Olivier Giraud and Nikola Tietze

"Non-take up", "Access to social rights", "Anti-discrimination": Reframing equality in France

Abstract: This article analyzes policy frames that address the transformation of the conception of inequalities in the French context. In the past thirty years, socio-economic and socio-cultural transformations have challenged the French version of social citizenship and its conception of equality and had impacts on welfare provision and social policies. In our view, policy frames consist of normative goals that need to be institutionalized by way of authoritative texts. This process of institutionalization creates opportunities for further development of specific ideas on an institutional level. We have scrutinized the way policy frames relevant to non-take up of social rights / access to social rights and policy frames related to the fight against discrimination have circulated between various public spheres. We then analyze legal texts that have institutionalized these policy frames. The article shows that the recent reframing of equality in the context of a dense historical legacy has triggered a consequent process of institutional change. The concrete enactment of these new norms remains fragile as it depends on social mobilizations and political support.

Keywords: French regime of social citizenship, institutionalization of normative goal settings, transformations of inequality, access to social rights and benefits

Olivier Giraud und Nikola Tietze, „*Non-take up*", „Zugang zu sozialen Rechten", „Antidiskriminierung": Neubestimmungen des Gleichheitsbegriffs in Frankreich

Zusammenfassung: In diesem Artikel werden die französischen *policy frames* untersucht, die den Wandel von Ungleichheiten fokussieren und adressieren. In den letzten 30 Jahren haben sozioökonomische und soziokulturelle Entwicklungen die französische Version der *social citizenship* verändert und die mit ihr verbundene Vorstellung von Gleichheit in Frage gestellt. Dies hat in der sozialstaatlichen Versorgung wie auch in der Sozialpolitik ihren Ausdruck gefunden. Ein *policy frame* besteht, so die Ausgangsüberlegung, aus normativen Zielsetzungen, die durch verbindliche Texte institutionalisiert werden müssen. Eine solche Institutionalisierung ermöglicht, spezifische Ideen auf der institutionellen Ebene weiterzuentwickeln. In unserer Untersuchung nehmen wir *policy frames* zum einen in Bezug auf die Nichtinanspruchnahme sozialer Rechte / den Zugang zu sozialen Rechten und zum anderen in Bezug auf den Kampf gegen Diskriminierung in den Blick. Wir spüren zunächst der Zirkulation dieser *policy frames* in verschiedenen Öffentlichkeiten nach und analysieren dann die Gesetzestexte, die zu ihrer Institutionalisierung geführt haben. Gezeigt wird, dass die jüngste Neuformulierung der Gleichstellung im Kontext eines dichten historischen Er-

bes einen entsprechenden institutionellen Wandel ausgelöst hat. Die konkrete Umsetzung der neuen Normen bleibt fragil, da sie von sozialen Mobilisierungen und politischer Unterstützung abhängt.

Stichwörter: Französisches Regime der *social citizenship*, Institutionalisierung von normativen Zielsetzungen, Wandel der Ungleichheiten, Zugang zu sozialen Rechten und Leistungen

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In the following, we analyze policy frames that address the transformation of inequalities in the French context in about the last 30 years. During this period, a series of socio-economic and socio-cultural transformations have challenged social citizenship and its conception of equality as it is fostered and expressed in symbolic dimensions and organized in welfare provision and social policies. First, the process of deindustrialization (Raphael, 2023) coupled with the neoliberal policy options that have increasingly prevailed at the European and national levels have created new forms of work and social inequalities. Women and migrants, who were confined to the periphery of industrial and wage-earning society of the 1960s and 1970s (Castel, 1995: 597), have been particularly affected by unprotected jobs, precarious work conditions, specific regulations of labor mobility and social promotion, and unequal access to welfare provision. Second, the claims for more gender equality as well as the cultural pluralization related to immigration have been further dimensions contributing to challenging the French conception of equality and to transforming understandings of what constitutes discrimination (Castel, 2006; El-Tayab, 2006).

In the following we focus on the way emerging inequalities and forms of discrimination have been addressed in France by applying an analytical perspective founded in the notion of policy frames. This notion helps us to consider the norms manifested in policy discourses and to study their interaction with institutional dynamics. We understand institutionalized norms to be opportunities for subsequent policy making (Marx-Ferree, 2005).

In France, over the last 50 years, various policy frames that were supposed to address social challenges in terms of equality have dominated public discourse and policy debates. For instance, in the wake of the economic crisis of the late 1970's, the notions "precariousness", "social exclusion" (Barbier, 2005), or "*insertion professionnelle*"

(Dubar, 2001) described emerging forms of labor market (mis)functioning. These terms rapidly spread in the spheres of expertise, public debate, political competition, as well as policy making and triggered official reports and key policy instruments for labor-market regulation. In spite of their influence as policy ideas, we have decided not to focus on this first wave of policy frames. Although these notions contributed to raising new questions about the capacity of the French socio-economic and policy systems to foster social integration, they did not point to concrete factors that have caused or been responsible for the evolution of the labor market.

Instead, we would like to compare the trajectory of two policy frames that have not only described the dynamic of the French labor market, but that have also addressed the transformation of inequalities. These policy frames characterize the nature of the emerging inequalities and identify mechanisms that account for them. The first encompasses two versions: *le non recours aux droits* – non-take up of entitlements – and *l'accès aux droits sociaux* – access to social rights. The second is *la lutte contre les discriminations* – the fight against discrimination.

