



Social Stereotypes: Implications for French Equity Law and Policy By Linda Hamilton Krieger

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Scholar-in-residence of the French-American Foundation at Sciences Po (spring 2008)

A Policy Brief from the Equality of Opportunity Program

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The French-American Foundation / Sciences Po scholar-in-residency program

The French-American Foundation has launched a scholar-in-residency program in partnership with Sciences Po Paris. This program, created for three years, shares pioneering American scholarship related to equal opportunity that is not well-known in France, and explores the policy implications of this research. As the leading French graduate school in public policy, Sciences Po is the ideal partner for this innovative project.

Every year, the selected scholar will:

- present a series of seminars for scholars and students at Sciences Po and other higher learning institutions;
- speak at conferences for a broader audience, including policy-makers, opinion-makers and other key stakeholders in the field of civil rights and anti-discrimination;
- participate in a debate with French scholars and policy-makers on a theme related to pro-equality law and policy in France and the U.S.

The visiting scholar will come from a variety of disciplines such as law, philosophy, social sciences, management, or public policy.

Publication of a report by the scholar-in-residence at Sciences Po

The invited scholar will write an article, to be translated into French and published in France, on an area of pioneering research, and discuss its French policy implications.

- **The topic of the report by Professor Linda Hamilton Krieger is “Social Stereotypes and Implicit Intergroup Bias: Implications for French Equality Law and Policy” (*Un problème de catégories : Stéréotypes et lutte contre les discriminations*). In this study, Professor Hamilton Krieger demonstrates that a large number of biased decisions can be expected to result not from conscious, intentional discrimination, as current policy models presume, but from a variety of social stereotypes which can implicitly influence a decision-maker’s judgment. Unless equal opportunity laws and policies are designed to deal effectively with these more subtle forms of bias, they will not succeed in eliminating discrimination.**

This policy brief reproduces the introduction of Professor Hamilton Krieger’s report.

At the center of the struggle against discrimination rests a paradox. When a society enacts laws prohibiting discrimination on the grounds of, say, race, or ethnicity, it asks its members to ignore certain categories when making decisions about other people. But antidiscrimination laws necessarily specify particular grounds—race, ethnicity, sex, sexual orientation, and so forth—on which discrimination is prohibited, and this very prohibition renders the proscribed categories legally and socially significant. Thus, in seeking to destabilize social categories, antidiscrimination law necessarily reifies them.

Until recently, progressive French leaders and mainstream intellectuals have responded to this conundrum by cleaving to a strong theory of unitary French republicanism. Adherents to this approach reject the very legitimacy of legally relevant racial, religious, or ethnic categories, whether they are used to impose civil disabilities or to remedy their pernicious historical legacies. The resulting politics of cohesive French peoplehood, born of Jacobin universalism and quickened by the traumas of slavery, the Dreyfus Affair, and the Vichy Regime, combined with post-modernist ideas about category contingency and instability to further delegitimize the view that racial or ethnic categories are in any sense “real,” capable of doing any constructive, anti-racist work.¹

The products of this commitment to legal and rhetorical “colorblindness” are evident across the French political and legal landscapes. The French Constitutional Council has repeatedly invalidated remedial legislation that uses racial, ethnic, or regional minority categories for remedial purposes.² Numerous influential anti-racist organizations and politicians, not least among them the anti-racist organization, *SOS-Racisme*,³ and Louis Schweitzer, the president of the *Haute Autorité de Lutte Contre les Discriminations* (HALDE), vigorously oppose even informational uses of racial or ethnic categories.⁴

Recent trends, however, have weakened the grip of category-blindness on French thinking about the struggle against discrimination. In the academy, pluralistic approaches to the problems of equality and difference emerged in the 1980s in post-colonial and immigration studies,⁵ refracting ethnic and regional activisms in such far-flung French spaces as the Antilles, Corsica, New Caledonia, and Larzac.⁶ Within France, Constitutional amendments in 1998 and 2003 devolving local law-making authority to French regions and overseas territories, and the 1999 amendments on electoral gender *parité* championed by French feminists,⁷ served to further particularize universalist conceptions of French peoplehood.⁸

