Projet d’Action de Recherche Concertée

Outsiders in Europe
The Foreigner and the ‘Other’ in the Process of Changing Rules and Identities

L’Etranger et l’Autre à l’épreuve des transformations normatives et identitaires en Europe

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1. Summary of the Proposal

The European Union is undergoing important transformations on both the normative and the identity level. The "others" are in Europe no longer merely those who do not have state citizenship of one of the member states of the Union. In the new European migration context, "otherness" as defined on a legal basis -the foreigner- has been complemented by a culturally and an ethnically coloured definition. This research project aims at studying the construction of categories and of identity classifications underlying new forms of inclusion and exclusion that are to be found in the context of the emergence of Europe as a legal, political and sociological entity. It will focus more specifically on the formation of particular collective identities which are targets of stigmatization and derogation as a result of the process of 'Europeanization' and the constitution of an 'imagined European identity'. In a context characterized by an increasing stress put on the juridical dimension of social relations together with a rise of affirmative identities, this projects intends to analyse the processes of categorization and derogation of individuals and groups on the basis of “culture” or “ethnicity” and their consequences for both minority groups (i.e. mobilization, submission, retreat, etc.) and the majority groups (i.e. fight against discrimination, normative and cultural impositions, intercultural practices, etc.). Of particular importance is the examination of the hypothesis according to which the definition of collective derogated identities - the “European outsiders” - is undergoing a transition from legal criteria (i.e. nationality) towards “cultural/ethnic” criteria (i.e. “Blacks”, “Roms”, etc.) or even religious criteria (“Muslims”).

The present project articulates five specific research subprojects dealing with a large and integrated set of forms of classification of social groups resulting both from chosen or from ascribed identities. The research will thus address the construction of categories through legal and social norms, institutional practises, social interactions and representations, as well as actors’ mobilizations. It combines diverse disciplinary fields (law, sociology, social psychology and anthropology) in order to approach the dynamics and the concerns that are at stake at the present time in the controversial issue of “immigration” according to multiple points of view and diverse research methods. Indeed, the ambition to address the plurality of dimensions (rights, recognition, identity, etc.) that are concerned with this issue can only be met if we adopt a trans-disciplinary perspective based on a theoretical and empirical dialogue between disciplinary orientations. The complementarity of research objects should allow to shed light, in particular, on the new forms of articulation between individuals’, groups’ and institutions’ use of legal devices (social psychology, sociology and law subprojects) and collective actions and mobilizations (anthropology, social psychology and law subprojects).

A first sub-study will tackle the analysis of norms and will look into legal categories of ‘otherness’ in texts and legislations dealing with foreigners on the European level. It will more specifically look into the transposition by states of European directives and on the conditions of integration which are being forced upon new immigrants. A second sub-study will focus foremost on the formation of categories and ethnic classification systems within the context of particular institutions (the school and the police) and among specific professional agents, by making use of a field study. A third sub-study will investigate the influence of the European and national level on the creation of legal instruments in the struggle against discrimination and will undertake a legal and court-oriented analysis of particular ethnic discriminations. A fourth sub-study will examine, in a social psychological perspective, the social representations of discrimination and the experience of diverse denials of recognition from the point of view of the person who feels being discriminated - and from the point of view of the group which is put in a minority position. A fifth sub-study will look into collective mobilization of groups which feel they are being derogated on the basis of their identity and who respond with a trans-national affirmation of their identity. A strong similarity of all the studies of the project is to be found in the international comparative aspect. The project wants to take into account the important difference on the discursive and legal level between European countries which tend to use ethnic categories and systems of classification in their political, scientific and media discourse on the one hand and, on the other hand, those European countries which are much more reluctant to do so.
2. Description of the Proposal

