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Legal mobilization and branches of law: Contesting racialized policing in French courts

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Abstract

When activists use the law to promote social change, how does the branch of law (criminal law, civil law, etc.) matter for movement outcomes? To examine this question, the article builds on legal mobilization scholarship, and on a qualitative study comparing three litigation strategies to contest racialized policing in France: mobilizing criminal law to hold officers accountable for police killings, mobilizing civil law to sue the state for racial profiling, and combining criminal and civil law to contest racialized police harassment. The findings suggest that three characteristics of legal branches matter for legal mobilization: (i) the branch's dominant paradigm (e.g., punitive vs. compensatory) determines how the problem gets framed and which actors are blamed for it; (ii) the legal provisions of each branch shape which aspects of the problem get highlighted, and which are obscured; (iii) the procedural and evidentiary rules determine the extent to which activists and victims can intervene in the fact-finding process and thus how much they can influence the strength of their claims in court. When they mobilize the law, social change actors strategize around the opportunities and constraints of various branches of law, to try influencing judicial decisions and the media coverage of cases.

INTRODUCTION

Youssef[1] was 17 when the police stopped him as he was walking home in Paris, France. Without giving any explanation, they took him into custody, where an officer slapped and punched him as another asked him for information about drug dealers in his neighborhood. He was released a few hours later without charge. This incident was not isolated; in the gentrifying neighborhood where he lived, Youssef and two dozen other teenagers, mostly Black and North African boys from low-income backgrounds, were routinely harassed by the police, repeatedly stopped and searched, taken into custody with no clear motive, and subjected to racist slurs, physical violence, and sometimes sexual violence.

[1]Pseudonym.

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With the help of non-governmental organizations and lawyers, Youssef and 17 others filed a criminal lawsuit in 2015, in which they accused 11 officers of unlawful use of force, sexual assault, arbitrary detention, and racial discrimination. In 2018, they filed a second lawsuit, in civil law, suing the French state for systemic discrimination. Both lawsuits challenged the same facts, but they each addressed a different aspect of the problem. The criminal trial considered the responsibility of individual officers and focused on the legitimacy of their use of force, but prosecutors and judges disregarded the plaintiffs' claims of racial discrimination. The civil trial considered the state's responsibility and examined whether the police practices were discriminatory, but did so in isolation from claims of violence. Thus, while the victims and activists sought to challenge what they perceived to be *discriminatory violence*, in law, their experiences were tackled *either* as unlawful violence, *or* as discriminatory targeting, with each claim being considered in isolation from the other.

This observation raises a number of questions: For activists seeking to contest racialized police violence in France, what difference does it make to challenge Youssef's interaction with the police as a crime or a civil rights violation? What opportunities and constraints does each provide for activists seeking to promote an understanding of the problem as racialized violence? How does each litigation type redefine problematic policing? I take these questions as a starting point to examine how the division of law into branches[2] (civil law, criminal law, administrative law, etc.), each with its own laws, procedures, and courts, matters for social movements.

A substantial scholarship analyzes how the law matters for social movements. Scholars have found that the law both constrains and enables social movements: legal rights tend to individualize structural issues, they place burdens on victims, and can reinforce existing social hierarchies, but the law can also provide movements with indirect political benefits when combined with political organizing, including raising constituents' consciousness, changing expectations, and catalyzing mobilization (Bumiller, 1992; Berrey et al., 2017; McCann, 1994; McCann, 2014; Merry, 2014; Scheingold, 2004; Stryker, 2007). While a majority of studies focus on civil rights law, a growing scholarship examines legal mobilization of other branches of law, including criminal law, administrative law, and constitutional law (e.g., in France: Israël, 2003; Fillion & Torny, 2015; Barbot & Dodier, 2010; de Galembert, 2008; Kawar, 2011). However, no study has, to my knowledge, attempted to theorize how different branches of law matter for social movements, and what difference it makes, for movement outcomes, which branch(es) of law activists mobilize.

This paper proposes a theoretical framework to analyze how the law's division into branches matters for social movements—in particular, how it shapes the cultural frames and meanings activists are able to promote in courts and the media. Rather than asking how *the law* constrains and enables social movements, I propose examining how different *branches of law* constrain and enable movements, and how social change actors strategize around the opportunities and obstacles that various branches represent. In other words, my paper advances a meso-level analysis of how the structure of the legal apparatus shapes legal mobilization and its outcomes. To do this, I examine and compare three litigation strategies developed by activists contesting racialized policing in France: (i) mobilizing criminal law to sue officers who kill, (ii) mobilizing civil rights law to sue the state for racial profiling, (iii) combining criminal and civil lawsuits to challenge police harassment as systemic discrimination.

Contesting racialized policing through the law in France presents two major challenges. First, the country's dominant ideology is anti-racialist; it deems the concept of race essentializing and racist, and the law prohibits the collection of data on race or ethnicity. Thus, although the law prohibits racial discrimination, it is difficult to prove the existence of racial inequalities (Brahim, 2020; Goldberg, 2009; Simon & Stavo-Debauge, 2004). Second, in law, police officers are assumed to be more credible than those they target, and this assumption of credibility is only questioned when the victim is not deemed to be part of the "police clientele" and his narrative is substantiated by external

[2]I use the term "branch" (from the French *les branches du droit)* to describe the different types of laws and proceedings, such as criminal law, civil law, administrative law, and constitutional law. In France, each branch has its own set of laws, procedures, courts, and judges.

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evidence (Jobard, 2012). Given that racialized minorities are disproportionately targeted by the police (Fassin, 2013; Gauthier, 2015; Open Society Justice Initiative, 2009), they are at once more likely to suffer police abuses, and less likely to be deemed credible when challenging a police officer's testimony. This paper investigates how activists have used various legal branches to overcome these challenges, and with what outcomes for the way courts and the media frame the issue.

I argue that there are three characteristics of legal branches that shape the opportunities and constraints for legal mobilization. First, the dominant paradigm underlying each branch of law (e.g., punitive for criminal law, compensatory for civil law) shapes which behaviors are addressed, which actors can be held accountable, and what remedies courts can order. For social movements, this means that the choice of legal proceeding entails specific ways to frame the problem, attribute blame, and suggest remedies; in other words, it shapes the framing of the cause in the legal arena. Second, each branch's legal provisions address specific aspects of the same social phenomenon, autonomously from other branches (Hermitte, 1999). For example, Youssef's interaction with the police can be addressed in law in multiple but distinct ways: as a criminal law matter (was the officer's use of force legitimate?), a civil rights issue (was the stop discriminatory?), or a constitutional law question (are the police allowed to stop people without reasonable suspicion?). For activists, this means that the choice of legal branch shapes the aspects of the problem that get highlighted, and those that might get obscured. Third, the procedural and evidentiary rules—who can present evidence and what counts as admissible evidence (Laugerud, 2020; Valverde, 2003)—determine the extent to which activists have control over the legal fact-finding process. In inquisitorial systems, victims have little control over criminal investigations, but they can introduce their own evidence in civil law proceedings.

When they mobilize the law, social change actors strategize around the opportunities and constraints represented by various branches of law, in order to try influencing judicial decisions and the media coverage of these cases. While it is beyond the scope of this paper to analyze why activist groups decide to mobilize different legal branches, I discuss how their identities and resources shape their ability to get around the constraints and take advantage of the opportunities offered by various branches of law.

The paper proceeds as follows. The next section presents my conceptual framework, followed by a presentation of the data and methods. Then, I discuss how French laws have tackled issues of racialized violence, and maintained a separation between violence on one hand, and discrimination on the other. The following three sections analyze the three litigation strategies that activists contesting racialized policing have used in France. For each, I analyze the opportunities and constraints of the legal branch mobilized, and how activists strategized around them to expand legal opportunities and promote their frames in courts and beyond. The conclusion summarizes the paper's main arguments and limitations.

WHAT DIFFERENCE DOES THE BRANCH OF LAW MAKE?