By early 2007, French anti-racism activists and influential intellectuals no longer formed a solid, universalist block, as evidenced by support for *les statistiques de la diversité* by the *Conseil Représentatif des Associations Noires* (CRAN) and the efforts of the *Institut National d'Études Démographiques* (INED) and the *Institut National de la Statistique et des Études Économiques* (INSEE) to conduct a 2008 survey, *Trajectoires et Origines*, which includes questions on respondents' self-perceived skin color.⁹

Pressures bear down on colorblind French republicanism from the European Union as well. Following on EU Directives 2000/43/EC and 2000/78/EC, the European Commission has encouraged member states to undertake research initiatives to advance understanding of discrimination and to evaluate the effectiveness of anti-discrimination policies.¹⁰ In connection with these initiatives, the EC specifically endorses the collection of statistical data on the scale of discrimination and the effectiveness of anti-discrimination policies in EU member states. The recommended initiatives involve use of racial, ethnic, gender, and other demographic categories, corresponding to the grounds of discrimination prohibited in EU directives. Suggesting that there can be no effective, category-blind evaluation of antidiscrimination efforts, the European Commission Directorate-General for Employment and Social Affairs cautioned in 2004 that, "[T]he lack of mechanisms to collect data and to monitor trends and progress in Member States currently makes it difficult to assess the real extent of the challenges that exist and to measure the effectiveness of legislation and policies to tackle discrimination."¹¹ Accordingly, it continues, "[G]reater availability of quantitative and qualitative data could help to support the development of anti-discrimination policies by establishing baseline positions, identifying where results of inequalities lie and analyzing their dimensions."¹²

The prohibition of indirect discrimination in EU Directives 2000/43/EC and 2000/78/EC also challenges France's category-blind approach to equal opportunity

enforcement policy. Preamble 15 of EC Directive 2000/43/EC specifically provides that the collection of data from which indirect discrimination can be discerned is "the responsibility of national legal proceedings or other competent proceedings." The Preamble goes on to recognize that proof of indirect discrimination relies in significant part on statistics comparing the relative impacts of facially neutral practices on different racial, ethnic, gender, or other legally relevant groups.¹³ It is difficult to imagine how a law prohibiting indirect discrimination could be implemented without reference to or demographic information about the impact of challenged policies on different ethno-racial groups. Directly challenging the colorblind approach, initiatives designed to redress indirect discrimination necessarily utilize ethno-racial categories.

The use of geographical locations as thinly veiled proxies for ethnicity in French positive action initiatives also challenges the French commitment to uncompromising colorblind republicanism by attempting an "end-run" around it. A proliferation of special "zones"—the *zones d'éducation prioritaires*, the *zones d'entreprise*, the *zones urbaines sensibles*, and the *zones de redynamisation urbaine*—function as *de facto* positive action programs targeted at French ethnic minority groups. The situation has not escaped notice from any point on the French political spectrum.¹⁴

Demographic *finesse* also characterizes the representation of ethnic difference in the French census. Because the census includes no ethnic or racial categories, French citizens of, say, sub-Saharan ancestry, who are perceived as black, are accounted for in the census only through an indication of their nationality and birthplace. But, of course, many black French citizens were born in France, to parents who were also born in France. They are French citizens and are not "immigrants" in any sense, so they are demographically invisible. The same situation obtains for French citizens of Arab or North African ancestry. As French demographer Patrick Simon puts it, French minorities have a formal kind of "equality through invisibility."¹⁵ But because they are demographically invisible, it is impossible to know how many Blacks, or Arabs, or North Africans, live or work in France, let alone whether, controlling for their availability and qualifications, they are statistically under-represented in higher educational institutions or various segments of the labor force.

In short, one could say that French equality policy is having category problems, seeking to combat racism without race,¹⁶ ethno-centrism without ethnicity. The resulting tensions, in Patrick Simon's words, have triggered "a controversy of rare violence between those that would like to see statistics take into account

the diversity of the population and those who denounce the danger that such statistics might pose of ethnicizing or racializing society." 17

With politicians, activists, jurists, and others so deeply split over such fundamental conceptual issues, the debate over French equality policy will likely accelerate before it resolves. This debate, one hopes, will continue to benefit from the work of French scholars, who in recent years have generated a robust, interdisciplinary literature on racism, discrimination, and the struggle for equality in and beyond the Hexagon.

Largely missing from this interdisciplinary dialogue, however, are insights from empirical social and cognitive psychology, which in recent years have made great strides in understanding the ways in which religious, ethnic, gender, and other stereotypes can influence social perception and cause unintentional, as well as intentional, discrimination. As France reconsiders its commitment to an exclusively colorblind model of nondiscrimination, insights from this research have much to contribute.