European countries have undergone deep transformations since the end of the Second World War, particularly with regard to the increasingly diverse composition of their populations due to migration processes. These developed in the 1950s, 60s and 70s in Germany, Belgium, France, the Netherlands, the United Kingdom and Switzerland, then in the Scandinavian countries (Sweden, Denmark, Finland) and more recently in former emigration countries that have now become host-countries (Spain, Italy, Greece, Portugal). The ways in which immigration policies are implemented (temporary immigration, colonial and/or organized by bilateral conventions, etc.) have converged with relatively no intergovernmental dialogue. The deepening European integration has led to the creation of an institutional framework for a European immigration and asylum policy. Even though, strictly speaking, there is no common policy, the Europeanization of this public policy is in progress. If the regulation of foreigners’ entry, freedom of movement and right to stay in the European territory is the focal point of legal and political debates within European and national institutions, issues regarding the integration of foreigners have traditionally remained within the realm of national sovereignty, more specifically so for rules of citizenship. Nevertheless, in this area as well, convergences between national policies appear, notably in the generalisation of *jus soli*. In fact, the issue of immigration and integration in Europe is characterised by a dual process: national differentiation against a backdrop of European convergence. European integration reinforces the convergence process without eliminating the necessary adaptations to specific national circumstances.

In addition to the political and institutional factors, the Europeanization of immigration policies is under the influence of at least two new processes. The first one is a consequence of the specificities of these new migrations. The processes of globalisation and growing urbanisation that characterise the 21st century are bringing about a new age of migrations (Castles & Miller, 2003). Mobility and freedom of movement are values that are pursued and are essential factors for social advancement. They have an effect on increasingly complex migratory models. Indeed, the simple duality of working immigration and settlement immigration is no longer operational. The entry of tourists or students feed these new migration processes as much as working immigration, asylum or family regrouping. In addition, freedom of movement within Europe strengthens movements of migration. In Europe today the national origins and statuses of new migrants are very different from the past. Since the fall of the Berlin wall and the enlargement of the European Union, many immigrants come from Central and Eastern Europe. The era of the illiterate male immigrant from a rural area is long gone: the new migrants are more often women, city-dwellers and highly educated.

The second change is due to the transformation of identities within Europe. This affects nationals as well as foreigners. As a supranational identity is being created at the European level, European States are faced with at times quite strong re-emerging national and regional identities. In addition, legal tools, institutional practises, social interactions and representations all contribute to the metamorphosis of the image of the foreigner in Europe. Immigration used to be largely indexed on the economic aspect and on the need to respond to demands of the labour market. Today, however, the social tensions and political passions produced by immigration are mostly linked to issues of belonging and identity. The representation of the foreigner is no longer solely defined by his or her place on the labour market or in the social hierarchy. Because of its enlargement and immigration flows,
European society is increasingly questioning its cultural and « ethnic identity ». As a consequence, boundaries between internal identities within States are being redefined. Some non-nationals that have become nationals may remain confined to a status of outsider identity while some non-nationals may become culturally similar. Legal and social categorizations are reshaping the image of the foreigner in Europe: this image becomes that of the Other, « the non-European Other », whose legal and symbolic definition varies and wavers with different social situations. Thus, the European construction is followed by processes of identity redefinition: them/us, national/non-national, European/extra-European, the majority of *homo nationalis* / the minority of *homo nationalis*, local/global.

The main object of this project is to study the processes by which identities are redefined and how their boundaries are shifting within Europe. It is mainly concerned with those who are foreigners in the eyes of the law as well as with those who are socially and cognitively considered to be foreigners. This is what we mean by « representation » or « image » of the foreigner. This notion can be multiple and we are propose to identify its ideal types. At the level of social representations, two generic origins seem to crystallize cultural diversity and feed fears in Europe (cultural conflicts, clash of civilizations, terrorism, etc.): « sub-Saharan Africans » and « Muslims ». They will be at the heart of our analyses, yet these will not be limited to them. The approach this research project promotes is fundamentally trans-disciplinary. Rather than being approximate, such trans-disciplinary approach intends to be a true disciplinary dialogue (anthropology, law, social psychology and sociology) on specific objects of study. Through a common effort aimed at finding concepts whose meaning can be shared, we aspire to create an integrated trans-disciplinarity best able to address the challenges posed by the complexity of knowledge. The shifting boundaries of identity form a plurality of legal, social, political and symbolic configurations in terms of “us” and “them”. We will specifically focus on the European/non-European distinction, which defines majority/minority positions constructed by legal and institutional devices, media messages and discourse, social dynamics, mobilizations and other processes of representation, which differentiate groups and individuals.

