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The Colin Kaepernick Case : A Study of African American Athletes Activism and Patriotism in American Sports

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Vincent Chenal

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A Study of African American Athletes Activism and Patriotism in American Sports

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Mémoire de master 2

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Vincent Chenal

The Colin Kaepernick Case

A Study of African American Athletes Activism and Patriotism in American Sports

Mémoire dirigé par Monsieur le Professeur Christopher Delogu
Membre du Jury : Monsieur le Professeur Robert Sherratt

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Introduction

As far as I remember I have always been a fan of sports. In my childhood and teenage years I played every sport I could, always happy to experience new games. Of course being French I was playing soccer, but I also dabbled in lots of other sports, notably basketball. When I was seventeen years old, my parents finally subscribed to Canal+. I was ecstatic, the long wait was over, I would finally be able to watch the NBA. I still remembered painfully my friends telling me about Michael Jordan games they watched in the middle of the night, while all I could do was read about his exploits in newspapers and magazines. Sometimes they taped the games for me, but a sport game when you know the outcome is a lot less fun to watch. The highlights were nice but it was before the Internet so you had to have a friend to tape them for you. Finally I would be able to watch some games live. But it was September 1999, and 'Air Jordan' had retired for the second time — I would have the opportunity to watch him play live, but Michael Jordan with a Wizards Jersey was never really Michael Jordan. And as it turned out, I discovered something that fascinated me more than basketball ever had, American football.

I knew about football from pictures I had seen and stories I had heard. But I knew nothing about the rules, how it was played, the teams. I was instantly captivated by its energy. As I watched and gradually discovered the rules of the game, I enjoyed it more and more. Until I finally decided something that I still argue today from time to time in debates with other sports fans: this sport is the ultimate combination of strength, speed, agility, dexterity and strategy. I especially enjoy the strategy. I love the strategical battle between two football teams. At first glance, football can seem to be no more than big guys slamming into each other. But then you realize that every player on the field has a different assignment and that

all these different missions combine in a strategy to drive the ball through the opponent's ranks. And in this strategy, the quarterback is the key. No other team sport gives such a crucial role to one of its players. It helped me understand why in movies and television shows set in American high schools the quarterback of the football team was always the most popular kid. In short, I fell in love with football and the NFL. I have not missed a Super Bowl since 2000 and I have made a tradition, since the increase of possibilities to watch the games thanks to the Internet, to watch every playoff game. Thus, I knew who Colin Kaepernick was when I saw his name associated with a controversy reported in the French news.

I first heard about Colin Kaepernick's protest in early September 2016 in my favorite talk show about sports as a brief news story stating that he had protested during the American national anthem to denounce police brutality against African Americans in the US. I was instantly interested because in my opinion Colin Kaepernick was a star. I had seen him play in 2013 and 2014 during the playoffs and I liked his style a lot. I was also surprised because they usually talk about the NFL only once or twice a year around the Super Bowl, so I figured something must really be happening and I began to look for more information. I was impressed by what he did, risking his career as a leading athlete in the most exciting game of the world for something he believed in. Because other examples that came to my mind of athletes who had protested in the United States were Muhammad Ali and Tommie Smith and John Carlos, and I remembered that things were very difficult for them after their protests. I then kept regularly following the development of the story in the news. So when I had to choose a topic for my paper, in September 2018, right after the Nike development in Kaepernick's story, I decided without hesitation to write about the Colin Kaepernick case. This subject really inspired me because it is set in the dramaturgical world of sports, while at the same time raising wider issues about American society. There were several aspects to the

protest, and the controversy it started, that I found were really complex and deserved to be discussed.

The first aspect is the man who started it. At the time, all I knew was that he was a quarterback for the San Francisco 49ers in the NFL. In my eyes, it meant that he had one of the best jobs in the world. I wanted to discover what kind of person was able to put that in jeopardy by standing for a cause. This will be the first part of this paper: who Colin Kaepernick is. I will look back at his background to know where he came from and how he became a professional football player, before looking at his career and the man he became. Then I will discuss what he did with his protest, why he did it, and move on to how it was received and the controversy it created. And the controversy was intense. It spread far beyond football and sports in general. It became a societal debate. Furthermore, it has lasted. It was not a lone event implicating one man. It was started by Colin Kaepernick, who became its figurehead, but the protest was relayed by other athletes and has persisted through time. How Kaepernick navigated through this long controversy is another aspect that deserves to be discussed.

After learning the details of this case, I found that the central issue around which everything revolved was that Colin Kaepernick acted alone. Why? And how did that factor into the evolution of his protest? These are the questions I tried to answer writing this paper.

Stepping back from the Kaepernick case, I will explore the history of African American athletes' activism. It is a history into which Colin Kaepernick will naturally be included because of his skin color and the motives behind his protest. He is an educated man and there is no doubt that he was familiar with this history. From what it tells us, he must have known that standing alone in the name of social justice for African Americans often meant dire personnel consequences. That he chose to act the way he did anyway tends to

show that he did not have a list of concrete demands, but that the important thing for him was promoting his message.

Then I will focus on the stage Colin Kaepernick chose for his protest: the playing of the national anthem in a football stadium and by extension the flag of the United States. They are symbols, and as such, they do not create the same emotions in everyone. But they represent patriotism which is a value that appears to be extremely dear to a lot of Americans, especially in sports. The American flag is in every stadium. The national anthem is played before every sports game in the United States. It is a publicly displayed value of the National Football League and as such, patriotism was bound to have an impact on reactions toward Kaepernick's protest. He stood alone against the interests of powerful institutions.

I will finish by studying a twist in the development of Kaepernick's activism that could happen precisely because he stood alone: Nike's support. The fact that he was alone, added to his discreet behavior through the controversy, almost silent and poised, made possible for Nike to market him. Nike gave a new face to Colin Kaepernick's activism: endorsed activism.

And finally, in the third part, I will examine the legal framework that has to be taken into account when a foreign language teacher, like every teacher, working in the French national education system wants to discuss a subject involving politics such as the protest of Colin Kaepernick. This framework is made of rules whose applications are not set in stone but instead left in large part for local authorities to determine. They consist in not allowing employees of the French government to criticize too harshly and openly their employer. By definition then, they do not apply to criticisms made toward foreign governments. I will present in the third and last part my opinion on this state of fact.

Overall, I find the case of Colin Kaepernick's protest interesting and worth studying because it spread from the world of sports, a world of excess, but there was no excess in the protest itself, only in the way many reacted to it. Kaepernick denounced a social injustice and asked the country to live up to its proclaimed values of equality before the law and liberty and justice for all. He made his statement and has stood by it ever since he first started his protest almost three years ago, all the while remaining strikingly discreet although he was at the center of a nationwide debate. People reacting did the talking. And Nike paid. I think that this protest and the following controversy provide valuable insights into American culture and society.

1. The Colin Kaepernick Case

1.1. Colin's Kaepernick's Life until August 2016[1]

1.1.1. Childhood

Colin Kaepernick was born on November 3, 1987, in Milwaukee, Wisconsin. His mother was a white American young woman named Heidi Russo and his father an African American man whose name is unknown. Heidi Russo, nineteen years old at the time decided to put her child up for adoption. A common friend introduced her to Rick and Teresa Kaepernick, a couple of white American middle-class citizens who were looking to adopt because they wanted another child but had lost two previous infant sons born with heart defects. Teresa was a nurse and Rick a factory manager. The mixed ethnicity of the child posed no problem to the couple and Heidi felt sure that they could provide a better life for Colin than she would have been able to. In consequence the adoption was finalized in the early days of December 1987. Colin, aged five weeks old at the time, then joined the Kaepernick family as the youngest of three children, thus gaining an older brother, Kyle, and sister, Devon, in the process.

When Colin was four-years-old, the Kaepernick family moved to Turlock, California, 100 miles east of San Francisco, a city of around 75,000 inhabitants with less than two percent of the population identifying as African American.[2] Colin's status as an adopted child was impossible to hide and he had to grow up facing curious comments from classmates

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[1] See Redban, ch. 1-4.

[2] According the United States Census Bureau, www.census.gov/quickfacts/fact/table/turlockcitycalifornia/PST045218.

asking him about his skin color that was so obviously different from his family. He felt loved and supported by his parents and siblings and it gave him the strength not to be brought down by remarks and jokes against him. It always made him feel protected to see how his family and especially his mother Teresa would react and defuse racial slurs directed against him.[3] Through all that, Colin was from a young age made aware of social and racial issues, issues that resonated deeply in him, and at the same time he also learned nonviolent, respectful ways to face those issues.

Sports skills were another tool Colin had growing up to face adversity and find his place in society outside of the family nest. He felt good on the sports fields and from a young age his mind was made up about what he wanted to do with his life. In the fourth grade, aged nine, he wrote to answer an assignment given to his class about what they wanted to do when they grow up: "I'm 5 feet 2 inches 91 pounds. Good athlete. I think in 7 years I will be between 6 feet - 6 feet 4 inches 140 pounds. I hope I go to a good college in football then go to the pros and play on the Niners or the Packers even if they aren't good in seven years" (qtd. in Redban ch.1). As we will see, he followed his plan.

1.1.2. School Years

Colin Kaepernick followed a very traditional way to discover his athleticism. From the age of five, after moving to Turlock, California, his parents registered him in the neighborhood baseball team as a way to make new friends. In junior high he started playing also football and basketball and was shaping up to be tall and athletic. But it is really during his high school years that he begun to really stand out and show evident signs that he might

[3] See Colin and Teresa Kaepernick's appearance on *VH1*'s "Dear Mama" show, May 7, 2018.

have what it takes to shine at the highest levels. In 2003 he entered the newly created John H. Pitman High School and joined the football, baseball and basketball team of the athletics program — this is possible because in the US schools sports are scheduled according to seasons, with fall, winter and spring sports. He was a noticed athlete and won high distinctions in all three sports. In parallel of his exploits on the sports fields he was also a dedicated student. One of his professor remembered him as a problem solver, someone who always wanted to understand what he had done wrong in order to fix it (Redban ch. 2 par. 5). Colin managed to maintain a 4.0 GPA throughout high school qualifying him for most universities. The next step was then logically for him to go to college.

Colin's performance on the baseball diamond as a pitcher had earned him so much praises that people thought he would go on to play baseball. Severals offers had been made by baseball scouts offering him full-ride scholarships in their universities. But Colin's love was football. During his junior year, his football coach had made a tape of Colin's plays throughout the season. With the help of that coach, Colin's brother Kyle made a highlights tape and sent it to more than a hundred football coaches. No offer came. He was 6 feet 5 inches tall but only 170 pounds, and football programs were concerned that he was too tall for his weight and would get hurt at college level. When he graduated Colin had received only one offer for a tryout from the University of Nevada in Reno.

Because the baseball offers were solid ones, even the coaches of the University of Nevada thought that Colin would opt for a baseball scholarship. But he did not give up and went for the tryout during the summer camp at the University of Nevada. There, he seized the opportunity and showed his skills. He was offered a full scholarship and he enrolled at the school in the fall of 2007.

1.1.3. College years

Even though Kaepernick was a dominating quarterback during his high school years, the coaches of the University of Nevada football program planned at first to use him as a safety, a defensive position where size and speed are essential, while making him a reserve quarterback. This was not a surprising decision. The quarterback position in football comes with a tremendous responsibility and by way of consequence, for a freshman to occupy the position is not something that is the norm. Usually the quarterback jersey goes to a more seasoned student. But on the fifth game of the season, the starting quarterback got injured, and he was called to replace him. Kaepernick seized the opportunity again. He gave an impressive performance and the coach decided to let him remain the starting quarterback for the next game, and eventually for the rest of the season.

He begun his sophomore year as starting quarterback. He played very well throughout the season.[4] Kaepernick seemed to be focused on football but baseball was still interested in him and he was even drafted by the Chicago Cubs in the Major League Baseball Draft of 2009. Kaepernick decided to stay in college. During his junior year he managed to keep very high personal statistics which earned him personal rewards and his performances seemed to make him a prime candidate to go play for the NFL but he decided to remain in college for his senior year.

His last season, Kaepernick kept up the pace he had set his previous two seasons.[5] He had honed his game and his physique and he was dominating the games. His last year of college football even culminated in a movie-like final confrontation against the University of

[4] Second sophomore player in conference history to be named Offensive Player of the Year.

[5] First player in NCAA history to reach 2000 yards passing and 1000 yards rushing three different seasons.

Nevada Wolf Pack's fiercer rivals. The Boise State Broncos were on an undefeated streak of twenty-four games, lasting almost two years, when they visited Reno for the last home game of Colin's college career. The game was intense but the Wolf Pack prevailed in an overtime victory.[6] Kaepernick ended his college football career on a superb note and decided logically to enter the 2011 National Football League Draft at the end of the school year.

Life was full of success on the field when he was wearing the Wolf Pack jersey, but off the field, college years were also an important time in the life of Colin Kaepernick. It is at this period that he shaped the adult he was going to be.[7] As is the case for many Americans and many students in general who go to universities far from their home, life drastically changed for Kaepernick. But in his case, the shock was amplified by his background and the fact that he was bi-racial, and black. He met friends, especially on the football team, that had had a tougher experience of their skin color than he had. He was made aware of social issues that he knew existed because he had had his share of experiences, but from which he realized he had been mostly sheltered by his loving family. And he was also confronted with a form of rejection, or at least defiance against who he was. He was sometimes lambasted by whites for being black, and sometimes by blacks because he had been raised by a white family. But the main way that he was perceived was as a jock, a star-to-be, quarterback of the football team, who also got offers from baseball. Life was supposed to be easy for him, as long as he performed on the field.

In this context Kaepernick developed his core values. He was raised as a Baptist and confirmed as a Lutheran. Religion is very important to him and it is at that time that he started his impressive tattoo collection which are for the vast majority of religious

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[6] For more informations see Molina, and the highlights video of ESPN available for example here: www.youtube.com/watch?v=zyPpOhl9dnM.

[7] For more information about Kaepernick's university years outside of football, see Branch.

inspiration.[8] For example he wears a Bible psalm, a Christian cross, praying hands, angels fighting demons, the word "Faith." He talks very openly about religion and never tried to hide his faith.

While at the University of Nevada he also became a member of the Kappa Alpha Psi fraternity, a fraternity prominently Afro-American. He pledged during his junior year, encouraged by his then teammate Brandon Marshall, who also became an NFL player. Marshall found that Kaepernick was very serious about his commitment to the fraternity (Branch). One of the members of the University of Nevada's charter of Kappa Alpha Psi at the time, named Olumide Ogundimu, recalls that they were surprised to see Kaepernick come to a meeting, because he was the star quarterback, and they could not guess what he was searching for by entering their community. They lately discovered that what Colin Kaepernick was looking for was a connection to his roots and broader understanding of others (qtd. in Branch).