Our analysis is organized in three analytical steps. First, we define the notion of social citizenship and characterize the French version of the conception of equality it entails. Second, in the theoretical part of the article, we discuss the policy frame approach and situate this notion within research and literature focusing on policy ideas and discourses and on the institutionalization of norms. Our focus is on the opportunities for concrete subsequent policy making and regulation opened up by institutionalization. Third, in the analytical section, we begin by reviewing the historical trajectory of the discourses of each policy frame to precisely define its rationale. Inspired by the qualitative methodology of process tracing, we consider "descriptive and causal inferences from diagnostic pieces of evidence, often understood as part of a temporal sequence of events" (Collier, 2011). We scrutinize how the policy frames we consider have circulated between various public spheres: academia, social movements, partisan politics, international organization, the European Union, or foreign countries. In a further step, we analyze authoritative texts (mostly legal texts) selected for their pathbreaking character in the institutionalization of the policy frames we focus on. Here, the objectives are to identify i) the institutionalization of the policy frame's normative goal settings (regulatory goals in terms of inequality), ii) the instrumental mechanisms and concrete policy tools that are supposed to implement the normative goals, iii) the institutional definition of the regulation's most important stakeholders (addressees, organizations, and persons in charge of the implementation). In the conclusion, we summarize our results and focus on the interplay of "non-take up" / "access to social right" with "the fight against discrimination" in order to understand the dynamics of social policy making in France and the transformation of the conception of equality entailed in the French social citizenship regime.

1. Social citizenship and the conception of equality in France

We define social citizenship as a logic of integration of individuals into a political order that is related to a conception of equality (Somers, 1994). More precisely, social citizenship is a structured and meaningful configuration of symbolic and material relations between individuals, the social groups they are affiliated to, and institutional polities (central state, territorial public authorities, or public instituted organizations of the welfare state, etc.) that practically monopolize political legitimacy. The definition of equality (framed in relation to gender, social class, social status, profession, status, territory, religion, etc.) is an outcome of this configuration.

The French citizenship regime is complex and in part ambivalent. In a historical perspective, Bryan Turner has characterized it as based on an integrated public sphere that developed in opposition to the influence of the Catholic church. The "revolutionary conception of active citizenship" (Turner, 1990: 209) evokes the active involvement of individuals in shaping democratic rights and participation. This trajectory has tended to highlight, in the symbolic dimension, the direct confrontation between individuals and the state. Unequal status structure and professional, religious, regional, or other socio-cultural affiliations were perceived as legacies of the *Ancien Régime* and negated in order to foster equality. This "was combined with an attack on the private space of the family, religion and privacy" (Turner, 1990: 209). Theorization of the concept of solidarity, most prominently in the wake of the Durkheimian school, was an important development in the French republican citizenship tradition. The direct confrontation between individuals and the state, the negation of socio-cultural affiliations, and disregard for family privacy also shaped the French social citizenship regime and influenced the concrete ways in which equality was realized. Yet, adoption of the insurance-based type of welfare state has implied the mediation of labor unions and business associations in the French social citizenship regime (Rosanvallon, 2007). This type of welfare state arrangement reproduces the socio-professional logic of stratification. It was later complemented by the development of the wage-earning society and brought about what Robert Castel has called a "society of graduated inequalities" (Castel, 2009). The French system of social protection is, however, entangled with the public realm. Individuals' participation in the labor market includes the expectation of their involvement in the social citizenship regime. The welfare state reciprocates by protecting individuals from the adverse consequences of social risks.

Over time, both socio-cultural transformations and socio-economic dynamics have challenged the general grammar of citizenship in France. The form inherited from the French Revolution has long included all family members in the citizen status imparted to the head of the family (Verjus, 2001). This "modern" version of the antique *pater familias* has been transposed in social citizenship (Frader, 2008). The family represented the unit of social equality, which introduced an unequal gender role differentiation. Beginning in the early 1980s, a process in which social rights were individualized occurred. In the meantime, labor market regulations and social rights in France were organized around the norms of a "male breadwinner model and a half"

(Lewis, 1992). This phrase refers to the importance of full-time female labor market participation. As several historical analyses have pointed out, labor migration in France developed at an early stage of industrialization. Migrant workers have been included in the benefits of the social citizenship system since the late 19th century (Rosental, 2011). The French tradition of *jus solis* and French policies for acquiring citizenship have facilitated integration. However, migrants, especially those coming from the Northern African and sub-Saharan regions of the French colonial empire since the early 20th century and in even greater numbers since the 1960s, have endured various forms of "negative discrimination" (Castel, 2006). Their concentration in specific urban areas and the deterioration of their economic situation as well as the restrictive regulations applied to their social rights and benefits have had specific effects and represent two key dimensions of "negative discrimination" (Castel, 2006: 789).

Since the revolution, the French regime of citizenship has been based on a tension between the symbolic commitment to radical equality and an evolving logic of organized inequalities. De-industrialization has brought about a weakening of the working population and the development of precarious and low-paid work in the lowest segments of the service industry. Disadvantages with respect to social conditions and employment opportunities plague those with no or less valued job skills (Raphael, 2023) and affect in particular migrants, women, and young people. Welfare policies play a key role in compensating for disadvantages that occur in specific social groups (Duvoux, 2009).