Since the 1990s, a rich scholarship has examined how mobilizing the law constrains social movements, and the conditions under which it can help advance social change (for reviews see Stryker, 2007; McCammon & McGrath, 2015; McCann, 2006, McCann, 2014; Israël, 2009). This scholarship emerged in response to the "pessimistic view" according to which there is little hope for progressive movements to achieve change through the law, because courts perpetuate and maintain inequalities (Galanter, 1974) and have little power to enforce social change (Rosenberg, 1991). Nuancing the pessimistic view, empirical studies examined the conditions under which litigation can provide indirect political benefits for social movements (McCann, 1994; Scheingold, 2004), and expand the legal opportunities available to victims of injustice (Andersen, 2004; Vanhala, 2012, 2018). These studies suggest that three features of the legal system matter for social movements' litigation outcomes.

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First, the principles and language of Western legality both constrain and enable social movements. The ideologies of individualism, rights, and private property, often obscure the structural and intersectional dimensions of social inequalities, and leave no leeway to consider the historical systems of domination within which inequalities are embedded (Bereni & Chappe, 2011; Berrey et al., 2017; Crenshaw, 1991; Israël, 2009). As a result, the legal system is better able to tackle complex problems such as abusive policing one "bad apple" at a time, than to highlight patterns of practice or structural inequalities (Merry, 2014). At the same time, legal concepts—for example rights—can provide social movement with a powerful normative language to raise consciousness and change beneficiaries' expectations. When combined with political organizing, legal language can contribute to catalyzing mobilization and producing political pressure for change (McCann, 1994; Scheingold, 2004).

Second, the legal stock—written laws and judicial precedent—matters for social movements in that it shapes the chances of litigation success. Unlike political decisions, legal decisions are constrained by existing rules and precedent. Empirical studies have found that changes in legal stock (legislative or judicial change) can open up new opportunities for social movements, or conversely close existing spaces for action (Andersen, 2004; Evans Case & Givens, 2010; Vanhala, 2018). For instance, new legal rules about gender or racial equality, including supranational law like EU law, can expand legal opportunity structures for advancing rights claiming (Cichowski, 2013).

Third, procedural rules enhancing or constraining access to justice determine movements' ability to advance their cause through the law (Andersen, 2004; Vanhala, 2012). The rules governing access to legal institutions (who has "standing", who bears the costs of litigation), and the availability of resources for legal advocacy, shape the extent to which social movements can use litigation to advance their claims (Andersen, 2004; Evans Case & Givens, 2010; Vanhala, 2012, 2018).

In short, existing scholarship suggests that legal principles and language, legal stock, and the degree of accessibility of the legal system, are key factors determining the opportunities and constraints social movements face when mobilizing the law. Yet, these factors vary depending on the branch of law mobilized. This raises a number of questions. If mobilizing the law involves reframing social problems in ways that fit with legal language, how does mobilizing different branches of law, which rely on distinct legal concepts (e.g., crime vs. rights), matter for the way activist causes are reframed? If written laws and precedent shape the legal possibilities for activists, how do differences in the way each legal branch addresses a social problem, matter for how the problem gets redefined in law? If the rules governing access to legal institutions shape the opportunities available to social movements, how do procedural differences between branches matter for movements' success in bringing cases to court? In other words, how does the division of law into branches matter for movements' ability to advance their claims?

Some studies have noted that movement actors select which branch of law to mobilize based on its potential to advance their claims in courts and beyond. Chappe's work on French organizing efforts against workplace discrimination shows that rights groups often select branches of law based on their potential to portray the violation as severe (Chappe, 2019). Similarly, McCann and his colleagues have demonstrated how the campaign against Big Tobacco in the US shifted from a civil law logic to a criminal law logic, thereby contributing to shifting the media narrative away from individual responsibility and toward corporate responsibility (McCann et al., 2013). In a recent study, McCann and Lovell describe how union activists filed a civil suit in a murder case that had already been adjudicated in criminal courts, because it provided an opportunity to uncover evidence of the involvement of governmental intelligence agencies (McCann & Lovell, 2020). No study has, to my knowledge, sought to bring these insights together to theorize how the law's division into branches matters for social movements.

This paper proposes a conceptual framework to compare the opportunities and constraints of different legal branches. The framework draws on existing scholarship's insights about the importance of legal language, legal stock, and rules governing access. Based on my findings, I add another characteristic of legal branches that has so far garnered limited attention in legal mobilization scholarship: the rules governing evidence, that is, who presents evidence and what counts as admissible and relevant evidence (Valverde, 2003).

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I argue that three defining characteristics of each branch matter for social movements: the branch's dominant paradigm, its legal stock, and its procedural and evidentiary rules. The rest of this section discusses each one in turn using the example of criminal and civil law branches in France. Table 1 summarizes these characteristics.

Dominant paradigm

The underlying paradigm of different legal branches (principles, concepts, language) determines the types of behaviors addressed, the actors that can be held accountable, and the consequences a judicial victory has for the movement. French criminal law relies on a punitive paradigm that considers specific behaviors to be harmful to society and deserving of punishment. Because a guilty verdict can have serious consequences, including incarceration, criminal laws only address behaviors by individuals directly implicated in criminal behavior. By contrast, civil law rests on a compensatory paradigm. It deals with disputes between individuals or organizations, and seeks to compensate one party for the injury caused by another (there are no punitive damages in French law). As a consequence, civil law allows plaintiffs to expand the scope of responsibilities to those indirectly implicated (employers, the state), but the potential penalties are less serious. A corollary of these different paradigms is that national cultures place different symbolic values on different legal branches. In France, criminal law is widely perceived as dealing with more serious problems than civil laws, and many victims and lawyers prefer to initiate criminal lawsuits, even when the chances of winning are slimmer, because of the stronger symbolic message it sends (Chappe, 2019; Saguy, 2018).

Legal stock

The legal provisions and case law of each branch shape which aspects of a situation are considered relevant, and which are obscured. As Hermitte argues, each branch of law addresses a specific aspect of the same object or interaction, and provides a specific point of view on it (Hermitte, 1999). For example, in France, criminal law tackles racial inequality only when it takes the form of hate speech or intentional discrimination, whereas civil law addresses situations of differential treatment and disparate outcomes. For social movements, this means that the branch they mobilize determines how the problem gets defined, both in court and in the media coverage of the case.

Procedural and evidentiary rules

The procedural and evidentiary rules of different branches of law determine who has access to courts, and how evidence about the social problem is produced and presented in court

TABLE 1 Characteristics of criminal and civil law in France

	Criminal law	Civil law
Dominant paradigm	Punitive	Compensatory
Actors targeted	Directly involved	Directly or indirectly involved
Symbolic value	More serious	Less serious
Remedy	Criminal punishment	Civil damages
Legal stock	Bans intentional discrimination	Bans direct and indirect discrimination
Evidentiary rules	Police and judges produce evidence	Parties produce evidence

(Laugerud, 2020; Valverde, 2003). As a result, mobilizing different branches provides different possibilities for activists to uncover facts that substantiate their claims, and to present them in legal proceedings. In criminal law, allegations are investigated by the police under the supervision of the prosecution or an investigative judge. Prosecutors act as gatekeepers by deciding on indictment and charges. In civil disputes on the other hand, each party presents evidence to support their claims and there is no prosecutor leading the investigations. Thus, for social movements, launching criminal law claims gives them little power over the procedure, but the state-led investigation can be helpful in revealing information that would not otherwise be available to them. Launching civil law claims means the plaintiffs have more control over initiating the procedure and over the kind of evidence they provide, but requires that they have the resources to produce relevant evidence.

This paper develops this conceptual framework in a civil law country, but the three characteristics of legal branches can provide a useful starting point to examine how the law's distinct branches matter for social movements in common law countries, too.

DATA AND METHODS

The analysis is based on a larger ethnographic project that compares three mobilizations contesting racialized policing in France: a movement of families of victims of police killings demanding "Truth and Justice," a national campaign against racial profiling led by NGOs, and a neighborhood mobilization supporting teenagers of color harassed by the local police in Paris. From the summer of 2016 to the summer of 2018, I was embedded within each mobilization, as a member of various activist collectives or as an unpaid intern. Through this, I observed about 150 meetings, public events, workshops, and protests; I conducted over 90 interviews with movement actors, including activists, NGO workers, victims-turned-activists, lawyers, plaintiffs, and researchers; and I analyzed legal case files, political debates, media coverage of policing issues, and activist publications.