Kaepernick was an athlete, but he never failed to train his brains too. He had finished High School with a 4.0 GPA and did not stop his efforts in the University's classrooms. He was described by all as a dedicated student. He attended classes on business and sociology mostly but he was interested in many subjects and often attended various lectures. His teammate Brandon Marshall recalls that he was sometimes curious to know when Colin was sleeping (qtd. in Branch). In the end, he graduated with a bachelor's degree in business management.

But while he became more aware of the world around him and the society he was living in as an African American. While he succeeded in his studies and achieved the goals he had set for himself. His biggest dream remained football. And at the 2011 NFL Draft, late

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[8] For a complete overview of Kaepernick's tattoos, see Joe.

April, for the immense satisfaction of the nine-year-old little dreamer still inside him, he was drafted by the San Francisco 49ers.

1.1.4. NFL career[9]

As is almost always the case for a rookie quarterback, Kaepernick's first year in the NFL was spent almost exclusively on the bench, as a backup for Alex Smith the starter of the time for the 49ers. He got out of the bench for a few plays on only three games the entire season and every time when it was non-consequential for the team, when the game was already firmly in their hands. Kaepernick spent the year learning his team's offense strategies, assisting Smith during practices and taking the temperature of pro-football waters.

The decisive moment of his career came during a home game against the Rams, from Saint-Louis at the time, week 10 of the 2012 season, his second in the league. Alex Smith received a hard blow that left him concussed near the end of the first half and Kaepernick had the opportunity to play the entirety of the second half. The 49ers were down by 10 points when Kaepernick stepped in. The game ended on a tie and he had once again seized his chance. The next week, he made his debut in the NFL as a starter while Smith was still in recovery and the Niners won against the Chicago Bears. Then came the first controversy that included Colin Kaepernick's name. This one was a classic: fans and medias questioning the coach's decision to bench the seasoned quarterback in favor of the upcoming youngster. Kaepernick played great and the Niners won. But the fans and reporters were still not totally convinced and the controversy, although more of a lively debate amongst football aficionados than real controversy, dwindled but perdured as Harbaugh maintained his confidence in

[9] For more information, see Redban ch.4 and Crawford ch.3.

Kaepernick and trusted him with the starting quarterback position. The controversy ended three weeks later when Kaepernick led the 49ers to a win at the New England Patriots, one of the strongest team in the league, and assured San Francisco of a playoff participation at the end of the season. Like he had done every time in his sports career, Kaepernick seized the opportunity when it presented itself and made the best of it.

But the fairy tale was not over yet. He was on his way to stardom. The young quarterback with his tattoo-covered arms that — unfairly in the eyes of some — had replaced a solid, appreciated and dependable quarterback was quieting all reproaches. And when the Niners won the NFC championship for the first time in eighteen years, he and his tattooed arms definitely made his way to the heart of the fans. The San Fransisco 49ers were returning to the Super Bowl after an eighteen-year absence. In a thrilling game[10] Baltimore won Super Bowl XLVII but Kaepernick had impressed[11] and San Francisco lost by only three points. At the end of the season Alex Smith was traded and Kaepernick was awarded the role of starting quarterback for the next season. The 2013 season was the confirmation that Kaepernick had the talent to be a starting quarterback in the NFL. He led the 49ers to a 12-4 season and qualified them for the postseason again. This time they lost the NFC Championship game to the Seattle Seahawks.

Previous to the 2014 season, Kaepernick signed a six-year contract extension for $126 million — which could be re-evaluated as are most athletes' contracts in the NFL — with a $13 million fully guaranteed. To him it meant financial success but the season would be uneven, with the 49ers alternating between good and bad, and ultimately finishing the season

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[10] With a notable thirty-five minutes power outage and the 49ers almost overcoming a 22 points deficit.

[11] In that game he broke the record for longest run for a touchdown with a 14 yards run, record that previously belonged to Joe Montana, a strong symbol for 49ers fans.

with an 8-8 record, ending a series of three consecutive participations in the postseason. This resulted in coach Jim Harbaugh leaving the team and Colin Kaepernick facing criticism on his athletic performances. Consecutively, 2015 season was very difficult for Colin. He started the season with physical issues and his relations with the new coach Jim Tonsula tended to be complicated. After a crushing defeat week 8 in Saint-Louis against the Rams, Colin Kaepernick lost his starting position in favor of Blaine Gabbert who started the game on week 9. Kaepernick and the team then announced that he would be out for the second half of the season because he had to undergo shoulder surgery. The 49ers finished the season with a 5-11 record, Tonsula was fired and replaced by Chip Kelly. Colin's surgery went well and he returned to the team. And then came the start of the 2016 season.

1.2. Colin Kaepernick's Protest - Taking a Knee

1.2.1. How it happened - Colin Kaepernick's last season

The 2016 football season started for Colin Kaepernick with the question of who between him and Gabbert would be sitting on the bench during the games.[12] It was uncertain which quarterback coach Chip Kelly would favor to start on opening night. But whether or not he would leave it during the games, Colin Kaepernick had decided to remain seated on the bench during the pre-game playing of the national anthem. The first two preseason games, it went unnoticed or at least it was not discussed publicly. But when the third game came, reporters were ready.

[12] For a chronological recap of the debate read *Bleacher's Report* article "Blaine Gabbert Named 49ers' QB over Colin Kaepernick," bleacherreport.com.

It was in San Francisco, on August 26, 2016. The 49ers were hosting the Green Bay Packers for their third out of four preseason games. As is the tradition, the national anthem "The Star-Spangled Banner" was played before the game and, as the custom requires, everyone in the stadium stood to attention. Well, not everyone because Colin Kaepernick was noticed sitting on a bench on the sideline. Asked about it after the game, he explained his sitting out the anthem with these words to an official NFL media: "I am not going to stand up to show pride in a flag for a country that oppresses black people and people of color. To me, this is bigger than football and it would be selfish on my part to look the other way. There are bodies in the street and people getting paid leave and getting away with murder." Following the game, photos of Kaepernick wearing socks showing cartoon pigs wearing police hats taken during an open-to-public practice on August 10 resurfaced and became viral. Kaepernick was asked to comment and he confirmed that it was to protest police brutality and settled all debate around it with a post on social networks dated September 1:

> I wore these socks, in the past, because the rogue cops that are allowed to hold positions in police departments, not only put the community in danger, but also put the cops that have the right intentions in danger by creating an environment of tension and mistrust. I have two uncles and friends who are police officers and serve ALL people. So before these socks, which were worn before I took my public stance, are used to distract from the real issues, I wanted to address this immediately (qtd. in Knoblauch).[13]

That same day, the 49ers played in San Diego for the last preseason game against the Chargers. A game that was scheduled to host a celebration in honor of two hundred military

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[13] The original statement from Kaepernick on Instagram is no longer available, but it has been relayed by several news outlets, for an example see Knoblauch.

members on the field during the pregame ceremony. This resonated a lot with the fact that many critics opposed to Kaepernick not standing for the anthem and the flag considered him to be unpatriotic. Not standing meant to those detractors that he had no respect for the sacrifices soldiers made to the country. There was a lot of curiosity about what Colin Kaepernick would do during the ceremony.

Prior to the game, Kaepernick got in touch with Nate Boyer a former green beret and football player who had written an article about Kaepernick's protest on the website of the *Army Times* dated August 30. In this article Boyer talks about his feelings toward the anthem and the flag as a veteran. About the protest he says that he was hurt but understands and respects Kaepernick's opinions. Kaepernick and his teammate Eric Reid — who had decided to join him in his protest —received the visit of Boyer before the game and they had a long conversation at the end of which the players decided to switch from remaining seated to kneeling during the anthem. After the game Reid stated in an interview that the switch was made to show more respect to the military members with a gesture they deemed respectful.[14] The way they kneeled is common both to football players and the military. Boyer explained after the meeting: "We sorta came to a middle ground where he would take a knee alongside his teammates. Soldiers take a knee in front of a fallen brother's grave, you know, to show respect" (qtd. in Brinson). The gesture is also well-known of football fans who all have seen players from both teams kneel in that fashion to salute an injured player carried out of the field by paramedics.

After that, Kaepernick kneeled again on September 12, in San Francisco, for the opening game of the season against the Los Angeles Rams, a game that he would spend on

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[14] See the *New-York Times* article of September 25, 2017, "Eric Reid: Why Colin Kaepernick and I decided to Take a Knee."

the bench. Whether it was because of the controversy surrounding Kaepernick or because he felt that he was still too rusty from recovery after his surgery to play, coach Kelly gave the starting position to Gabbert and the Niners won. Gabbert started again the next week and Kaepernick, who was now joined in his protest by other players from various teams, knelt during the anthem again. But this time San Francisco lost and began a series of thirteen losses. The football season was disastrous for the 49ers. Kaepernick had gotten his starting position back on week 6, just after the team announced that they had restructured his contract. He was playing well in spite of the controversy surrounding him, and he managed to end the season with better statistics than his two previous ones. But the team did not perform well, especially because of an appalling defense. He continued to kneel during the anthem until January 1, 2017, when he played his last game for the 49ers. He opted out of his contract on March 3, an option made possible by his restructured contract, and became a free agent, free to sign with any team. But no offer came, and according to the majority of football pundits, this had nothing to do with the way he played, but everything to do with his protest. To this day, he has not played football in the NFL again.

In the meantime he has lived up to his statement that he would continue his protest until he saw what he perceived as significant change in politics. He was followed in his gesture by numerous players in many teams and different sports all throughout the 2016 and 2017 seasons and even, to a lesser extent, the 2018 season. Parallel to his protest on the field, he developed his activism outside of football too. He founded a charity he called “Kaepernick 7” through which he donates funds to other charities, and founded a campaign, the “Know Your Rights Camp”, that offers a camp for young African Americans throughout the country — it has been held six times in six different cities to this day — and is designed to “raise

awareness on higher education, self-empowerment, and instruction to properly interact with law enforcement in various scenarios."[15]

1.2.2. The context at the time

Colin Kaepernick first remained seated during the playing of the national anthem on August 14, 2016. But it went unnoticed until he stayed on the bench for the third time on August 26, 2016. This would become the official date of the start of his protest, because he was asked about it after the game and finally put words behind his actions and stated his purpose: to protest police discrimination against black and browns in the Unites States.

At the time, the Black Lives Matter movement was three years old. This movement originated online on social media in the summer of 2013. It focuses attention on police brutality against African Americans too. But it has a larger range than Kaepernick's protest. The movement was founded in response of the acquittal of George Zimmerman, in July 2013, after Zimmerman had killed an unarmed seventeen-year-old African American. Zimmerman was not a policeman or a security guard, but a simple citizen on a neighborhood-watch patrol. The Black Lives Matter movement responded to a growing concern in the United States in the last decade. But it is not the only one. Across the US, numerous associations and movements are addressing the issue of police brutality, such as Communities United For Police Reform,[16] or Communities United Against Police Brutality,[17] among others.

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[15] All information about Kaepernick's charity are available on its website kaepernick7.com.

[16] Created in 2012, its website describes the association goal as "working to end discriminatory policing in New York."

[17] Founded in Minneapolis in 2000 and still active today.

Official statistics on the subject of police brutality are hard to find. On the Bureau of Justice Statistics website, information on arrest-related deaths are available until 2012. But news outlets and other citizen initiatives have taken upon themselves to do the work of compiling the datas on police brutality and deaths in the United States. The Washington Post has started an initiative they named “Fatal Force.” The Guardian has its own counter they called “The Counted.” Both these initiatives rely on journalistic work and public contributions.

Even though official statistics and number are hard to find, one thing is certain to any observer: instances of African Americans being victims of the use of excessive or fatal force by the police are not rare. And another thing is clear: social media have provided a powerful tool to spread the word. Every once in a while, at a pace that is worrisome in itself, a story about an African American unjustly dying after crossing the police’s path goes viral on the Internet. In the summer of 2016, when Colin Kaepernick started his protest, the high profile cases in the news — that he referenced himself during his initial interviews — were the cases of Alton Sterling and Philando Castille, respectively shot by police in Louisiana and Minnesota, July 5 and 6. In the first case, officers were not charged. In the second, the officer was charged but acquitted one year later. Both incidents were recorded live on social media. On September 16, three weeks after Kaepernick’s protest had become wildly noticed, the killing of Terrence Crutcher in Tulsa, Oklahoma, made the news. The officer would be charged with murder, but he was acquitted on May 2017.

September 2016 was also going to be the start of the presidential debates for the 2016 elections. The first debate was scheduled on the 26, and polls at the time suggested strongly that it would be held between Hillary Clinton and Donald Trump. In the first interview he

gave after his first protest was noticed[18] after a 49ers practice on August 28, Kaepernick was asked both about President Obama and the presidential candidates. Regarding President Obama the reporter asked if he was conscious that some people might find exaggerated to hear claims about racism in America when the country had elected a black president twice. Kaepernick replied that he could not have resolved all the issues involved in an eight-year span. And concerning the presidential candidates, he declared:

> I think the two presidential candidates that we currently have also represent the issue that we have in this country right now. … You have Hillary who has called black teenagers or black kids super-predators. You have Donald Trump who is openly racist. I mean we have a presidential candidate who's deleted emails, who's done things illegally and is a presidential candidate. That doesn't make sense to me because if it was any other person, you'd be in prison.[19]

Although the context in September 2016 was highly political and a lot of controversies at the time were racially oriented, Colin Kaepernick never stated that there was a particular event that led him to his protest. He was reacting to a general atmosphere and to the repetition of dramatic events. He said himself that he did not planned nor timed his protest, that it was something that he felt he had to do because he could do it, meaning he had a status and a platform allowing him to speak when others could not. And he felt that it was his responsibility to do so because of that.

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[18] Not including the official statement he made after the game on August 26.

[19] The integrality of the interview from August 28, 2016, is available on *YouTube*, titled "Colin Kaepernick Explains Why He Won't Stand During National Anthem."

1.2.3. The direct aftermath

The controversy, fueled by social media, soon gained national coverage. Its first aspect was that Colin Kaepernick aiming his protest at the anthem and the flag shown a lack of patriotism and respect toward the military. As we have seen, Kaepernick was concern with this misinterpretation of his protest and tried to address it. He met with Nate Boyer, switched from sitting out to kneeling, and clarified his stance several times in different media. In the interview he gave to the press after the 49ers practice on August 28, he said :

> I have great respect for the men and women that have fought for this country. I have family, I have friends that have gone and fought for this country. And they fight for freedom, they fight for the people, they fight for liberty and justice, for everyone. That's not happening. People are dying in vain because this country isn't holding their end of the bargain up, as far as giving freedom and justice, liberty to everybody. That's something that's not happening. I've seen videos, I've seen circumstances where men and women that have been in the military have come back and been treated unjustly by the country they have fought for, and have been murdered by the country they fought for, on our land. That's not right.[20]

But despite his clarifications, the association had been made in the mind of some and they would not see past what they felt was disrespect to the country to hear the actual message behind the protest: police brutality against African Americans. It is interesting to note that for an important part of the population, Kaepernick's protest would from then on always be about patriotism in the sense of love and respect for the country.