### 2.1. Foreigners and immigrants in the national framework

The situation in Europe is fairly exceptional in the history of international migrations. Indeed, many immigrants live permanently in a country other than their own and for the most part adopt the standards of living of their host country while keeping their original nationality. The myth of temporary immigration and the rigour of certain rules of nationality have maintained certain immigrants in a precarious situation because of their legal outsider status. The rights of immigrants, even when they were considered as foreigners from a legal point of view, were extended between 1960 and 1990. Despite national specificities, this process can be observed all over Europe. Full citizenship rights however, remain the exclusive right of nationals. Comparative studies (Hammar, 1985; Layton-Henry, 1990) have focused on this extension of the rights of immigrants such as union rights, social rights, political rights (right to vote), rights to stay and freedom of association. The extension of these rights is analysed in different ways. Some see these reforms as the result of social movements (Miller, 1981; Galissot *et al.*, 1994). Others (Brubaker, 1997; Joppke 1999; Guiraudon, 2000; Schnapper, 2002) see them as the continuation of the institutional heritage of the democratization process specific to each European State. The weight of the Nation-State would be the dominant factor. Still others (Bauböck, 1994; Soysal 1994), in contrast, insist on the growing importance of international actors and on the prevalence of supranational legal and political decisions. The growing rights of immigrants led Tomas Hammar (1990) to suggest that there may be a dual citizenship, one
for nationals, the citizens, and the other for immigrants with an unlimited right to stay, the denizens (vs citizens). The integration policies of the 1990s reduced this difference, but have not been able to prevent the development of more complex forms of differentiation of national/non-national statuses.

In the early 1990s, deep differences remained between European States with regard to the integration of immigrants. The analysis of public policies shows that the differences are less a result of the characteristics of the immigrants themselves than of the weight of national structures in their definition. Several comparative studies (Hammar, 1985; Schnapper, 1992; Costa-Lascoux & Weil, 1992; Baldwin-Edwards & Schain, 1994; Favell, 1998; Koopmans & Statham, 2000; Entzinger, 2000) enabled the formalization of European models of integration. Two components of the policies led to a differentiated construction of the image of the foreigner: the rules of citizenship and the public policies towards ethnic minorities.

The reform of the rules of citizenship has been on the agenda of several European States since the 1980s. Once the permanent character of the presence of immigrants is acknowledged, the transformation of non-national status into a national status becomes an issue. Two models of access to citizenship have contributed to oppose the French model to the German one (Brubaker, 1997). The former, an open model, is based on the right of the territory (Jus soli) and the latter, a closed model, is based on the right of blood (Jus sanguinis). The rules of citizenship based on the jus soli which characterize immigration countries facilitate a rapid inclusion into the nation, mainly of the descendants of immigrants who become nationals if they are born on the territory of the host country. This is notably the case of France, which adopted the jus soli in 1889 (Weil, 2000). Naturalization processes that only impose a short transition period to become a national, share the same spirit. On the other hand, with the jus sanguinis, full-fledged citizenship is transmitted by filiation. Transition periods for naturalization are long and conditions of access are stricter. These two models may not be found in their pure form. Since 1980, those European States that had the most restrictive legislations have reformed them by adopting the territorial principle and by softening the conditions of naturalization (Sweden in 1980, the Netherlands in 1984, Belgium in 1984, Spain in 1991, Italy in 1992 and Germany in 1999). There is a remarkable convergence of the legal tools to be noted in Europe, without, however, implying that it is equally the case of the ideological foundations or of the political justifications. Even if all States wish to remain sovereign in this matter, thus asserting the permanent legitimacy of the Nation-State (Joppke, 1990), over the last twenty years, there has been a European convergence marked by a liberalisation of the modalities to acquire citizenship. Many foreigners have become nationals in this way and thus European citizens.