2. Analytical grid: policy frames as normative and institutional devices

To analyze the way policies have addressed the transformation of the dynamic of inequalities in France, we have developed an analytical grid based on the concept of "policy frames". This notion relates the analysis of normative discourses and ideas to institutional processes. It considers both the symbolic and the practical dimensions of policies that address inequality. This section reflects, first, on the idea selection aspect of policy frames, and, second, on the institutionalization of these ideas, which is seen as an opportunity for subsequent policy making.

In policy science, Martin Rein and Donald Schön were among the founders of the policy frame approach in the 1970s (Rein, 1977). They defined policy frames as the modes of actors' "selecting, organizing, interpreting and making sense of a complex reality to provide guideposts for knowing, analyzing, persuading and acting" (Rein, 1996: 146). In this view, policy frames play a guiding role throughout the policy process. Tebeje Molla and Andrea Nolan explain how policy frames enable researchers to "get behind surface features of policies in order to understand assumptions and logics underpinning" those policies (Molla and Nolan, 2019).

The literature about ideas has been particularly rich from the mid-1980s onwards (Hall, 1986). According to Daniel Béland, "the term ›ideas‹ refers to the historically constructed beliefs and perceptions of both individual and collective actors" (Béland, 2019: 4). Jal Mehta has differentiated between three types of ideas: "policy solutions,

problem definitions, and public philosophies or Zeitgeist" (Mehta, 2011: 25). Through this double perspective, we focus on two policy frames: the fight against discrimination and the non-take up of social rights / access to social rights. These frames include ideas for policy solutions beyond the problem definition and the normative objective. Here, both the problem and the normative objectives are "given" and formulated in the notion itself (Mehta, 2011: 26). This implies also that the "idea provides the means for solving the problem and accomplishing those objectives" (Mehta, 2011: 26). The explicit identification of a policy strategy is key in the case of the policy frames we have selected.

In order to analyze the dynamic of the regime of social citizenship, we want to understand the relation between ideas and the institutional process. Consequently, focusing on the institutionalization of a policy frame is considered to be an opportunity for subsequent policy making. In this context, we share Myra Marx Ferree's view on framing as an "*interaction in which actors with agendas meet discursive opportunities as structured in institutionally authoritative texts*" (Marx-Ferree, 2012: 13, italics by the author). Authoritative texts (laws, regulations, court decisions, and the like) result from the successful institutionalization of previous policy frames. As such, they "have power to include and exclude issues and choices from the realm of politics" (Marx-Ferree, 2012: 13). This selection thus opens up an opportunity for adequate social and political forces to pursue and concretely implement the normative goals of the policy frame.

M. Marx Ferree's analytical approach focuses on the processual interplay between institutions, ideas, and social actors. Her perspective is coherent with Mary Douglas's view on institutions that "remember and forget" and "fix processes that are essentially dynamic" (Douglas, 1986: 69, 71). Institutions "fix" previously prevailing ideas, and deal with emerging ones. Sometimes, they merely eliminate institutions that cannot make it to the stage of institutionalization. In the logic of M. Douglas, institutions tend to "naturalize" their intentions and effects. They match the dominant understanding of a specific issue. Or conversely, they progressively make the dominant understanding sound coherent with the program of the institution.

However, M. Marx Ferree introduces a more dynamic view of the interplay between ideas, institutions, and social actors. For her, the "authoritative texts" that concretely perform the influence of institutions "are not a single master frame, but rather a network of meaning, a framework shaping and shaped by the active framing done by actors with agendas" (Marx-Ferree, 2012: 14). This statement has two concrete implications for us. First, institutions imply an intricate interplay between past and future decisions. Therefore, a new authoritative text does not change the understanding or the entire subsequent policy regulation of a given policy domain overnight. As Wolfgang Streeck and Katheleen Thelen have shown, several mechanisms account for these dynamics (Streeck and Thelen, 2005). Policy reform or policy institution, is, in many instances, the addition of an emerging conception about a specific issue, and / or a new provision or instrument addressing this issue. Through "layering", new instruments and their policy aims progressively evict the previous ones (Streeck and

Thelen, 2005: 23). According to the mechanism of "drift" (Streeck and Thelen, 2005: 24), the stability of institutions fails through the transformations of the understanding – via cultural change for instance – or of the conditions that the addressees of an institution may face. Second, beyond the processual dimension of interaction between previously institutionalized policy frames, policy actors may intentionally want to provide a diverging interpretation of a specific institution (Streeck and Thelen, 2005: 15). This raises the question of the degree of constraint that is incorporated into any institutional regulation, as well as the level of the social actors' compliance or autonomy with respect to such regulations. Hendrik Wagenaar mentions the "owners" of the institutions, that "jealously guard them" (Wagenaar, 2015). The more open view of M. Marx Ferree also includes policy actors that would – more or less opportunistically – seize upon and invest in an institutionalized policy frame in order to push forward a specific policy agenda.

Following M. Marx Ferree, we aim to go beyond the contradictions between stability and change in a longitudinal perspective. Beyond social actors' compliance and autonomy, institutionalized policy frames can be understood as opportunities for a further development of a specific frame. Institutionalization is consequently only a step, however crucial, in the process of social change. Nonetheless, change must be enacted by social and political forces that pursue a similar policy goal.