[20] Same interview aforementioned.

Nevertheless, it was not the case for Colin Kaepernick, and many were who saw things his way and supported his actions. Some other NFL players even began to kneel like him, some chose to remain seated, or to raise a fist in the fashion of Tommy Smith and John Carlos and the Black Power movement. Some teams, or group of players, chose to stand side by side with their arms linked. Athletes from other sports joined the protest, like Megan Rapinoe, one of the most internationally recognized face in women soccer. When the basketball season started, some NBA players took part in the protest, teams like the Boston Celtics or the New-York Knicks linked arms during the anthem. Athletes in High Schools and Colleges joined in. Cases of cheerleaders kneeling were reported. The protest even spread to some marching bands and singers who knelt while performing the anthem. All throughout the 2016 NFL season, the same question was always in the air before and after every game played by any team : who was kneeling?

Everyone commented and the country was divided between those who supported Colin Kaepernick and his protest and agreed with his message, those who agreed with his message but not his way to pass it on, and those who did not like both — although regarding people in that last category it is often unclear if their reaction is prompted only by the fact that they see the protest as unpatriotic or because they do not agree with the fact that police brutality is an issue.[21] A lot of celebrities, media people and politics reacted to Kaepernick's kneeling and everyone seemed to have an opinion, but the turning point occurred exactly one year later, when now-president Donald Trump weighed in.

It is no secret that Donald Trump is using Twitter a lot, and that he is not shy of comments on many different subjects. But regarding Colin Kaepernick and the controversy of NFL players kneeling he was officially silent. Until September 22, 2017, during a Republican

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[21] See Pellegrino for an example of that confusion.

rally in Huntsville, Alabama, where he made a statement in his typical verve: "You see those people taking the knee when they are playing our great national anthem. Wouldn't you love to see one of these NFL owners when somebody disrespects our flag, to say get that son-of-a-bitch of the field right now, out! He's fired. He's fired!" Statement that he followed the next day on his official Twitter account with a somewhat more moderate post: "If a player wants the privilege of making millions of dollars in the NFL, or other leagues, he or she should not be allowed to disrespect our Great American Flag (or Country) and should stand for the National Anthem. If not, YOU'RE FIRED. Find something else to do!"[22] As a result, the protest that was loosing momentum after the beginning of its second season was reignited. Numbers can vary since there is no official tally of who was protesting and how, but few players were reported demonstrating on week 2 of the 2017 season. But on week 3, when games were for the most part played the day following Trump statements, on September 24, it was a tidal wave. The protest reached its peak. Over two hundred players were reported kneeling or protesting one way or another, joined by members of staff, coaches and in some cases even the owners themselves.[23] Some teams, like the Dallas Cowboys or the New Orleans Saints decided to all lock arms together and kneel prior to the anthem and then stand for it with their arms remaining linked. Others like the Seattle Seahawks, the Tennessee Titans and the Pittsburgh Steelers[24] decided to remain in their locker room during the anthem and issued statements. Here is the statement from the Titans: "As a team, we wanted to be unified in our actions today. The players jointly decided this was the best course of action.

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[22] @realdonaldtrump, Twitter, September 23, 2017.

[23] A tally of all players and staff who protested that day can be found on Sports Illustrated website, www.si.com/nfl/2017/08/22/national-anthem-protests-list-players-kneel.

[24] At the exception of one player, who would the next day see his jersey rocket to top seller, see Garcia.

Our commitment to the military and our community is resolute and the absence of our team for the national anthem shouldn't be misconstrued as unpatriotic." The uproar came mostly from the fact that many felt the declarations of President Trump were outrageous and denied them their freedom of speech. It is interesting to note that among NFL owners, seven of them had publicly admitted donating money[25] to Donald Trump, and some of those, like Robert Kraft owner of the New England Patriots, were arms in arms with their players on the field on September 24. The NFL had not been united by the original protest started by Colin Kaepernick, but Donald Trump succeeded in bringing more strength to those who were already protesting and in leading many more to show support to the protest. Even though for many the reaction came from President Trump's statement and was a visceral one that was short-lived, the protest had regained momentum and it would perdure the entire 2017 season.

On October 16, things evolved for Colin Kaepernick. He decided to sue the NFL accusing the owners of collusion to keep him of the field. This legal fight can seem dissociated to his initial protest against police brutality, and to have more ramifications in the fight for freedom of speech. But it had the effect to confirm Kaepernick's role as the face of the movement even if he was not in the league and by definition could not kneel anymore during the pre-game ceremonies. He gained officially the martyr status, stating clearly that he could not play anymore, do his job and earn his living, because he had started a discussion that many did not want to have.

For the rest of the league, the season would go on with players protesting and the owners and the league having to face criticism from a consequent number of people for letting it happen. As one author puts it: "Albeit many think of professional athletes as autonomous superstars, they are still employees of their respective teams … The reason why

[25] See Isidore.

the NFL is in this situation is the 49ers management and ownership did not have the fortitude to suspend him immediately" (Pellegrino). The numbers were proving that the NFL was slowly but steadily loosing viewers.[26] The blaze following Trump's input had at least led to the realization that something needed to be done and official talks were conducted between the league officials and the players organizations. One of these organizations, the Players Coalition,[27] was created during the 2017 season by active players, some of whom were protesting the anthem at the time. One of the issues tackled by this organization is Police brutality but it does it under one of its three "pillars" which are "Police & Community Relations, Criminal Justice Reform, and Education & Economic Advancement" making its range of concerns larger than Colin Kaepernick's initial protest. Kaepernick himself never took part in the Coalition but his teammate Eric Reid who knelt with him from the start was a member at first and then left them because he, and others, had different opinions about what the association should be and do, notably its treatment of Kaepernick.[28]

In April 2018, Colin Kaepernick received international recognition for his activism when he was honored by the Amnesty International Ambassador of Conscience award during a ceremony that was held in Amsterdam. He was introduced on stage by his teammate and close friend Eric Reid. At the time they were both without contract with the NFL[29] and Kaepernick opened his speech praising him.[30]

In May 2018, during the off-season, the NFL issued a new National Anthem Policy that required players on the field to stand, and gave the option for those who wished to

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[26] For more on NFL ratings in 2017 see Deitsch.

[27] The players coalition website: https://players-coalition.org/about/.

[28] For a detailed account, see Thomas.

[29] Reid signed with the Carolina Panthers week 4 of the 2018 season.

[30] Full speeches from both Kaepernick and Reid are available on *YouTube*.

remain in the locker room. This did not pleased the NFL Players Association that stated they were not consulted prior to the new policy. It was finally pulled in July, before the season, until the league and the players could come to an agreement. It has not been enacted or enforced to this day.

The 2018 season of the NFL was about to start. The question was in everyone's mind: would the protest go on another season? Kaepernick was still not signed and his grievance for collusion was in the hands of an arbitrator. But, as things turned out, even if he had not been in the 49ers uniform or that of another team and knelt during a pre-game ceremony for more than a year and a half now, Colin Kaepernick was going to be the center of attention again.

1.2.4. The latest developments

On August 30, 2018, Colin Kaepernick got a good news. Arbitrator Stephen Burbank declared that Kaepernick's lawyer had enough elements for his case to go to court. His grievance for collusion against the NFL was now officially a law suit. Even if the beginning of the NFL season was a week away at the time, this information might not have been sufficient in itself for the media to continue talking about Kaepernick because the 2018 preseason showed less mobilization among NFL athletes during the anthem. But it turned out that Kaepernick would make the headlines again a few days later. On September 3, he posted on his Twitter account a new Nike ad in witch he featured. A close-up shot of his face with the slogan "Believe in something. Even if it means sacrificing everything" written across it. The picture would appear the same day in large — extra large even in some cases — posters in the streets and two days later the full video ad was released.[31] In this emotional film, in the

[31] Nike "Dream Crazy" released September 5, 2018.

long-lasting tradition of the Nike ads, Colin Kaepernick's voice talks about sports and dreams and the video shows a panel of athletes whose stories are inspirational, to end with a shot of him walking in the street in civil clothes, the only athlete featured in the commercial who is not shown while performing his sport.

The video was named "Dream Crazy" and is part of the 30th anniversary of Nike's "Just Do It" campaign. It shows and mentions other athletes. Some worldwide superstars like LeBron James and Serena Williams. But other lesser-known athletes are featured, sometimes not even professional, but not less inspirational. Like young wrestler Isaiah Bird who is born without legs, Shaqueem Griffin, the first one-handed player to be drafted in the NFL, Alicia Woollcott, who was homecoming queen and linebacker for her school football team, and others, sixteen in total. The message the video carries is universal. "It's only a crazy dream until you do it." But the one thing that many people would see when they watched it was Colin Kaepernick, the guy who knelt during the anthem and disrespected the flag, as the star of a Nike commercial ad. They did not like it. Some even burned Nike shoes on social media. And amidst the comment were the posts from President Trump on Twitter judging that it was a very bad commercial move for Nike and wondering "What was Nike thinking?"[32] The response came one week later from Wall Street where Nike's stock reached an all-time high at closing on September 13, eight days after the release of the video.[33]

The 2018 NFL season started without Colin Kaepernick on the field, but he was still very present in the ad pages, the screens and the collective mind. His protest would continue throughout the season, carried by others. But their ranks would diminish game after game. At

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[32] @realdonaldtrump, Twitter, September 7, 2018.

[33] It has since been bested.

the end of the season, only a handful of players were reported still kneeling.[34] Maybe as a way to try to revive the protest or maybe as a way to take it to other areas than the football stadiums, there was an appeal on social media for a boycott of the Super Bowl, played on February 3, 2019, in support of Colin Kaepernick. Additionally, a number of posts of celebrities and famous black activists wearing "I'm with Kap" shirts appeared on social networks.[35]

The latest development to date came less than two weeks after that, on February 15, 2019, and it was a somehow surprising one. With a laconic official statement, due to a confidentiality clause, Kaepernick's lawyer announced that they had come to an agreement with the NFL to settle the lawsuit. Some numbers have since leaked[36] regarding how much Kaepernick was paid by the league but nothing was either confirmed or denied. The reasons behind this settlement are then left to interpretation and supposition. But the matter of Colin Kaepernick donning an NFL team jersey and competing ever again in the league is still unresolved to this day, and many are keeping an eye on the off-season news to see if he will get a contract for the 2019 season. Will Colin Kaepernick be able to continue his activism while being a quarterback in the NFL, or will he have sacrificed his sports career for what he believed in?

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[34] No players were reported kneeling during the 2018 season playoffs, for an account of the last two weeks of the season, see www.si.com/nfl/2018/12/16/players-who-protested-racial-injustice-police-brutality-during-national-anthem-week-15 and www.si.com/nfl/2018/12/23/players-who-protested-racial-injustice-police-brutality-during-national-anthem-week-16.

[35] See Law.

[36] The Wall Street Journal published on March 21 an article titled: "NFL Paid Under $10 Million to Settle Colin Kaepernick Grievance."

2. Activism in Sports, Kaepernick in History and The Land of Patriotism

Introduction: Would things have been different if Kaepernick hadn't acted alone?

Whenever someone disrupts the regular order of things with his or her actions, the same basic questions come to mind. What happened? Who did it? How and when did they, he or she do it? And why? In the case of Colin Kaepernick we will see that some of these simple questions do not have simple answers. Many layers have to be taken into account to understand what happened since August 26, 2016. One thing is clear above everything else: what was done by one football player in a squad of more than fifty athletes, in a league that counts more than fifteen hundred, started a controversy that impacted all of them and crossed the borders of their sport to create a nationwide — even worldwide to some extent — debate that lasted over two years and which, as of this day thirty-two months later, is not resolved yet.

In this instance, what happened was that Colin Kaepernick decided not to stand for the American national anthem. Who was that man and what exactly did he do? The first part of this paper answers that question. But one person is the sum of many elements that mixed together create a personality. And in the case of Kaepernick, one of these constituent parts is professional football player in the National Football League. He is neither just a man, nor just an African American man, in the eyes of many his predominant identity is athlete. And in that regard, he belongs to a legacy of black athletes who at one time in their life exceeded their role on the field, or the court, or the diamond, to take on a larger role. They wanted to go further than an athletic performance and to send a message to the whole society. They tried to change the way things are done or the way people think. Because he protested, Colin

Kaepernick became voluntarily or not a member of that family of athletes. In the first chapter of this second part, we will review who came before him, what they did and why they did it, as well as the consequences it had for them, in order to have a historical perspective on the subject of activism led by black athletes.

We will then move on to the how and the when. Kaepernick chose to stage his protest during the pre-game ceremony and the playing of "The Star-Spangled Banner" that has become a tradition in the NFL. It was a logical choice. At that moment, he was assured of the public's attention and that the symbolism behind it would definitely stir emotions. Immediately after the start of his protest, when the outrage had not yet fully spread, his first interview showed that he was conscious of what it would provoke and that he was ready for it. In part because fervent patriotism displays have become a component of the sports business in the United States since the events of September 11, 2001. We will see in the second chapter how this came to be, and how it influenced the very protest of Kaepernick in a way that he might not have fully anticipated. He might have been ready for some backlash, but certainly not for the aspect the controversy would take on in the eyes of many 'patriots'. We will observe that once this link between patriotism and Kaepernick's protest was made, it would be impossible to undo, and we will reflect on the reasons that could account for this confusion.

And finally in the third chapter we will reflect on Colin Kaepernick's personal involvement. He has stated his intentions several times in different interviews, but overall Colin Kaepernick is rather moderate in his use of the media. Whether they be social media or mainstream media. He has not given many interviews and his behavior can be labeled discreet given the intensity at times of the controversy he had started. In that regard, Nike's commercial, which was a well-kept secret, was surprising. We will see what it meant to

Kaepernick's protest. We will also remark that he did not need to be highly loquacious, mainly for two reasons: the social media, and Donald Trump. The first were speaking for him, and the last speaks a lot and as president has enormous broadcasting resources. Social media have become in the last decade an important actor of the way information spreads and they were instrumental in Kaepernick's protest. As was President Trump whose inflammatory remarks revived a stagnating movement. Both, in their fashion, have contributed to a protest that would not have had the same shape or impact without them.

Throughout these three chapters we will also consider how Colin Kaepernick's choice to act alone influenced the outcome and the development of his protest. Activism has an intimate historical relationship with the African American community, and there is no doubt that he would have found support to protest police brutality against people of color — he did in a certain way with those who protested following his example. Whether a group action would have been more or less efficient is something that we can reflect on and have opinions about, but something that we will never know for sure because he chose to stand — to kneel in this case — on his own. Others followed his lead, but the gesture was associated with him and he had to shoulder most of the consequences. In the end, the choice he made to be his own voice and not to ask anyone to join him is an important aspect of his activism, and pivotal to his protest.