This article summarizes this research and illustrates its critical importance to the debate over colorblindness in French antidiscrimination policy. While direct discrimination is usually understood as deliberate action expressing a conscious intent to discriminate, the reviewed research demonstrates that discrimination can also result from the unintentional, unconscious application of gender, racial, ethnic and other stereotypes that people – even well-intentioned ones – absorb from their cultural environment. These more subtle forms of discrimination occur because stereotypes function not only as consciously held beliefs about social groups, but also as deep mental structures that unknowingly distort people's perceptions about individual members of stereotyped groups.

Stereotypes, this research shows, can operate *implicitly*, biasing a decision-maker's social judgment, even if he or she has consciously rejected the beliefs associated with the stereotypes, and even if he or she is committed to the proposition that "race" and "ethnicity" do not really exist. In societies in which racial, ethnic, or similar categories have been made salient by history, literature, or patterns of economic, political, or spatial organization, the conscientious disavowal of "race" or "ethnicity" as legitimate social constructs does not prevent people from spontaneously using those categories in perceiving, encoding, and making predictive or attributive judgments about other people. Unless equal opportunity policies are designed to address these more subtle forms of bias, they will not succeed in eliminating discrimination or effectuating equality of

opportunity. They will simply naturalize and legitimize them.

Notes:

1. For an illustration of this melding of Republican political universalism with post-modern conceptions of racial and ethnic category incoherence, see, Alain Blum and France Guérin-Pace, *From Measuring Integration to Fighting Discrimination: The Illusion of "Ethnic Statistics," French Politics, Culture, and Society*, 25 (1), 2008 45 - 61.
2. E.g., Conseil Constitutionnel, 82-146 DC, *Quotas par sexe*, 18 Novembre 1982; Conseil Constitutionnel, 91-290 DC, *Statut de la Corse*, 19 Mai 1991; Conseil Constitutionnel, 99-412 DC, *Carte européenne des langues régionales ou minoritaires*, 15 Juin 1999. In November 2007, the Conseil invalidated certain provisions of an immigration bill that would have allowed, in certain contexts and under limited conditions, the anonymous government collection of data on self-perceived race and ethnicity for research purposes. While the decision was technically based on procedural grounds, the Conseil strongly suggested that the challenged statutory provisions violated Article I of the French Constitution as well. Conseil Constitutionnel, 07-557, *Loi relative à la maîtrise de l'immigration, à l'intégration et à l'asile*, 15 Novembre 2007.
3. SOS-Racisme sponsored an online petition opposing the amendments to the immigration bill that would permit collection of ethnic statistics. As of the writing of this article, the petition had been signed by 105,532 individuals, many of them influential French intellectuals, political leaders, trade unionists, and political activists). The petition may be viewed at <http://www.fichepasmonpote.com>.
4. See generally, Daniel Sabbagh and Shanny Peer, *Introduction - French Color-Blindness in Perspective: The Controversy Over "Statistiques Ethniques," French Politics, Culture, and Society*, 25 (1), 2008 1– 4.
5. See, e.g., Gérard Noiriel, *Le Creuset français: histoire de l'immigration, XIXe-XXe siècles* (Paris: Seuil, 1988); Gérard Noiriel, *Population, immigration et identité nationale en France* (Paris: Hachette, 1992); Herman Lebovics, *True France: The wars over Cultural Identity, 1900-1944*, Ithaca: Cornell University Press, 1992).
6. See, e.g., Herman Lebovics, *Bringing the Empire Back Home: France in the Global Age* (London: Duke University Press, 2004).
7. For a description of *le mouvement pour la parité* in the 1990s and a discussion of its theoretical implications for Republican universalism, see Joan Wallach Scott, *Parité: Sexual Equality and the Crisis of French Universalism* (Chicago: University of Chicago Press, 2005).
8. See generally, Gwénaële Calvès, "Color-Blindness at a Crossroads in Contemporary France," in Herrick Chapman & Laura L. Frader (Eds.), *Race in France: Interdisciplinary Perspectives on the Politics of Difference*, 219-226 (New York: Berghahn, 2004).
9. Patrick Simon, *The Choice of Ignorance: The Debate on Ethnic and Racial Statistics in France*, *French Politics, Culture, and Society*, 25 (1), 7 - 31 (2008)
10. Council Decision 2000/750/EC of 27 Novembre 2000, published in OJ L303 of 2 Decembre 2000.
11. European Commission, Directorate-General for Employment and Social Affairs, *Equality and non-discrimination in an enlarged European Union: Green Paper*, 22 (2004).
12. *Ibid* at 23.
13. For a description of the role of statistics in identifying indirect discrimination, see Patrick Simon, *Comparative study on the collection of data to measure the extent and impact of discrimination within the United States, Canada, Australia, Great-Britain, and the Netherlands*, European Commission, Directorate-General for Employment, Social Affairs and Equal Opportunities (2004); Patrick Simon, *The Choice of Ignorance: The Debate on Ethnic and Racial Statistics in France*, *supra* n. 9.
14. See, e.g., Alexandra Laignel-Lavastine, *Cette inavouable discrimination positive*, *Le Monde* (Edition Abonés) 5 Octobre 2007 (describing the research of French sociologist Milena Doytcheve on the "special zones" and contextualizing that research within the spectrum of political viewpoints about the function in French equal opportunity policy).
15. Patrick Simon, *The Choice of Ignorance: The Debate on Ethnic and Racial Statistics in France*, *supra* n. 9.
16. I borrow the phrase from Erik Bleich, *Anti-Racism Without Races: Politics and Policy in a "Color-Blind" State*, in *Race in France: Interdisciplinary Perspectives on the Politics of Difference*, 162-188 (Herrick Chapman & Laura L. Frader eds.), Oxford: Berghahn Books (2004)
17. *Ibid*.