3. Policy frames: sequential analysis and institutionalization

In this section, we first scrutinize, on the backdrop of M. Marx Ferree's analytical grid, the temporal layering of the ideas and discourses around policy frames that emerged in the 1990s in France, with the aim of addressing inequalities: "non-take up of social benefits" evolving into the concept of "access to social rights", and the "fight against discrimination". In a second step, we scrutinize their institutionalization through legislation. For the latter, we focus on legislative goal setting, the definition of instruments, and determining the most important stakeholders.

3.1. Non-take up and access to social rights: sequential analysis of ideas and discourses (from the 1970s to 1998)

In France in the 1970s and 1980s, no distinction was made between the policy frames of non-take up of social entitlements and access to social rights. During this period, the notion of access to social rights in the sphere of policy making was mostly mobilized by religious charities, such as the *Secours catholique*. The discourse was focused on fighting inequalities by fostering access for the poorest part of the population to social entitlements and welfare provision. In the sphere of social sciences in the mid-1970s, sociologist Antoinette Catrice-Lorey considered the inability of the most disadvantaged members of France's population to access social benefits as a key shortcoming of social policies (Catrice-Lorey, 1976). Her pioneer work showed that the interplay of cultural deprivation of the most disadvantaged people with the administra-

tive complexity of the French social security system creates an important barrier to accessing social entitlements (Catrice-Lorey, 1976: 200–201). International scholarship has produced various explanatory models: procedures and steps of access to social rights; instruments supporting people's decisional capacity to take up schemes; the way the claims are received and processed by the administration (Van Oorschot, 1991). Those models were imported into the French debate and policy making from the early 1990s.

First, the National Office for Family Allocations (*Caisse Nationale des Allocations Familiales, CNAF*) has financed targeted research on the issue of non-take up of various benefits. Second, the introduction of a minimum income scheme (*Revenu Minimum d'Insertion, RMI*) in the late 1980s has triggered a debate about relations between the administration and the public. The CNAF has invited Wim van Oorshot, who developed his own analytical model of non-take up, to work with colleagues in France (Warin, 2017: 28). The definition that emerged from this cooperation replicated his typology and was complemented by an objectizing one, based on a ratio between the number of theoretically entitled persons and the number of actual recipients of benefits.

At the beginning of this century's first decade, non-take up of social entitlements has become an issue in public debates. Philippe Warin, a scholar of welfare state analysis, founded in 2002 an institute dedicated to both applied and more theoretical research on non-take up, the *Observatoire du non recours* (Odenore). He was identified by the media as an expert on the issue (Le Monde, 2010, 2013). During the 2010s, he argued that whereas, in terms of efficiency, non-use of specific social entitlements might lead to savings in public spending in the short term, it would result in considerably higher mid- or long-term expenses. Regarding the frequently cited issue of social fraud, he pointed out that non-take up is far more important in budgetary terms, as well as being a more crucial socio-political matter (Odenore, 2012).

Institutionalization of non-take up of social entitlements reached a peak during the decade of the 2010s. It was one central element of the French government's 2013 multi-year plan against poverty. In this plan, the notion of "fair rights" relates measures targeting social fraud and to those aiming to combat non-take up of social entitlement (Warin, 2019: 11). However, certain civic society organizations nowadays tend to criticize the notion of "non-take up" itself. They argue that the notion contributes to stigmatizing people who do not take up their social entitlements (for instance CNCDH, 2022).

From the late 1990s, debates in France on access to social rights began to diverge from discussions about non-take up. The latter was focused on the identification of concrete barriers: information for the public, administrative procedures for claiming social benefits, matching schemes to meet the needs of the population, etc. This academically informed policy frame has provided important technical expertise. Debates about access to social rights, in contrast, beyond initial contributions by leaders of charity organizations, were at first shaped by legal scholars.

In the international debate, the notion of access to social rights relates to citizenship. The complementary importance of the legal and the socioeconomic dimensions of citizenship supposes a balance in the corresponding rights. Hilary Sommerlad refers to the increase of "substantive inequality and hence social and political exclusion" within the "privatized citizenship model" (Sommerlad, 2004: 366). Supporting access to social rights is supposed to consider a person's individual situation. The poor or people whose economic situation is precarious are excluded from ordinary citizenship. Their access to rights should, however, also not depend on legal litigation. In France, litigation is considered too risky and costly. Yet, in order to preserve equality, at least symbolically, those who are disadvantaged are granted the same legal rights as the rest of the population. This kind of inclusion is ensured through the creation of a specific sector dedicated to aiding people in realizing rights. Access to social entitlements is then based on counselling and supporting people in securing their rights and on social mediation rather than litigation (Sommerlad, 2004).

In France, legal scholars have also played an important role in framing access to rights. First, access was interpreted as a redefinition of insurance-based social rights (Lafore, 2004). Access to social rights aims, in this context, to include marginalized and fragile groups within the population in the regular provision of welfare benefits. The French tradition of defining equality implies the integration of all individuals into the common law provisions and not the creation of a "second class" of individuals for whom specific provisions are made. Second, access to social rights relates to the notion of fundamental rights. Those are defined as basic rights that guarantee a minimal standard of living (Lafore, 2004: 25). Enacting fundamental rights implies the establishment of a dividing line between these rights and others. In discussions among legal experts, fundamental rights relate specifically to the notion of equality.