2.1. Sports and Black Activism

When you love sports, you love its heroes. Every sports fan has his personal hall-of-fame, in which he sets on a pedestal athletes that elicit strong emotions and that are revered for their accomplishments on the field. But sometimes accomplishments off the field too can

influence our judgement of an athlete. Whether it is because of something he did or simply the way he is, or she is — in that domain everything that is true for a male athlete is of course the same for a female athlete. And when you are an enthusiastic sports fan, your hall-of-fame does not include only athletes who are contemporary to yourself, but athletes from sports history too. Looking back on his life it leaves little room for doubt about Colin Kaepernick conceivably being an enthusiastic sports fan. He most probably knows about sports history. And as I mentioned in the first part, he was also interested in social issues related to his African American origin. It is then logical to think that he knew the stories of the athletes that made sports history not only because of their success in their respective championships, but also because they brought forward issues of racial inequality in the United States.

Another reason to think that Kaepernick was aware of black activism history in sports is Harry Edwards. Edwards is Professor Emeritus of Sociology at the University of California, Berkeley. He is considered a leading figure in the sociology of sports and especially the issues surrounding the African American athlete's experience. And for good reason because he was an athlete himself and a leader of the Olympic Project for Human Rights[37] that agitated the year preceding the Mexico City 1968 Olympic Games where Tommie Smith and John Carlos famously raised their black-gloved fists on the 200-meter sprint medal podium. For several years now he has also served as a consultant for sports teams in California, notably the Golden State Warriors and the San Fransisco 49ers. It is through that role that he met Colin Kaepernick. Colin Kaepernick has stated[38] that he consulted with Harry Edwards and that he considered him a friend. When asked what part he played in Kaepernick's protest, Edwards described it as "basically an on-going

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[37] See Edwards.

[38] See his interview of August 28, 2016.

conversation."[39] Colin Kaepernick was then according to all appearances well informed on the subject of African American athletes and activism when he started his protest. He chose to enter their team and to play for what Harry Edwards calls "The Struggle" because his protest was about race, about the inequality in treatment when people of color face the police.

Historically sports in the United States have always been closely associated with racial issues for the simple reason that at the time when contemporary sports were created and began to organize themselves, the United States was still segregated.[40] The first instances of organized sport competitions were held between plantations in the eighteenth and early nineteenth century, where the owners would make their slaves compete in various events, notably foot-racing, horse-racing, boxing and fishing.[41] From the start, sports have been an opportunity for those who had the right skills to access a better social condition. One example of such success dates from the early 1800s, when a slave named Tom Molineaux gained his freedom from his owner as a reward for earning him substantial winnings in boxing bouts. Once freed, Tom Molineaux[42] went on to become the first black boxer to defeat a white champion in England in 1810.

Horse riding is one of the oldest organized sports, and in the nineteenth century, it was the leading sport. Prior to the Civil War it was dominated by African American jockeys.[43] The reason was that tending to horses on the plantations was a job performed by slaves. Some successful trainers and jockeys were a valuable commodity that owners traded between

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[39] Interviewed by James Brown for *CBS This Morning* on September 12, 2016, *YouTube* extract entitled "Sociologist Harry Edwards on 49ers Colin Kaepernick controversy," www.youtube.com.

[40] National (1876) and American (1901) League merged to created the MLB in 1920, same year the NFL was created and the NBA followed in 1946.

[41] See Rhoden, ch. 2.

[42] See Rhoden, ch. 2 and Fitzpatrick.

[43] See Rhoden, ch. 3.

themselves and who could even in some cases earn amounts of money that allowed them to live comfortable lives despite their status. After the Civil War, and the Civil Rights Act of 1875, some could have anticipated that being allowed to establish themselves as owners and compete in their own name, colored jockeys that were dominating the races in terms of numbers and talent would now benefit from their athletic dominance. But it would not be the case. As William C. Rhoden explains in his book:

> African American jockeys disappeared because of a confluence of powerful forces — owners and trainers who stopped hiring them, white jockeys who ganged up on them, and the Jockey Club that systematically denied the reenlisting of blacks. Black riders became victims of the Jockey Syndrome, or changing the rules to fit a need — the need to maintain control in the face of a perceived challenge to white supremacy (68).

This notion of challenging white supremacy is a potent motive. African American athletes' activism has had different orientations and motives at its roots, but to challenge white dominance and racial inequality in a given area of sports or society is a common feature to all of their protests. Harry Edwards regroups the different protests over the years in consecutive waves that had different motivations depending on their starting point.[44] According to Edwards, from the beginning of the twentieth century to the Second World War was the first wave. Athletes were at that time striving to prove that African Americans had all the necessary qualities to compete on the same level with whites. Notable athletes of this first wave were:

- Jack Johnson, African American boxer who became the first black heavyweight world champion in a fight against Canadian boxer Tommy Burns that had to be organized in

[44] As he explained in a conference for Harvard University School of Politics on September 13, 2017, available on YouTube with the title *From Robinson to Kaepernick: The Evolution of Athlete Activism,* www.youtube.com, 10:40-18:05.

Australia, in December 1908. He then fought James Jeffries who was considered the best boxer of the time but had retired undefeated the previous year after having continuously refused to fight Johnson. Johnson won in 1910 and became the undisputed world champion, exactly one hundred years after Tom Molineaux's accomplishments in London.[45]

- Major Taylor, who became the first African American[46] world champion in any sport when he won the sprint event of the 1899 world track championship of cycling. Throughout his life Taylor had to struggle with racism but he had a successful cycling career and gained international recognition.[47]
- Jesse Owens, undoubtedly the most famous of the list, who achieved worldwide star-athlete status with his performance as a black man sprinting and winning on the tracks of the 1936 Olympics in Nazi Berlin under the nose of Adolf Hitler.

The second wave follows World War II. These athletes were fighting for equal opportunities to access the biggest leagues or tournaments of their sport. They became icons because they finally broke the barriers that remained in the highest levels of competition as the professional leagues of the modern era were still segregated. Jackie Robinson is the most notable example of this generation of African American athletes. He integrated Major League Baseball in 1947 — he was drafted in 1946 by the Brooklyn Dodgers and started playing the next year. He had always been a proponent of fighting discrimination[48] and became a life-

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[45] See Rhoden 90-96.

[46] He was the second black athlete to be world champion after the Canadian boxer George Dixon.

[47] For more on Taylor, see the *Washington Post* article "The Little-Known Story of Major Taylor, America's First Black Sports Hero, Who Became a World Champion During the Jim Crow Era of the 1890s."

[48] He was court-martialed in 1944 in a context of racial tensions in the army during the Second World War, for complete information, see Franklin.

long spokesman for equality between races in sports and society. He opened the doors of Major League Baseball to generations of athletes of color and his continuous involvement in African American social causes made him the face of integrated sports in the United States. But he was actually not the first. A few months before he was signed by the Dodgers, four African American football players had signed professional contracts in the NFL. Kenny Washington was the first. He signed with the Los Angeles Rams in March 1946, followed by Woody Strode, but Bill Willis and Marion Motley were the first to play in a game, with the Cleveland Browns in September 1946. In Basketball the color barrier was broken in 1950 when Chuck Cooper, Earl Lloyd and Nat 'Sweetwater' Clifton — who previously played for the Harlem Globetrotters — were drafted by teams competing in the National Basketball Association. Basketball was the last of the three major sports in the US to integrate but the one for which it caught on fastest and which saw a continuous progression of the number of African American players over the following years. Also the first from which emerged a black national superstar whose dominating talent was unanimously recognized: Bill Russell, who won eleven championships[49] during his thirteen-year career with the Boston Celtics between 1956 and 1969. In tennis it was a woman, Althea Gibson, who was the first black athlete to compete in major tournaments in 1950.[50] This wave of athletes who integrated sports at the highest competition levels showed that African Americans could now compete equally with whites on the same playing fields, and it was bound to have repercussions on society. As Crawford puts it: "Sports inherently were never political, but it could not contain

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[49] He won the last two as player-coach, making him also the first African American head coach in the NBA.

[50] She had had the support of Alice Marble, former tennis champion who famously wrote an effective letter to *American Lawn Tennis Magazine* in support of Gibson entering the US championship.

the ethos of fairness within itself, and soon the egalitarian ideology of sports flitted out from the sporting arenas into the politics of the nation" (15).

The 1950s and 1960s would see a lot of advances made toward social justice for African Americans. Mandatory integration of schools in the 1950s and the official end of the Jim Crow laws in the mid-1960s are striking examples. But even if sports had been integrated, the third wave of African American athletes activists still had reasons to protest. And it involved the most famous of all African American athletes, Muhammad Ali. These athletes were asking for dignity and respect. They were demanding to see applied in society the social progress promised by the law. Born Cassius Clay — a name that he famously abandoned as it was his "slave name" he said — Ali became a national icon for two reasons. One, he was a great boxer, according to some the greatest of all times. Two, he was an eloquent and irrepressible spokesman for the African American cause. His refusal to participate in the Vietnam War, a decision that cost him his boxing title and four years of his career when he was at his prime, made him a symbol of the suffering and sacrifice of the Civil Rights Movement.

Harry Edwards, although lesser known, also was an important figure in the years of the Civil Rights Movement. Being himself an athlete, who went to college on a basketball scholarship, his area of expertise and his favored field of protest was — and still is — the world of sports. In 1968, in the midst of racial turmoil in college athletics, he created the Olympic Project for Human Rights. Its most famous action was the Olympic boycott they planned for 1968. While the boycott did not take place, their voice had an impact and it led to the annulment of the decision made by the International Olympic Committee to allow South Africa to participate in the 1968 Olympic Games in Mexico. It also led to the demonstration of Tommie Smith and John Carlos who were members of the OPHR and also frequented the

San Jose State University where Edwards was an instructor in sociology.[51] He was never directly under the spotlights, favoring organization and mobilization of motivated like-minded energies, but Edwards was there and, as it turned out, he was around again before Colin Kaepernick started his protest and became the face of what he describes as the fourth wave of African American athletes protesting for racial justice.

The legacy of black athletes struggling for their rights is rich. Howard Bryant describes this legacy of social struggle for black athletes as a responsibility resting on the shoulders of the black athletes who reach success, and calls it "the Heritage." Harry Edwards' fourth wave of protesting African American athletes is the embodiment of this concept. They are athletes who reached financial success and positions that give them a platform to be heard, a form of power, that they chose to use to give a voice to those who do not have the power to be heard and whose cause matters to them. Colin Kaepernick is a prime example of this generation of athletes and has become its leading symbol. But he is not alone.

On July 9, 2016, an entire Women's National Basketball Association team, the Minnesota Lynx, wore shirts during their warm-up with the message "Change Starts With Us, Justice and Accountability" on the front, and the names of Alton Sterling and Philando Castille, the logo of the Dallas Police Department, and Black Lives Matter, on the back. The shirt was worn in reaction to the events of the previous days, the deaths of Sterling on July 5, and Castillo on July 6, killed by police followed the next day, July 7, by the mass shooting of Dallas police officers killing five of them. In the wake of the display of support by the Lynx several other teams of the WNBA wore shirts promoting the Black Lives Matter movement during the following days. This created turmoil within the league with officials first issuing

[51] For the complete story of the boycott, see Edwards.

fines toward the protesting teams before backing down.[52] Although the protest did not reach the front pages of the news and did not create as strong a controversy as Kaepernick's anthem protest would, it showed that many athletes were ready to use their platform to send a message. If this still needed to be confirmed, it happened again on July 13, during the ESPY Awards, which are in a way the Oscars of sports. The yearly ceremony is usually a show dedicated to celebrating the sports accomplishments of the year and is traditionally conducted in a light-hearted mood. But that night, in the opening segment of the show, four African American athletes took the stage with a solemn message.[53] Four of the most prestigious names in basketball, LeBron James, Carmelo Anthony, Dwyane Wade and Chris Paul, gave a speech about police brutality, gun violence, and the need for athletes to use their status and the possibilities it offers them to help bring about the changes they deemed necessary in society. Anthony opened stating that the current situation led them to this initiative. Paul continued and listed victims of police killings as their motive to encourage fellow athletes to emulate a list of sport legends who stood up to defend what they believed. Wade insisted further with the following statement:

> The racial profiling has to stop. The shoot-to-kill mentality has to stop. Not seeing the value of black and brown bodies has to stop. But also, the retaliation has to stop. The endless gun violence in places like Chicago, Dallas, not to mention Orlando, it has to stop. Enough. Enough is enough. Now, as athletes, it's on us to challenge each other to do even more than we already do in our own communities. And the conversation, it

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[52] See the *New York Times* article of July 23, 2016, "WNBA Rescinds Fines for Players' Pre-Game Activism," www.nytimes.com.

[53] Video of their speech available on *YouTube*, "[2016 ESPYs] Carmelo Anthony, Chris Paul, Dwyane Wade, & LeBron James Opening Segment," www.youtube.com/watch?v=KCjMvEdPi30.

> cannot stop as our schedules get busy again. It won't always be convenient. It won't. It won't always be comfortable, but it is necessary.

And James concluded, opening with: “We all feel helpless and frustrated by the violence. We do. But that’s not acceptable. It’s time to look in the mirror and ask ourselves what are we doing to create change.” Before closing with an appeal not only to celebrate Ali but to follow his footsteps by educating themselves on the issues at hand and speaking up for those who cannot.

LeBron James was not a first timer. He and his teammates of the Miami Heat[54] had worn hoodies before a game to protest stereotypes and ask for justice following the Trayvon Martin shooting, in March 2012. In December 2014, following the death of Eric Garner, Derrick Rose of the Chicago Bulls donned a black t-shirt with the words “I Can’t Breathe” during pre-game warm up. It went viral when LeBron James and his teammates as well as players of the opposing team repeated the gesture two days later. The “I Can’t Breathe” shirt then spread throughout the NBA for a few days. It was widely commented upon, as all things ‘king’ James does, but did not create a strong controversy. In the same fashion, the opening speech of the ESPYS got some attention, but did not create a national debate like Kaepernick’s stance would.

I do not think Colin Kaepernick was in attendance that night because he did not have a good season and the ESPYS mostly celebrate victories, but he definitely got LeBron James’ message. Nevertheless, it may be noted that before engaging in his protest, he witnessed these athletes displaying support to the cause he would embrace, but he still chose to act alone. As we saw, the legacy of African American athletes promoting social causes, especially struggling for the betterment of African American lives, is rich and full of experiences to

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[54] Including Dwyane Wade.

learn from. One of these lessons is that when you engage in a protest, there are bound to be repercussions. Furthermore, Harry Edwards stated in an interview[55] that he had warned Kaepernick on what it meant to protest "and, as much as anything else, the price, the cost of what he's doing." He ended saying that Kaepernick was "good with all of that" and he manifestly was, as his first interview after he started his protest shows, when he replied to a reporter asking him why more players were not protesting: "They're scared they might lose their job, or they might not get their endorsements. They might not be treated the same way and those are things I'm prepared to handle. And those are things other people might not be ready for."[56] Kaepernick's intent, as he says in the same interview, was to "bring awareness" and this may be the reason why he acted alone and made no concrete demands. He may have even welcomed the backlash that made him a martyr — a quarterback without a team — because it was bringing more attention to his message. But in the long run, it has not accomplished anything else for now. And what if Kaepernick had chosen to use the social climate of the time to unify every black player in the league, or even only those of the 49ers? This will always — or at least for the time being — remain only conjecture because it is not the way he chose to act, but we can take a look once again at history to form an opinion on the question.