2007-2008 Scholar-in-Residency Program at Sciences Po

Selected Scholar: Law Professor Linda Hamilton Krieger

Professor Hamilton Krieger holds a B.A. from Stanford University and a J.D. from New York University. She practiced as a civil rights lawyer at the Employment Law Center in San Francisco and as a senior trial attorney for the U.S. Equal Employment Opportunity Commission. During her 13 years of practice, she handled a number of groundbreaking employment rights cases at both trial and appellate levels. From 1991 to 1995, she was a lecturer and then an acting associate professor at Stanford Law School. She joined the Boalt Hall Faculty in 1996 and received the Rutter Award for Teaching Distinction in 2000. Professor Hamilton Krieger's publications include the edited volume *Backlash against the ADA: Reinterpreting Disability Rights* (Ann Arbor, University of Michigan Press, 2003); "Civil Rights Perestroika: Intergroup Relations After Affirmative Action," *California Law Review* (66, 1998); "The Content of Our Categories: A Cognitive Bias Approach to Discrimination and Equal Employment Opportunity", *Stanford Law Review* (54, 1995); and "Behavioral Realism in Employment Discrimination Law: Implicit Bias and Disparate Treatment" [with Susan T. Fiske], *California Law Review* (94, 2006).

2008-2009 Scholar-in-Residency Program at Sciences Po

Selected Scholars: Sociologists and education specialists Patricia Gándara (UCLA) and Gary Orfield (UCLA)

Patricia Gándara, PhD
Professor, UCLA Graduate School of Education
Co-Director, The Civil Rights Project at

Gary Orfield, PhD
Professor of Education, Law, Political Science and Urban
Planning and Co-Director, Civil Rights Project/Proyecto
Derechos Civiles at UCLA

Key themes for the 2008-2009 program include:

- Policies and practices that have produced and sustain ethno-racial separation and inequality, compared to those that have potential to enhance equal opportunity;
- Relationship between housing patterns, racial integration and school opportunity;
- Inherent features of segregation: its strong capacity for self-perpetuation and the conditions under which externally imposed change can or cannot succeed.

Professor Gándara and Professor Orfield's report will be entitled *Housing Segregation, Educational Inequality and the Perpetuation of Social Stratification*.

French-American Foundation—Statement of Purpose

Founded in 1976, the French-American Foundation is committed to advancing the dialogue between France and the United States. The foundation brings together key policymakers, academics, business leaders and other prominent individuals from both countries so that they may exchange their ideas and create productive bonds likely to have a lasting effect on policies in France and in the United States. To reach these objectives, the French-American Foundation creates multi-year thematic programs, holds conferences, organizes exchanges and produces publications meant to foster and share best practices between the two countries.

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