For this article, I draw on a subset of the data collected for the larger project, which speaks directly to the three types of legal mobilization I compare: mobilizing criminal law to sue officers who kill, mobilizing civil law to sue the state for police discrimination, and mobilizing criminal and then civil law to contest discriminatory police harassment. These are the most central litigation strategies developed within the movement to contest policing practices in France.[3]

This dataset includes interviews with 12 lawyers, including seven who defended victims of police violence in criminal cases, and four who developed the civil law strategy and the criminal/civil law strategy. Further, I interviewed 20 victims or families of victims who took their grievances to court, including 12 who initiated criminal proceedings, four who were plaintiffs in civil lawsuits for discrimination, and four who participated in the criminal/civil lawsuit. All the interviews were semi-structured and lasted between 1 and 4 hours. I asked lawyers about the cases they had taken on, why they chose specific legal arguments or strategies, and how they perceived the law's capacity to hold police accountable. I asked victims and families of victims what motivated them to take their case to court, and how they had experienced the judicial process. I interviewed the most central actors several times throughout the two years.[4] In addition to the interviews, I observed a dozen meetings in which lawyers, activists, and plaintiffs discussed their legal strategies.

The paper further draws on my observations of three trial hearings that represent the three types of legal mobilization: the criminal trial of the officer who shot and killed Amine Bentounsi (2017), the civil law case in which 13 plaintiffs sued the state for racial profiling (2016), and the criminal and civil lawsuits initiated by 18 plaintiffs to contest racialized police harassment in a gentrifying

[3]It should be noted that they are not the only ones. Activist groups also launched criminal lawsuits for perjury against officers who lie in official reports, and a claim seeking the Constitutional Court's opinion (*question prioritaire de constitutionalité*) on the law regulating police stops—both with mixed results. As such, the paper does not offer a comprehensive overview of litigation against racialized policing in France, but rather an in-depth analysis of the constraints and opportunities of the three most important litigation strategies.

[4]All the interviews were conducted in French, tape-recorded, and transcribed. I translated the quotes I use in this paper myself.

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neighborhood of Paris (2018; 2020). I also analyzed the case files of the racial profiling lawsuit, as well as of the criminal and legal lawsuits in Paris. Finally, I did a systematic analysis of the media coverage of the cases I examined in four mainstream press publications, *Le Monde*, *Le Figaro*, *Libération*, *Médiapart*, and *Le Parisien*. I identified the themes covered in the media, with a particular attention to the presence or absence of discussions of racial inequalities, and the specific terms used to discuss them.

To analyze this dataset, I did a first round of inductive coding, which brought to the fore the opportunities and constraints of different legal branches. In interviews, lawyers and victims spoke about the obstacles they encountered in different types of legal proceedings, how they developed strategies to overcome them, or how they strategically mobilized different branches. My trial observations complemented the interview data by revealing how judges and prosecutors in different legal branches responded to various types of arguments and evidence. The case files further provided a detailed look into the legal arguments that movement actors developed, the counter-arguments police and the state produced, and how courts responded to them. After the first round of coding, I returned to the data to systematically examine how movement actors understood and navigated the constraints and opportunities of legal branches, and their outcomes in court and in the media.

RACISM AND VIOLENCE IN FRENCH LAW: SEPARATE LEGAL PROBLEMS

Since the introduction of the concept of discrimination in French law in 1972, laws have maintained a separation between acts of physical violence on one hand, and racial discrimination on the other. Over the past five decades, legislators have rejected activist demands to criminalize racist violence by arguing that it would go against the country's universalist and anti-racialist ideology (Brahim, 2020). In the 2000s, to comply with European law, France enacted new civil laws that expanded the definition of discrimination, but they defined its scope of application in such a way as to limit it to discriminatory targeting or denials of rights, and to preclude considerations of violence as a component of discrimination.

Discrimination in criminal law: Intentional and explicit racial bias

The term "discrimination" first appeared in a 1972 law, enacted to align French law with the International Convention on the Elimination of All Forms of Racial Discrimination. The law criminalized verbal expressions of racism (incitement to racial hatred, racist insults, racial defamation) as well as racial discrimination, defined as the intentional refusal to grant a right, a good, or a service to a person on grounds of their race or ethnicity.[5] Despite the fact that political debates at the time centered on the issue of racist violence, and despite the fact that the international convention requires states to criminalize acts of violence against people on grounds of their race, parliamentarians refrained from criminalizing racist violence (Brahim, 2020).

In the 1970s and 1980s, a stark increase in racist attacks against North African migrant workers claimed dozens of lives (Giudice, 1992). Antiracist mobilizations demanded stronger protections against racist violence and an end to impunity (Hajjat, 2013). Over the next two decades, Parliamentarians passed legislative changes that expanded the criminalization of racist speech, but they consistently rejected demands to make racist violence a specific offense, arguing that it would go against the universalist ethos of criminal law (Brahim, 2020). It was not until 2003 that legislators created an aggravating circumstance for crimes committed "on grounds of race or ethnicity." According to the law, for a crime to be considered to have a "racial characteristic," it must be committed on grounds

[5]Loi no. 72-546 du 1 juillet 1972 relative à la lutte contre le racisme.

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of the victim's race, and the crime must have been preceded, accompanied or followed by verbal or written expressions of racism.[6] Thus, criminal law does not tackle racist violence, only racist speech accompanying acts of violence. This has meant that efforts to use criminal law to challenge racial discrimination have only succeeded when the discrimination was explicit, for example when job ads specified "no Blacks" (Chappe, 2019). In the absence of such explicit evidence, challenging discrimination in criminal courts remained impossible.

Discrimination in civil law: Differential treatment and disparate impact

The 2000s were a turning point for antidiscrimination legislation. The European Union adopted two antidiscrimination directives which were binding to member states: the Racial Equality Directive (2000/43/EC) and the Employment Equality Directive (2000/78/EC). In 2001 and 2008, France enacted two laws to transpose these directives. They banned discrimination on the basis of race and gender (among other criteria) in employment, education, health, and access to goods and services.[7] These legal reforms profoundly transformed antidiscrimination legislation in the country.

In the new laws, discrimination was expanded to include both direct discrimination (a difference of treatment on the basis of race) and indirect discrimination (measures that appear neutral but have a disproportionate impact on a racial group). This meant that the law tackled, for the first time, acts that go beyond intentional or explicitly racist behaviors. Moreover, the laws defined discrimination as a civil tort rather than a crime, and thus opened the door for holding accountable people that may have indirectly caused the discriminatory behavior, such as employers. The law also introduced a shared burden of proof: when alleging discrimination, the claimant must provide evidence to establish a "presumption of discrimination," after which the burden of proof switches to the respondent who must prove that the behavior was not discriminatory.

The civil antidiscrimination laws of the 2000s created new opportunities and led to important advances in the struggle against sex discrimination and union discrimination in the workplace (Bereni et al., 2010; Chappe, 2019). However, they remained difficult to use to challenge racialized policing. The laws' scope of application was limited to employment, social protection, health, social benefits, education, and access to goods and services—policing practices were not included. In addition, France's strictly anti-racialist ideology and the legal ban on the collection of racial and ethnic data represented significant obstacles for racial discrimination claims, since evidence of racial disparities was difficult to produce (Calvès, 2002; Simon, 2015; Simon & Stavo-Debauge, 2004).

Importantly, the laws' conception of discrimination implicitly excluded acts of violence or harassment, limiting the civil law definition of discrimination to behaviors such as denying someone a right or blocking their access to goods or services. The implicit differentiation between violence (to be dealt with through criminal law) and discrimination (to be dealt with through civil law) was made clear in debates over sexual harassment laws. Sexual harassment was introduced in French law as an act of violence punishable under criminal law (Saguy, 2003). When new European laws required member states to define sexual harassment as a form of discrimination, French legislators were reluctant to comply, and did so with significant delay under the pressure of sanctions (Saguy, 2018). Today in France, sex discrimination remains the only kind of discrimination for which acts of violence are explicitly included in the civil law definition of discrimination.

Thus, French law maintains a separation between violence on one hand, and racial discrimination on the other. In criminal law, acts of violence are addressed but racial discrimination is only taken into account if the perpetrator expresses a racist motive. Civil laws tackle direct and indirect discrimination, but French legislators have been reluctant to include acts of violence within the definition of discrimination. What is more, the dominant view among legal professionals is that, when

[6]Loi no. 2003-88 du 3 février 2003.
[7]Loi no. 2001-1066 du 16 novembre 2001; Loi no. 2008-496 du 27 mai 2008.