In 1970, nine players at the University of Syracuse boycotted the entire season in protest against several issues concerning both disparities between white and black students, but also between students on sports scholarships and 'regular' students, regardless of their race. They were to be nicknamed (mistakenly) the 'Syracuse 8' by the media. Although their protest impeded their football career, they were able to bring about some changes in the

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[55] See aforementioned CBS interview by James Brown.

[56] See aforementioned interview of August 28, 2016.

university, some graduated, and they moved on with their lives. They never broke ranks and remained united throughout the whole season, in the face of harsh criticism from a majority of people around them. They had to wait until 2006 for Syracuse University to honor them for their contribution to social progress at the university.[57] This may seem like a long time, but eventually, what was considered as causing trouble at one time was acknowledged as beneficial for the institution, thus validating their protest.

A similar case had occurred the previous year, in the 1969 football team of the University of Wyoming. Fourteen African American players were dismissed by their coach, Lloyd Eaton, because they wanted to follow the Black Student Association and demonstrate against their scheduled opponent Brigham Youth University, in protest of the Mormon policies against black members in the clergy. The dismissal of the 'Black 14' as they were to be called created an uproar in the local community. Partly on behalf of the players, partly in support of the coach. The issue was even brought to trial. The legal conflict lasted three years and ended in 1972 in favor of the defense, coach Eaton, who had been dismissed as head coach at the end of the 1970 season. In that case, a good number of students and members of the faculty were on the side of the players, but public opinion, and as it turned out the judge, were firmly in favor of the coach. Even the criticism that ensued and the protests that welcomed the team on away games did not make the public support of the coach waver, only a bad football season led to his dismissal the next year. The 'Black 14' misadventure would bring about changes both in the University of Wyoming and BYU, but it cost them a year of football and those of them who wanted to keep on playing had to transfer.[58]

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[57] For more information, see "The Syracuse 8" by *The Players' Tribune*, October 22, 2015, www.theplayerstribune.com.

[58] A documentary titled "Black 14" directed by Darius Clark Monroe and edited with archive footage is available on *Topic* website, www.topic.com.

The ‘Syracuse 8’ were only acclaimed after thirty-six years, the ‘Black 14’ lost their court battle, Tommie Smith and John Carlos were vilified[59] by many in the US in the direct aftermath of their protest, Ali lost four years of his career while he was at the top of the boxing world, Jesse Owens was barred from his sport[60] not one year after having brought glory to America in Nazi Germany, activism does not seem to benefit African American athletes in the past. Success and acknowledgement of the importance of what they stood for seemed at best to occur in the long run. But recent events tend to show that this might have evolved for the better.

In the early days of November 2015, at the University of Missouri, a series of racial incidents had brought unrest to the student community. A group of them regrouped under the name Concerned Student 1950 and addressed a list of demands of which the primary one was the dismissal of the university president. One student, Johnathan Butler, decided to go on a hunger strike. Discussions took place between the students and the university but nothing seemed to happen until the football team — under the impulse of its black players — threatened to boycott games in support of Butler’s hunger strike. The protest gained national attention and two days later, the university president and its chancellor tended their resignation.[61] The cost of the football team boycotting a game was a powerful incentive.[62] This made echo to what happened in the National Basketball Association in April 2014 with the notorious incident concerning Donald Sterling, owner of the Los Angeles Clippers. In a taped conversation leaked to the press, Sterling made racists comments toward his players

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[59] They were notably stripped from their medals and expelled from the US track team, see History.com Editors.

[60] See Miller.

[61] See Bryant 199-200.

[62] They risked a $1 million fine, see Jackson.

and fans. The reaction of the players remained measured, but they threatened to boycott the playoffs. The threat was apparently enough since four days later NBA Commissioner Adam Silver announced that Donald Sterling was banned from the NBA and would be forced to sell his team — which happened later that year. The simple threat of the team boycotting the playoffs had been enough for the NBA to move against one of its owners. The player had shown that in the context of a world of sports where the sums of money were staggering they had power when they presented a united front. Unity being another common point between these two cases, where all players of the team, regardless their skin color, banded together.

And this is possibly the reason behind Kaepernick's motive for acting alone. He might have known or felt that he would not have the support of his entire team. And knowing from history that there were going to be repercussions that could be severe if the totality of the players weren't united, he perhaps found easier to launch the protest alone and manage the repercussions rather than to fail to organize a movement, like a strike, and possibly bring others with him in his downfall. Strikes have proven successful in the history of modern-era organized sports. Every major sport league has had its strike or lockdown, even several, over the years. They were efficient because all of — or at least majority enough so that the games could not be played — the players were united. But these lockdowns were almost all about money, and it is easy to bring people together for money. A lot more complicated when it comes to social issues, especially racial ones.

In my opinion, taking into account the history of protests led by African American athletes, Colin Kaepernick had only one power. Not the power to bring about change, but the power to be a center of attention and by virtue of this platform, to send a message. In consequence, what he did makes a lot more sense. What could he have done to create enough emotional response to trigger a national debate, the highest realistic aim he could reach?

Slogans on t-shirts were obviously not enough. Boycott is not something efficient on your own. His response was to direct his protest toward the “Star-Spangled Banner” anthem, and by extension the American flag, a symbol of patriotism and, in a wider sense, love for the country. It is a source of strong emotions, especially in a country whose military culture is important, and to use it in a protest was bound to stir emotions. It was an effective choice because it talked to everyone sharing the same anthem and flag, not only the football fans. It efficiently crossed the borders of sports and became a public opinion issue to which it was easy for anyone to relate. Furthermore, as we will now observe, it was made even more potent by the fact that patriotism and sports have a special relationship in the United States.

2.2. Post 9/11 Patriotism in Sports

Patriotism is an intellectual concept. As such, it can take different forms and mean different things depending on the individual. But the core essence of the concept of patriotism is appreciation of the country. What the country represents is a subjective notion, here again opinions may differ. However, when patriotism is concerned, emotions are concerned. This means that it is by essence a sensitive subject, and like all emotionally sensitive subjects, the risk is that feelings can be strong enough to cloud the judgement, and hinder rationality. Colin Kaepernick’s protest was directed at one of the strongest symbol of patriotism, the national anthem. It addressed directly the sense of patriotism of those who witnessed his protest. And in my opinion this was both beneficial and detrimental to his objective. Beneficial because it brought the attention needed to shed light on the issues he wanted to put forward. Detrimental because in the eyes of a large number of people, the message behind what he did was lost to the resentment for the way he did it. Not standing for the flag was considered unpatriotic by

that group of people, and basically, someone who was unpatriotic did not deserve anything from them other than contempt. Besides, Kaepernick's protest stage was also a sensitive area for the NFL. The football league, but also every major American sport league, has cultivated a relationship with patriotism throughout history. Relationship that became a lot closer after the terrorist attack of September 11, 2001, and which has evolved to the point of being institutionalized today.[63]

Being French, for me the national anthem being played prior to a game means that it is an international game featuring France's team, or eventually the final game of a national competition. But in the United States, it just means that the game is about to start. The official reason is that it is to honor the country, its values and those who gave their life in service. What it means to those who hear it is another matter, and a component of Colin Kaepernick's message. But first of all, it is a tradition. A tradition that is as old as the sports themselves. The first documented time that the "Star-Spangled Banner" song — it was not yet an official anthem — was played during a game can be traced back to the second half of the nineteenth century and the beginning of professional baseball. Before it was even designated to be used in official ceremonies by the United States Navy in 1889, then by President Woodrow Wilson in 1916, and officially declared the United States national anthem by Congress and President Herbert Hoover in 1931. At that time, it was already featured regularly in baseball games of the MLB.

The first turning-point in the relationship between sports and patriotism can be traced back to the first game of the World Series of baseball, September 5, 1918, played in New York. At that time the First World War was entering its final year, the war effort was at its highest and throughout the sports season different events in support of the fighting troops had

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[63] See Bryant ch.5 and 7.

been organized. But one event that everybody would remember occurred during the seventh inning stretch — a pause in the seventh period of a baseball game — when the stadium band started playing "The Star-Spangled Banner." It was a popular success and the not-yet-official anthem was consequently played during every game of the World Series. From then on, it became a tradition in baseball to have the stadium bands play it to mark big occasions like national holidays or important games like the World Series. War was the context of the beginning of the tradition, and is directly linked with the tradition to display patriotism in stadiums.

The next instance of a strengthening of this tradition was World War II. During the years of the Second World War, two combining factors led to a wide propagation of the now-official national anthem in all stadiums. Technical progresses in sound-system technologies and the strong patriotic sentiment that accompanied the years of war. Sound-System were cheaper — in the long term — than bands and every stadium was soon fitted with one, and playing "The Star-Spangled Banner" was appreciated by spectators as a way for large audiences to show their patriotism. So much so that it is during those years that it became customary to play it before every baseball game. At the same period, the tradition spread to other sports and directly at the end of the war, the commissioner of the NFL Elmer Layden demanded that all the teams continue playing the national anthem before every game.[64] Every team played ball, other sports league too, and before long the national anthem was played before every sports game in America — Canadian teams in the leagues play the Canadian anthem, along with "The Star-Spangled Banner" when they face team from the US. Although, it is noteworthy that playing the national anthem before a game has never been made officially mandatory. But the ritual has been adopted so universally that it is now virtually

[64] For more on the national anthem in US sports, see Waxman.

impossible for a team to stop playing it without being condemned unpatriotic and risk dire fallouts in terms of public support and by consequence, revenues.

Finally, the last step in the process of shaping patriotism in stadiums as it is experienced today in the United States was not a war, but something close: terrorism. On September 11, 2001, the Unites-States were attacked on their own soil and shaken at their core. The whole country — and the world — was shocked by the events that took place in New York. In the aftermath of the attacks, people needed something to bring them together. As Howard Bryant puts it: "Sports had a role, too, and a new word was added to our vocabulary right alongside *winning* and *losing*; the new word to describe sports' mission was *healing*. Teams and their leagues felt an obligation to be involved in the patriotic rush. They had to show their colors and show their faces" (102). And then again, the World Series of baseball would be a strong symbol of patriotism display. The series was between the Arizona Diamondbacks based in Phoenix, and the New York Yankees. During the game ceremonies, members of the police, firemen and first responders as well as military forces were honored, the flyover concluding the national anthem[65] during game seven even featured the Northrop Grumman B2-Spirit commonly known as the Stealth Bomber, and to open game three, when the series arrived to Yankee Stadium in New York, President George W. Bush in person threw the ceremonial first pitch of the game. After the games, the Yankees adopted the tradition to sing "God Bless America" during the seventh inning stretch. The other teams followed suit to the extent that commissioner Bud Selig made it mandatory (Bryant 107). Super Bowl XXXVI, played on February 3, 2002, was also aimed at overcoming 9/11 and honor the victims. The game logo originally meant to honor the host town of New Orleans was reshaped as the United States and bore the flag colors. Janet Jackson who was scheduled to

[65] The first flyover during a game is also credited to the 1918 World Series of baseball.

headline the halftime show conceded her spot to U2 who played their songs while the names of all the World Trade Center attacks victims were being projected on a large screen behind them. George W. Bush made another public appearance at a ball game, this time to participate in the coin toss. The broadcaster Fox Sports aired before the game a video of NFL players reading parts of the Declaration of Independence — which started their own tradition they have repeated at every Super Bowl they televised since then. Another video featuring former presidents reading a speech of Abraham Lincoln was aired. And ultimately the game was won by … the Patriots !

"The Star-Spangled Banner" was from then on indissociable from the stadiums. An example of that association is the recorded performance of Whitney Houston during the pre-game ceremony of Super Bowl XXV played in Tampa, Florida, in January 27, 1991, ten days after the start of Operation Desert Storm of the Gulf War — another historically highly patriotic game — became platinum after it was re-released following 9/11. The only time in history the national anthem went platinum.[66] Besides the relationship between stadium and anthem, this shows that the patriotic sentiments were really high at the time. And the reaction of the sports leagues to this need for sharing a sense of community through collective displays of patriotism set a trend in the way sports game would be organized that has not faltered to this day. Howard Bryant describes it:

> Of all American social institutions, 9/11 most radically altered sports, from the place where fans escaped the world and its problems to the definitive staging ground for the nation's war effort, the restoration of its wounded spirit, of taking back everything Osama bin Laden took from it. Sports would embody the way the United States would

[66] It had only gone gold when it was originally released to support the troops of the Gulf War, and it went platinum to support 9/11 victims.

> view itself and its institutions. … What was thought to be a period of grieving and a temporary display of militarism became a permanent, cultural transformation, now going on nearly twenty years (101).

Upon looking at this history of the relationship between The Star-Spangled Banner anthem and sports, it becomes easier to understand in part the reaction of a consequent proportion of the public to Colin Kaepernick's protest. It must not be overlooked that during the twentieth century and the beginning of the twenty-first century the United State have known more years when it was at war than not. The list is long: First and Second World War, Korean War, Viet-Nam War, Cold War, Gulf War, War on Terror, and to name only the major conflicts. It is then only logical that patriotism be a component of the American culture. In the eyes of many, patriotism becomes associated with Americanism. Not showing support to the military becomes equivalent to not showing support to the values that the United States are defending and upholding on the international scene. It also means that for a good part of the population, it is personal because they know close ones who are fighting, fought, were harmed or died for their country. Patriotism and appreciation of the military forces have become so closely linked over the years because of the pageantry surrounding sports events that when Kaepernick staged his protest during the anthem, criticizing the country for not upholding its values, in their eyes he was saying that he did not respect the military and the human sacrifice it represents. He understood as much and it is the only thing that made him inflect his position since he started his protest, when he switched from seating to kneeling. But for many of those who are intimately concern, whatever the form of the protest, if it is directed at the symbols of the country, it is not something they can look past to hear the message behind it. And even if they heard Kaepernick, the message could not register for their pain, or shock, or disgust at the action took precedent over it. However Kaepernick and

his supporters tried to stress that the national anthem protest was not directed against the military and its men and women, the association between "The Star-Spangled Banner" and support of the troops in stadium was too tightly woven.