The public policies towards ethnic minorities are strongly rooted in the different national models and are thus extremely varied across Europe. On this subject, the French and English models have often been contrasted. Ethnic minorities are acknowledged as such in Great Britain. In France, there is a process at hand that aims at making these minorities invisible. This dichotomy is found in the very heart of Belgium. Two models can be found there: the one in Flanders is closer to the one found in the United Kingdom and the model in Brussels and Wallonia is closer to the French one. Named on one side of the Channel, unnameable on the other side, ethnic minorities in both countries are the object of public policies that present as many differences as there are similarities in fact. These public policies are generally implemented at the local level. In Great Britain they are mainly equal opportunity policies that cover positive action measures (controlling ethnic representation in public sector jobs for example) and policies of community management (education). In France, both forms of
policies are absent as such, but some actions are used under the general name of urban policy or the fight against exclusion. Without referring to them like the British do, the French implement under the label of general policies, certain types of policies which are actually targeted to specific groups in indirect manners such as priority education zones, procedures of professional insertion, “enterprise zones” (zones franches), etc. These are, in other words, policies whose implicit aim is to fight against the effects of ethnic discrimination (Calvès, 1999).

The extension of the rights of citizenship obtained by immigrants (even if they are still legally foreigners) and the fact that foreigners acquire nationality (which guarantees full citizenship) were essentially nationally inspired, even if international institutions also played a part. In the new migratory context of the 21st century, Europe plays a crucial role even though it does not replace the national intervention. The legal and symbolic representations of foreigners are increasingly under the effect of the Europeanization of immigration, on the one hand, and, on the other hand, of supranational identity construction (European or not).

2.2. The Europeanization of the legal construction of the foreigner.

Since the Amsterdam Treaty signed on the 2nd of October 1997 and which came into effect in 1999, immigration and asylum policy has in principle become a European matter. The communitarization of this field corresponds with the end of the intergovernmental method and with the choice of a more integrated approach as well as the selection of a certain number of areas for which a common policy is put forward (Crépeau & Carlier, 1999). The study of different measures in the field of asylum (Dias Urbano de Sousa & De Bruycker, 2004; Guild 2004) and immigration (De Bruycker, 2003) tends to show the emergence of a relative convergence of national policies in Europe. This trend towards convergence was brought to light long before the communitarization (meant as the operation of institutional transfer of national competencies to European institutions) of public action in this field (Schnapper, 1992; Costa-Lascoux & Weil, 1992; Lapeyronnie, 1993; Giraudon, 2000; Geddes & Favell, 1999; Geddes, 2003). However, States remain the primary actors in the definition of immigration policy. For example, each country uses the principle of national sovereignty with regard to the issue of economic migration while regretting the lack of coherence between public policies (quotas in Italy and Spain, green card in Germany, points-based policy in the United Kingdom, etc.).