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faced with acts of violence, filing a criminal lawsuit is more appropriate than arguing discrimination in a civil court. Saguy (2018) finds this to be true for sexual harassment claims. My interviews with lawyers working on police violence cases show a similar trend.

CRIMINAL LAW: EMPHASIS ON VIOLENCE, ERASURE OF RACE

The most common way that people mobilize the law to contest policing practices in France is to file criminal complaints against individual officers. Since the 1990s, the "Truth and Justice" movement, centered around families of victims of police killings, has organized around criminal proceedings against police officers who kill. This section analyzes the opportunities and constraints of criminal law for contesting racialized police violence, and how movement actors navigate them. It shows that criminal law's dominant paradigm, legal provisions, and procedural and evidentiary rules, result in a focus on individual officers' use of force, and an erasure of the racialized aspect of police violence. Given this, the Truth and Justice movement adopted a dual strategy: lawyers developed legal arguments that aligned closely with the legal and procedural constraints of criminal law, which entailed refraining from claims of racial discrimination to maximize the chances of an indictment. In parallel, activists used the rare trials as political platforms to introduce a structural analysis of racialized police violence through expert witnesses, albeit with limited resonance in the judicial outcome and media coverage.

Criminal proceedings: Tackling illegitimate violence, one bad apple at a time

When someone dies during a police intervention, the criminal proceedings aim to respond to two questions: was the officer's use of force legitimate? did it cause the death? Criminal law's punitive paradigm means that lawsuits consider only the responsibility of individual officers involved in the death, not that of the institution or the state. The provisions of the French penal code stipulate the conditions under which police can use lethal force (force must be strictly necessary and proportionate to respond to an immediate threat of bodily harm), but they do not include race as a central consideration. As discussed above, criminal law only tackles racial discrimination as an aggravating circumstance, and only if there is explicit evidence of the offender's racist motive. Moreover, victims have little control over the investigation process; they are only allowed to make requests to the investigative judge, but the magistrates retain full discretion to accept or reject these requests.

Within these constraints, all the lawyers I interviewed avoided bringing up race in criminal cases alleging police violence (with the exception of lawyers who developed the third litigation strategy I examine below). In the Truth and Justice movement, lawyers mostly play a support role, helping victims' families navigate the criminal proceedings, but otherwise intervening little in political organizing or the development of movement discourse. Aiming to maximize the chances of an indictment and conviction, they develop arguments that stick closely to the legal provisions and procedural rules of criminal proceedings.

When I asked criminal lawyers whether they ever bring up race in police violence cases, all gave a version of the answer "no, because there is no evidence." To ensure they are taken seriously, lawyers told me, they avoid bringing up racial discrimination unless they have "tangible evidence," such as proof of verbal expressions of a racist motive by the officer as he was using force. In cases of police killings, such proof virtually never exists, both because most officers are careful not to be caught shouting racist slurs, and because prosecutors and investigative judges do not typically investigate whether the crime was racially motivated. Without proof, mentioning that race may have played a role would make them lose credibility. "Either you have concrete proof, or it doesn't

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exist," one lawyer explained, "every small battle counts, and the battles you can't win, you shouldn't fight."[8]

Even if lawyers could point to a broader pattern of racialized police violence within which the specific incident at hand occurred, they refrained from making this argument in criminal courts. One lawyer explained; "criminal law allows you to address acts of violence, of drug trafficking, but… not a policy, a discriminatory action, except if the officer was particularly careless, did something very explicit."[9] In other words, criminal law seizes facts only one interaction at a time but cannot tackle patterns of practice like institutional discrimination.

Moreover, virtually all the lawyers I spoke to were careful to stay in line with the dominant legal culture, which considers discrimination as a separate, and less serious, legal problem than violence. Some endorsed this view and avoided bringing up discrimination because they viewed it as unimportant compared to the more serious question of lethal violence. For example, an immigration lawyer who represented several families of victims of police killings explained that in cases of police violence, especially lethal violence, the question of discrimination was secondary:

> I won't claim discrimination because the main issue is not that [the victim] was a North African worker or a *pur beurre* French, I don't care. It's important for a sociological analysis, but in the [legal] case, what matters is: who killed [him]? Unfortunately, it becomes secondary… It would overburden the case with things that are certainly important but completely minimal relative to the main issue… What counts is that he was beaten up by police officers. [Discrimination] is completely secondary.[10]

Other lawyers were sympathetic to families' and activists' arguments about the racialized nature of police violence, but they still avoided bringing up race for fear of losing credibility. Racial discrimination, they argued, is too politically loaded, and mentioning it in front of a judge might backfire. In criminal proceedings, it might be perceived as political talk rather than legal talk and would risk jeopardizing the whole defense.

The non-White lawyers I spoke to mentioned a further obstacle to raising arguments of discrimination in criminal proceedings: lawyers of color risk being delegitimized—and their clients penalized—if judges perceived them as going against the law's universalist ethos. A Black male lawyer explained: "Discrimination is sensitive because you shouldn't give the impression that you're screaming 'discrimination' all the time, otherwise, you lose credibility."[11] Echoing this, a mixed-race female told me that it is particularly difficult for non-White lawyers to claim racial discrimination in front of judges who are virtually all White, adding:

> I've had many African clients tell me, 'it's because I'm Black.' And I tell them: yes and no. Yes, it's true, but no, we won't base our defense on it. Otherwise, we're playing the victim… It's always delicate to emphasize this identity aspect, the system is not ready to hear these arguments objectively.[12]

In sum, by and large, lawyers who represent victims of police violence avoided mentioning race and racial discrimination in criminal proceedings for police brutality and focused solely on the legitimacy of police use of force. The dominant legal culture downplaying discrimination as unimportant in cases of violence, the restrictive definition of a racist motive, and the evidentiary rules in criminal law, meant that lawyers avoided mentioning race to maximize the chances of an indictment.

[8]Interview with male lawyer who defended a victim of police killing, April 14, 2017.
[9]Interview with male lawyer who represented several victims of nonlethal police violence, September 25, 2017.
[10]Interview with male lawyer, September 22, 2017.
[11]Interview with male lawyer, September 25, 2017.
[12]Interview with female lawyer, February 1, 2018.

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Introducing race through expert testimonies at trial

The vast majority of cases of police killings end with a non-indictment decision.[13] Trials are rare, so when they happen, activists seek to use them as a political platform to garner media attention around their struggle and legitimize their claims. To do this, they introduce sociologists and activists as expert witnesses.

In 2017, the Appeals trial of the policeman who shot and killed Amine Bentounsi provided one of those rare opportunities (Pregnolato, 2020). On April 21, 2012, four officers sought to arrest the 28-year-old of Tunisian origin after he failed to return to prison from a furlough. During the foot-chase, police officer Damien Sabounjian shot Amine Bentounsi in the back. According to the shooter, Amine had pointed a gun at him, so he fired in self-defense, but by the time the bullet reached him, Amine had turned around. However, six witnesses testified that the victim had never turned to face the officer and was running away when he was shot.

The five-day trial focused on adjudicating whether the policeman was acting in self-defense when he shot the victim. The question of racial bias was largely absent from the debates, until the fourth day of the trial, when the court heard the testimonies of four expert witnesses requested by the victim's family. The first was Farid el Yamni, whose brother Wissam was killed by the police in 2012. The victim-turned-activist spoke about the investigations into his brother's death and the routine denial of justice his and other families face. Then, antiracist activist Omar Slaouti spoke about several cases of police killings dismissed without an indictment, and about the rampant racism within police forces, evidenced by their high rates of voting for the far-right party. Next came Nacira Guenif-Souilamas, a sociologist of gender, ethnicity, and immigration, who spoke about the normalization of racialized violence in France. She explained that her research shows that "the police want to affirm their authority over a population that doesn't have the benefit of the law". She ended her statement by addressing the jury and telling them that their decision "largely exceeds the case of the accused officer [and] resonates with a broader situation of injustice suffered by a population stigmatized because of its origins." Lastly, Michel Kokoreff, an urban sociologist, spoke about the endemic nature of racial discrimination in France, not just in policing but also in schools, social housing policies, the judiciary, and the media.[14] In short, these expert statements framed police killings as a routine practice of the French police; they denounced the widespread impunity granted to police officers who kill, and affirmed that police brutality is a symptom of systemic racism in France.