The culture of patriotism display in sports, if it had assuredly been genuine empathy and emotions at the start — and still is in the eyes of part of the public —, evolved toward something less noble as it was institutionalized. At first, playing the anthem and celebrating the military responded to a need for people to come together through common symbols, especially in times of war. Then, in the wake of 9/11 it was a need of unity, in order to find comfort, strength and security, and it extended to the celebration of police, fire fighters, first responders, the men and women that were keeping people safe at home, in addition to the ones fighting for them on foreign soil. But why is it still going on today then, when the sacrifices made in the World Trade Center's towers were made almost two decades ago? Some would argue that it is because the War on Terror is still going on, and that with it comes foreign and domestic threat, so it makes sense to keep celebrating both military and police alike; they would not be completely wrong. But today the reasons for patriotism and appreciation of the forces displays in stadiums have become less a visceral response to a general emotion than a simple marketing deal between the sports leagues and the military.

In November 2015, US senators John McCain and Jeff Flake released *Tackling Paid Patriotism*,[67] a report on how sports team were paid by the military forces to host ceremonial events. The report did not criticize money spent by the Department of Defense to do its own promotion, but focuses on the part of the budget that encompass a lot of what was thought by the general opinion to be genuine tributes. Features like a soldier throwing a ceremonial first pitch, the presence of the color guard, soldiers singing the anthem or deploying a large flag

[67] Accessible online on different platforms.

on the field, even staging a surprise homecoming, were paid for by the DoD. The issue was not the money, for once, because the stated amount of $6.8 million, although a large sum, is a small amount compared to the annual budget of the DoD that is counted in hundred billions of dollars. In their press conference of November 4, 2015, Senator Flake first states the marketing and advertising budget allowed to sports by the DoD is $53 million and he then corrects to "ninety some million dollars for sports marketing generally." Furthermore, in the report, the New England Patriots are said to have received $700,000 between 2012 and 2014 for "paid patriotism." The annual revenue of the team in 2017 was $593 million according to Forbes.[68] In other words, the amounts stated in the report are not the problem — although given the fact that it is taxpayers money it can be considered an issue by the general opinion — but what was denounced by Senators McCain and Flake was that this money was spent on events that in the eyes of the public were free of charge, genuine celebrations when they were in fact paid for by their taxes. The outrage did not come from the fact that the US military was spending money to market itself, since the abandon of the conscription in 1973, advertisements for the military in all forms are common in Americans daily lives. What caused indignation was that the teams were receiving money for something that should be done for free or risk loosing its meaning. The blame was on the leagues and they quickly reacted in pledging to stop billing these ceremonies. The NFL, who was the major beneficiary of these contracts according to the report, conducted its own audit and in may 2016 they announced through their commissioner Roger Goodell that they would return a little over $723,000. The controversy was short lived, and the pageantry continued, because these displays of patriotism are beneficial to all actors even without money directly exchanged for

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[68] Forbes offers on its website financial statistics for all NFL teams, www.forbes.com/nfl-valuations/list/#tab:overall.

it. The cynic might for example argue that the only reason the leagues continue to celebrate the troops is to continue selling teams' military-themed paraphernalia. Every team of every major league has in its shop military versions of their jerseys, or hats, or hoodies and so on — the NFL and its supplier Nike have even created a "Salute to Service" brand. On the military side however, the reason is plain, it is nice to be celebrated and it is a good way to create potential new recruits. In his book, Howard Bryant interviews retired three-stars Lieutenant General Russel Honoré, known notably for being the commander of the task-force that led the relief efforts after Hurricane Katrina, who gives his explanation for the military presence in sports stadiums:

> Oh no, we gotta recruit them little SOBs. Mom and Dad, we're gonna recruit 'em. You better hold on to them if you don't want them in the Army. We're gonna recruit the hell out of them. That's how we man the force. We only get two out of every ten that qualify. And [sports] is a good place to recruit them… About 65 percent of our soldiers come from rural communities, and any exposure we can get to that population is very important, and important that people see the esteem that people hold those in uniform who serve. […] The kids that go to [sporting events] have a pretty good tendency to play sports, and to be a warrior you need to be what we call the 'warrior athlete.' You gotta be able to run. You gotta be able to jump. You can't be no fat ass. We need the warrior athlete. And the people who say they want to go to a game and don't want to see the color guard on the field, I feel sorry for them, but we've got to recruit every opportunity we get to get the right young people who want to serve and participate (209-210).

Upon reading this somewhat colored statement, the forces opposing Kaepernick's protest reveal themselves a little more. What Kaepernick was directing his protest against is a

symbol that is part of a pageantry deer to important actors. The NFL is a business generating billions of dollar thanks to its fans, it does not like controversy. The US military forces have even more money and, above everything else, it has a crucial need of good public opinion to maintain its workforce. Kaepernick stood alone against the interest of adversaries that are powerful and this is undoubtedly a big part of the reason why he lost his place in the NFL. Because he acted alone, it is a fair assumption on the part of the NFL owners that keeping him away from football will eventually make the anthem protests stop. Those who followed his lead did so in support of his cause, but without any particular agenda, no demand other than to see an end to unjustified police brutality toward black and brown Americans. It is too vague to remain mobilized. For a successful outcome you need precise demands to negotiate upon. This movement has none, or rather one far too vague. Kaepernick became the face and the leader of a protest that apparently had no other agenda than to point out a social issue. A protest that criticized America and its institutions on the stage of the football institution during a ceremony associated with America's strongest institution, its army. This amounts to a lot of people and a lot of interests challenged by one man whose followers have never been united and whose numbers are dwindling over time. He protested the national anthem because he felt the need to make a statement to speak against police brutality toward black and brown people. He acted alone because it was something personal for him and he just wanted to share it and let everyone decide what to do with it for themselves. And in my opinion, given that he appears to have been conscious of what he risked and to be firm in his resolve, and would most probably refuse to stand even if he returned to the league, it is also the main reason why he will never play football in the NFL again.

2.3. Endorsed activism, silent activism, social media and Donald Trump

It is clear upon looking at his life story and the way he expresses himself that Colin Kaepernick is an educated man. As such, he knew the history of activism led by African American athletes. And because according to all appearances he is an intelligent man, whose life was spent in football stadiums, it seems logical to me that he must have been conscious of the role of the military pageantry surrounding the games. In his interview he says that his protest is: "something that I felt I had to do." This means to me that it was not an impulsive action. It was not something that occurred to him as he was seated on the bench as the anthem was about to be played and it struck him that he did not feel like standing up. He thought things through. His interviews in the wake of the launch of his protest confirms he had realized that being a public figure he had a platform and he chose to use it for something that he felt was important and greater than sports. In doing so he entered the legacy of African American athletes who had used their platform to promote social justice. But the context today is different from what it was at the time of segregation and later the Civil Rights Movement era. Sports are now billions of dollars industries and athletes of all races can become rich superstars. And in fact, one thing sets Colin Kaepernick apart from most of the big names of black athletes activism, he is a multi-millionaire.

Among the most frequent criticisms he had to face after the launch of his protest, a close second to non-patriotism, was that he was making millions of dollars so he should be grateful, stop talking and focus on his performance on the field of football. In that reproach there are two aspects. The first is that an athlete should stick to sports. That sports and politics should be separated. That people do not want the politics of the real world to spoil their enjoyment of the recreation that are sports. This argument is to me somehow fallacious in a

country where the anthem is played before every game, where military and police are so often celebrated in stadiums, and where a spectator attempting to go to the restrooms during a song — "God Bless America" as patriotic as it may be is still officially just a song — can be kicked out of a stadium.[69] But the second aspect of the reproach, that he should be grateful because he earns millions, is in my opinion more deserving to be discussed. According to some comments, Colin Kaepernick — and others — should not speak on social justice because they are rich. They should be grateful. But in the same time football players are expected to give back. Every year players are rewarded for their involvement off the field in their community, notably through the Walter Payton Man of the Year Award issued during the pregame ceremony of the Super Bowl. The public opinion loves the story of the athlete who overcomes his origin and escapes misery through sport, gains fame and money and uses it to help his community. It is a beautiful thing to do, but does it keep the same value when you do it to follow what you think is expected of you? To what extent is the commitment of the players involved in the NFL Community programs toward the different causes they defend genuine? There seems to be a logical conclusion to this dichotomy: a player is supposed to show his gratitude for earning millions of dollars by giving some back to whom his boss says he should. Kaepernick knew the cause he wanted to defend would be unpopular in the eyes of the owners and the NFL because of their links to the law enforcement community visible in the stadiums throughout the country. He chose to do it anyway, and to counter critics about his millions, he put his money where his mouth was. He not only donated to charities, he created one devoted to educate young people about their rights, promote social justice and denounce police brutality toward colored citizens. He did what successful athletes are expected to do by the general audience, only he added a twist, a statement that the cause he

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[69] See Bradford Campeau-Laurion's misadventure at Yankees stadium, notably in Bryant (153).

had to defend should not even exist in the United States according to the values anthem and flag were representing. His charity was his private life, his public life as quarterback of the San Francisco 49ers, he chose to use it to deliver a message to the public. He became an activist.

In their time, many big names of African American athletes activism had to endure financial hardship following their protest. Kaepernick enjoyed the wealth brought on by modern-era sports business, he is a millionaire. Loosing his job in the NFL would cost him millions more he would have earned, but somehow he decided that he already had enough to risk it. And of top of that, luck, fate, or good planning, was on his side because even though he left the league after the 2016 season, every season since, an event would bring him back to the center of attentions. In the beginning of the 2017 season it was President Trump's declarations that brought him additional support and *GQ*'s Men of the Year award that helped earn him more positive recognition. And in the 2018 season, Nike who was endorsing him since 2011, far from stopping their support as he was not a professional athlete anymore, created a new position for him: 'endorsed activist.' They made him the face of their anniversary "Just Do It" campaign, not because he his a successful athlete, but because he started a meaningful protest. Moreover, he did it in a pondered fashion. He did not aim at antagonizing people, he acted peacefully, with respect and his behavior remained calm and poised all along the controversy. All of which made possible for Nike to remain associated with him. And they did not stop there, together with Kaepernick they launched an "icon" jersey.[70] In essence, Nike paid him to continue doing what he was doing, to be an activist, or

[70] Jersey that rapidly sold out and was replaced by a similar jersey without the Nike brand sold on Kaepernick's charity website, but regularly out of stock.

in the words of Amnesty International's award he had received in April 2018, an "Ambassador of Conscience."

Besides being extremely well-paid, another surprising aspect of Kaepernick's activism is its lack of words. In that fashion, he is fairly different from Malcolm X, one of his role model whom he often refers to. Colin Kaepernick has chosen to let his actions speak for themselves. After having explained his posture, he almost never gave an interview. He even declined being interviewed by *GQ* for their *Men of the Year* issue, notwithstanding that he was featured on the cover. In their article about him in that issue, that they entitled "Colin Kaepernick Will Not Be Silenced," the editors of *GQ* wrote about the conversation they had with him: "As his public identity has begun to shift from football star to embattled activist, he has grown wise to the power of his silence." They also explained that Kaepernick told them he did not want to be interviewed so that his words could not be used against him and in support of Donald Trump and the way he oriented the debate. In fact, since he has been out of the NFL, Colin Kaepernick has relied essentially on social networks, prominently Twitter, to communicate. He has posted a little over 11,500 posts on Twitter to this day[71] since opening his account almost ten years ago in June 2009. As elements of comparison President Trump has posted four times more since May 2009 and LeBron James two times less since March 2009. He is not particularly prolix but this is an area where he is less discreet. It shows it is his favored mean of communication. Although, *New York Times* journalists Benjamin Hoffman and Thalia Minsberg studied his social networks account and reported on an article dated September 4, 2018, that: "His use of social media is especially intriguing because it is often lost just how rarely the words are actually coming from Kaepernick himself." And about the content of his Twitter feed they wrote:

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[71] Numbers last checked on June 2, 2019.

> Rather than posting his own thoughts, Kaepernick mostly retweets other accounts. His selection includes messages of support for protesting players, relevant news, posts by Reid and other athletes, and frequently the thoughts of his girlfriend, the radio and television host Nessa Diab, and his close friend Ameer Hasan Loggins, a doctoral candidate at the University of California at Berkeley who posts under the name @LeftSentThis.

To anyone visiting his social networks pages, the main subjects, to the point that it almost seems to be the only things he writes and reacts about, are his "I Know My Rights" campaign and reactions to the anthem protest. When this is put in relation with the fact that he almost never accepts televised or press interviews, the assessment is that he relies on social networks to convey and relay his message and his actions. Thus another facet of his activism is its discretion. In some ways, Kaepernick's activism could be described as 'silent activism.'

Now, let us wonder what would the impact of the exact same protest have been in 1970. At that time, a player kneeling during the national anthem would have had to catch the attention of one of the reporters in attendance. If it would have been a press reporter the news would only have hit the stand the next morning. A television or radio reporter and it might have been reported during the evening news shows. In both cases, the news would have then been reported by the other media and news outlets, and submitted to the filter of the personal perceptions of each news outlets and journalists, before starting to spread. It would have taken time for the information to gain attention on a national scale. In the eighties and nineties, it might have been faster as technologies evolved but the process would have remained basically the same. But the twenty-first century changed all that. Internet had arrived and multiplied drastically the propagation speed of information, as well as the way it

is passed on. Kaepernick's protest was first noticed on a picture[72] taken by a beat writer with the 49ers for NBC Sports posted on Twitter about another matter. It might as well have been a picture taken by a fan. Today, anyone at the right place at the right time with a camera-phone and an Internet connection can report an information. And this information is available to a great number of people that can relay it in an instant with a simple click on a screen. In some cases without any filter, just a raw — video or other — information; in other cases with as many filters as the number of people passing it along.

The social media networks were central in Colin Kaepernick's protest. Not only because Kaepernick favors them to communicate, but for the fact that they set the trend of the controversy all along the course of the protest. In our modern society social media have become the embodiment of the voice of public opinion. There has been a generalization of their use that has spread even to almost all news shows, whether it be on radio or television. Every news broadcaster now features readings from statements sent by its audience to react on topics during their show. There is of course a selection made by those news teams and they only read the reactions and opinions they choose to, according to their editing needs. But the fact of the matter is that public opinion now has a voice. And when it expresses itself massively and at times very strongly, like it was the case for those that found Kaepernick's protest unpatriotic, it becomes very difficult to ignore. The critics of the first days toward Colin Kaepernick and his protest saying that it was an offense to the military forces and those who died in service, and burning his jersey to illustrate their anger, went a long way to fuel the controversy and contributed in the diversion from the intended message. Most of the time, social media do not offer the proper space for constructive debate. It is hard to offer a well

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[72] Post from Jennifer Lee Chan on *Twitter*, @jenniferleechan, "This team formation for the National Anthem is not Jeff Fisher approved. #HardKnocks" August 26, 2016.

contrived argument in less that a hundred-forty — two hundred eighty since November 2017 — characters on Twitter, so most of the time messages are short and condensed. Nevertheless they can be effective, and in that case they were. Kaepernick's protest got divided thanks to them, original purpose on one side, controversy on the other.

