally promoting the diversity agenda. Bébéar’s report specifically responds to government-led initiatives calling on the business world to participate in the overall fight against discrimination, to actively reflect the diversity of France within businesses and to target discrimination from within the sector. This report is prefaced by a letter from then Prime Minister Jean-Pierre Raffarin urging a reflection on the question of diversity from within the private sector:

Today, the life journeys of our fellow citizens of foreign origin are still too often faced with multiple obstacles that are not fortuitous, what sociologists call ‘glass ceilings.’ However, if the components of the national community are diverse, this diversity must be found on all societal levels, meaning including the highest. This diversity must be visible: it is a question of justice, it is also the only possible avenue for revitalizing the republican pact. [...] It is why I deem indispensable that private actors invest themselves in these issues of equal opportunities in matters of recruitment and in employment in corporations, whatever its size or its activities sector.¹⁰

The government is thus actively implicated in introducing a diversity agenda within

⁷ Yazid Sabeg and Laurence Méhaignerie, *Les oubliés de l’égalité des chances. Participation, pluralité, assimilation... ou repli?* (Institut Montaigne, January 2004).

⁸ Claude Bébéar, *Des entreprises aux couleurs de la France. Minorités visibles: Relever le défi de l’accès à l’emploi et de l’intégration dans l’entreprise*. (Paris: Institut Montaigne, November 2004).

⁹ “L’Institut Montaigne - Think Tank indépendant”, n.d., <http://www.institutmontaigne.org/site/page.php> Accessed 2010-06-15.

¹⁰ Bébéar, *Des entreprises aux couleurs de la France*, 3.

the private sector.

The combination of government pressure and business initiatives to implement diversity policies in the private sector is therefore based on a conflation of “diversity policies” with equality and antidiscrimination. The push towards increasing diversity within business is presented through these reports and government instructions as the solution to redress inequalities and a method to combat racial discrimination. Progressively, diversity becomes equated with antidiscrimination.

This conflation of equality and diversity does not happen only on the national level, but is also reflected in wider European politics and cannot be taken in isolation from similar moves at regional and international levels. Already, at the EU level, there has been a campaign sponsored by the EU Commission conflating equality and the fight against discrimination with diversity politics. As a follow-up to the Equality Directives of 2000, the EU Commission launched a campaign in 2003, entitled “For Diversity. Against Discrimination.” with the stated aims “to raise awareness of the existing antidiscrimination legislation and of discrimination in general, and to promote the benefits of diversity.”¹¹ This was part of the wider “Community Action Programme to Combat Discrimination” launched in 2001, a six-year funding programme, carrying a budget of approximately 20 million Euros annually.¹²

In the way that it is presented, a diversity programme offers potential for providing an alternative approach that could complement antiracist activism and the legal apprehension of racial discrimination, by tailoring the initiatives to the specificities of the private sector. Just because it is presented as such, it does not

¹¹ European Commission - Employment, Social Affairs and Equal Opportunities, “For Diversity. Against Discrimination,” *ec.europa.eu*, n.d., <http://ec.europa.eu/social/main.jsp?catId=542&langId=en> Accessed 2010-11-28.

¹² European Commission, Directorate-General Employment, Social Affairs and Equal Opportunities, Anti-Discrimination Unit, *5 years of raising awareness in the European Union. The “For Diversity. Against Discrimination.” information campaign* (EU Commission, 2008), 6–7.

necessarily follow that diversity policies actually contribute to the overall fight against racial discrimination or to greater equality.

This chapter's further exploration into the implementation of diversity policies across various sectors cannot be removed from wider political and economic developments because other elements are at play here, as the next section outlines. Contextualizing the emergence of diversity policies in the business sector and the supposed link between diversity and equality in France within the framework of neoliberalism clarifies underlying tensions in these claims for equality.

Contextualizing Diversity Politics and the Politics of Diversity

A conceptual link between diversity policies and equality emerged in the United States in jurisprudence relating to budding affirmative action policies in certain American states during the 1970's.¹³ This jurisprudence and case law led to the promotion of diversity policies to target the long-established racial inequalities in a country only just emerging from entrenched racial segregation following the Civil Rights Movement.¹⁴ Diversity policies were thus established within the particular context of a race-conscious system that does not have the same problematic approach to racial identification as in France. While diversity politics have since prospered in the USA, expanding into sectors beyond higher education, it is not until 2004 that a similar concept of ethnic or racial diversity began to reverberate around the French scene.

Because of this context and tradition, the rapid rise of a diversity discourse on the French scene has often been characterized as the introduction of American-

¹³ Bereni, "Faire de la diversité une richesse pour l'entreprise"; Daniel Sabbagh, "L'itinéraire contemporain de la 'diversité' aux États-Unis: de l'instrumentalisation à l'institutionnalisation?," *Raisons Politiques*, no. 35 (August 2009): 31-48.

¹⁴ Julie Ringelheim, "Diversity and equality: an ambiguous relationship. Reflections on United States case law on affirmative action in higher education," in *The politics of diversity in Europe*, ed. Gavan Titley and Alana Lentin (Strasbourg: Council of Europe Publishing, 2008), 31-44.

style multiculturalism. President Sarkozy's statement in support of positive discrimination and his nomination of a Muslim prefect appear to be a significant "turning point."¹⁵ The growing diversity agenda in France, seeping into politics, business, higher education, etc... is largely perceived to be an offshoot of multicultural policy, a reflection of Sarkozy's intention to introduce identity-based policies such as those seen in the United States, in Canada or in the United Kingdom.

In terms of the binary opposites of French universalism and Anglo-Saxon multiculturalism, the increased use of the language of diversity has largely been perceived as an attempt to impose something external to the French tradition. The foreign and supposedly American character of positive discrimination, diversity, positive action, and ethnic statistics contribute to the belief that these measures have no place in republican France. American multiculturalism and its policy offshoot are dismissed as inapplicable in France,¹⁶ and when perceivably related policies are employed in France, they are characterized as American. For example, republican sociologist Dominique Schnapper who sat on the Constitutional Council stressed the close link between diversity and affirmative action in an interview:

DS: "They all speak of diversity not to say affirmative action." KS: "Do you think that it is equivalent, diversity and affirmative action?" DS: "Yes, well affirmative action means having a policy *for*, so it is not the same thing. It is, diversity, refers to what the goal of affirmative action was."¹⁷

However, the automatic association of any such policies to American multiculturalism limits analytical scope and ignores crucial aspects of this debate, particularly in the significant political agenda behind diversity policies in various French sectors. Aside from the typical questioning contrasting "multicultural" and

¹⁵ Fourest, *La dernière utopie*, 250–251; Patrick Simon, "Comment la lutte contre les discriminations est-elle passée à droite ?," *Mouvements* (December 13, 2007), <http://www.mouvements.info/Comment-la-lutte-contre-les.html> Accessed 2010-12-20.

¹⁶ Slama, "Contre la discrimination positive"; Bourdieu and Wacquant, "On the Cunning of Imperialist Reason."

¹⁷ Dominique Schnapper, interview.

“universal” approaches, the rise of diversity policies in France needs to be contextualized within the framework of the neoliberal agenda.

To analyze the relationship between diversity policies and neoliberal policies, it is first necessary to unpick the very concept of “diversity” as an emerging paradigm. Generally speaking, diversity is a very fluid concept that evokes different meanings for different contexts and actors, and that carries a significant conceptual duality that must be addressed in any attempt to evaluate the effectiveness of “diversity” as a tool for achieving equality. In analyzing the concept, Judith Squires refers to “frames” from which diversity can be understood: on the one hand there is “the emergence of ‘diversity’ as reflecting the claims of marginalized cultural groups, social movements, and difference theorists,”¹⁸ and on the other, there is “‘diversity’ as a managerial policy and modality of governance, devised as a means to pursue economic productivity with greater efficiency.”¹⁹ This dichotomy also correlates to the distinction brought forward by Davina Cooper between *diversity politics* and the *politics of diversity*, respectively. Cooper identifies the *independent* radical challenges by minorities to different systems of oppression (racism, patriarchy, neoliberalism...) on the one hand and the depoliticized management of this diversity on the other.²⁰ Understanding the nuances distinguishing these two sides of the dichotomy is imperative for thoroughly breaking down the concept of diversity in its implementation in France.

Within the French context, both aspects of diversity (diversity politics and the politics of diversity) have emerged onto the public scene. The 1980’s, for example, witnessed the *Marche pour l’égalité et contre le racisme* (March for equality and against racism – December 1983) where migrants and racialized youths used the language of civil rights to challenge the racism and inequalities they experienced

¹⁸ Judith Squires, “Diversity: A Politics of Difference or a Management Strategy?” (Unpublished paper, 2005), 3.

¹⁹ Ibid.

²⁰ Davina Cooper, *Challenging Diversity. Rethinking Equality and the Value of Difference* (Cambridge: Cambridge University Press, 2004).

in their everyday lives.²¹ More recently, groups such as the CRAN, the Collectif DOM, ADEN, and the *Indigènes de la République* make similar claims for the increased recognition of the diversity in a plural France through discourse and activism that incorporates racialized experiences and analysis of French society. The rise in a diversity discourse in France is not only reflected in the activities of such movements, but it has also made significant advances beyond the business world, in political discourse, as manifested by Sarkozy's support of positive discrimination and the creation of the French Muslim Council (*Conseil Français du Culte Musulman* – CFCM) in 2003.

All these examples can fall under the bracket of “diversity” but there is a clear difference between these last examples and grassroots movements that have emerged from within civil society. This distinction is important to bear in mind when evaluating the potential antidiscrimination element of contemporary diversity policies in France and the issue of whether diversity policies contribute to the fight against racial discrimination.