More crucially for our discussion, whereas the logic of insurance-based social protection defines equality as a relationship between socially constructed and institutionally recognized social groups (profession, employment status, etc.), the notion of fundamental rights refers to equal treatment of every individual. In that respect, it relates to the policy frame of non-discrimination. The French legal tradition considers the mechanisms that are at stake here to be societal and non-political. This implies an individual conception of social rights that is distinct from the collective, insurance-based version.

Beyond this transformation of social rights into fundamental rights, political scientists have delivered a more pragmatic interpretation of the emergence of the policy frame defined in terms of access to social rights (Hamel and Muller, 2007). According to them, access to social rights must be understood in the context of policies that aim to limit welfare spending, on the one hand, and try to answer the increasing needs that arise due to the acceleration of the de-industrialization process, on the other. Access to social rights is seen as a kind of "compromise" between the important policy goal of protecting weaker individuals in society and the demands of economic performance and rationalization (Hamel and Muller, 2007). Access to social rights corresponds,

then, to the necessity to focus welfare state provision on the most disadvantaged part of the population and on their basic needs.

3.2. Institutionalizing access to social rights

The decisive line of development in the institutionalization of access to social rights relies on two laws passed in 1998 by a left-wing parliamentary majority known as the "plural left", an alliance between Greens, Socialists, and Communists. These legal texts were the first to develop definitions of access to rights that differed from earlier ones. The first, dated 29 July, focused on combating exclusion (law no. 98–657, 29 July 1998). In general, it was intended to be a further step in the response to the "new" forms of poverty identified not only by sociological research but also by public reports dating back to the 1980s (Lafore, 2020: 39–40). Article 1 of this law states that "employment, housing, health protection, justice, education, training and culture, family and child protection" are fundamental rights. In each of these areas, the law guarantees access to entitlements that respond to precarious situations. It also defines instruments for implementing specific measures to aid people in securing access to their rights.

Article 1 states that people should be offered information about their rights but does not explicitly define social groups to be targeted. In the following articles of the law, a series of social groups are specifically identified, according to the areas concerned: age and duration of unemployment (art. 5), housing problems (art. 33), persons with health concerns (art. 67), etc. Illiteracy is mentioned as a cross-cutting difficulty (art. 33).

Similarly, the stakeholders involved in access to rights vary according to the areas of intervention. Generally, the state actors are in a position to take the initiative, along with local authorities, professionals, and specialized institutions and agencies – regional health agencies, for example. In the various areas, the law primarily introduces instruments for coordinating and activating different players: action plans involving all the relevant actors, often placed under the responsibility of a central government agency. For example, article 71 provides for a regional "program for access to prevention and care for the most disadvantaged".

Whereas the first law mostly displays policy objectives in regard to the struggle against poverty, the second law of December 1998 is devoted to "access to the judicial system and the amicable resolution of disputes". Though this law has defined policy goals primarily dedicated to the relations between individuals and the legal system, it has set up policy instruments installing a concrete provision of legal and administrative assistance, including assistance in securing the provision of social benefits, that soon proved successful. Article 9 of this second law defines access to rights as "providing general information to people about their rights and obligations and directing them to the bodies responsible for implementing these rights". Access to rights is further defined as "helping people to take steps to exercise their rights", "providing aid during non-jurisdictional proceedings" and "in drafting and concluding legal acts".

The same article also establishes services with respect to concrete measures: "In each *département*, a departmental council for access to the law is set up, responsible for identifying needs, defining a local policy and drawing up and circulating an inventory of all actions undertaken." This body is chaired by the *département's* president of the *Tribunal de Grande Instance* and includes representatives of local authorities, the legal profession (lawyers, notaries, etc.) and an association working in the field of access to the law and, often, to social rights. The justice ministry provides financing and a legal clerk position for the most important structures. There are today more than 2000 "Points Justice" throughout the entire territory of France but mostly located in deprived neighborhoods (Ministère de la Justice, website). Most of these host several associations that send volunteer lawyers, a majority of whom specialize in laws and regulations on labor, family, social issues, or foreigners and immigration.

3.3. Fighting discrimination: sequential analysis of ideas and discourses (from the 1950s to 2004)

Three sets of ideas as well as sets of political and normative discourses concerning the "fight against discrimination" stand out. Initially, the "fight against discriminations" was based on the problematization of racism and anti-Semitism. From the 1950s onwards, it was mobilized by associations with close ties to the political and social forces that worked for France's liberation from Nazi occupation. This mobilization was strongly influenced by the experience of racial hierarchies during the Vichy regime and the German occupation. The importance of the *Mouvement contre le racisme, l'antisémitisme et pour la paix* (MRAP) in the anti-discrimination debate between the 1950s and 1970s bears witness to this.[1] This debate was driven both by left-wing political forces and by moral figures, who embodied the struggle through their own lives and stood up for the institutions of the French post-war republics and in particular for equality. This first set of discourses, focusing exclusively on racism and anti-semitism, referred above to discrimination in the form of individual acts committed by an identifiable perpetrator against his or her victim.

In 1972, the French parliament passed the first law condemning racial and anti-Semitic discrimination as criminal offenses. This law, named the Pleven law after the minister of justice at the time, took up "almost word for word" the formulations of the MRAP legal commission (Chappe, 2011: 110). This first attempt to institutionalize measures against racist discrimination was based on two ideas: firstly, an individualizing definition of direct discrimination, and secondly, confidence in the principle of equality, embodied in the institutions of the Fifth French Republic and its legislation and jurisdictions that addressed racial discrimination.