And if there is but one man who has figured out the impact of social media on public opinion and their potential as a mean of communication, it is Donald Trump. In my opinion, President Trump's input in the national anthem protest was a calculated one. Candidate Trump has run under the sign of the American flag, rigorously. Every statement, every action during his campaign was aimed at selling one narrative: the last administration has let you down, I am here to "make America great again." And it has not stop since he became president. If there is only one example to give to illustrate that President Trump is governing to please the nationalist part of the United States, it was his decision to withdraw from the 2015 Paris Agreement on climate change modification. Through that lens, his reaction to the protest started by Kaepernick is easily explained. Talking about Colin Kaepernick or acknowledging his protest would have meant having to discuss his grieving, to discuss police brutality and systemic oppression of people of color in the United States. This is why I think he waited that long to react, combined with the fact that when the protest started he had an election to win and that he was rather busy with transitioning from the Trump Tower to the Oval Office during the football season. But when 2017 season begun and football players continued kneeling and other forms of protest during the anthem, he had to speak. Therefore, in order not to address or acknowledge the issue behind the protest, he jumped on the controversy social media had provided him and played the patriotism card. He added an attack toward the players freedom of speech and a cheap shot against the NFL's ratings. All the ingredients to fuel the controversy and drive it further away from the issue intended by

Colin Kaepernick, namely a change in politics regarding police brutality. There is the possibility that he acted out of impulse, without having carefully thought through the possible consequences of his declarations. There is also the possibility that he genuinely thought what he was saying. I am not a specialist, not a political analyst, not even a journalist, I can only give my personal opinion based on what I read and what I heard, and I think that the effects of President Trump's input were to efficient to be a fluke. After his statements, the protest reached its peak in participation but it had changed its message, now it was about football players protesting for their right to manifest their own opinions. Meanwhile, the opinion that started the original protest lost even more ground in the media. And in the meantime, the attacks toward NFL's ratings proved efficient since the NFL started to actively discuss with the players to end the protest.

Thus, like Kaepernick, the most virulent opponents to his protest favor the social media. Their outrage at the protest may come from the fact that they deem criticism toward America unfounded and think police brutality and systemic oppression against African Americans is not real. Or they may want the flag and anthem to be a symbol of unity and not dissent. Their motives are not clear since the bulk of the debate happens on social networks where arguments are scarce and emotions are high.

Colin Kaepernick, or Black Lives Matter — a movement created on social media — and many if not all charities today, rely on social networking to bring awareness to their cause, to organize and publicize their events, in short, to exist. Social media has become an unavoidable part of activism in the twenty-first century. Thanks to them more people now can have their voice heard than it was the case during the Civil Right Movement era. But at the same time, people opposing change or having a different view of the world have the same

possibilities, social media do not discriminate. They have simply become a new ground where the battle of activism has to be fought.

Conclusion : A multifaceted activism

By starting protesting the national anthem, creating controversy and shedding light on a social issue, Colin Kaepernick made his entry in Howard Bryant's "Heritage" and joined the ranks of black athletes whose names carry today a double meaning of sportive accomplishments and struggle for racial equality. Names like Jackie Robinson, Muhammad Ali, Tommie Smith, John Carlos, Arthur Ashe, and many others. Kaepernick is the latest arrival on the list, and he is a child of his time. His activism was different from Ali's vehement speeches, but he shared with him the fact that he was financially comfortable. It had more in common with the silent gesture of Tommie Smith and John Carlos on their podium in Mexico, and the backlashed that followed, but he was not an amateur-athlete barely making a living like they were. Being the last arrival in the club, he could learn from their experiences and hence was more prepared for the consequences of his protest. He knew what he could and could not do, and what to expect.

"Believe in something, even if it means sacrificing everything." Kaepernick says in Nike's video. Notwithstanding the fact that this sentence better not be taken out of the context of sports — I imagine it would have a totally different effect on a religious group's website for example — it does not suit Colin Kaepernick. By protesting the way he did, conscious as he was of the consequences, and as he stated in his interview when he said: "to me this is greater than football," he has shown that football is not everything. And football is the only thing that he sacrificed. I am not trying to undermine what he did, football was his passion

and his childhood dream. To be able to play it in the NFL, up to the Super Bowl nonetheless, and to have to suddenly stop when you are still in good physical condition must be tough. But it is not everything. Athletes of the 'Syracuse 8' or the 'Black 14' really risked everything. Their football but also their education, their future, were on the line. Colin Kaepernick's future was not. For the other athletes included in the spot, the statement makes more sense. Serena Williams is the embodiment of that sentence, she believed she could be the greatest tennis player of all time and she dedicated her life to that purpose since she was a child. Other athletes in the video have this in common: their sport is what they make sacrifice for. Kaepernick did the opposite. He sacrificed his career and his dream of returning to the Super Bowl and this time bring home the ring — I extrapolate based on what my dream would have been were I in his cleats — in benefit of his personal life. He sacrificed his job in order to launch a protest aimed at raising awareness on a social matter that touched him as an African American man, not merely a football player. But he did it with a bank account well furnished, even more so when Nike decided not only to continue endorsing him but to promote him even more, sponsoring his activism. The question then becomes does endorsed activism has less meaning? Does the cause that Kaepernick defends, equality of treatment for all races in front of the law, has less value if he earns money to be its spokesman? In my opinion it does not. It does not negate the facts that generated his protest and that he denounces.

Besides stemming from a rich historical legacy and being sponsored, another facet of Colin Kaepernick's activism is its relative silence. In the era of over-communication, he managed to create a nationwide controversy spawning countless debates in various media, not limited to the sports shows, while remaining extremely partial with interviews and public statements. This is definitely a defining aspect of his activism and was made possible by social media. He did not have to communicate because so many others were doing the

speaking for him. He chose to use the money that sports — and later on his activism — brought him to speak throughout his actions rather than his words. He has founded and funded his own charity to address the issue he denounced with his protest. Like the popular saying goes, he put his money where his mouth is. This public silence, coupled with his actions, is what defines the most Colin Kaepernick's activism.

To sum up and conclude, Colin Kaepernick chose a career change, from professional football player to professional activist. He protested a racial injustice but made no concrete demand, hence his protest was only about raising awareness. He staged it during the national anthem and under the flag, guaranteeing controversy. He went against the interest of the NFL and the Department of Defense, too powerful adversaries to face them on his own and avoid repercussions. This leads me to conclude that Colin Kaepernick felt so strongly for his cause, an issue that he knew would not be resolved overnight, that he accepted to end his career early to start working toward fixing the problem. Because he knew that in sacrificing his career in such a high-profile protest and national controversy, it would bring awareness to the issue of police brutality. Perhaps enough so that a concrete change might arise. I think things would have been different if he had not acted alone. Numbers differ from source to source and change every season but the NFL is credited with around sixty percent of black players and the NBA around eighty percent. I imagine it is tantamount to utopia to imagine all of them banding together to defend a cause, but their overwhelming majority makes me curious to see what would happen if they all boycotted the game. Even if it would only be at the scale of just one team it would have huge consequences that I would be curious to see. But in that case it could not have happened because Kaepernick did not want to interfere with football. He staged his protest during a ceremony unrelated to the game itself, literally located on the sideline. This is only my personal conclusion, but to me it also means that he was not looking

to pollute the fans passion, his passion, the game of football. He simply had a statement that was very dear to his conscience and that he wanted to make in an effective enough manner to be heard by as many minds as possible. And he did.

3. Obligation de neutralité, devoir de réserve et cours d'anglais

Introduction : définition de l'obligation de neutralité et du devoir de réserve

Le 5 décembre 2018 dans un contexte de contestation nationale autour du mouvement des « gilets jaunes », Jean-Michel Blanquer, ministre de l'Education nationale et de la jeunesse, présentait à l'Assemblée nationale un projet de loi visant à réformer l'Education nationale. Comme toute proposition de loi, et particulièrement dans le climat politique français actuel, nombreux de ses articles ont été discutés et critiqués par les médias et les enseignants. Parmi ceux-ci, l'article 1er que des journaux comme *Le Figaro* ou *Mediapart*, ont décrit comme un renforcement du devoir de réserve des enseignants.[73] A la même période, ce devoir de réserve pour les enseignants faisait l'actualité car une enseignante de Dijon était convoquée par son rectorat après avoir publié un article critiquant le Président Macron le 12 décembre. Le 20 décembre elle a été sanctionnée d'un rappel à son devoir de réserve.[74] Mais de quoi parle-t-on lorsqu'il est question du devoir de réserve des enseignants ?

Lorsqu'un enseignant entre dans l'Education nationale, il lui est alors attribué le statut de fonctionnaire d'état. Ce statut lui confère des droits et des obligations qui sont définis par la loi 83-364 du 13 juillet 1983, dite loi « Le Pors » du nom de son rédacteur Anicet Le Pors alors Secrétaire d'Etat chargé de la Fonction publique et des Réformes administratives. Or dans cette loi, il n'est à aucun endroit fait mention d'un devoir de réserve. Ce qui se rapproche le plus d'une définition officielle de ce devoir de réserve des fonctionnaires peut se

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[73] Voir Lelièvre.

[74] Pour un compte rendu plus détaillé, voir Zagdoun.

trouver sur le site officiel de l'administration française[75] qui définit le devoir de réserve ainsi :

> Tout agent public doit faire preuve de réserve et de mesure dans l'expression écrite et orale de ses opinions personnelles.
>
> Cette obligation ne concerne pas le contenu des opinions (la liberté d'opinion est reconnue aux agents publics), mais leur mode d'expression.
>
> L'obligation de réserve s'applique pendant et hors du temps de service.
>
> Le manquement au devoir de réserve est apprécié par l'autorité hiérarchique au cas par cas.
>
> Ce devoir s'applique plus ou moins rigoureusement selon :
>
> - la place dans la hiérarchie, l'expression des hauts fonctionnaires étant jugée plus sévèrement,
> - les circonstances dans lesquelles un agent s'est exprimé, un responsable syndical agissant dans le cadre de son mandat bénéficie de plus de liberté,
> - la publicité donnée aux propos, si l'agent s'exprime dans un journal local ou dans un important média national,
> - et les formes de l'expression, si l'agent a utilisé ou non des termes injurieux ou outranciers.
>
> Cette obligation impose aussi aux agents publics d'éviter en toutes circonstances les comportements susceptibles de porter atteinte à la considération du service public par les usagers.

Ce devoir de réserve ne s'applique donc pas au contenu des propos mais à la façon de les exprimer et au comportement du fonctionnaire. Cependant, même si comme le stipule cette

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[75] www.service-public.fr.

définition la liberté d'opinion du fonctionnaire est garantie, sa liberté d'expression est non seulement encadrée par le devoir de réserve mais également par le principe de neutralité. On trouve la définition de ce principe sur le portail internet de la Fonction publique[76] où, sous les droits et obligations des fonctionnaires, l'obligation de réserve y est définie comme suit :

> Le principe de neutralité du service public interdit au fonctionnaire de faire de sa fonction l'instrument d'une propagande quelconque. La portée de cette obligation est appréciée au cas par cas par l'autorité hiérarchique sous contrôle du juge administratif.
>
> L'obligation de réserve est une construction jurisprudentielle complexe qui varie d'intensité en fonction de critères divers (place du fonctionnaire dans la hiérarchie, circonstances dans lesquelles il s'est exprimé, modalités et formes de cette expression).
>
> C'est ainsi que le Conseil d'Etat a jugé de manière constante que l'obligation de réserve est particulièrement forte pour les titulaires de hautes fonctions administratives en tant qu'ils sont directement concernés par l'exécution de la politique gouvernementale.
>
> A l'inverse, les fonctionnaires investis d'un mandat politique ou de responsabilités syndicales disposent d'une plus grande liberté d'expression.
>
> La réserve n'a pas trait uniquement à l'expression des opinions. Elle impose au fonctionnaire d'éviter en toutes circonstances les comportements portant atteinte à la considération du service public par les usagers.

Cette notion d'obligation de neutralité a été validée par écrit avec la loi 2016-483 du 20 avril 2016 relative à la déontologie et aux droits et obligations des fonctionnaires, dont l'article 1er a modifié l'article 25 de la loi du 13 juillet 1983. Article qui stipule à présent :

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[76] www.fonction-publique.gouv.fr.

> Le fonctionnaire exerce ses fonctions avec dignité, impartialité, intégrité et probité.
>
> Dans l'exercice de ses fonctions, il est tenu à l'obligation de neutralité.
>
> Le fonctionnaire exerce ses fonctions dans le respect du principe de laïcité. A ce titre, il s'abstient notamment de manifester, dans l'exercice de ses fonctions, ses opinions religieuses.
>
> Le fonctionnaire traite de façon égale toutes les personnes et respecte leur liberté de conscience et leur dignité.
>
> Il appartient à tout chef de service de veiller au respect de ces principes dans les services placés sous son autorité. Tout chef de service peut préciser, après avis des représentants du personnel, les principes déontologiques applicables aux agents placés sous son autorité, en les adaptant aux missions du service.

Comme l'on peut le constater, l'ensemble des ces textes nous informe donc que le devoir de réserve signifie que le comportement d'un fonctionnaire ne doit pas porter atteinte à sa fonction. Dans le cas d'un enseignant cela se traduit par le fait de ne pas par son comportement porter atteinte à la réputation de l'Education nationale et à celle de l'établissement auquel appartient l'enseignant. Ces textes nous informent aussi que si l'enseignant conserve sa liberté d'expression, il doit rester neutre dans le cadre de sa fonction et ne pas tenir de propos faisant l'apologie de ses convictions personnelles ou dénigrant celles des autres. Enfin, ces textes expriment également que le jugement d'une éventuelle infraction à ces notions de réserve et neutralité appartient aux supérieurs hiérarchiques directs, et sont donc soumis à des appréciations variables suivant les situations précises. L'application de cette loi est donc soumise à l'étude de chaque cas.

Dans un premier temps, nous parlerons des implications de ces devoirs et de leur application dans le contexte de l'enseignement. Puis, nous aborderons le cas particulier du

cours d'anglais. L'obligation de neutralité existe afin que les fonctionnaires français ne critiquent pas leur employeur — la même obligation existe dans le monde de l'entreprise privée — mais lorsqu'un enseignant d'anglais mentionne dans son cours des choix politiques faits par des pays étrangers il ne parle pas de son employeur, donc par définition l'obligation de neutralité ne s'applique pas. Je présenterai mon point de vue sur le sujet.