In court, legal professionals ignored these statements. The activists and sociologists were the only witnesses for whom no judge, jury member, lawyer, or prosecutor had any question. I later learned that the presiding judge had asked everyone to refrain from asking them any question so as not to "waste time," a request with which everyone complied. In their concluding arguments, all the legal professionals instructed the jury to ignore these statements. The prosecutor called on the jury to find the officer guilty, but added "this trial is not a political forum or a scholarly conference, and it's not a rally or a protest; it is a meeting of jurors who must decide on the fate of [the accused]." The victim's lawyer, too, told the jury that they should not listen to those within the police calling for a presumption of self-defense, nor to those "who want a conviction for the cause against police brutality."[15] Thus, even though activists managed to introduce statements about the role race in policing at the criminal trial, jurors were instructed by legal professionals on all sides of the dispute to ignore these statements.

What is more, when Amal Bentounsi, the victim's sister and by then a prominent figure of the Truth and Justice movement, took the stand, the presiding judge did not allow her to speak about her brother's experiences with police abuse. When she started sharing details about the abuse and mistreatment he suffered at the hands of the police and in prison, the presiding judge interrupted

[13]Basta! «Décès suite à une intervention policière: les deux-tiers des affaires ne débouchent sur aucun procès», https://www.bastamag.net/Violences-policieres-suivi-judiciaire-non-lieu-sans-suite-prison-impunite-IGPN.

[14]Field notes, trial observations, March 9, 2017.

[15]Ibid.

her saying: "I don't want us to waste time on this." He advised her to stick to her role as a civil party (victim), and to talk about how it feels to have lost him. Amal insisted that this story is important to understand her brother's trajectory, but the president interrupted her again and said firmly: "we are not here to put the police on trial!" (*on n'est pas là pour faire le procès de la police*). She could not complete the statement she had prepared.

At the end of the week-long trial, the jury convicted the officer for unintentional homicide and the court sentenced him to a suspended prison sentence. Without surprise, the court did not consider whether race had played a role in the crime.

Activists were under no illusions that the expert statements might be considered relevant for the court's decision, but they sought to use the highly publicized trial as a loudspeaker to promote their claims in the media coverage of the case. However, their institutional and structural analysis did not transfer in the media coverage of the trial. In March 2017, 23 articles were published about the trial in *Le Monde* (center), *Le Figaro* (right), *Liberation* (left), and *Le Parisien* (largest local paper). The articles covered, at length, the victim's criminal history,[16] the defendant's personality,[17] the contradictions between his statements and those of the witnesses, as well as the police protests that followed the guilty verdict. None of the 23 articles mentioned any of the sociologists or activists' statements, and only two covered Amal Bentounsi's attempt to tell the story of her brother's trajectory, both of which highlighted the judge's admonishment. *Le Monde* even used the president's reprimand as the title of its article, "This is not the trial of the police."[18]

In sum, in criminal law, the dominant paradigm, legal provisions, and procedural and evidentiary standards, focus the attention on individual officers' responsibility for excessive use of force, but sideline considerations of racial discrimination. As a result, criminal lawyers representing victims are reluctant to bring up race. When activists attempted to introduce an analysis of the role of race in a police violence trial through expert witnesses, judges, prosecutors, lawyers, and even the media, silenced or ignored these statements.

CIVIL LAW: CONTESTING DISCRIMINATION, VIOLENCE DOWNPLAYED

In parallel to the Truth and Justice movement, social change actors developed a second litigation strategy to contest racialized policing: mobilizing civil law to challenge discriminatory police stops. This strategy was spearheaded by the transnational organization Open Society Justice Initiative (OSJI), which organized a campaign against racial profiling in France throughout the 2010s, in partnership with French organizations and lawyers. To get around the difficulties of challenging racial discrimination in criminal courts, OSJI turned to civil laws and sued the state for discriminatory stops. Their lawsuit resulted in an important judicial victory: in 2016, France's highest court condemned the state for three discriminatory stops. This section analyzes how the litigation team used the provisions and evidentiary rules of civil law to carve a space for challenging racialized policing in French courts, and examines the political resonance and limitations of the 2016 ruling.

Civil law: Suing the state for discriminatory stops

In the mid-2000s, OSJI launched a racial profiling program in France; they established partnerships with French organizations and built a coalition engaged in political lobbying, media campaigns, and litigation. In the early 2010s, OSJI started elaborating what they call a "strategic litigation" case, with the goal of expanding legal opportunities for victims of racial profiling. To build the case, OSJI

[16]The victim was repeatedly described as "fugitive robber."
[17]For example, *Le Parisien* titled "A man incapable of questioning himself."
[18]Le Monde, March 10, 2017, Affaire Bentounsi: «Ce n'est pas le procès de la police».

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mandated Felix de Belloy, a criminal lawyer, and Slim Ben Achour, an employment lawyer specialized in antidiscrimination law.

Ben Achour and de Belloy suggested a litigation strategy based on civil law rather than criminal law. Mobilizing civil law presented several advantages, they argued. It allowed them to rely on a broader definition of discrimination than in criminal law: civil law bans differential treatment, regardless of an intention to discriminate. Even though the scope of application of civil antidiscrimination laws does not include police activity, they developed the argument that equality and non-discrimination is an overarching principle in international, European, and French constitutional law, and therefore nondiscrimination rules must apply to policing practices, too. Mobilizing civil law also allowed them to sue the state, rather than individual officers, based on provisions stipulating that the state is responsible for misconduct by public employees. Discrimination being a form of misconduct (*faute*), the state is liable for discrimination by its agents, they reasoned. This would also help the campaign frame the issue as an institutional problem rather than a matter of "bad apples."

Another key advantage of mobilizing civil law was the opportunity to rely on more favorable evidentiary rules. As discussed above, civil law proceedings provide plaintiffs with more control over the fact-finding process, as they can introduce their own evidence. What is more, European and French laws stipulate that, in civil discrimination cases, the burden of proof is shared between the claimant and defendant: plaintiffs must present facts establishing a "presumption of discrimination," (evidence suggesting differential treatment), and it is then the state's responsibility to prove that the practice was not discriminatory or based on objective factors. If, as they hoped, the court endorsed their argument that civil antidiscrimination laws apply to policing practices, then plaintiffs would be able to benefit from a shared burden of proof.

Still, even with more favorable evidentiary rules, the litigation team faced a challenge: French police keep no systematic records of police stops, so plaintiffs needed to come up with evidence that a stop happened and that it should be presumed discriminatory, without relying on police records. After much thought, the litigation team settled on two forms of evidence. First, each plaintiff provided an affidavit (*attestation*), written by a witness to the stop, testifying that the plaintiff was stopped for no apparent reason. As Ben Achour explained, in civil law, affidavits are one of the main modes of proof; "in [civil] law, the affidavit is deemed truthful… the citizen is deemed to be in good faith, unless you prove that he lied."[19] Affidavits were both a credible form of evidence in civil courts, and easy to produce, as long as someone had witnessed the stop. Second, the plaintiffs presented scientific research demonstrating that police stops disproportionately target racial minorities. In 2009, OSJI had published France's first study quantifying racial disparities in police stops, in collaboration with renowned French scholars. The study, which found that Arabs and Blacks are eight and six times more likely to be stopped by the police than Whites (Open Society Justice Initiative, 2009),[20] had been widely recognized, by media and politicians, as credible (Boutros, 2020). The lawyers hoped that, combined, witness affidavits and the scientific study would be sufficient to establish a presumption of discrimination. It would then be up to the state to prove that the contested stops were not discriminatory. Since the police keep no written records of identity checks, the lawyers believed that the state would struggle to produce evidence that the stops were based on objective, non-discriminatory factors.

Based on this legal strategy, the litigation team selected 13 plaintiffs, all of them Black and Arab men who had been stopped for no apparent reason in various French cities, in the presence of a witness willing to write an affidavit (often a person stopped alongside them). As de Belloy summarized, they were looking for "people who had the characteristic of being Black or Arab, who were stopped without any reason while they were doing a mundane and absolutely normal activity." He added that the plaintiffs would ideally have no criminal record because "we started with the assumption that the

[19]Interview with Slim Ben Achour, July 7, 2016.