If the modus operandi of immigration policies suffers from the lack of European integration, this is not the case for the legal categories, particularly those of non-national and of European citizens. The European construction has led to a re-categorization of the legal definitions of national legislations, in particular those pertaining to the issues of entry and stay of non-nationals. By introducing, as early as 1957, a principle banning nationality-based discrimination, the European construction has had an impact on traditional legal categories (Bribosia, Dardenne, Magnette & Weyembergh, 1999). In fact, the classical distinction between national and foreigner has become more complex. Today, there are three different categories: the national, the national of an EU Member State and the national of a third country, the latter being a euphemized way of referring to non-EU foreigners. This new categorisation did not erase all distinctions between nationals and nationals of other Member States, also called European citizens. However, it helped to accentuate the common aspects and to bring the European citizen closer to the national by pushing the non-European foreigner away from the latter. If some of the new rights obtained in the European framework by third-country nationals stem from the new rights that have been awarded to European
citizens, notably following the creation of a European zone of free movement, clear-cut differences in treatment remain between European and non-European citizens. The debates concerning these differences are analysed as the expression of either the passage from national to societal security issues (Waever, 1993), or from a control of territories to a control of populations (Bigo, 1996; Huysmans, 2000). This differentiation illustrates the way in which non-European foreigners are considered as a threat, entailing the need for Nation-States and national institutions to acquire the means necessary to reduce the risks.

2.3. The Europeanization of immigration and anti-discrimination policies

The most visible sign of the Europeanization of immigration and of integration policies lies clearly in the production of European legal norms. These are mainly directives that are concerned with immigration policy \textit{stricto sensu}, i.e. the admission of third-country nationals within the European Union for a stay longer than three months for family regrouping, studies, etc. Political scientists have largely focused on the analysis of the institutional framework (March & Olsen, 1991; Hall & Taylor, 1996; Radaelli, 2001) with supranational institutions and multi-level governance as their objects of study; legal scholars have also considered the legal tools produced at the European level and their translation at the national level. There is a recurrent question throughout this type of research: does Europeanization lead to a widening or to a reduction of the rights of foreigners?

The theory of the alignment to the lowest standards is most often suggested. According to a widely shared opinion, the legislative suggestions of the Commission were practically emptied of all substance by the Council of Ministers, because of the obligation for this institution to reach unanimous decisions involving the representatives of all of the Member States. The political image of the legislative process tends in this way to align itself with the long-standing criticism by NGO’s defending foreigners’ interests who claim that the harmonization is bringing standards down, that it is bringing about a generalization of the lowest standards among the Member States and is thus unfavourable to the interests of foreigners. If this hypothesis is corroborated, then it would be time to question whether the European framework introduces or not more restrictions to foreigners obtaining rights than does the national framework. This would lead to thinking that Europeanization tends to reinforce the threatening figure of the foreigner.

One of the aims of this research is to confirm or not if the elaboration of a European legal norm leads to a generalization of the lowest standards. Many elements encourage a more moderate vision. The relations between European law and national law on immigration matters are much more complex than what the theory of a harmonization of the lower standards suggests. There are few points on which there has been a harmonization and the Member States have created numerous ways out of the obligations set by European law (including the introduction of non-constraining measures in directives that are by definition legally binding!). Moreover, the fact that the Council, in each directive, gives the Member States the right to maintain or introduce more favourable national provisions tends precisely to avoid a general harmonization towards the lower minimum standards agreed upon unanimously by Member States.

In certain areas the action of the European Union has clearly contributed to the extension of the rights of non-national residents. By deepening and complementing the actions of several supranational institutions working towards the protection of human rights (Soysal, 1994), the European Union has led Member States to develop their legislative protection of the principle
of equal treatment and to reinforce their national anti-discrimination policy (Niessen & Chopin, 2004).

Anti-discrimination tools are usually constructed by a multi-stage process (Simon, 2004). The starting point is when the issue of discrimination is put on the political agenda, sometimes as a result of a mobilization campaign. Then, a first type of reaction consists of admitting that the most blatant cases of discrimination (« direct » discriminations) should be brought to justice. The limitations of such a reaction and the lack of substantial improvement in the situation of the discriminated groups imply that the systematic nature of these discriminations needs to be taken into account. As a consequence, « indirect » discriminations that can happen beyond the will of their author need to be tackled. The fight against discriminations aims at the equal treatment of different situations and tends to implement « reasonable accommodations » that would benefit particular groups. This transition from the individual to the group level is also visible in the implementation of positive actions, namely in programs with quantified objectives in order to ensure an equitable representation of protected groups (Martiniello & Rea, 2004).