The expanding diversity agenda in the private sector and in political discourse marks the increasing shift towards Squires' second frame or towards Cooper's reference to the politics of diversity, with diversity rapidly becoming a neoliberal tool of governance. Attributing responsibility to the influence of Anglo-Saxon multicultural policies is thus problematic in the way that it tends to deflect responsibility from the French government's neoliberal policy. *What is the relationship then, between the politics of diversity and neoliberalism?*

The shift from “diversity politics” to the “politics of diversity” occurs with the appropriation of the “diversity” concept and related policies to further the aim of increasing economic growth. This appropriation functions according to a particular process centered on the idea that issues of racism and sexism will be resolved by the

²¹ Lentin, *Racism and Anti-Racism in Europe*.

free market. Patrick Simon proposes that “modern capitalism no longer needs racism to organize exploitation at the local level, which is probably not true at the global level, as evidenced by North-South relations. In a context of a labour market restructured around immaterial services and productions, racial barriers are no longer necessary to modulate statuses and organize production.”²² This idea echoes the arguments in Walter Benn Michaels’ *The Trouble with Diversity*: “A society free not only of racism but of sexism and of hetero-sexism is a neoliberal utopia where all the irrelevant grounds for inequality (your identity) have been eliminated.”²³ According to the free market rationale then, racism and discriminations are presented as counter-productive, thwarting the overarching goal of economic efficiency, productivity and gain, rather than morally wrong. This does not imply that Michaels supports racism, sexism, etc... but he argues that the idea of the market regulating these inequalities is false. As Lentin and Titley explain, “Neoliberal approaches to race take it for granted that capital in the USA since the 1960s has been colour blind (Winant 1997). Neoliberals are thus deeply invested in the commitment to post-racialism because capitalism, it is held, gains no advantages in reproducing racisms. Racial discrimination, therefore, cannot be said to be responsible for the greater deprivation experienced by people of colour, disparities which many neoliberals admit, but which are attributed to a host of other, racially inflected, reasons for individual underachievement.”²⁴

Michaels’ argument, which primarily focuses on the USA example, has recently been taken up by critics of the French approach to diversity such as Caroline Fourest who questions President Sarkozy’s development of diversity policies over redistributive economic policies at a time when the gap between the rich and the poor is only widening as a result of liberal economic policy.²⁵ Also, in a review published in *Le Monde*, Philippe Bernard evaluates Michaels’ work in relation

²² Simon, “Comment la lutte contre les discriminations est passée à droite.”

²³ Walter Benn Michaels, *The Trouble with Diversity. How we learned to Love Identity and Ignore Inequality*. (New York: Hold Paperbacks, 2006), 75.

²⁴ Lentin and Titley, *The Crises of Multiculturalism. Racism in a Neoliberal Age*, 168.

²⁵ Fourest, *La dernière utopie*, 113.

to France: “Sometimes caricatural but saved by its irony, the book in fact argues for the defense of the so-called “French model” of equality, blind to origins and religions, extension of “*laïcité*” even if it does not use this word, without English equivalent.”²⁶ This comment fails to understand the particularities of the US situation and imposes a French reading onto it. Frequently cited and applauded in fieldwork interviews for this research, the connections drawn between Michaels’ work and France fail to establish crucial links between France’s own neoliberal policies and the push towards diversity.

The arguments developed by Walter Benn Michaels are used within France as a validation of the republican model over Americanized identity-based policies. But the French version of “diversity” is not necessarily inconsistent with the republican model of universalism, as subsequent sections of this chapter will show. When reading Michaels’ book with the French context in mind, the aim should not be to pit the republican model against the “American” model of multiculturalism but to question the similarities between US and French economic policy. Fourest’s critique for example, misses the point in marking a separation between liberal economic policy and diversity policies, as the latter supports the goals of the former.

Employing diversity to further a neoliberal economic agenda relies on specific mechanisms by which the free market takes charge of and exploits the concept of diversity. Henry Giroux claims that “Within the discourse of neoliberalism, democracy becomes synonymous with free markets, while issues of equality, racial justice, and freedom are stripped of any substantive meaning and used to disparage those who suffer systemic deprivation and chronic punishment.”²⁷ He goes on further to qualify neoliberalism as “an ideology, a politics, and at times a fanaticism that subordinates the art of democratic politics to the rapacious laws of a

²⁶ Philippe Bernard, “La diversité, nouvel opium du peuple ?,” *LeMonde.fr*, March 15, 2009, http://www.lemonde.fr/livres/article/2009/03/14/la-diversite-nouvel-opium-du-peuple_1167970_3260.html Accessed 2011-06-26 .

²⁷ Henry A. Giroux, “The Terror of Neoliberalism: Rethinking the Significance of Cultural Politics,” *College Literature* 32, no. 1 (Winter 2005): 9.

market economy that expands its reach to include all aspects of social life within the dictates and values of a market-driven society.”²⁸

Previous chapters have traced the manner in which non-governmental actors such as the HALDE (until its dissolution) and civil society activists have carried the onus of fighting racial discrimination. Effectively, it appears that political powers have devolved this fight against racial discrimination and racism to other actors: aside from introducing antidiscrimination legislation, the French government has largely delegated antiracist activities, formally or informally. The turn towards diversity policies follows this model of devolution, but with a new twist, now turning to actors in the private sector. This management of antiracism based on delegation functions well within the prism of neoliberal ideology.

While actors such as Bébéar and Zabeg have had a strong role in bringing the diversity agenda into the private sector, the infusion of diversity policies within business works in coordination with governmental interests. Already, as established above, the Bébéar report – influential in paving the way for diversity policies – directly resulted from a request by then Prime Minister Raffarin urging big business to take on racial discrimination and endorse diversity. Considering Giroux’s assessment of neoliberalism, these developments in France seem to be informed by similar patterns and appear consistent with what Bauman describes as the “disconnection of power from obligations.”²⁹

Within the French context, “the disconnection of power from obligations” can operate along two different levels: firstly, it can relate to the overarching power of the government, which systematically delegates responsibility for antiracism and antidiscrimination to other actors, and secondly, to the power held by private sector corporations. By applying pressure on other actors and transferring the

²⁸ Ibid., 12.

²⁹ Zygmunt Bauman, *Globalization: The Human Consequences*. (New York: Colombia University Press, 1998), 9–10 cited in. Giroux, “The Terror of Neoliberalism,” 11.

responsibility of antiracism onto them, the government appears to promote antiracism and anti-racial discrimination, whilst concurrently implementing xenophobic, racist or discriminatory policies. This is precisely what happened, for example, when the French government restricted immigration and set expulsion quotas targeting Roma in July 2010,³⁰ at a time when public policy is presented as overly concerned with fighting discrimination, as has been the case since the French “invention of discrimination.”³¹ By delegating responsibility, the government is therefore also releasing itself from democratic obligation to citizens. In turn, the business sector manifests power by giving the impression of actively contributing to the promotion of equality – as diversity increasingly becomes falsely presented as synonymous with equality – whilst perpetuating discriminatory practices, especially at higher managerial levels. In this sense, not only is there a disconnection of power from obligations, but also absolution from any further obligations (in the sense that diversity measures are often introduced as a preventative measure from future legal troubles).

Throughout this process, overarching *power* nonetheless remains with the State, which can still continue to manage diversity. The deployment of diversity policies is of particular use to the State, as it can maintain control over the way that racial discrimination *appears* to be challenged, whilst further strengthening its own political interests. This control remains apparent in the transition from the HALDE to the *Défenseur des droits* (the Rights Defender) as the agency responsible for antidiscrimination. The dissolution of the HALDE and its replacement by the rights ombudsman elicited a number of concerns over this questionable move. Antiracist and human rights activists challenge this move as counter-productive, claiming that the new structure will hinder the specific fight against discrimination and that there are no guarantees of its independence.³² European deputy and member of the UMP,

³⁰ Fressoz, “La polémique monte autour de l’expulsion des Roms.”

³¹ Fassin, “L’invention française de la discrimination.”

³² “Indépendance et moyens de la HALDE menacés : la lutte contre les discriminations sacrifiée ?,” *Mouvement contre le racisme et pour l’amitié entre les peuples*, March 9, 2010, <http://www.mrap.fr/contre->

Dominique Baudis, has been nominated by President Sarkozy as head of the new agency, reigniting the concerns already raised in Chapter Five.³³

Furthermore, there is consternation that the government is stifling opposition to policy that is deemed discriminatory. Even though specific questions of the HALDE's independence have been raised in Chapter Five, the HALDE did produce deliberations and decisions that were not always favourable to the government, especially in relation to the aforementioned 2007 immigration law and on the treatment of Roma (before Bougrab's presidency).³⁴ Socialist senators Alain Anziani and Bariza Khiari suggest that the HALDE's dissolution is the government's reaction to the HALDE's criticisms of immigration policy and its publication of discriminatory practices by big corporations (evidenced through testing of corporations within the CAC40).³⁵ This apprehension is reflected in a number of media publications and in activist circles. In contrast to the HALDE, diversity policies offer the state the possibility of demonstrating its commitment to fighting racial discrimination, without the worry that they will challenge its power. The government portrays its commitment to diversity which is entrusted to the private sector, and stifles opposition to state-sanctioned discrimination.

Diversity policies prove useful to the state in symbolically counteracting the socio-economic failures and continued oppression of disadvantaged populations by marketing the racialized and bringing them into the neoliberal project with their supposed inclusion into "diversity." But as Lentin and Titley argue, the state can simultaneously delineate what consists of *bad diversity* through the "act of cultural

le-racisme-sous-toutes-ses-formes/discriminations/independance-et-moyens-de-la-halde-menaces-la-lutte-contre-les-discriminations-sacrifiee Accessed 2011-06-26.

³³ AFP, "Baudis: un choix politique" pour Lang," *Le Figaro*, June 7, 2011, <http://www.lefigaro.fr/flash-actu/2011/06/07/97001-20110607FILWWW00441-baudis-un-choix-politique-pour-lang.php> Accessed 2011-06-26 .

³⁴ HALDE, "Délibération relative au caractère discriminatoire de certaines dispositions de la loi n° 2007-1631 du 20 novembre 2007 relative à la maîtrise de l'immigration, à l'intégration et à l'asile n° 2007-370."

³⁵ Alain Anziani and Bariza Khiari, "La HALDE cannibalisée," *Le Monde*, June 3, 2010, <http://alainanziani.fr/content/la-halde-cannibalis%C3%A9e-par-alain-anziani-et-bariza-khiari-le-monde-3-juin-2010>.

governmentality.”³⁶ The burqa, for example, as the new target of governmental concern in 2010, resonates loudly as emblematic of unwanted diversity in France.³⁷ The state can therefore maintain control through its management of good and bad diversity.

Big business and the Right mutually benefit from this shift, as capitalism and the fight against inequalities are no longer mutually exclusive. It would be a mistake, however, to present these developments as mainly a result of Rightist combinations of business and antidiscrimination.³⁸ On the contrary, the marriage of diversity and seemingly contradictory, even racist or xenophobic practices and policies spans the political spectrum.³⁹ Giroux’s above assessment of a neoliberal marketization of social issues appears particularly relevant in the French context when viewed through the prism of diversity policies in the private sector. Through this process there is also the possibility that social actors, civil society activists and ground-level movements will be pushed aside in the field of antiracism, which is doubly problematic if the diversity policies that are enacted instead do not actually contribute to instilling equality, but instead function to hide certain forms of inequalities.