[20]The study relied on observations of police stops in Paris: researchers recorded the characteristics (racial appearance, gender, age) of all the people present in a specific place, to create a benchmark of the "available population"; then, they recorded the characteristics of people stopped by the police, in order to measure whether the police disproportionately stop certain groups.

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state would be unable to justify why they had been stopped."[21] For this reason, they also limited the plaintiffs to people whose stop was a "simple stop," that is, involved no finding of an offense, no detention for identity verification, and no violence.[22] In 2012, the 13 plaintiffs field a lawsuit suing the state for discriminatory police stops.

Symbolic victory: The state is liable for discriminatory stops

By 2016, the case had gone all the way to France's highest court. In what was widely considered a historic decision, the Court of Cassation condemned the state for "grievous fault" (*faute lourde)* in three of the 13 stops, for which the court concluded that they were "conducted based on criteria stemming from physical characteristics associated with an origin, real or imagined, without any prior objective justification."[23] The ruling also endorsed the shared burden of proof; to contest a discriminatory stop, the court explained, plaintiffs "must bring elements of fact that show a difference of treatment and constitute a presumption of discrimination," and then "the administration must prove, either the absence of a difference of treatment, or that this difference is justified by objective elements other than discrimination."[24] The state was ordered to pay 1500 euros in compensation to each of the victims. With this ruling, the Court of Cassation created a new cause of action for victims of discriminatory policing, expanding the legal opportunities available to contest racial profiling.

This judicial victory came on the heels of years of political organizing that brought the issue of racial profiling to the forefront of political debates (Boutros, 2020). Despite the government's initial promise to address the issue, strong resistance from police unions blocked all reform proposals. In this context, the court's decision sent a strong political message. Not only did it confirm the growing consensus that racial profiling is a reality in France, it also signaled that it is a problem that the state (and not just individual officers) is accountable for.

The decision was not as widely covered in the media as the activists hoped, in large part because of its unfortunate timing: the ruling was released on the day of Donald Trump's election in the United States. Nevertheless, the coverage from mainstream media unanimously called it a historic decision that set a judicial precedent (*qui fait jurisprudence*). The press emphasized the legal rule established by the court: "an identity check based on physical characteristics associated to real or assumed origins, without prior objective justification, is discriminatory and constitutes a grievous fault."[25] Journalists also emphasized the adjusted burden of proof, and speculated that this decision "could lead to much litigation."[26] To Ben Achour, the ruling significantly strengthened the credibility of the campaign's claims. "I think we won politically, in the sense that it's not a matter for debate anymore. Of course in some circles, on the far right, they will find justifications for racial profiling, but everybody now agrees that Blacks and Arabs are disproportionately stopped."[27]

However, the symbolic strength of the ruling obscured the narrow nature of the cause of action it opened. The court restricted the kind of evidence plaintiffs need to establish a presumption of discrimination, while adopting an expansive understanding of the evidence the state can present to counter discrimination claims. In the three cases where the court ruled the stop discriminatory, the witness was an activist who testified that he had watched the police patrol for an hour and a half in a racially mixed space, during which they stopped only young Arab or Black men, none of whom were arrested. In other cases, the court found that a presumption of discrimination was not established because of the absence of evidence that officers were stopping people of color exclusively when the

[21]Interview with Felix de Belloy, October 30, 2017.

[22]This created some tension with the activist organizations that helped identify prospective plaintiffs, which were frustrated that the lawyers wanted to represent only "clean cases."

[23]In French law, the state can be held accountable for simple fault (*faute simple)* or grievous fault (*faute lourde*).

[24]Court of Cassation rulings, November 9, 2016.

[25]Le Monde, November 9, 2016, "Contrôles au faciès: après la condamnation de l'Etat, la police devra changer ses pratiques."

[26]Libération, November 9, 2016, "Discrimination. La Cour de cassation confirme la condamnation de l'Etat pour des contrôles au faciès."

[27]Interview with Slim Ben Achour, March 26, 2017.

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contested stop happened. Thus, although there are no data in France about the racial composition of public spaces, the court implicitly required that plaintiffs prove that, in the time and space of the contested stop, only people of color were stopped, while white people who were behaving in the same way, were not. This implicit requirement of white comparators signals that "there is still an underlying requirement to prove intentionality," to borrow the words of an antidiscrimination law specialist.[28]

Further, the court endorsed the state's argument that if the police stop is conducted in a "sensitive" area, this is sufficient to prove the stop was based on objective factors. For example, the stops of two young Arab men who were sitting in front of their building talking in the suburb of Lyon, and that of a Black man who was stopped as he came out of his building, were not deemed discriminatory because the state argued that they took place in a sensitive neighborhood. In this way, the court excluded whole territories, vaguely defined as "sensitive" (code for low-income) from the protection against discriminatory stops. These restrictions meant that, since the 2016 ruling, few people succeeded in holding the state accountable for discriminatory stops.

In sum, mobilizing civil laws allowed activists to open new judicial avenues for considering the role of race in policing. Thanks to the more expansive definition of discrimination in civil law, to more favorable evidentiary rules, and the campaign's ability to produce and present evidence suggesting racial discrimination, activists succeeded in obtaining an important symbolic victory from France's highest court, which signaled the state's responsibility for racial profiling. While their strategy for this case intentionally avoided bringing up issues of police violence, the judicial victory opened new legal possibilities for challenging racialized police violence, which the same group of lawyers used in the case I discuss next.

COMBINING CRIMINAL AND CIVIL LAW TO CHALLENGE RACIALIZED VIOLENCE

In the 2010s, activists developed a third litigation strategy for contesting racialized police violence: combining criminal and civil proceedings to challenge the routine, repeated practices of one police unit. In 2013, in a gentrifying neighborhood of the 12th district of Paris, residents, youth counselors, and local NGOs started organizing against one police unit, nicknamed the Tigers Brigade, which routinely harassed teenagers from immigrant and low-income families. According to the teenagers, the "Tigers" repeatedly stopped them and took them into police detention without clear motive. During these interactions, the police officers mocked and insulted them, including with racist slurs; they punched, slapped, and pepper-sprayed them; and some officers sexually molested them during pat-downs. The interactions always ended with the police ordering the young people—mostly boys—to "beat it" (*dégagez*). As part of their organizing effort, the local actors solicited the support of OSJI and of lawyers Slim Ben Achour and Felix de Belloy to help prepare a lawsuit against the Tigers. This section examines how the lawyers used a combination of criminal and civil proceedings to expand their legal arguments, from contesting discrimination in discrete interactions to challenging institutionalized practices, and from contesting discrimination as differential targeting, to arguing that repeated stops, frisks, arbitrary detention, and violence targeting the same young men of color were constitutive of systemic discrimination and "discriminatory harassment." They did this by launching a criminal complaint alleging dozens of instances of misconduct by the same police officers against multiple plaintiffs, and then using the records uncovered in the criminal investigation to launch a civil claim against the state for institutionalized discrimination.

[28]Interview with female lawyer, specialized in antidiscrimination law, January 24, 2018.

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Criminal lawsuit: From discrete incidents to routine, repeated practices

When they agreed to support the teenagers, Ben Achour and de Belloy suggested launching a criminal lawsuit. Despite the limitations of criminal law in tackling racialized police violence, they believed that the symbolic weight of a criminal lawsuit was the best way to garner attention around the Tigers' practices and achieve change. Ben Achour explained:

> Our first objective was for [the abuses] to stop, and the best way to do that is to file a lawsuit. The second objective was to have so much scrutiny on this police brigade that there would be personnel change – the administration often does that – and the third objective was to have criminal convictions. If you manage to place pressure… on police, judiciary, investigators… your complaint will be taken seriously.[29]

To create enough public scrutiny on the Tigers brigade and to pressure investigators to stop dismissing the teenagers' allegations without investigation, the litigation team prepared a collective complaint. After months collecting evidence (victim and witness testimonies, videos, photos, medical records), in December 2015, they filed a lawsuit in which 18 plaintiffs accused 11 police officers of 44 counts of assault, sexual assault, arbitrary detention, and discrimination, over the span of 3 years (2013–2015).