1 The MRAP (Movement against racism, anti-Semitism and for peace) was founded in 1949 by members of the French Resistance movement, the *Francs-tireurs* et *partisans*, and the communist organization of immigrant manpower (FTP-MOI) and deportees.

Beginning in the 1980s and especially in the 1990s, a second set of discourses problematized racial discrimination more vigorously by addressing the social, political, and/or institutional processes that produce material and social inequalities. Both the mobilization of the descendants of post-colonial migrant workers (*Les Marches pour l'égalité*) and social science research have expanded the first set of ideas inherited from the resistance against the Nazi and Vichy regimes to the specific problems of postcolonial migrant workers and their families of North-African and sub-Saharan descent. According to social science research, this social group suffered discrimination in terms of access to jobs and housing, spatial segregation in cities and, more broadly, in terms of upward social mobility (Belorgey, 1988; de Rudder et al., 2000). By emphasizing the problems as deficits of social integration, this reading of discrimination could in part be linked to the definition of discrimination in terms of non-take up and access to social rights, as defective access to general rights and entitlements also played a key role in it. The book *La France raciste* (Wieviorka, 1992), resulting from research directed by Michel Wieviorka, represents an example of the interplay of both rationales. The interactions of racial and ethnic discrimination, on the one hand, and structural social inequalities in terms of unemployment and segregation in urban and social space, on the other, have produced integration problems and negated the equality principle embodied in French institutions, in particular in the public education system. Here, a different interpretation from that of the Pleven law emerged and influenced, in the 1990s, the public debate on discrimination as well as the fight against it. Discrimination was subsequently approached to a greater extent in relation to specific socio-economic situations, resulting in a de-individualization of discrimination for specific social groups. Discrimination and its affects were seen as societal problems that threaten social and national cohesion (HCI, 1998). As we have shown in the previous section, one answer to this integration problem has been to promote access to social rights for all citizens, without thematizing specific access problems of particular social groups. Furthermore, there was increasing acknowledgement that the criminal justice response and litigation, which had previously been extremely rare (Lieberman, 2004), could not deal with these societal problems. In the late 1990s, studies on racism in the workplace commissioned by the trade union CFTD and carried out by researchers at the research institute CADIS, whose director was M. Wieviorka, not only demonstrated the need to change the way racial discrimination was viewed. They also highlighted the interest of social actors, in this case the trade union movement, in using the fight against racial discrimination to address social problems, particularly in the field of work (Bataille, 1997; Chappe, 2019).

A set of discourses of a more legal nature has become salient as a third line of development from the 2000s onwards. On an international scale and in other European national contexts, for example in Great Britain, discussion on discrimination was evolving, notably by drawing on the notion of fundamental rights. Non-discrimination is then (re-)affirmed as the "logical corollary" of human equality (Borgetto, 2008: 9) and of "rights and freedoms" (European Convention on Human Rights, article 14). This set of discourses could more or less seamlessly tie in with the historical

experience of Nazi racial hierarchization, but has contributed to opening up the fight against discrimination to other forms of unequal treatment. Researchers and jurists from international organizations not only combine their thinking on the fight against racism (for instance in the frame of the International Convention on the Elimination of All Forms of Racial Discrimination (1965)) with that on gender equality (Crenshaw, 1989), but also integrate other potentially discriminatory criteria such as religion, disability, social origin, etc. into the anti-discrimination debate. International definitions of discrimination have become increasingly complex. They include an ever-increasing number of factors and attempt to guarantee the open nature of the list of factors that can lead to discrimination. In addition, discussions between legal experts increasingly consider how the multiple dimensions of discrimination in terms of rights and freedoms intersect. Legal concepts, particularly at European Union level, encompass unequal treatment produced by "an apparently neutral provision, criterion or practice" (Directive 2000/43/EC), and support academic discussions on multiple, intersectional, or multi-variable discrimination (Verloo, 2006). French legal scholars have in part embraced these concepts and participated in the international discussion (Mercat-Bruns, 2016). They have acknowledged direct and indirect discrimination as one form of illegitimate differences in treatment (Lorchak, 1987).

When the French government had to transpose EU Directive 2000/43 into national law in 2000, it faced the issue of how to integrate the earlier concepts of the "fight against discrimination" with the multilayered sets of political and normative discourses that had meanwhile emerged. The implementation of meaning entailed various risks for the French government. Among them was the problem that the European definition of direct and indirect discrimination requires the identification of social groups and was thus at odds with the French concept of the equality norm and social citizenship. The executive also ran the risk of becoming embroiled in a public debate, backed by research, on the unfulfilled promises of the immigrants' integration and the resulting issues of social exclusion or unequal access to social rights. In 2001, the "Plural left" government transposed the European Directive's dual definition of direct and indirect discrimination into labor law (Law no. 2006–1066 of 16 November 2001). This represented the starting point of a successful legal institutionalization of measures to combat direct and indirect discrimination at the workplace (Chappe, 2019). But that government failed to establish an independent body to oversee the fight against discrimination, as required by the same Directive, and neglected discrimination with respect to administrative and in particular social rights.