Throughout the analysis presented in this chapter, it is therefore important to bear in mind these wider debates about diversity, as they relate to specific political and economic concerns that are not necessarily relevant to the objective of equality. This chapter will bring into question whether this link between equality and diversity is actually reflected in the implementation of diversity policies across private and public sectors. It is first necessary, however, to examine the justifications put forward for instituting diversity within the business world.

³⁶ Lentin and Titley, *The Crises of Multiculturalism. Racism in a Neoliberal Age*, 190.

³⁷ Ibid.

³⁸ “Comment la lutte contre les discriminations est-elle passée à droite ? - Mouvements”, n.d., <http://www.mouvements.info/Comment-la-lutte-contre-les.html>.

³⁹ Éric Fassin, “Le loup de la xénophobie et l’agneau de la diversité,” *Regards.fr*, February 4, 2008, <http://www.regards.fr/nos-regards/eric-fassin/le-loup-de-la-xenophobie-et-l> Accessed 2011-05-19; Geisser and Soum, *Discriminer pour mieux régner*.

Justifications for Diversity in the Private Sector

Since its emergence in 2004, the diversity agenda has been taken on significantly within the private sector with increasing numbers of private sector actors engaged in developing diversity management within their companies. Recent research shows that various factors and reasons can be attributed to this engagement, and include two main types of arguments: ethically grounded arguments and economic arguments.

The moral arguments deployed in favour of introducing diversity politics within the private sector relate to the question of corporations' *social responsibility*. With growing concern for discrimination matched by a relatively stronger antidiscrimination legal framework, the corporate world is claiming some responsibility for ensuring that the private sector is in compliance with the law and towards society in general, for the sake of social cohesion and wider social good.¹ Couching this justification in terms of social responsibility meets the need for companies and management to keep the legal system at bay, by taking control of employment and workplace discrimination in their own way. As Robert-Demontrond and Joyeau explain: "The social responsibility of companies, the self-regulation of their activities, allows the substitution of a public regulation system by a private regulation system, by the public: the social actors to which the company must account its acts, for its survival."² By taking internal action, companies can thus demonstrate their willingness to participate in the fight against racial discrimination, simultaneously remaining one step ahead of possible legal sanctions or entanglements that can result in negative media attention. It reflects the resentment towards government or public involvement in what is considered to be a private, business matter: companies and corporations do not want public bodies to dictate how their activities should be run. Voluntarily committing and displaying this commitment to diversity politics within

¹ Philippe Robert-Demontrond and Anne Joyeau, "Vives et vertus de la diversité ethno-culturelle," *Revue management & avenir* 4, no. 10, Management Prospective Editions (2006): 118–119.

² Philippe Robert-Demontrond and Anne Joyeau, "La performance des politiques de diversité en question: une étude des représentations des acteurs," *Revue management & avenir* 31 (n.d.): 79.

the private sector, companies thus attempt to gain a level of independence from public intervention.³

This is increasingly evidenced by economic arguments deployed to support such managerial policies, identifying private sector diversity policies as beneficial to the overall competitiveness of the business and potentially financially rewarding. It is argued that diversity can not only increase the level of creativity within the workplace, but that it can also foster a positive image of the company in the eyes of consumers.⁴ To this end, a “diversity label” has been introduced to highlight corporations that actively engage in diversity policies serving this exact purpose through the logic that consumers will more likely support a corporation officially recognized as promoting diversity. These arguments posit that diversity creates a healthier and more positive work environment, in which values of tolerance and respect are considered a priority. A more pleasant and creative work environment can increase employee productivity, while a public and advertised diversity label will improve the image and reputation of the business and positively influence consumption.⁵

Both economic and moral arguments already bring into question the proposed link between diversity and equality. Equality is not the primary end goal; instead it is a tool to increase productivity, output and attract consumers. Even the commitment to diversity articulated around social responsibility is, as described above, not identified as a goal in itself, but rather manifests a willingness to remain in control of internal personnel management. It also reflects less concern with preventing discrimination because it is morally wrong, than an attempt to avoid the negative impact a legal case can bring to a company’s image and subsequently consumer base. Identifying the chief arguments used to promote diversity policies in the business world, it is clear that diversity becomes another corporate strategy.

³ Robert-Demontrond and Joyeau, “La performance des politiques de diversité en question”; Bereni, “Faire de la diversité une richesse pour l’entreprise.”

⁴ Robert-Demontrond and Joyeau, “La performance des politiques de diversité en question,” 78–81.

⁵ Ibid.

In spite of the economic benefits diversity policies can bring, their introduction has met resistance argued along economic and socio-political lines, reflecting a theoretical evaluation of diversity's place in business that questions the private sector's actual responsibility to the rest of society. Firstly, there is apprehension over the resources and time that would be co-opted to benefit diversity politics in the workplace, at the detriment of productivity. There is also concern that involvement in activities that are not purely mercantile takes away from a business ethos.⁶

Other arguments display concerns of a different nature: it has been argued that taking on diversity measures could adversely affect employees and the workplace because of communications issues and "language and cultural differences."⁷ Accordingly, it leads to a potential clash of cultures or religions within a given company due to the racist ideas and stereotypes that dominate the public domain and media, which would emerge if there was a more diverse workforce.⁸ This is not a new argument, often used to excuse shops and companies that prefer to racially discriminate, thereby breaking the law, than potentially lose clientele that holds these racist attitudes.⁹ Or again, there is a fear that diversity would reinforce identity-based groups that will discriminate against non-minorities. Rather than mediating and challenging racist attitudes, they are allowed to flourish if perceived to increase productivity and consumerism.

As with most debates, the language of republican tradition is present, employed here to maintain opposition to diversity policies. Opponents to diversity measures caution against the dangers of "communitarianism," interpreting these policies as potentially divisive to employees, and society in general. The diversity agenda would thus go against the principle of universalism and non-differentiation by reinforcing isolationist community-based identification. The appropriation of

⁶ Robert-Demontrond and Joyeau, "La performance des politiques de diversité en question"; Robert-Demontrond and Joyeau, "Vives et vertus de la diversité ethno-culturelle."

⁷ Robert-Demontrond and Joyeau, "La performance des politiques de diversité en question," 85–86.

⁸ Ibid.

⁹ Dominique Schnapper, interview.

American-style language of diversity also leads to amalgamations linking diversity to “multicultural” policies (affirmative action, positive discrimination, ethnic statistics, etc...) perceived as antagonistic to republican values. More generally, diversity policies are seen to result in the entrenchment of particularistic identities. This type of positioning ultimately establishes an indirect link between diversity and racism, where diversity would promote communitarianism, which as seen throughout this research, is considered, as the antipode of universalism, as equal to racism.¹⁰

Varied arguments are thus deployed in favour of and against diversity policies in the French private sector but, despite the negative arguments, French companies are increasingly joining this campaign for diversity and implementing policies within their human resources and management, as attested by the growing number of signatories to the Diversity Charter. The Diversity Charter was launched by Bébéar and Sabeg in 2004, calling on private actors to fight discrimination, specifically racial discrimination. Any company can commit to this charter if it “condemns discriminations in the field of employment and decides to act in favour of diversity.”¹¹ In its first year of existence, only a dozen or so companies formally accepted this commitment, but this number grew exponentially over the years and by May 2011, 3 235 corporations have since signed up to the Diversity Charter.¹²

There is an obvious element of self-interest for the private sector, whereby companies can improve their image – and therefore increase consumer interest – while minimizing the possibility of legal repression by nurturing an impression of conscientious corporations, in tune to the realities of racial strife. “Diversity” seems to have caught on rapidly in the private sector in France, but there remains a contradiction, as notes sociologist Laure Béréni, between the wave of commitment towards increasing diversity policies and continued large-scale denial of

¹⁰ Robert-Demontrond and Joyeau, “La performance des politiques de diversité en question.”

¹¹ “Charte de la diversité - La Charte de la diversité, une initiative d’entreprise.”, n.d., <http://www.charte-diversite.com/charte-diversite-la-charte.php>.

¹² Charte de la diversité en entreprise, *Liste des signataires*, April 30, 2010.

discriminations in the workplace.¹³ This chapter seeks to explore this contradiction further, which becomes clearer with the analysis of how diversity policies are implemented.

Universalizing Diversity

Having contextualized the emergency of diversity policies within France as an antidiscrimination tool, as well as within the wider context of neoliberal agenda, this chapter has thus far established that there are some key tensions between the diversity and equality agendas, which do not necessarily overlap. This has already been exposed in the analysis of justifications for introducing diversity policies in business, which largely ignore the question of equality. This section will now focus more precisely on the way that diversity policies have been implemented, in light of the objectives announced at the onset of diversity's emergence from 2004 onwards. The question that can be raised about the commitment of private sector businesses to "doing diversity"¹⁴ is two-fold: firstly, to what extent do diversity policies in the private sector actually constitute effective antidiscrimination or antiracist mechanisms, and secondly, what perverse effects can such policies have on the struggle to challenge racism? As will become apparent through this section, the initial focus on implementing diversity policies to target racial discrimination specifically is rapidly diluted through the process by which discrimination and diversity are concurrently universalized, bringing into question the relationship between diversity and equality.

Towards Ethno-Racial Diversity? The Universalization of Diversity Through Implementation

¹³ Bereni, "Faire de la diversité une richesse pour l'entreprise."

¹⁴ Sara Ahmed and Elaine Swan, "Doing Diversity," *Policy Futures in Education* 4, no. 2 (2006): 96-100.

Diversity, as a concept relating to antidiscrimination, can be quite ambiguous unless properly defined, but initially, diversity politics in the French context were presented in a very targeted manner. The efforts instigated by Sabeg and Bébéar for more diversity in the private sector were specifically directed towards increasing the level of *ethnic* and *racial* diversity within this sector. As Sabeg emphasizes in the preface of his report, “It is urgent to build the legal framework for an appeased citizenship, based on ethnic diversity and equal opportunities,”¹⁵ identifying two groups left behind by equal opportunities: “the declassed” and the “visible minorities.” The first category refers to the former “native French” (ie white) working class people who face extremely high levels of unemployment today. The second group is defined as follows:

Principally North Africans and blacks – even though they represent nearly twelve percent of the population, do not truly participate in public life and in the fate of French society – except in the area of sports and arts. Invisible or nearly in the management of corporations, institutions, intermediate bodies, on television or within the political sphere, they are also largely underrepresented in public service and in highly visible positions (media).¹⁶

Similarly, the Bébéar report is entitled “Corporations in France’s Colours,” specifically referring to the discrimination experienced by *visible* minorities, therefore largely attributable to their skin colour, or generally to physical characteristics.¹⁷ Here, Bébéar offers the following definition of “visible minorities:”

To refer to our “fellow citizens of foreign origin,” we have employed the expression of “visible minorities.” By this we mean our fellow citizens, who do or do not come from immigration, who reside in France and whose skin colour distinguishes them in the eyes of the majority of our fellow citizens.¹⁸

Through these definitions, both the Bébéar and Sabeg reports are responding to the general tendency to refer to minorities in France as “French citizens of foreign origin” as former Prime Minister Raffarin did in the letter cited above. The continued reference to French citizens’ possible ancestral link to countries other than France

¹⁵ Sabeg and Méhaignerie, *Les oubliés de l’égalité des chances*, 12.