Thanks to the collective nature of the complaint, to the large number of allegations, and to the media attention the organizers managed to draw around the complaint, the police inspection services (IGPN) conducted an uncharacteristically thorough investigation. In 2017, the prosecution referred four officers to trial for three incidents of physical assault, and dismissed the other allegations for insufficient evidence. While the trial covered only a fraction of the facts alleged in the complaint, the investigation file provided activists with a trove of usually inaccessible police records, which revealed that the Tigers' practices were part of an institutional policy to systematically "expel undesirables" (*évincer les indésirables*) from public spaces. The Tigers brigade received daily instructions to expel undesirables from public spaces, even when they had committed no offense or incivility (Boutros, 2018). The term "undesirables" was not defined, but in practice, it referred to young men of color from low-income backgrounds or homeless persons.

The local organizers took advantage of having their day in court to draw media attention to these policies and to the racialized harassment practices they fostered. In preparation for the trial hearing in February 2018, some elements of the investigation file were leaked to the press, including records showing the institutional policy of expelling undesirables, as well as a letter that the prosecutor's office sent to the head of the police station, deploring "serious breaches in the procedures of police detention," and warning that this could lead to criminal proceedings for arbitrary detention.[30] Based on these documents, mainstream media outlets noted the police's "routine interventions to remove undesirables"[31] and the institutional strategy to use stop, search, and detention to expel individuals.[32] Mainstream outlets described the allegations as "daily and brutal harassment" (*Le Monde*)[33] and "brutal police harassment" (*France Info*).[34]

The investigation file also included video excerpts from a body-camera worn by one of the policewomen in the Tigers brigade. The camera was switched on and off at the police's discretion, and the footage does not show physical violence, but it shows officers repeatedly stopping young men that they know and call by name, systematically frisking and searching them, and systematically

[29]Interview with Slim Ben Achour, March 26, 2017.
[30]Investigation file.
[31]France Inter, February 22, 2018, "Le procès d'une drôle de "Brigade du tigre."
[32]Le Point, February 21, 2018, "Quatre policiers jugés pour des violences après des plaintes d'adolescents."
[33]Le Monde, December 17, 2015, "Des adolescents portent plainte pour violences policières."
[34]France info, July 3, 2017, "Paris: quatre policiers renvoyés devant la justice pour des violences commises sur des jeunes."

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refusing to give a motive for the stop. This footage was leaked to two national newspapers, *Le Monde* and *Mediapart*, each of which released excerpts of the footage, emphasizing the "unprecedented" nature of such images, and their revealing of "routine police harassment."[35]

Thus, although the vast majority of allegations of police abuse never made it to trial, the organizers used the records uncovered in the criminal investigation to promote, in the mainstream media, a narrative emphasizing the routine, institutionalized nature of police discrimination and brutality, which they described as *police harassment*. This helped activists shape the media coverage away from the usual narrative of an isolated incident and toward a discussion of the repeated and collective nature of police abuses.

During the trial in 2018, the debates focused on the legitimacy of police use of force, with judges and prosecutors giving little attention to the allegations of discrimination. However, in a break from the usual practice of criminal lawyers in cases of police brutality, the victims' lawyers decided to bring up racial discrimination in their oral arguments. While they knew that this was unlikely to influence the judicial outcome without proof of explicit racist speech, they made what they called a "political decision" and argued that the repeated stops, violence, and arbitrary detention that the plaintiffs suffered were part of a discriminatory pattern of practice.

While in police violence cases, judges and prosecutors generally dismiss claims of racism and discrimination as "political" (see above), in this case the prosecutors made the unusual decision to spend half of their time during oral arguments responding to claims of discrimination. In her concluding arguments, the prosecutor called on the court to find the officers guilty, but said that she "cannot accept to hear that this is the trial of a group of racist and violent police officers who on a daily basis stop young innocents." She recognized that racial profiling is "a reality that no one is denying," but insisted, "this is not the reality of this case." In a somewhat circular argument, she claimed that the plaintiffs were not innocent victims since "their names are included in numerous police records that show that they are subjected to stops and police detention, either because there is a noise complaint, or because of spit, graffiti, or fireworks, or because the police unit received instructions to keep an eye particularly on this area." Without responding to the claim that the police stopped the teenagers regardless of their behavior, the prosecutor insisted: "there is a context in this neighborhood that justified a police presence," adding "who wants to live in a place where the youth smoke joints in building entrances, listen to loud music, and do motorcycle street racing?"[36] Her statement used coded racialized images of "youth" (code for Black and Arab boys from low-income families) ruining the quality of life of "residents" (code for White middle-class families). The prosecutor thus endorsed the police officers' arguments that they were justified in stopping, frisking, and detaining *any and all* young men of color hanging out in public spaces because some residents complained that *some* of them were loud or committed incivilities.

Hence, the strategy of launching a collective complaint about multiple instances of police abuse, allowed activists to overcome the usual silencing of allegations of racism in criminal trials of police violence, and to pressure the prosecution to articulate a response. While the court did not convict any of the officers for discrimination, the organizers successfully introduced a discussion of the role of race in police violence in criminal courts, something that was unprecedented.

The Court of First Instance condemned three of the officers for aggravated assault, a ruling that the Court of Appeal reversed in 2020. However, this was not the end of this case. Lawyers and activists launched a second lawsuit, based on the same facts, but in civil law.

[35]Youtube, Le Monde, February 14, 2018, "Paris: des images inédites de la police lors de patrouilles dans le 12ème arrondissement" https://www.youtube.com/watch?v=q6UeaAj604U; Youtube Mediapart, February 13, 2018, "Paris XIIe: le harcèlement policier au quotidien" https://www.youtube.com/watch?v=MZaLvGsQMcc.

[36]Trial observations, February 21, 2018.

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Civil lawsuit: From intentional to systemic discrimination

Shortly after gaining access to the investigation file, the lawyers started working on a civil lawsuit against the state, arguing that the practices of the Tigers brigade constitute "discriminatory harassment" and "systemic discrimination." As one lawyer noted,

> The criminal investigation allowed us to see the orders given by the police chiefs; there are police officers whose task it is to wipe out the undesirables. This allows us to prove that there are in fact top-down directives. The prosecutors' indictment decision implies [it's about] bad apples, but the file we have access to shows that this is a society-wide policy.[37]

The innovation of this lawsuit, which was filed in June 2019, was to use the police records uncovered in a criminal investigation, as evidence in a civil lawsuit against the state. To support the claim of systemic discrimination, the complaint included, in addition to the victim and witness testimonies, police records describing the policy of "expelling undesirables," intervention records showing police routinely expelling "undesirables" who were committing no offenses, and body-camera footage showing systematic frisks and searches during stops. The plaintiffs also added statistical studies showing wide racial disparities in police stops in France, as well as multiple affidavits written by white residents of the neighborhood testifying that the police never stop them.

This evidence allowed the lawyers to introduce new legal arguments in court. As we saw above, criminal cases for police misconduct typically ask whether discrete incidents of use of force were legitimate, and the civil lawsuit against racial profiling asked if specific identity checks were discriminatory. By contrast, this lawsuit asked whether the *cumulative effect* of individual practices, institutional policies, and interinstitutional relations, created a situation of *systemic discrimination*. The complaint described "a situation of cumulative and dynamic inequality resulting from the interaction of practices, decisions, individual or institutional behaviors, which have intentional or unintentional prejudicial effects on the group targeted."[38] In other words, the police records allowed activists to expand the usual focus on discrete incidents and to introduce a legal claim about discriminatory policies and patterns of practice.

In its 2020 decision, the Paris Court of First Instance condemned the state for five instances of physical violence for which medical certificates and several witness testimonies corroborated the plaintiffs' allegations, as well as for five unlawful stops based on procedural errors (e.g., failing to record a legal motive for detention). However, the judges ruled that there was insufficient evidence to prove discrimination.[39]

In line with the Court of Cassation's 2016 ruling, the court considered whether the evidence plaintiffs presented established a presumption of discrimination. It ruled that general statistics demonstrating racial disparities in police stops are insufficient, on their own, to establish a presumption of discrimination. Further, it considered affidavits by White residents irrelevant because they did not describe the behavior of these residents, noting "to establish a difference of treatment, one must demonstrate that, the behavior being equal, only the plaintiffs are stopped." In other words, it followed the Court of Cassation's requirement that the plaintiff provide evidence of a relevant comparator, and prove that, in the time and space when the plaintiffs were stopped, *only* people of color were stopped despite the fact that there were Whites behaving in the same way.