3.4. Institutionalizing anti-discrimination

When the establishment of a body charged with overseeing the fight against discrimination was put on the political agenda in 2002,[2] indirect discrimination through ad-

2 President Chirac had just been re-elected in a second round against the far-right candidate Jean-Maire Le Pen (Chappe 2011, 118).

ministrative and welfare provision emerged as a salient topic in public debate. The institutionalization of the anti-discrimination policy frame through the creation of the *Haute Autorité de Lutte contre les Discriminations et pour l'Egalité* (HALDE, High Authority for the Fight against Discrimination and for Equality) was set against the backdrop of this debate as well as against the layering of political and normative meanings described above. Vincent-Arnaud Chappe (2011) notes that three cognitive, technical-legal, and normative shifts in relation to these three-layered discursive sets enabled the establishment of the HALDE and thus the institutionalization of the policy frame "fight against discrimination" through enactment of the Law no. 2004 1486 of 30 December 2004. These three shifts were implemented both through the definition of the institution's goals and through the identification of its main stakeholders and instruments.

Article 1 establishes the HALDE as "an independent administrative authority". This represents a "cognitive" shift in relation to the first and second discursive sets (Chappe, 2019: 112). It defines the fight against discrimination, HALDE's area of competence, as the fight against "all forms of discrimination, direct or indirect, prohibited by law or by an international commitment to which France is a party" (art. 1, para. 2). The semantic scope of the notion of discrimination is not defined; instead, the text refers to existing national legislation – principally the Pleven law and the law of November 16, 2001, transposing the fight against discrimination into the Labor Code – and to the vague term "international commitment" of France. Only Title II of the Act (article 19), concerning the transposition of EU Directive 2000/43, and Title III (articles 20 to 22), reinforcing "the fight against discriminatory comments of a sexist or homophobic nature", specify the discrimination covered by the Act. This clarification remains incomplete insofar as Law no. 2004–1486 of 30 December 2004 does not name the factors of discrimination listed in the international conventions to which France is committed, nor the definitions of "direct" and "indirect", which must be sought in the European text of Directive 2000/43. The broadening of the scope of the fight against discrimination in relation to the focus of public debate on the inequalities affecting migrants and their families is based on an interlocking of international, European, and national normative provisions. These provisions are listed in a table in the report by the Parliamentary Commission on the draft law creating the HALDE (Report, 28 September 28 2004: 18–19).

The interlocking of normative provisions responds to the third discursive set in the public debate. It supports the role and importance of the legal norms of non-discrimination already established in Law no. 2004–1486. The already established legal norms justify the institutionalization of the fight against discrimination. In this respect, Law no. 2004–1486 is characterized by its high level of legal technicality. It specifies the "impartiality" of the HALDE, which represents both the normative objective of the institutionalization of the fight against discrimination and its central instrument (Law no. 2004–1486, art.1, 3, 6, 17). The independence of this body is seen as fundamental for addressing the "urgent need to find ways and means of effectively combating discriminatory practices that undermine the principle of equality and, by extension,

social cohesion" (Bill, 15 July 2004: 3), for becoming the interlocutor for victims of discrimination (Law no. 2004–1486, art. 4) and assisting victims (art. 7). Also, the HALDE's instruments (investigating facts (art. 4, 5, 8), formulating recommendations (art. 11), raising public awareness of discrimination issues (art. 15)) and its relations with other institutions and administrations (art. 6, 8, 10, 14 and 18), notably the judiciary (art. 12 and 13), all depend on institutional "impartiality". From this point of view, Law no. 2004–1486 shifts the political debate to a technical-legal sphere. This shift makes it possible to isolate public problems, i.e. to address discrimination – in this case racial and ethnic discrimination – separately from questions of the political order of the French republic. "As the issue of discrimination is reduced to the problem of the effectiveness of positive law, and as this technical-legal shift confirms the broadening of the scope of the fight against discrimination beyond ethnic or racial discrimination, integration policies regain their autonomy by dissociating themselves from the issue of discrimination" (Chappe, 2011: 111).

The legal technicality of Law no. 2004–1486 reveals a third shift. This is of a normative nature. "Turning a political problem into a legal issue implies a shift in normative references. [...] Debating the means of making this or that standard effective implies suspending public questioning of the value of the standard and the consequences of its effectiveness" (Chappe, 2011: 129). Indeed, Law no. 2004–1486 is sparing in its use of the notion of equality, even though it leads to the establishment of the *Haute Autorité de Lutte contre les Discriminations et* ***pour l'Egalité***[3] and imposes "communication and information actions to ensure the promotion of equality" (art. 15).[4] It merely establishes the link between the institutionalization of "the fight against discrimination" and the principle of equality. The conformity of this link with the norms and promises of the French Republic and its potentially dangerous nature for "republican universalist grammar" were, however, the focus of public debate preceding Law no. 2004–1486 (Chappe, 2011: 114).

The HALDE addresses "[a]ny person who considers himself to be a victim of discrimination..." (art. 4). Its instruments, determined by Law no. 2004–1486, thus establish an interface with this republican universalist grammar, in which the principle of equality represents a pivot and "social cohesion" constitutes an end. The republican universalist grammar is affirmed by the way in which the eleven members of the HALDE are appointed (art. 1). In addition, an "Advisory Committee" of "qualified personalities chosen from among representatives of associations, trade unions, professional organizations and any other persons active in the field of anti-discrimination and the promotion of equality" (art. 1) represents civil society and offers various

3 Our emphasis.

4 In a very neutral way, this article repeats the following reasoning in the draft law: "The creation of such a body, like the independent bodies of the same kind already set up in several neighboring countries, meets the urgent need to find, in our country, the ways and means of effectively combating discriminatory practices which undermine the principle of equality and hence social cohesion" (Bill, 15 July 2024: 3).

participants in the debate on the link between anti-discrimination and the principle of equality an opportunity to contribute.