¹⁶ Ibid., 25–26.

¹⁷ Bébéar, *Des entreprises aux couleurs de la France*.

¹⁸ Ibid., 9.

contributes to the refusal to fully accept non-whites, or those who do not “seem” French as whole and equal citizens.

They therefore underline the inherent paradox of emphasizing republican universalism and the widespread acceptance of nomenclature that constantly highlights a difference between those citizens who are “native French” and those whose parents or grand-parents have migrated from other countries, former colonies, or from French overseas territories. By referring back to the non-French origin of only certain portions of the population emanating from immigration, mainly extra-European immigration, a systematic line is drawn in the public eye of a distinction between French citizens. This correlates with the widespread difficulty in finding appropriate terminology to speak of the racism and discrimination, and more generally the experiences of ethnic, racial, cultural, linguistic, religious, etc. minorities, without breaking the supposed republican commitment of non-discrimination or stepping over the line of the race taboo. The phrase “visible minorities,” and by extension the concept of diversity, therefore attempts to rectify the gap in the current terminology that attempts to refer to those experiencing racism in a roundabout way.

It therefore appears that from the onset, diversity agendas have expressively targeted French citizens who have been racialized and who have experienced racism and racial discrimination. Through the elaboration of these agendas, businesses thus began to tackle racial discrimination in employment specifically to promote more ethno-racial diversity in the private sector.

This is not the first time direct measures have been set in place to target a very specific form of discrimination. While “diversity” itself only emerged in its current form from 2004 onwards, there have been indirect forms of group-based diversity policies in politics, only under a different name. In the eighties and nineties, the issue of *parité* emerged concerning gender equality, which questioned the limited role of women in government and politics. Despite many obstacles in the advancement of this cause in French politics, the parity movement has since been widely successful,

culminating in the 2000 law “designed to promote equal access of women and men to electoral mandates and elective functions.”¹⁹ Previous attempts had failed because of constitutional constraints preventing the Government from passing legislation enforcing gender parity so it only became within politics through a 1999 constitutional reform, finally allowing the Government to enact legislation promoting a greater representation of women in political parties and in government, for example through equal gender representation on party electoral lists.²⁰

Gender parity was initially controversial, similar to controversies surrounding the issue of race, bringing into question the Government’s role in institutionalizing gendered differences in legislation and policy. Much like race and ethnicity, gender was largely considered to be an illegitimate basis for differentiation and therefore contrary to universalism. To overcome the perceived tension between gender parity and universalism, gender, as an “illegitimate” category underwent a process of universalization whereby gender parity was rationalized and re-conceptualized in order to be included within republican values.

This process was achieved through the conceptualization of gendered differences as universal, a difference existing across all groups. Daniel Sabbagh explains the argument: “The idea was that there is a fundamental and universal anatomical duality of humanity. Being universal, this duality was thought to be congruent with Republican universalism. It was seen as the original, universal division that spans all divisions.”²¹ By making this argument, parity activists also challenge the idea of a social construction of gender; for example Gisèle Halimi expressed that “women do not constitute a community, and do not have among them any communitarian links, as defined by sociologists. They are neither a race, nor a class, nor an ethnicity, nor a category. They are found in all these groups, they engender them, they cut across them. Sexual difference constitutes the initial parameter. Before

¹⁹ *Loi n°2000-493 du 6 juin 2000 tendant à favoriser l’égal accès des femmes et des hommes aux mandats électoraux et fonctions électives*, 2000.

²⁰ Ibid.

²¹ Sabbagh, interview.

being a class, a race, a corporation, etc... the human being is first either feminine or masculine.”²²

Two significant processes are happening here. On the one hand, gender is re-conceptualized to be incorporated into the universal, and as a result, the gender diversity issue quickly becomes prominent and largely accepted on the French political scene. This process is double however, as the universal itself is reciprocally reshaped and redefined through this process. Gender may have already partly been incorporated into the universal with women’s enfranchisement but universalism is now explicitly taking on a new form. Considering Balibar’s analysis of the relationship between universalism and racism, this development is very significant: universalism, although constantly advocated as an all-encompassing facet of French political culture whereby no one is excluded, is proven to still be restricted. The fact that gender parity required a re-definition of universalism to be accepted implies that universalism contained restrictions as a concept. Although gender has now been incorporated into the universal, other elements – the racialized – continue to be excluded.

The example of gender parity is important for understanding the approaches to ethno-racial diversity in the private sector. Diversity, as we will see now, also undergoes a process of universalization, but unlike gender, there is no place for race or ethnicity in the universal. While “gender” was conceptually transformed through a universalizing process rendering it an acceptable target of government and legal action, the contentious concepts of race and ethnicity cannot undergo the same process. I now turn to the implementation of diversity policies

As mentioned above, prominent and politically engaged businessmen like Bébéar and Sabeg initiated diversity policies in the private sector specifically to target the discriminations faced by “visible minorities” in the workplace, in other words, targeting racism and racial discrimination. However, in the implementation of

²² Gisèle Halimi, “Parité hommes-femmes : un débat historique ?,” *Le Monde*, March 7, 1997.

diversity policies, it becomes apparent that diversity itself is *universalized* resulting in private sector policies that actually take a more generalized approach to diversity, no longer focusing solely on the plight of ethno-racial minorities in France. The message is lost along the way and dilutes the issue of race.

Doytcheva's extensive research into corporate implementation of diversity policies highlights the impact of challenging racial discrimination within a universal, raceless approach that does not take into account ethno-racial factors. Generally, it appears as though the promotion of diversity has increasingly been geared towards age and disability, bypassing the question of racism and racial discrimination.²³ Just as the overall political approach to racial discrimination has been universalized with the creation of a generalized antidiscrimination body (the HALDE), so diversity is universalized by taking into account all forms of discrimination. Even though the initial focus may have been racial discrimination, companies took the initiative to institute diversity policies that targeted all discriminations and resulted in a wider form of diversity. This only becomes a problem if certain forms of discrimination are ignored as a result.

Because diversity policies are based on the willingness of individual companies to actively engage in the overall fight against discriminations, they do not have any external constraints, aside from maintaining the principle of non-discrimination as prescribed by law. In terms of the choices to be made about how to tackle discrimination and promote diversity internally, companies have a vast independence. In practice, however, implementing a general diversity policy potentially requires large amounts of resources and time, and significant changes, so many companies have opted to focus their attention and efforts towards only a few forms of discriminations, rather than on all of them. It is therefore necessary for individual companies to determine which types of discrimination are the most significant, shaping their activities accordingly. Through a global focus on discrimination,

²³ Milena Doytcheva, "Réinterprétations et usages sélectifs de la diversité dans les politiques des entreprises," *Raisons Politiques* 35 (August 2009): 108–109.

diversity becomes universalized, but due to practical limitations, a hierarchy of discrimination is inevitably established within individual companies.

Doytcheva's research on the implementation of diversity policies in French private companies demonstrates how this selection, of *which* discriminations they will choose to target in their diversity campaigns, is often determined by a "self-diagnostic" system allowing individual companies to identify the most pressing discriminations *for them*.²⁴ As a result, several specific forms of discrimination, namely age, disability and sex/gender discrimination, appear to dominate the private sector while others are seen as less important or less relevant. Doytcheva's interview with a diversity manager brings to light this process of internally determining whether there is a problem of racial discrimination:

It's complicated when we ourselves don't discriminate or we don't have the impression of doing so, to perform a diagnostic. But I don't have the impression – I am not saying that there aren't problems here or there, there may be – I don't have the impression that it is really something that is significant. I do not think that there is strong discrimination in relation to this problem (ethnicity and "race"). You just have to look at the first page of the Villiers store.²⁵

The types of actions initiated by corporations with the aim of implementing "diversity" in the workplace reflect this broader tendency of putting issues of racism aside as research into their practices shows that "diversity" activities are actually quite limited in scope. Mainly reliant on awareness building internally, companies focus on getting the message of diversity across rather than implementing significant changes to organization structures. Some significant strides have been taken to neutralize the recruitment process by reinforcing the idea of "recruitment based on skills and ability," complemented by the establishment of "anonymous CVs," a practice

²⁴ Ibid., 118.

²⁵ Quoted in Milena Doytcheva and Marion Dalibert, *De la lutte contre les discriminations à la "promotion de la diversité". Une enquête sur le monde de l'entreprise*, Inégalités, discriminations, reconnaissance : une étude sur les usages sociaux des catégories de la discrimination (Université de Lille 3-GRACC/DREES-MiRE, December 2008), 110.

greatly advocated by antiracist organizations and antidiscrimination actors, including those within the government.²⁶

Nonetheless, stricter recruitment policies have generally not transmitted to high-level positions, often directed towards lower-level positions instead, with the assertion that higher diversity among lower-level employees will “trickle up” into other positions. This strategy is excused and attributed to other factors, where diversity of management is generally not seen as a goal, even implicitly, as Doytcheva describes:

This is where the posture of denial that we have mentioned previously can best be seen: yes, the question is raised, but from a strategic point of view, it is better to start ‘from the bottom’; yes, it is important, but our recruitment procedures are very ‘secure’ at that level; yes, we want to [promote diversity] but we lack candidates, etc.” The recruitment procedures are considered to be ‘transparent’ and effective, but it is mainly the lack of potential candidates that is cited as a reason for little diversity in the higher levels of management in the private sector.²⁷

Even actions directed at recruitment are not especially significant, as the focus is generally placed on reinforcing internal promotion of minorities, rather than on recruitment.²⁸

Displaying so much independence in the implementation of diversity policies, private sector actors have shown a general tendency to focus primarily on age, disability and gender discrimination, rather than on the specific issue of racism. This is largely due to the conceptual difficulties of determining the extent of racial discrimination in the business world compared with more easily identifiable forms of discrimination. The problem with race continues to pose roadblocks to the effective implementation of antidiscrimination policies as well as diversity policies. Even though racism was the primary target of diversity policies, it ironically is the most difficult to apprehend and is often ultimately pushed aside.