3.1. Implications et application

Les textes de lois traitant du devoir de réserve des enseignants et de leur obligation de neutralité ne sont pas précis car ils découlent d'une philosophie générale plutôt que d'une règle de fonctionnement stricte. Le projet de loi de l'actuel ministre de l'éducation nationale et de la jeunesse ne déroge pas à la règle. Dans ce texte, adopté par l'Assemblée Nationale et présenté actuellement (mi-mai 2019) au Sénat, l'article 1er stipule :

> Dans le respect de la loi n° 83-634 du 13 juillet 1983 portant sur les droits et obligations des fonctionnaires, par leur engagement et leur exemplarité, les personnels de la communauté éducative contribuent à l'établissement du lien de confiance qui doit unir les élèves et leur famille au service public de l'éducation. Ce lien implique également le respect mutuel entre les membres de la communauté éducative, notamment le respect des élèves et de leur famille à l'égard de l'institution scolaire et de l'ensemble de ses personnels.

Dans cet article, une partie de la communauté des enseignants a interprété cet appel à l'engagement et à l'exemplarité pour contribuer au lien de confiance entre familles et service public de l'éducation comme un renforcement du droit de réserve. Cet article peut effectivement être interprété comme une demande au corps enseignant de ne pas critiquer leur

hiérarchie. Car une perte de confiance des élèves et leur famille envers l'Education nationale peut survenir si les enseignants eux-mêmes critiquent ouvertement des consignes officielles. Mais là encore, aucune précision sur ce que l'on peut ou ne peut pas dire, ni ce sur ce que l'on peut ou ne peut pas faire. L'interprétation est laissée aux autorités juridiques lorsqu'un cas concret se présente.

La philosophie dont découlent ces différents devoirs de l'enseignant ne me semble pas être irrationnelle. Au contraire, je pense que son intérêt et sa raison d'être sont évidents lorsque l'on considère que dans le cas des professeurs, ces fonctionnaires en question sont en contact direct avec la population française scolarisée. Soit l'immense majorité de la population âgée entre six et seize ans.[77] Les élèves, au moment de leur scolarité, ont des personnalités en structuration. Parallèlement à leur savoir sur les différents sujets enseignés, ils construisent également leur vision de la société. Leur système de valeur étant encore en construction, ils sont influençables. S'il est admis que dans le rôle de l'enseignant intervient une part d'éducation — on parle bien d'éducation et non d'enseignement national[78] — il est toutefois nécessaire d'imposer des limites à cette composante d'éducation, l'école ne pouvant ni ne devant pas se substituer à l'autorité familiale. Transmettre des valeurs universellement admises comme le respect d'autrui et des règles de vie en communauté fait partie intégrante de la profession d'enseignant. Mais les limites vont intervenir dès lors que l'on aborde le sujet des valeurs philosophiques, idéologiques ou des opinions définies comme personnelles, que l'élève cultive individuellement et auprès de sa famille. C'est dans ces cas de figure que des situations problématiques peuvent intervenir. Les textes, particulièrement l'obligation de neutralité, imposent aux enseignants de ne pas promouvoir auprès de leurs élèves leurs

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[77] Entre trois et seize ans si la réforme est adoptée.

[78] Cependant on parle bien d'enseignants, et non d'éducateurs, ce qui pourrait laisser croire si on s'en réfère aux mots, que la partie éducation de l'Education nationale ne reviendrait pas aux enseignants.

opinions personnelles. En France, même s'il est vrai que cela a longtemps fait débat, le domaine de la religion pose moins de problème car il est maintenant entendu que la religion n'est pas un sujet approprié à l'Ecole nationale, qui est par définition laïque. Autrement dit, toutes les religions y sont acceptées mais la religion ne doit pas intervenir dans le déroulement de la vie scolaire. Un professeur faisant l'éloge d'une religion à ses élèves serait rapidement sanctionné, et cela ne soulèverait aujourd'hui que très peu de débat. Pour les sujets de société, et notamment la politique, la situation en France devient plus ambigüe. C'est en raison de ces sujets que les textes sont écrits de façon à laisser s'exprimer le cas-par-cas face à la loi.

En effet, si un professeur tient des propos racistes, le débat ne sera pas long et les sanctions ne tarderont pas. Dans ce genre de cas où la position soutenue par un enseignant va complètement à l'encontre du simple civisme, la situation est facilement résoluble. Cela devient plus compliqué lorsqu'il s'agit de polémique de société sur des sujets de la vie courante. Pour prendre un exemple précis, et contemporain, si un enseignant venait à critiquer le mouvement des « gilets jaunes », offensant ainsi un enfant dont les parents seraient actifs dans le mouvement, ou bien même qui en serait lui-même un fervent soutien, et que cet élève s'en plaignait, on peut se demander comment serait résolu le problème. Y aurait-il des sanctions ? Et si c'est le cas lesquelles ? Les réponses à ces questions devraient alors être données par les supérieurs hiérarchiques directs de cet enseignant, on peut donc logiquement en conclure qu'elles seraient différentes suivant les cas. Et en suivant cette logique on peut de la même façon juger que l'obligation de neutralité sera plus ou moins prononcée suivant les élèves auxquels on enseigne, leurs parents, et la direction de l'établissement auquel on appartient.

A ces difficultés d'application viennent s'ajouter la question de la séparation entre vie privée du fonctionnaire et son rôle public. En théorie, si l'on veut respecter le principe de neutralité, un enseignant ne doit pas mentionner ses préférences religieuses ou politiques à ses élèves. En pratique cela peut se faire sans difficulté sur le lieu de travail, dans l'établissement scolaire, car seule de la restreinte est nécessaire. Cela se complique énormément en revanche dans le domaine public. S'il veut suivre à la lettre le principe de neutralité, il devient alors difficile, voire impossible, pour un enseignant de s'impliquer activement dans la vie politique ou de pratiquer sa religion. Dans le cas de la religion, l'école étant laïque, la religion d'un enseignant ne posera pas de problème s'il ne l'affiche pas et qu'il n'en discute pas avec ses élèves. Les plaintes éventuelles d'élèves ou de leur famille contre un enseignant simplement car il a été vu à la mosquée, la synagogue, l'église, ou autre, seront naturellement classées sans suite tant que l'enseignant n'en a pas fait mention dans l'établissement. Si des sanctions étaient prises elles seraient illégales et facilement attaquables. Dans le cas de la politique, la situation est moins claire. La France est un pays très politisé. Les échelons de la politique descendent jusqu'au niveau local. De plus, par tradition, les professeurs d'école[79] et les enseignants en général étaient souvent des figures de la politique locale au niveau des villages et communes. Auparavant, toute la communauté locale était au fait de la couleur politique du professeur de leurs enfants. Les choses ont évoluées, la tradition s'est érodée, l'exode urbain s'est accéléré, mais cela ne veut pas dire pour autant que tous les enseignants ont perdu leur fibre politique. Et certains gardent une vocation pour la participation à la vie politique.[80] Or avec le développement des réseaux sociaux, un enseignant militant ou exprimant sur ses réseaux ses opinions politiques pourra

[79] Les instituteurs, de leur ancienne dénomination encore fréquente dans le langage courant.

[80] Des assouplissements sont prévus dans les lois, droits et devoirs, pour les responsables des syndicats.

difficilement s'en cacher de ses élèves et leur famille. C'est donc là qu'intervient la nuance entre devoir de réserve et obligation de neutralité.

L'obligation de neutralité en ce qui concerne les enseignants ne pouvant pas réalistement s'appliquer au delà de l'enceinte de l'établissement sans entraver leur liberté d'expression, le devoir de réserve prend alors la relève pour assurer que si opinions politiques ou critique envers le gouvernement doivent se produire, qu'elles soient au moins formulées de façon non outrancière, de façon à créer un débat plutôt que de chercher la polémique. Mais là encore, l'appréciation des propos qui seraient éventuellement mis en cause reviendra aux supérieurs hiérarchiques directs et sera donc variable selon les cas.

3.2. Le cas particulier du cours d'anglais

Le devoir de réserve et l'obligation de neutralité ont notamment une application qui pousse à s'interroger sur leur implication en cours d'anglais. Suivant leurs consignes, un enseignant en désaccord avec la politique de son gouvernement ne peut pas en discuter avec ses élèves. Au maximum, il peut amener ses élèves à en discuter entre eux mais ne devra pas donner son opinion personnelle. L'enseignant est salarié du gouvernement français, et en tant que tel il ne peut pas critiquer son employeur. Mais qu'en est-il de l'avis de l'enseignant sur les gouvernements étrangers ?

Un enseignant d'anglais va être bien plus souvent amené à discuter avec ses élèves des gouvernements américain et britannique que du gouvernement français. Dans le cas traité en première et seconde partie, celui de Colin Kaepernick, en parler en classe sans faire mention de la politique américaine et de la police aux Etats-Unis, ainsi que du président Trump, serait ne pas aborder le sujet en profondeur, perdant ainsi beaucoup de son intérêt.

Les textes ne mentionnant pas ce cas précis, la seule législation qui reste en vigueur est le devoir de réserve. L'enseignant peut en théorie donner son opinion, quelle qu'elle soit, sur des gouvernements étrangers et les politiques qu'ils ont menées dans le passé tant qu'il n'utilise pas de terme outrancier et n'a pas un comportement déplacé. Et la plupart ne se gênent pas. Lorsque j'étais encore lycéen, George W. Bush était fréquemment et durement critiqué, et durant mes stages en établissement récemment, j'ai entendu dire également beaucoup de mal à l'encontre de Donald Trump ou Theresa May, et parfois avec des propos qui poseraient immédiatement problème s'il s'agissait d'Emmanuel Macron, Jean-Michel Blanquer ou tout autre ministre.

Je trouve personnellement cet aspect des choses regrettable pour deux raisons. La première est que je trouve que cela invalide une des raisons philosophiques données pour l'existence du devoir de réserve et de l'obligation de neutralité, à savoir la volonté de ne pas influencer la construction psychologique des élèves. Je ne saisis pas en quoi critiquer des choix politiques faits en France gênerait ou orienterait le développement de leur conscience sociale et politique alors que de critiquer ceux faits par d'autres nations ne poseraient pas le même problème. Critiquer la politique d'immigration de Marine Le Pen ou d'Emmanuel Macron peut être sanctionné, mais critiquer celle de Donald Trump ou de Theresa May ne fera pas de vague. Pourtant, dans les deux cas le concept d'immigration, la psychologie à l'oeuvre et les aspects personnels que peuvent revêtir ce sujet de société sont les mêmes quel que soit le théâtre des évènements. Je trouve cela dérangeant d'imaginer qu'un élève qui aurait pendant plusieurs années des enseignants critiquant Donald Trump puissent sortir de sa scolarité avec une image biaisée des Etats-Unis eux-mêmes. On peut par exemple imaginer que cet élève, si dans le même temps l'enseignant a encensé par exemple Justin Trudeau, confronté au choix de partir au Canada ou aux Etats-Unis pour la suite de ses études ou pour

son emploi, choisisse le Canada en raison de cette image négative véhiculée pendant sa scolarité quand les Etats-Unis auraient été un meilleur choix pour l'élève s'il — ou elle — avait pris le temps de bien examiner ses choix.

La deuxième raison est plus triviale et terre-à-terre. Selon moi, l'obligation de neutralité devrait s'étendre aux politiques étrangères car la libre critique des gouvernements étrangers peut créer une habitude néfaste pour l'enseignant. Si un professeur prend l'habitude de critiquer ouvertement la politique d'un dirigeant étranger et qu'il se retrouve face à un élève ayant une double nationalité dont il ne serait pas au courant, des problèmes peuvent rapidement survenir. De plus, sans parler de conflit avec les élèves ou leurs parents, l'enseignant peut également se créer ses propres problèmes. Trop de critique envers un gouvernement étranger peut diminuer l'intérêt des élèves pour découvrir l'histoire et la culture de ce pays, ce qui signifie concrètement que l'enseignant peut se retrouver avec plus de difficulté à intéresser les élèves au contenu de son cours. De la même façon, imaginons un professeur d'anglais expliquant par exemple systématiquement que le Brexit est survenu parce que la majorité de la population de la campagne et des petites villes anglaises est profondément anti-européenne, voire raciste dans le pire des cas. Que ferait ce professeur s'il avait l'opportunité d'organiser un échange culturel enrichissant avec un établissement d'une ces petites villes en question ? Les élèves ne seraient-ils pas influencés négativement dès l'annonce d'un projet qui pourrait s'avérer une expérience extraordinaire pour eux ? Pour éviter d'avoir à se poser ces questions, le plus simple est d'appliquer à soi-même l'obligation de neutralité dès qu'il est question de politique ou de sujets sociaux polémiques quel que soit le pays d'où ils proviennent.

Conclusion : de l'importance du jugement personnel

En résumé, un enseignant qui choisit d'entrer dans l'éducation nationale française doit respecter une obligation de neutralité concernant ses opinions personnelles lorsqu'il est dans l'enceinte de l'établissement, et il doit dans sa vie publique faire preuve de réserve dans l'expression de ses opinions et son comportement. En ce qui concerne la traduction concrète de ces consignes, un constat s'impose, il appartient à l'enseignant d'évaluer lui-même le contexte dans lequel il évolue pour savoir situer les limites qu'il doit s'imposer vis à vis de ces devoirs. Les textes montrent que les situations sont gérées au cas-par-cas en prenant en compte la particularité de chaque contexte. La personnalité et la psychologie de l'enseignant, celles des élèves et leurs familles et celles de l'équipe dirigeante de l'établissement sont trois facteurs qui font que les limites à imposer par l'enseignant à sa liberté d'expression sont changeantes. La responsabilité lui incombe donc de définir ce qu'il peut se permettre dans le traitement des sujets de société qu'il aborde en cours.

Dans le cas du professeur d'anglais, l'obligation de neutralité ne s'impose plus dans le jugement des politiques menées par des gouvernements étrangers, mais il sera plus simple et plus logique d'agir avec les pays et dirigeants étrangers comme on le ferait pour ceux de la France. De ne pas discuter de ses convictions personnelles mais en autorisant, et parfois même en encourageant, les élèves à en débattre entre eux après leur avoir donné un maximum d'éléments objectifs. La solution la plus simple à envisager serait d'éviter en cours d'anglais de traiter tout document culturel traitant de sujets sociaux de nature à engendrer des polémiques. Mais cela équivaudrait à ne pas saisir une opportunité d'ouvrir un peu plus les élèves aux nations qui les entourent et que les technologies modernes rendent de moins en moins éloignées.

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The Colin Kaepernick Case

A Study of African American Athlete Activism and Patriotism in American Sports

Vincent Chenal

Master's Thesis supervised by Professor Christopher Delogu

In this Master's Thesis I studied the case of Colin Kaepernick, an African American football player who knelt during the national anthem to denounce police brutality against people of color in the United States. This paper gives an account of what happened then discusses the place of Kaepernick in black athletes activism history, the form he gave to his own activism and the relationship between football and US sports in general with patriotism.

I also discuss the rules a teacher of the French National Education has to follow regarding the mention of politics and societal issues in class and the particularity of modern language classes. Especially English teachers who will be led to mention foreign politics in their class, as would be the occurrence if they were to talk about the Colin Kaepernick case.