Despite its success (Chappe, 2011), HALDE no longer exists. Following the constitutional law modernizing the institutions of the Fifth Republic (constitutional law no. 2008–724, 23 July 2008), the fight against discrimination became one of the missions of the state agency *Défenseur des droits* [Rights Defender]. This independent administrative authority, established by organic law no. 2011–333 of 29 March 2011, has been charged with integrating the normative objectives of both the fight against discrimination and for access to (social) rights. Officially, this was done to ensure greater coherence and legibility in the protection of rights and freedoms and to rationalize the action of independent administrative authorities (Chevallier, 2011). Incorporating, at the outset, a large part of HALDE's staff (Latraverse, 2018), the name of this new independent administrative authority obscures the policy frame of the fight against discrimination and places greater emphasis on that of access to rights. Yet the fight against discrimination is one of the institution's missions, and "the protection of rights" and "the promotion of equality and access to rights" are its "means of action" (Défenseur des droits, website).

4. Conclusion

With M. Marx Feree, W. Streeck, and K. Thelen, we can conclude that the interplay between the definition of policy goals and their accomplishment involves several steps of institutionalization as well as the mobilization of social actors. Institutionalization creates opportunities for social change to unfold. However, in most cases, an institutional rule's capacity to trigger change has to be considered in the context of policy regulations involving a great number of policy regulations and social mobilizations. The institutionalization of an emerging policy frame is a first shift of norms. It has to be both preceded and followed by various steps of preparation, mobilization, and enactment.

As we have shown in this article, in the case of the French social citizenship regime, these interactions take the form of a historical process. Through this process, political discourses and normative objectives evolve without disappearing altogether. Social, political, and institutional actors organize the circulation of qualitative goals they take on board from public debates and/or academic work in order to address societal change. In France, transformation of the definition of social inequalities and the succession of policy frames dealing with social inequalities reveals a dynamic both in the diagnosis of the causes of the new forms of inequality and in the ways in which they are tackled.

The "non-take up" policy frame may have been relegated to the bottom of the institutional agenda concerning social citizenship. It nonetheless forms the cognitive and normative basis of the Defenders of Rights instrument in its mission to "combat discrimination and promote equality" and "defend the rights of users of public services" (Défenseur des droits, website). Academic knowledge on the realities of non-take up was produced on an international scale and integrated into administrative thinking

in France during the 1990s. But from the 2000s onwards, this perspective has had difficulty gaining acceptance in the face of political discourse on welfare fraud and, to an even greater extent, on the empowerment of individuals within the framework of neo-liberal social policies that focus on "activation".

Nevertheless, the principle of equality, the symbolic linchpin of the French concept of social citizenship, represented an important vector in the responses to transformed social inequalities during the period analyzed in this article. Indeed, political as well as state actors were unable to abandon equality in their pursuit of neoliberal objectives, without running the risk of positioning themselves outside the constitutional framework. The success of the "access to rights" policy framework confirms this. For some, its institutionalization and transformation into an instrument of the *Défenseur des droits* have helped to depoliticize the issue of social inequalities and defuse the risks they entail for France's institutional and normative integrity. From this point of view, access to social rights is understood as assistance for the most disadvantaged so that they can use social mediation. For others, however, the "access to social rights" policy frame represents a springboard for re-establishing the principle of equality in the exercise of French-style social citizenship, and if necessary, helping the most disadvantaged to initiate legal proceedings.

The fight against discrimination is "at odds with French universalist grammar" (Chappe, 2011: 117). It has been and still is, in the context of the *Défenseur des droits* today, linked to the promotion of equality. This policy frame is, during the period examined here, always directly tied to the symbolic linchpin of social citizenship. Yet, its institutionalization opens the way for normative, political, and legal dynamics that recognize specific social groups. This is in direct contradiction with the imagination of the "indivisible Republic", as well as with institutional mechanisms and administrative procedures denying social citizenship. Indeed, "[d]iscrimination is a specific concept, distinct from that of inequality" and requires, as jurist Sophie Latraverse points out, adaptations "in the way equality is understood" (Latraverse, 2005). The establishment of the *Défenseur des droits*, which combines the policy frame of access to social rights with that of the fight against discrimination, calls for an adaptation in the way political actors approach equality. However, this institution also represents an adaptation on the part of those who, thanks to the objectives and mechanisms of the *Défenseur des droits,* invest in the promotion of access to social rights within the framework of the fight against discrimination.

The policy frame based on access to social rights may have been less influential in symbolic terms. To assess its impact on the limits of the French social citizenship regime is a difficult task. However, several concrete policy instruments have been developed from this policy frame. They deal in various ways with the main goal of facilitating access for the most marginalized social groups to some key social entitlements. These instruments have been actively promoted and implemented by social groups (associations, activist lawyers' groups, social workers, etc.). Despite its low level of theorization, this development has brought about a concrete evolution of

the French regime of social citizenship, in which it has undergone an unprecedented process of differentiation.

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