²⁶ Robert-Demontrond and Joyeau, “Vives et vertus de la diversité ethno-culturelle,” 127.

²⁷ Doytcheva and Dalibert, *De la lutte contre les discriminations à la “promotion de la diversité,”* 120–121.

²⁸ Doytcheva and Dalibert, *De la lutte contre les discriminations à la “promotion de la diversité.”*

What is striking is the way in which religion is also swept aside, remaining largely absent from diversity policies. Previous chapters have already raised concerns about the potential spillover effect of disregarding the intersection of religion and race on other aspects of French public and private life. The implementation of diversity policies in the private sector brings to evidence this spillover effect within French companies, in spite of this newfound concern for discrimination. In spite of growing commitment to “diversity,” research has shown that religion is one of the exceptions, the limit of diversity. In Doytcheva’s interviews with diversity managers and personnel, religion repeatedly appears to be the most problematic aspect of managing diversity.²⁹

The recurring controversial debates surrounding the hijab, the recent ban of burqas in all public spaces,³⁰ and the widespread debate on Islam all appear to significantly impact the implementation of diversity policies. The accepted and acceptable “republican” discourse on *laïcité* that stigmatizes Muslims has seeped into the private sector, where employers attempt to enforce their own conception of *laïcité* within their companies, independently of the government or legislation. This was recently exemplified in the case of a woman working in the nursery Baby Loup dismissed for donning a veil, which was contrary to the nursery’s internal rules. Some lawyers interpret the validation of the dismissal by the Labour Relations Board (*tribunal des Prud’hommes*) in September as an extension of *laïcité* to the private sector.³¹

Under the guise of the general or global principle of *laïcité*, the stigmatization of Muslims is increasingly legitimized even within the private sector, as it becomes acceptable to target and discriminate against them. Within the context of diversity

²⁹ Ibid.

³⁰ “Assemblée nationale ~ Mission d’information sur la pratique du port du voile intégral sur le territoire national ~ Liste des comptes rendus”, n.d., <http://www.assemblee-nationale.fr/13/cr-miburqa/09-10/index.asp> Accessed 2010-04-06.

³¹ Caroline Politi, “Ce que l’affaire Baby Loup va changer dans les entreprises,” *L’Express*, December 14, 2010.

policies, these developments are significant in highlighting that there are limitations to diversity. Just as racism falls to the wayside, so does religious discrimination, particularly Islamophobia. Islam is not the type of *visible* diversity that is sought. Islam, emblemized in veiled women, is qualified by Doytcheva and Dalibert as “hidden diversity,” a problematic diversity within the private sector that is “segregated in certain activity sectors and types of employment where it seems less likely to ‘shock the sensibilities’ of collaborators and ‘clientele,’ or otherwise, rendered invisible through technology and the lack of face-to-face contact.”³²

So even within the prism of diversity, presented as carrying antidiscriminatory aims, there is a reproduction of discriminatory practice already widely accepted in other facets of French society. The universalization of diversity policies in practice has allowed individual companies to target certain discriminations rather than others, often at the detriment of the fight against racism. Through its implementation, diversity is transformed, the practical reality of which contradicts the initial goals. What is particularly problematic, however, is that with increasing numbers of companies moving towards instituting diversity policies, there will be growing consensus that they are actively fighting discrimination, in all its forms, whilst actually ignoring certain forms. Increasingly, diversity seems even further away from any notion of equality or antidiscrimination.

With the rise of diversity policies, a number of French corporations made a very public commitment to the promotion of diversity by signing the Diversity Charter and later initiating the Diversity Label. Examining the Diversity Charter and Diversity Label initiatives is useful for questioning the relationship between diversity and equality.

Starting from the aforementioned Diversity Charter, which companies can sign to publicly engage in the promotion of diversity, such commitments have been further solidified with the creation of a “diversity label” in September 2008 in coordination

³² Doytcheva and Dalibert, *De la lutte contre les discriminations à la “promotion de la diversité,”* 129.

with the government.³³ *AFNOR*, the French national organization for standardization (*Association française de normalization*) has become involved in the diversity agenda, granting the “diversity label” to companies that have made demonstrable efforts in the promotion of diversity in employment. The certification is a “testimony to the commitment of institutions in matters of preventing discrimination, of equal opportunities and the promotion of diversity under the management of human resources.”³⁴ Companies who meet the requirements are then granted a three-year certificate, which they can advertise to the wider public and consumers.³⁵

The diversity label closely follows on and resembles another existing label: the “equality label,” created in 2004 by the Ministry of Labour, Social Relations, Family and Social Solidarity. According to the Ministry, “The ‘equality label’ results from a strong political initiative: that of valuing gender equality at work in both companies and public institutions. This label rewards bodies which are resolutely committed to gender equality at work.”³⁶ Building on existing private sector initiatives for greater gender equality in employment, the diversity label nonetheless significantly contrasts with the equality label. The creation of an entirely separate label gives the impression that there is something distinct between the diversity agenda and the equality agenda, even though diversity is often presented as part of the latter, as seen earlier.

The creation of a diversity label as something separate from the pre-existing equality label reinforces the conceptual limitation of the notion of diversity and its practical implementation. As the diversity discourse has emerged onto the public scene and been presented as an antidiscriminatory tool, one particularly targeting ethno-racial diversity, it would logically follow that diversity, described in this way,

³³ Doytcheva, “Réinterprétations et usages sélectifs de la diversité dans les politiques des entreprises,” 107.

³⁴ “AFNOR Certification - Le label Diversité”, n.d., <http://www.afnor.org/certification/lbh004#p18708> Accessed 2010-05-26.

³⁵ “AFNOR Certification - Le label Diversité”, n.d., <http://www.afnor.org/certification/lbh004#p18708>.

³⁶ Ministry of Labour, Social Relations, Family and Social Solidarity and Secretariat of State for Social Solidarity, “Equality Label Pamphlet” (Women’s Rights and Equality Service, October 2008).

should fall under the bracket of equality. Yet, they are maintained as two separate categories.

The “equality label” refers to an initiative set in place to guarantee gender equality within both public and private sectors, but considering that gender discrimination prominently features in diversity policies, it is necessary to question the decision to keep these two labels separate. Firstly, the distinction implies that there is a difference between gender equality, and other forms of equality. Considering the initial intent to target racial and ethnic discrimination through the prism of diversity, this distinction could be interpreted to emphasize the importance of the diversity agenda: corporations are committed to fighting all forms of discrimination and not just those based on gender. The language nonetheless remains problematic. Not including diversity under the equality label can also imply that diversity does not relate to the question of equality and that there is another meaning to be drawn from this alternative label. The separation of the diversity and equality agendas can indicate, for example, that displaying diversity is an end in itself, even if it only purports to aim for equality.

Another explanation is that this is another aspect of the universalizing process, which is attributed to an unwillingness to create hierarchies between different forms of discrimination (as well as the universal approach to racism and the disavowal of race as a category), but even so, it does not provide an adequate explanation or justification for keeping both labels distinct. Ultimately, it reinforces the idea that issues relating to gender equivocate equality, whereas all other forms of discrimination are part of “diversity” and not necessarily part of the equality agenda. Further to this, particular concern is raised for any possibilities of intersectional analyses within the gender equality/diversity dichotomy that is ultimately created by this distinction. While gender equality is targeted by the “equality label” and racism or racial discrimination supposedly falls under the bracket of diversity, this neat distinction does not account for the experiences of racialized women, a perspective

which, as previously seen in Chapter Five, does not appear in either institutional (the HALDE) or civil society antiracist practices.

The discursive dissonance established by the existence of these two dissociated labels accentuates the problematic nature of diversity, as a catchall phrase and policy that sells a particular message while hiding another agenda. With “diversity” rapidly becoming popular in the private sector and having a significant impact on how racial discrimination is fought (or is not fought) within companies, it is nevertheless important to look to other approaches to implementing diversity policies, beyond the private sector. Doing so will allow us to connect the different applications of the diversity agenda to wider contexts and developments to determine whether the problems established so far also constrain other sectors.

Towards Ethno-Racial Diversity in the Public Sector

The new discourse of diversity emanating from the private sector and big business commitments have started to have an impact on politics, increasingly putting pressure on the political elite. In 2004, former minister Dominique Versini published a report on the state of diversity in public function and appealed for a renewal of the republican pact that takes into account the diversity of French society.³⁷ Then in 2009, sociologist Eric Keslassy, a strong advocate of socio-economic positive discrimination in France, published another report for the Montaigne Institute entitled *Opening Politics to Diversity*, identifying key issues plaguing the political representation of visible minorities in France.³⁸ Increasing attention on the lack of diversity in politics and in the public sector marks a new political diversity agenda.

The lack of diversity in politics is attributed to various reasons. The Versini report argues that the failure of the republican model of integration, discriminations

³⁷ Dominique Versini, *Rapport sur la diversité dans la fonction publique* (Paris, December 2004).

³⁸ Eric Keslassy, *Ouvrir la politique à la diversité* (Institut Montaigne, January 2009).

faced by minorities (as well as discrimination based on sex, age, disability, etc...), the failures of the education system and the preponderance of disadvantaged areas all contribute to a large gap in representation in politics. Mostly, this report takes a class analysis, with recurring references to the metaphor of the “broken social elevator.”³⁹

But overall, racism in the public sector is not accepted as an explanation for the lacuna of minority representation, which is instead often attributed to the lack of viable minority candidates with adequate levels of experience presenting themselves as political candidates (similar to excuses in the business world).⁴⁰ For example, after a series of interviews with political actors, Keslassy dismisses the idea of racism in politics: “rather than speaking of racism to qualify the attitude of political parties [as suggested by some of his interviewees], it is decidedly more preferable to speak of their disregard towards visible minorities.”⁴¹

The depoliticization of racism in public sector activities is also reinforced by the Versini report adopting a universal and global approach to diversity. Diversity is thus defined accordingly: “We advocate a global definition and strategy of diversity, taking into account age, sex, disability, as well as people’s social origin and situation; this strategy should be coupled with a reinforcement of antidiscrimination mechanisms.”⁴²

Just as in the private sector, concern over the lack of diversity in politics and the public sector is markedly focused on ethno-racial diversity, with these aforementioned reports and works concentrating on the lack of ethno-racial minorities in political parties. This focus is both depoliticized in the abstraction of racism as an explanation for the lack of diversity and universalized as part of a wider, more global diversity as was the case in business. Unlike gender, which can be universalized, race and ethnicity cannot undergo this conceptual metamorphosis, and

³⁹ Versini, *Rapport sur la diversité dans la fonction publique*.