More significantly, the court argued that the policy of "evicting undesirables" does not constitute discrimination.

[37]Field notes, lawyers' meeting October 13, 2017.
[38]Civil lawsuit filed in June 2019.
[39]Decision of the Tribunal Judiciaire de Paris, October 28, 2020.

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> The use of the terms "undesirables" and "young thugs" [*jeunes voyous*] to refer to some of the plaintiffs in the police digital records… [refers to] a category defined not by age or origin, but by behavior in the public space, on the basis of a policy, acknowledged by the officers and their supervisors, of securitization against "*the presence of youth in the evenings and nights on pedestrian zones, where they commit diverse nuisances and incivilities, and sometimes offenses, which are particularly bothersome to the residents of these neighborhoods*" (emphasis in the original).

Despite acknowledging a policy of "securitization against the presence of youth" in public spaces, and admitting that "the implementation of this policy leads to irregularities or unlawful behaviors by the police," the court determined that "this does not indicate a discriminatory connotation." Having thus rejected every piece of evidence, the court concluded "given that discrimination is not established for each incident taken in isolation, it cannot be established in a global manner, whether through the existence of a phenomenon of discriminatory harassment or of systemic discrimination."[40]

It is perhaps unsurprising that the lowest court refrained from recognizing "systemic discrimination," a concept for which there was no precedent in France's highest courts, but its detailed assessment of the evidence signaled two important advances: it endorsed the admissibility, in a civil lawsuit, of police records uncovered in a criminal investigation, and it accepted "systemic discrimination" as a valid legal claim.

In the media, this case helped the movement highlight the problem as police harassment and systemic discrimination. In May 2020, before the court's hearing, the state-appointed Rights Defender published a highly publicized opinion on the case, in which he concluded that the practices in this police district constituted "systemic discrimination." He wrote, "taken together, the facts establish the existence of discriminatory harassment, in that this practice of "eviction" and the daily experience it imposes on the young people creates an intimidating, hostile, degrading, humiliating, and offensive environment."[41] The watchdog's appropriation of terms such as systemic discrimination and discriminatory harassment suggests that activists' understanding of policing as racialized violence is slowly gaining ground in the public and political arena.

In sum, the strategy of combining criminal and civil lawsuits allowed activists and lawyers to overcome some of the difficulties of mobilizing the law to contest racialized police violence. Launching a collective criminal lawsuit based on multiple police interactions involving the same officers and the same victims over a long period of time, resulted in a criminal investigation that uncovered usually inaccessible police records and helped the lawyers impose a debate about racial discrimination during the criminal trial. Lawyers then used these records to launch a civil lawsuit that expanded their definition of police discrimination, from an attention to how individual officers select whom to stop, to challenging institutionalized practices and policies that create unfavorable outcomes for minorities. While courts have so far rejected these arguments, the fact that they considered the claims valid and the evidence admissible testifies to slow but noticeable changes in how civil courts address questions of policing and discrimination.

CONCLUSION

Existing scholarship shows that mobilizing the law both constrain and enable social movements (McCammon & McGrath, 2015; McCann, 1998; Stryker, 2007). My work contributes to specifying this finding by examining and comparing how mobilizing different branches of law, separately or in combination, matters for movements contesting structural inequality and violence. The findings,

[40]Ibid.

[41]Défenseur des Droits, decision number 2020-102.

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TABLE 2 Branch characteristics and activist strategies for contesting racialized policing in French law

	Criminal law	Civil
Branch characteristics	Punitive paradigm Laws ban illegitimate violence Evidence produced by prosecutor	Compensatory paradigm Laws ban discrimination Evidence produced by parties
Constraints and opportunities	Symbolically stronger Can only sue individuals Addresses violence; restricted definition of discrimination No control over fact-finding process	Symbolically weaker Can sue the state Addresses discrimination; but not discriminatory violence Parties produce evidence
Legal and media strategies	Expert witnesses to promote activists' claims Leak elements of criminal investigations Conduct own fact-finding before filing collective complaint	Produce and present own evidence (statistics, affidavits) Use criminal investigation file to launch civil lawsuit Build on judicial victory to expand legal claims

summarized in Table 2, suggest that three characteristics of legal branches matter for legal mobilization: (i) the branch's dominant paradigm, (ii) its legal provisions, (iii) its procedural and evidentiary rules. Each of these characteristics presents opportunities and constraints for social movements to promote their understanding of the social problem at hand. A branch's dominant paradigm shapes the symbolic value placed on litigation proceedings and thus the resonance the case might have in the media. It also determines how the problem gets framed in court and which actors are blamed for it. The legal provisions of each branch shape which aspects of the problem get highlighted, and which are obscured. The evidentiary rules determine the extent to which activists and victims can intervene in the fact-finding process and thus how much they can influence the solidity of their claims within legal proceedings.

One of the central findings is that, while all three characteristics present constraints for social movements, legal branches' evidentiary rules provide activists with the most opportunities to intervene in shaping the legal proceedings and their outcomes. In France, the paradigms and legal stock of both criminal and civil laws presented obstacles for contesting racialized policing, because they restricted how racialized police violence was redefined in law, either as individual officers' use of excessive force, or as discrimination in the choice of police targets. The role of race in police violence, and the way in which racialized policing is institutionalized, remained obscured. Activists and lawyers sought to overcome these obstacles by intervening in the type of evidence presented in proceedings. In criminal trials, they brought sociologists and activists as expert witnesses to expand the framing from a focus on bad apples to emphasizing structural racialized police violence. In civil proceedings, they drew on the possibility for claimants to present their own evidence to introduce statistical data produced within the movement.

Further, my analysis demonstrates that activists and lawyers use the law's division into branches strategically to construct new causes of action and to try and expand how the law tackles complex social issues. In France, activists have relied on the records uncovered in the course of criminal investigations to leak internal records to the media, and to present new types of evidence in civil law claims. This allowed them to expand their legal claims, from intentional discrimination to institutional discrimination and discriminatory harassment. Future research could refine my framework by examining the mobilization of other legal branches, for example by analyzing the class action lawsuit recently filed in France's administrative court (*Conseil d'État*) on racial profiling.

My work also contributes to scholarly debates on the role of race in policing, and on how to make visible the institutionalized and structural dimensions of racialized policing (Epp et al., 2014). The analysis shows that France's anti-racialist ideology constrains, but does not preclude,

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highlighting the role of race in policing through legal mobilization (Boutros, 2022). While criminal proceedings limit the possibilities for addressing the role of race beyond instances in which police officers hold and express racist motives, prosecutor-led investigations can help uncover internal records that show racialized institutional practices, which activists and lawyers would not otherwise have access to. Civil law proceedings, on the other hand, provide more possibilities for addressing racialized policing, as they endorse a more expansive definition of discrimination and allow plaintiffs to present their own evidence, but they require significant resources to produce the evidence necessary to launch a lawsuit.

The theoretical framework developed in this paper is based on the French legal system, but existing research suggests that the three characteristics of legal branches should also matter for legal mobilization in other contexts, albeit differently. For instance, social change actors in the United States, too, have used a combination of civil and criminal litigation to contest racialized policing, and have faced various opportunities and constraints in different branches. While criminal convictions are difficult to obtain, activists have successfully used the symbolic strength of criminal trials as political platforms to denounce anti-Black police brutality (e.g., Derek Chauvin's trial), and cause-lawyers have introduced scientific research in civil litigation to challenge racial discrimination in stop and frisk (e.g., *Floyd v City of New York*). However, country-specific legal and procedural rules—for example regarding qualified immunity or punitive damages—create different opportunities and constraints that shape how activists and lawyers make strategic decisions about which legal branches to mobilize, and the implications of various types of lawsuits on media frames, financial liabilities, and policy change (Schwartz, 2016). Future research could test and refine my theoretical framework by analyzing how the law's division into branches matters for legal mobilization in other legal systems, and by conductive comparative studies of legal mobilization against racialized policing in different countries.

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