

Reaction to: “We’re All French . . . Until We’re Not: The Constitutional Stratification of French Ethnic Minorities”

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Critical race theory often overlooks modern day anti-black, anti-immigrant, and anti-Muslim racism in European countries. Similarly, other insular discrimination is ignored in the Western context, such as the effect of racial disparities on Afro-Caribbean, genderqueer, immigrant, and disabled minorities. Accordingly, Perkins’ Note on racism in France is necessary. We often think of discrimination against racial/ethnic minorities and other disadvantaged groups as a problem confined to the United States. Despite some missing contextualization in the build-up of the piece, the effort is valiant. Perkins begins the Note by highlighting the plight of ethnic minorities in French society as it pertains to education, housing, employment, and law enforcement. There are a few key areas early in the Note where the reader needs more details about to whom the author is referring. As a juxtaposition, to say that the United States has a pervasive culture of anti-minority discrimination that leads to educational and housing disparities, police brutality, etc. is true, but incomplete. Different minority groups can feel the effects of discrimination differently. For example, while Latinx people face discrimination generally, especially immigrants, groups within the Latinx diaspora, such as Puerto Ricans who are U.S. citizens, are impacted differently by discrimination. The former can be unable to obtain a driver’s license because of immigration status, which can negatively impact employment prospects. On the contrary, although the latter has all the vestiges of citizenship, Puerto Ricans on the island aren’t represented in U.S. elections. As a result, the effectuation of their interests is stifled.

Accordingly, Perkins’ first issue is the lack of a clear conception of what she means by race. The author dances around a clear definition of who exactly we are talking about as the subject of France’s deeply ingrained racism. A reason for this, I suspect, is due to the incomplete recitation of the history of racism in France, where the author superficially calls upon France’s involvement in the Transatlantic slave trade and the Holocaust. A more complete retelling of these epochs could shade in a larger picture of French racial tensions, their social/political/religious/economic origins, how they were sustained, and what justification was given for the division. The Data Protection Act was not implemented until 1978. But what about prior to that date? There must be more information that can be unearthed to establish a coherent theory of race in France at least pre-1978.

At various points throughout the Note, the author characterizes her subjects as minorities, ethnic minorities, immigrants, French minorities, Muslims, non-white citizens, etc. She fails to realize the conflation in using the terms interchangeably or

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without attention to the implications for their differences. In her discussion of French racial groups in footnotes 55 and 57, the author hints at this nuance. These footnotes discuss France's "visible minorities" versus its invisible or passing ones, such as North and sub-Saharan-Africans, and other European minorities migrating to France. The Note takes for granted the differences between race and ethnicity. One of the most powerful points in the piece is where the author notes that racism happens based on the "presumption of foreignness and immigrant status regardless of French citizenship." This point is lost since the author made little clarification or gave little nuance to framing who the subject of French racism is.

A better way to refer to the people for whom Perkins seeks to reform French law could be "non-white French citizens and immigrants." From there, the author could use available statistics to contextualize the "who" of this piece. For example, as of 2001, five percent of France was non-European and non-white¹ and the *Institut Montaigne* estimated racial population totals in 2004 based on 1999 population totals collected by the French national statistics bureau INSEE.² Most, if not all, successful treatments of social and political racial policy inevitably deal with this race question early on and with great specificity (even if triangulated from narrative, archives, data points, interviews, etc.).

Even absent this contextualization, it is easy to glean an issue with French society's treatment of non-white French citizens and immigrants, especially as it relates to education, employment, housing, and police brutality. Mentioning the disparities across racial and ethnic minority groups could have enhanced this discussion. Nonetheless, this Section of the Note effectively highlighted a need for race-conscious remedies, which are impossible under France's current colorblind paradigm.

A counterargument to explore in work going forward is that we can address racial disparities without the verbatim adoption of a Canadian framework. In other words, France needs *better* anti-discrimination laws in specific contexts and HALDE needs to be revamped. Such an argument cannot be addressed without dealing with the harmfulness of colorblindness, as well as race consciousness as the best remedy to ending racial disparity. Even then, in contexts where race consciousness has been adapted, such as in affirmative action jurisprudence in the United States which Perkins relies on, racial disparity can still rear its ugly head. This is especially true if the "French republican ideal identity" pushes back, as is the case in the United States. A relevant next step is to evaluate how effective one can expect these adaptations to be in France given its legislative and judicial history.

Overall, Perkins shines a light on a complicated and important issue, not often discussed in racial theory and jurisprudence. This starting point leaves the reader able to consider thoughtful next steps in bringing France up to speed in addressing racial disparity which is often created at the hands of the state.

1. Erik Bleich, *Race Policy in France*, BROOKINGS INST. (May 1, 2001), <https://www.brookings.edu/articles/race-policy-in-france/> [<https://perma.cc/4BL5-TRMZ>].

2. Yazid Sabeg & Laurence Méhaignerie, *Les oubliés de l'égalité des chances: Participation, pluralités, assimilation . . . ou repli?*, in INSTITUT MONTAIGNE 80 (Jan. 2004).