⁴⁰ Keslassy, *Ouvrir la politique à la diversité*, 43.

⁴¹ Ibid., 40.

⁴² Versini, *Rapport sur la diversité dans la fonction publique*, 35.

instead, they are perpetually introduced as part of a global, universal diversity agenda, that incorporates all forms of discrimination. This way, they will be “accepted” as targets of diversity policy rather than dismissed as anti-republican. Race and racism continue to be drowned out by a generalized approach, even though ethno-racial diversity is emphasized as the main target of this approach.

Implementing Diversity Policies in the Public Sector

The growing concern about the apparent political homogeneity has not translated into any significant actions to date, especially in comparison to the advances of gender parity over the last decade. Aside from high profile nominations of politicians “representing diversity”⁴³ there has been no solid top-down action visibly to demonstrate its commitment to diversity.

Various politicians have recently attempted to enlist a wider commitment to diversity in politics and in the public sector, with the 2004 establishment of a network of elite minorities, the *Club XXI^{ème} siècle* (Twenty-First Century Club), that aims to promote diversity among France’s highest professions. One of the network’s five goals is to “produce a particular reflection on the theme of the diversity of the French population (*but not from within the angle of discriminations* [my emphasis]) at a time when the government is mobilizing on the question.”⁴⁴ The Club members’ belief in the republican model of integration frames their general objectives of “improving the situation while refusing anything that separates”⁴⁵

This elite club thus aims to reunite a large number of high profile “successful” professionals in France, who are part of the “visible minority.” Their objective is to paint a “positive” picture of a diverse French population and to promote this diversity,

⁴³ Geisser and Soum, *Discriminer pour mieux régner*; Vincent Geisser and El Yamin Soum, “La diversité made in France : une avancée démocratique en trompe-l’oeil,” *Revue internationale et stratégique* 1, no. 73 (2009): 103-108.

⁴⁴ “Club XXI^e Siècle | Objectifs”, n.d., <http://www.21eme-siecle.org/index.php?id=192010-06-20>.

⁴⁵ *Ibid.*

through a range of activities such as seminars and dinners. One significant activity has been to draft the Political Diversity Charter (*Charte de la diversité politique*).⁴⁶ This charter, based on the models of the Diversity and Equality Charters, is aimed at politicians and political parties, to commit to promoting diversity in electoral lists and political activities.⁴⁷ This engagement would entail appointing a person in charge of diversity, monitoring antidiscrimination activities, and promoting greater diversity in national, regional and local elections and appointments within a given political party.

These actions appear to fall in line with the general wave of diversity-based activities across other sectors and, just like efforts in the private sector, specifically target ethnic minorities: in the Political Diversity Charter, political parties are encouraged to “seek to reflect the diversity of French society, and especially its cultural and ethnic diversity at all levels of our political party – activists, managers, candidates and politicians.”⁴⁸ However, the Club’s actions appear to be very depoliticized and removed from the antidiscrimination agenda. Stating that one of their chief objectives is to “produce a particular reflection on the theme of the diversity of the French population *but not from within the angle of discriminations*”⁴⁹ the Club distances itself from a strong antiracist message, focusing instead on the positive aspects of diversity. All the while, the message becomes confused, as it is expressed in the Political Diversity Charter that “It is not to establish political commitments based on origin. Our action aims to combat discriminations, not to increase them.”⁵⁰

No significant concrete actions emerge as a result of the Club’s ambiguous objectives with respect to antidiscrimination. The Political Diversity Charter has had very few signatories, and has been characterized as a failed experiment. For example, 2007 presidential candidate Ségolène Royal only signed up to this charter between the

⁴⁶ Club XXI^e siècle, “Charte de la diversité politique”, n.d.

⁴⁷ Ibid.

⁴⁸ Ibid.

⁴⁹ “Club XXI^e Siècle | Objectifs.”

⁵⁰ Club XXI^e siècle, “Charte de la diversité politique.”

two rounds of the 2007 presidential election, which could be considered a conciliatory gesture in hopes of gaining political momentum during a tight campaign race rather than an actual pledge.⁵¹ Apart from several lukewarm efforts initiated by the Club, it does not appear to have made any significant impact in terms of widening diversity in politics and other professions. This could be attributed to the club's ambiguous stance on antidiscrimination, as well as to the highly restricted and elite nature of the network. Similar ambiguities are found at the wider political level.

It may appear contradictory for a Rightist leader, President Sarkozy, to be one of the most vocal politicians on the necessity of increasing diversity in all sectors of French life. This commitment appeared to be confirmed with his appointments of Rama Yade, Fadéla Amara and Rachida Dati to government positions following his election win in 2007. The high visibility of prominent minority women in the government gives the impression that the French government is making significant strides in ensuring that there is real diversity within French politics, one that reflects the important presence of minorities in French society. In terms of how successful such appointments can be in the greater fight against discrimination, Geisser and Soum warn, "the injection of diversity into senior positions could consist in a superficial colorization, without effectively addressing the problems of structural discrimination."⁵²

As seen previously, various actors have criticized such appointments as "tokenistic" gestures, as opposed to an indication of the government's political will. While there are undoubtedly elements of tokenism in these appointments, there are other factors that come to play here. This becomes more evident when examining wider developments in parties across the political spectrum. Taking over from a Left that did not seem too interested in diversity in politics, the Right appears to have

⁵¹ Céline Marcon, "Mais où sont passées les « minorités visibles » ?," *www.bakchich.info*, December 2, 2008 Accessed 28/06/2011.

⁵² Geisser and Soum, "La diversité made in France," 106.

embraced the *discourse* of diversity and inequalities.⁵³ When it comes to racism, the Left remains fixated on its universal and global approach, while the Right appears to have embraced the issue. Geisser and Soum's interviews and research on the participation of minorities in mainstream French political parties is indicative of this as numerous accounts confirm the idea that across the spectrum, the discourse of diversity and the vocal commitment to curbing racial discrimination does not translate into any significant changes for ethno-racial minorities in political parties. Instead, latent racism continues to hold a prominent place while minorities are often overlooked for any important positions within political parties.⁵⁴

There is therefore a severe disconnect between the discourse of diversity and the application of the discourse to everyday situations and sectors. This disconnect was blatant in the recent controversy surrounding Interior Minister Brice Hortefeux, who was found guilty and fined in June 2010 for "racist insult against the Maghrebian community."⁵⁵ Hortefeux, who appealed the ruling, has not faced any political fallout because of this conviction, his position in Government remaining intact. This incident is indicative of the apparent contradiction between discourse and action on a greater political scale. This "contradiction" is further apparent in the greater political dynamics in France. President Sarkozy himself carries this double discourse, condemning racial discrimination and advocating diversity on the one hand, whilst pushing a security-based agenda centered on managed migration on the other. The latter is riddled with negative imagery castigating immigrants and minorities for "failing" to integrate and even threatening to strip French citizenship from "delinquents" of "foreign origin."⁵⁶

⁵³ Simon, "Comment la lutte contre les discriminations est-elle passée à droite ?"; Mouvement Contre le Racisme et pour l'Amitié entre les Peuples - Service Juridique, "MRAP."

⁵⁴ Geisser and Soum, *Discriminer pour mieux régner*.

⁵⁵ "Le ministre de l'intérieur, la justice et la morale."

⁵⁶ "Discours extrêmement musclé de Sarkozy à Grenoble," *France Info*, August 31, 2010, <http://www.france-info.com/france-politique-2010-07-30-discours-extremement-muscle-de-sarkozy-a-grenoble-471346-9-10.html> Accessed 2010-08-30.

However, just as in the case of corporate diversity, the *discourse* of diversity in the public sector coupled with existing discriminatory practices, is not as contradictory as it appears. Patrick Simon, for example, suggests that there is no real rupture with the republican model of integration (to be replaced by an antidiscrimination agenda).⁵⁷ Along these lines, the antidiscrimination agenda, manifested by the pro-diversity discourse, appears to work towards strengthening and securing the integration model by taking on a new approach. Despite the fact that minority appointments in the name of diversity largely appear to simply be symbolic gestures, there are significant implicit dynamics at their root. Firstly, the government is sending the clear message that through the promotion of diversity – presented as the missing link between the two – it is actively fighting racism and promoting equality. This message is highly discursive, as it has not been matched by any substantive action and implementation. Secondly, it is actively promoting and reinforcing the idea of a particular integration, by opposing the problematic “immigrants” and exemplifying the “good” minorities who reach the top. Geisser and Soum describe this “schizophrenia” of French political leaders: “They declare the fight against discrimination “national priority” all the while fundamentally remaining prisoners of an integrationist representation of “visible minorities,” considering the “minority” as responsible of his own social and cultural exclusion.”⁵⁸

This is where the agendas of private and public sectors intersect, as the discourse of diversity is very much informed by governmental immigration policy, but also by a greater neoliberal push. Integration becomes two-fold. First, there is social integration where diversity policies indirectly promote the republican integration model by giving the impression that being of “foreign origin” no longer impacts ascension to success. But there is also economic integration, where there is greater access to employment across all classes, or at least that is the impression created through the diversity discourse. With the wave of diversity policies, failure to achieve

⁵⁷ Simon, “Comment la lutte contre les discriminations est-elle passée à droite ?”; Simon and Zappi, “La lutte contre les discriminations.”

⁵⁸ Geisser and Soum, *Discriminer pour mieux régner*, 61.

success can only be due to failures of minorities to integrate, rather than any other structural causes and racism becomes completely removed from the equation.

Diversity as an Antidiscrimination Tool

*"Diversity is a fundamentally polymorphous notion – as was integration – that, from its generalization, its vulgarization and its diffusion, loses from its reformative power, at the risk of becoming a hollow slogan, dressed with some scentless and painless 'little measures,' without any real repercussions on discrimination."*⁵⁹

The emergence of the concept of diversity in France, as a way of promoting the plurality of French society, appears to have had a great impact in many areas of French society, politics, media, private sector businesses, etc... since 2004. Diversity is repeatedly presented as central to French antidiscrimination from the various diversity charters to the Bébéar report stating that "companies who are already on the front line of integration have to amplify their actions to fight against discriminations that our fellow citizens from visible minorities are victim to, because they know that it is in the national interest."⁶⁰ Or again, the 2010 report by Patrick Lozès and Michel Wieviorka entitled *Fight Against Racism and Communitarianism* which made fifty propositions for social cohesion, with nearly 40 percent of which refer to "diversity" and various forms of promoting diversity. This particular report presents "diversity" as one of the key aspects of achieving effective results for fighting racism.⁶¹ The government has also taken this concept on board, and nominated Sabeg to the position of Diversity and Equal Opportunities Commissioner in 2008 to develop this agenda.⁶² However, this chapter challenges the presentation of "diversity" as a

⁵⁹ Geisser and Soum, "La diversité made in France," 104.

⁶⁰ Bébéar, *Des entreprises aux couleurs de la France*, 41.

⁶¹ Lozès and Wieviorka, *Lutte contre le racisme et le communautarisme*.

⁶² "Yazid Sabeg nommé commissaire à la Diversité et à l'Égalité des chances | Portail du Gouvernement", n.d., <http://www.gouvernement.fr/gouvernement/yazid-sabeg-nomme-commissaire-a-la-diversite-et-a-l-egalite-des-chances> Accessed 2010-06-21.

manifestation of greater claims for equality from marginalized groups, rather than a political and economic form of governance managed from the top.

Several issues arise from this apparent amalgamation of diversity and antidiscrimination, as expressed by political scientist Daniel Sabbagh:

In my view, it is neither analytically useful, nor politically wise to act as if antidiscrimination and diversity were identical or automatically related concepts. [...] The fact that there is x percent of people of origin y in sector z, in and of itself, is not always a legitimate object of concern for state authorities. It is so only when the degree of under-representation of members of some groups is such that you cannot reasonably assume that discrimination played no part in it, or that this is only the result of a collective preference that members of these groups just happen to have.⁶³

For Sabbagh, who has extensively researched the emergence of diversity in the USA in relation to affirmative action policies and antidiscrimination in general, the introduction of diversity in France via the business world and the amalgamation of diversity and antidiscrimination has been imported from the USA without adequate consideration of the particular American context that led to this amalgamation in the United States. Very specific judicial constraints led to the development of diversity policies in the United States, but Sabbagh claims these were not taken into account when adopting this concept in France.⁶⁴

But as we have seen throughout this chapter, it is not only an importation from the United States that was applied without much thought. While there are most likely problems in the application of “American-style” diversity within the French context, diversity has also actively been developed and managed to promote a very specific French political agenda. Considering the long-standing phobia towards “Anglo-Saxon” policies, it is unlikely that these policies have just “happened” in France, but appear rather to be part of distinct political processes, of particular EU policy and of the need for non-race euphemisms in France. Government endorsement of diversity policies

⁶³ Sabbagh, interview.

⁶⁴ Ibid.

must also be re-evaluated in relation to the continued importance of a neoliberal agenda which mobilizes the aims of antiracism to benefit economic growth, as seen earlier.

On the surface, the increasing development of diversity politics in different sectors of French life is touted as a “positive” approach to fighting discrimination: actions can be carried out by companies, independently from the government, with the added bonus of generating economic benefits (through increased productivity, displayable labels, etc...). While diversity programmes in the private sector can effectively have a positive influence on the profile of companies and raise awareness of the impact of racial discrimination, there is no guarantee that these policies will actually function towards antidiscrimination.

This concern has been raised by several anti-racist organizations, including SOS Racisme:

It is business associations that position themselves in a logic of managing the risk of conviction for discrimination, and so they develop a discourse on diversity and not on the fight against discrimination, with this utilitarian rhetoric, ‘I need to be certain of not being too strongly condemned’ and so blocking everything that is put forward in law and defending the rights of victims.

Today, the idea has developed that diversity is what is needed, and not the fight against discrimination. Diversity, there is no consensus on what that means. At least we know what discrimination is. It is a rupture with equality, it is a right; we are talking about justice, of equality between individuals. So we can identify. Diversity, it is a little bit more difficult, no one agrees. The problem in France is discrimination. [...] The problem is not that there are three blacks or three Arabs in a company, because diversity is not equal to nondiscrimination. You can have all the logics of reflecting society in companies, etcetera and continue to have discriminatory selection processes.⁶⁵

Effectively, recent research into the practices of companies promoting diversity policies indicates that not enough effort is placed on antidiscrimination. Instead, the companies focus on the positive aspect of the diversity message and only superficially

⁶⁵ SOS Racisme, interview.

address discrimination in recruitment and career promotion, whilst simultaneously continuing racist practices.

The combination of companies deciding what type of discrimination they want to target in their diversity policies and the initiation of activities that only superficially aim to inject a bit of diversity into the private sector therefore does not amount to an approach that challenges racial discrimination. Through attempts to positively spin the antidiscrimination aims of diversity politics in the business world, the repressive angle of legal antidiscrimination measures appear to be greatly diluted.⁶⁶ As one human resources development manager explains efforts to step away from the negative aspects of antidiscrimination, “There is a connotation that is not necessarily linked to business. We think more of an association that will fight against discrimination, than a business. Fighting against, it’s not positive, while managing diversity, it is much more positive, so it is much more mobilizing.”⁶⁷

The companies therefore engage in diversity activities that *appear* to be the lighter side of challenging discrimination, the more positive approach to a repressive legal system, but that consequently does not yield strong antidiscrimination measures. Adhering to the Diversity Charter or achieving the Diversity Label certification does not guarantee that a company is engaging in the promotion of diversity at all levels. A subterfuge thus takes place whereby the original discourse of diversity, first employed to target racial discrimination experienced by ethno-racial minorities is now used to focus action on gender equality and disability or age related issues in business.⁶⁸ This is in spite of a higher record of racial discrimination cases than any other type of discrimination.⁶⁹ This ultimately goes against the potential transformative power of diversity policies, as described by Davina Cooper:

⁶⁶ Bereni, “Faire de la diversité une richesse pour l’entreprise”; Doytcheva, “Réinterprétations et usages sélectifs de la diversité dans les politiques des entreprises.”

⁶⁷ Human Resources Development Manager, Distribution company, quoted in Doytcheva and Dalibert, *De la lutte contre les discriminations à la “promotion de la diversité,”* 57.

⁶⁸ Bereni, “Faire de la diversité une richesse pour l’entreprise”; Doytcheva, “Réinterprétations et usages sélectifs de la diversité dans les politiques des entreprises.”

⁶⁹ Haute Autorité pour la Lutte contre les Discriminations et pour l’Égalité, *Rapport Annuel 2009*.

The deployment of non-majoritarian tools, particularly of rights and entitlement, to defend and affirm subjugated identities has, however, in turn come under threat. For this is also a tale of conservative appropriation, in which right-wing forces colonise and inhabit the discourses progressive and left-wing constituencies have legitimated⁷⁰

One of the main reasons for why the execution of a diversity agenda within the private sector therefore does not fall within the gambit of antidiscrimination, and especially not within that of anti-racial discrimination, is that there is still too little recognition of racism and racially motivated discriminatory practices within companies. The fear of a public media condemnation for racial discrimination motivates the diversity agenda, but does not necessarily mean that there is any substance to it, aside from *appearing* to be promoting diversity. Without establishing this crucial link between racism and private sector practices, there is no possibility of a substantial anti-racial discrimination agenda within the diversity agenda.

This misrepresentation of diversity policies in the private sector can have a serious impact on the entire antiracist agenda. While framing the concept of diversity in the private sector in economic terms can have some potential benefits if it actually begets substantive reforms to the sector, ridding it of institutionalized discriminatory practices, it can also have dangerous repercussions if it does not. Already, research is increasingly being led in various business-related disciplines (economics, management, human resources, etc...) as to how one can measure the impact of diversity in business, providing “scientific” results about the positive and negative effects these policies have in this sector.⁷¹ This leaves “diversity” and by relation the anti-racial discrimination agenda (as it is presented in this sector) susceptible to elimination on the grounds that it is economically detrimental.

⁷⁰ Cooper, *Challenging Diversity*, 6.

⁷¹ Robert-Demontrond and Joyeau, “Vives et vertus de la diversité ethno-culturelle”; John Wrench, “Managing Diversity, Fighting Racism or Combating Discrimination? A Critical Exploration,” Council of Europe and European Commission Research Seminar (2003).

A “Fuzzy” Concept

The assumed automatic link between antidiscrimination and diversity policies can thus be problematic, in the sense that it creates the *impression* that various sectors are actively engaging in changing potential discriminatory practices, whilst falling short of actually contributing to the overall antidiscrimination agenda as it is taken on by the legal system and by antiracist organizations. The rapid spread of the notion of diversity that has been traced in this chapter, from the private sector to political initiatives, has only helped to confuse the concept further. In its initial introduction to the French public scene in 2004 “diversity” was presented as a key concept that largely served to refer to redressing inequalities experienced by the visible minority in France, but the concept has also significantly changed over time becoming increasingly blurred and fuzzy. As Pap Ndiaye explains:

It has an advantage and it has a drawback. The advantage is that it's fuzzy, the drawback is that it's fuzzy. It is a portmanteau word that can mean anything we want. And the big advantage these last few years, is that ‘diversity’ is a pretty pleasant word that deep down allows to speak of issues of the antidiscrimination struggle in a way that allows to disarm a bit of the opposition, that is seemingly against diversity in a first place. It allows to move forward. The problem is obviously that in a perspective which can be quite conservative, diversity can be put forward as a way to no longer be interested in forms of social inequalities that persist in our country, and it would obviously be regrettable to go towards, for example, the promotions of equality elites, with a sort of tokenism, while masses of people are in difficult situations of great social and even legal fragility, with regards to *sans-papiers*. So we must obviously watch out for that, and at the same time, not to throw out the baby with the bath water, and keep the baby, that is the baby of the antidiscrimination struggle. And so here we touch upon the limits of the notion of diversity.⁷²

N’Diaye is not the only one concerned with the potential of neglecting the antidiscrimination struggle through the use of the concept of diversity. Patrick Lozès, president of the CRAN also expressed this apprehension:

There is some positive and some negative. The positive is that it is a word that reassures. It is a word that people agree on, but the negative is that by itself, it does

⁷² Ndiaye, interview.

not mean anything, and that it can also be negative that it ‘reassures’ and hides the real difficulties. We say diversity not to say Black and Arabo-Maghrebian, but by saying diversity, well we say just that. So diversity, in reality, it is all of us, it is the whole French society, and so we shouldn’t mistake our goal. Me, it doesn’t bother me to use the word if there is a very precise goal. The precise goal is to ensure that the diversity of French society is found on all levels and that the system does not impede, in a direct or indirect manner [...] its citizens, that’s it. That is what it’s about, but obviously, for some, diversity is used as diversion.⁷³

All in all, the chief manner in which the concept of diversity becomes a very fuzzy concept is in its attempts to break with the republican taboo and speak of race or ethnicity. As the above quote highlights, the notion of diversity has been introduced in an effort to conceptualise the problems of racism and racial discrimination while skirting the entrenched taboo on race. Thus, “diversity” joins the ranks of other euphemisms like “immigrants,” “children of immigrants,” or “French of foreign origin,” that are awkwardly employed in efforts to avoid using the stigmatized racial or ethnic terminology.

The injection of the concept of diversity into the public sphere, while following in the tradition of euphemizing French race relations, is nonetheless seen as a step towards American-style colour-consciousness. Bébéar and Sabeg were clearly inspired by earlier developments in American law and politics, adopting the language of diversity alongside that of equal opportunity and positive action previously frowned upon as “Anglo-Saxon” approaches. Legal specialist Mark Bell raised this point, pointing out the seeming disconnect between the republican model and the appropriation of diversity policies in the business world and beyond.⁷⁴ Perhaps this disconnect can actually be explained by the inherent contradictions between the republican model and attempts to theorize racism without race: is it possible that actors within France are themselves frustrated by this reticence towards race and struggle to find a way to break away slowly from the republican tradition?

⁷³ Patrick Lozès, President of CRAN, “Interview with Patrick Lozès, President of CRAN.”

⁷⁴ Mark Bell, interview.

As Lozès's quote indicates, this may be a possibility, especially considering that, at the start, diversity politics were actually aimed at visible minorities: those who are racialized in France. It appears, however, that even euphemisms have their limits. Just as antidiscrimination underwent a process of universalization, epitomized by establishing the HALDE as a generalized antidiscrimination body, rather than having a dedicated anti-racial discrimination agency, diversity policies also experienced a transformation. Through the actual implementation of diversity policies in the private sector, ultimately left up to each individual company to manage independently and in their preferred approach, diversity experienced a similar process of universalization or "globalization."⁷⁵ As Lozès and Wieviorka explain, "Dynamics of diversity appear to exist in the financial world and in businesses leading from a *specific diversity*, focused on the criteria of skin colour, to a *global diversity*, concerning a set of criteria, meaning skin colour, but also gender, disability, or age."⁷⁶

Doytcheva's research has shown how two key factors have worked to inform this process: firstly, the refusal to acknowledge racial discrimination and secondly, the continued reticence towards race. She writes, "The 'global' or 'broad' vision of diversity also imposes itself against what would be the primary meaning [of diversity], essentially informed by the categories of ethnicity and 'race.' 'Global' diversity appears today as the compulsory framework for company approaches; to attach it to a specific discriminatory category, particularly ethno-racial, is henceforth perceived as a discriminatory process."⁷⁷

Overall, the examples in this chapter show that while there are a variety of approaches in broaching and implementing the diversity agenda, they remain comparable in their constraints. While diversity in politics attempts to break from a global definition of diversity, the overall diversity agenda is limited by the continued attempts to frame such policies within the bounds of republican universalism.

⁷⁵ Doytcheva et al, Lozes refer to diversity going from specific to global.

⁷⁶ Lozès and Wieviorka, *Lutte contre le racisme et le communautarisme*, 29.

⁷⁷ Doytcheva, "Réinterprétations et usages sélectifs de la diversité dans les politiques des entreprises," 114.

Diversity politics do not pick up enough steam to make significant impact, emitting an ambiguous message that reinforces confusion and uncertainty and ultimately skirts the issue of racial discrimination.

Conclusion

The diversity agenda has gained significant momentum since 2004, and continues to impact various areas of French society, even penetrating the debate on ethnic statistics. Throughout this chapter, however, “diversity” resonates as a particularly nebulous concept. Through its ambiguous use in different sectors, diversity becomes appropriated for agendas that are not necessarily relevant or related to the fight against racial discrimination and promotion of equality. This is especially problematic when the infusion of diversity policies is showcased as contributing to fighting racism, giving the impression that business and public actors are committed to this cause, whilst concurrently reinforcing discriminatory practices in these sectors. At first, the concept of diversity responded to the problems posed by the republican tradition of avoiding race by providing an alternative language. However, the concept inevitably experienced the same process of universalization that diverted from diversity policies’ initial objective of targeting racialized experiences.

As Lentin and Titley affirm, “Diversity is a malleable discourse suffused through a variety of institutional practices and policy frameworks. Diversity may be a hybrid product of strands of contemporary thinking on identity, difference, power and social justice, but this does not entail that discourses and practices of diversity offer the enabling or subversive possibilities associated with it in all or even many contexts.”⁷⁸ In response to this statement, one could wonder what the conditions

⁷⁸ Gavan Titley and Alana Lentin, “More Benetton than barricades? The politics of diversity in Europe,” in *The politics of diversity in Europe*, ed. Gavan Titley and Alana Lentin (Strasbourg: Council of Europe Publishing, 2008), 10–11.

would be to render the diversity agenda in France a more “subversive” power? The CRAN president, Patrick Lozès proposes the following:

When the people concerned are in the debates, and take charge, all these pitfalls can be overturned more easily. Meaning, if it is the people themselves who utilize, the concerned people who employ this expression and that remain in the fight for equality, for me there are no problems. The black movement in the United States changed its name several times, it is not going to deter from its pertinence and with tremendous progress in fact. So the word diversity, it conceals traps to recognize, to be able to apprehend them properly.⁷⁹

Perhaps, as he predicts, diversity can thus only retain some subversive power if it is taken on by those that *experience* racism and approached in a bottom-up approach rather than appropriated by the government or business.

⁷⁹ Patrick Lozès, President of CRAN, “Interview with Patrick Lozès, President of CRAN.”

Conclusion

"A civilization that proves incapable of solving the problems it creates is a decadent civilization. A civilization that chooses to close its eyes to its most crucial problem is a stricken civilization. A civilization that uses its principles for trickery and deceit is a dying civilization." – Aimé Césaire¹

"When will the word 'racism' be redefined?" – Ahmed Saiad²

Commenting on Caroline Fourest and Fiammetta Venner's 2009 documentary *"La bataille des droits de l'Homme,"* which featured the hostility towards claims of Islamophobia during the 2009 UN World Conference on Racism (Durban II), Ahmed Saiad aptly asks when "racism" will be redefined. This question sums up quite neatly the problem of French antiracism, where there is a constant struggle to identify what actually constitutes racism.

The tensions over defining racism and their impact on antiracism have been demonstrated throughout this research. The raceless approach to fighting racism grounded in republican universalist principles results in the systematic failure to incorporate the lived experience of racialized people into anti-racial discrimination practice. Universalism shapes antiracism by limiting its scope, which leads to insidious forms of racism being ignored and dismissed. It is only from a critical reading through the lens of race and through a historicized account of race in French society and politics, that these racisms become discernable.

¹ Césaire, *Discourse on Colonialism*, 1.

² Ahmed Saiad, "Tintin au Conseil des Droits de l'Homme de l'O.N.U.," *Les Indigènes de la république*, May 15, 2009, http://www.indigenes-republique.fr/article.php3?id_article=564&var_recherche=ahmed+saiaad Accessed 2011-06-26 .

A continuum is evident across sectors – legal, civil society, institutional, political and private – where the specific challenges to racial discrimination are universalized to fall within the protection against *all* forms of discrimination, but thereby lose the key antiracist message along the way. Within each of these sectors, there is a recurring process according to which antiracist action is stripped of political meaning and takes on a universalized form that rids it of its specificity. While there is a noticeable challenge to this universalizing process, particularly from alternative antiracist organizations and a growing number of academics tackling the question of race, the raceless approach appears to be increasingly institutionalized across sectors.

Through this interdisciplinary analysis it becomes clear that anti-racial discrimination is marred by disjointed action that is not facilitated by the political powers. On the contrary, the government is increasingly appropriating the fight against racial discrimination, but in such a way that hinders antiracist struggles. The dissolution of the HALDE and the shift towards speaking of diversity rather than antidiscrimination, not to mention racism, underline a significant regression from the increased recognition of the problems of racial discrimination (and discrimination in general) since the end of the 1990s. The clear conceptual and practical constraints that emerge from a universalist approach that does not leave room for “race” to be considered seriously are only compounded by the very dilution of the anti-racial discrimination agenda by political powers. The end result is the redefinition of “discrimination” where racial discrimination and race no longer figure.

The fight against racism must therefore be re-appropriated by an antiracist movement that challenges the dissipation of antiracism at the national level to prevent racism from becoming even more acceptable. Central to this must be a systematic disputation of the institutionalized raceless approach. It is now time to give an avenue for the racialized of France to have their voices heard; only then will the roots of racism be properly addressed.

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Appendix 1: List of Interviews

Antiracist Organizations

- MRAP Service Juridique (x2)
- SOS Racisme
- SOS Racisme Service Juridique
- ADEN
- Mouvement des Indigènes de la République
- CRAN
- Collectif DOM
- LICRA
- Ligue des droits de l'homme

Academics and Individuals

- Jean-François Amadieu
- Mark Bell
- Laure Béréni
- Gwénaëlle Calvès
- Didier Fassin
- Virginie Guiraudon
- Didier Lapeyronnie
- Marie Mercat-Bruns
- Pap Ndiaye
- Daniel Sabbagh
- Pierre Tévanian
- Patrick Weil
- Michel Wieviorka

Institutional Actors

- Conseil Constitutionnel: Dominique Schnapper
- CERD: Régis de Gouttes
- CNCDH: Michel Forst
- HALDE: Sophie Latraverse
- Sciences Po Diversity Section: Hakim Allouch
- APSV: Stéphanie Baux

Appendix 2: The CNIL's 10 Recommendations on Diversity

- 1.** Provide broader researchers' access to statistical databases and administrative records,¹
- 2.** Use “objective data” related to the ancestry of individuals (nationality and/or birth place of parents) in surveys to assess diversity,
- 3.** Do not incorporate data on personal ancestry in corporate or administration records (staff and users/customers),
- 4.** Conduct research on “perceived” discriminations, including the collection of data on the physical aspect of individuals
- 5.** Accept, under certain conditions, that first names and surnames be analysed in order to detect any potential discriminatory practices,
- 6.** Amend the Data Protection & Liberties Act (Loi informatique et libertés) to improve the protection of sensitive data, by guaranteeing the scientific nature of research and harmonising control procedures on research files,
- 7.** Oppose the creation of a national “ethnic and racial master record”,
- 8.** Resort to trusted expert third parties to conduct research on diversity assessment,
- 9.** Guarantee confidentiality and anonymity via the use of anonymisation techniques,
- 10.** Guarantee the effective enforcement of the rights granted under the Data Protection & Liberties Act by ensuring full disclosure.

¹ Debet, *Mesure de la diversité et protection des données personnelles*.