In this context, it is crucial to understand the impact of the European Union on anti-discrimination policies in this context. On the one hand, at the very stage of elaboration of European tools, the Europeanization of these policies is linked to a bottom-up mechanism inspired by national laws and practises in order to elaborate a common norm. On the other hand and conversely, Europeanization also means the impact of the common norm on the legal orders of the Member States. This dimension is present, in particular, in the banning of discriminations based on nationality - indeed the European normative level was in this case the driving force. However, as far as ethnic and religious discriminations are concerned, the European level is grafted onto existing national laws and practises, taking inspiration from as well as completing them. In the last two cases, Europe attempts to address issues that are found at national levels by generalizing the use of common legal tools. Without creating new categories, the European Union contributes to the reshaping of identities and to the creation of new ones. The fundamental principle of fighting against nationality-based discrimination that has been at the heart of European integration since its beginnings, is now completed by tools used to fight against discriminations based on race and ethnic origin on the one hand, and on religion and beliefs on the other. Today however, this latter policy today remains underdeveloped at the European level. The Amsterdam Treaty represented an opportunity to give the European Treaty a new legal basis (article 13 CE) allowing the unanimous elaboration of European policies against discriminations based on gender, sexual orientation, handicap as well as race, ethnic origin, religion and beliefs. Despite the fact that unanimity is required, the political context (i.e. the increasing electoral power of extreme right-wing parties in Europe) helped the rapid adoption of two European directives on this matter: directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (De Schutter 2001 ; Bell, 2002 ; Borillo, 2003).

These legal tools also enable us to measure the transformations of the figure of the foreigner. After living in Europe for over forty years, some foreigners, most of whom have become nationals, as well as their descendants are, in some degree, maintained in an immigrant status which is the cornerstone of racial and ethnic discrimination. These figures of foreigners whose legitimate presence is still disputed are always suspected of wishing to avoid the obligations of integration. Rising racism and increasing racial and/or religious discrimination confirm, in legal categories as well, the construction of an ethnic European society. This is a
mosaic of national identities as well as a budding supranational identity strewn with minority ethnic identities resulting from successive migrations. The figure of the foreigner is enlarging and englobe more and more those who are becoming ethnic minorities in the heart of Europe.

2.4. European citizenship and European Identity

European integration is likely to contribute to the production of a European identity transcending national identities. Three strategies have been used in order to create and to foster a European identity. Firstly, effort has been made to stress and discursively construct a common culturally defined European identity in a similar way as national identities have been constructed (Hobsbawm, 1983). This has been done through the use of historical myths referring to a common Christian heritage (Bryant, 1992), a common political and legal history tracing back to the Roman period and the humanist tradition. Moreover, ideologies (Europe as a peaceful and democratic project and as having modernizing and civilizing aspirations), the performance of secular rituals (European elections) and the use of a common Eurosymbiosis (flag, anthem, format of passport, etc.) (Shore 1995) have been used to promote a common cultural identity. In addition a broad scheme of cooperation programs in different European States has been introduced on the levels of education (Erasmus-schemes), research and arts. All this has obtained an additional dimension due to the introduction of a European currency (the Euro) in day to day life. Secondly, a supra-national legal system has been constructed which guarantees inhabitants of Europe several basic rights and gives European workers specific rights (through the Treaty of Rome). Finally, a new (embryonic) form of European supranational citizenship has been introduced in a distinct and explicit ‘citizenship of the Union’. This citizenship of the Union confirmed the right of free movement on the territory of Member States, the right to address appeals to the European Parliament and to the European ombudsman. In addition the right of political participation in municipal and European elections in every Member State under the same conditions as State citizens has been introduced. And finally the right to get support outside the EU by any diplomatic service of another Member State as if one were its own national has been installed. To date, the citizenship of the Union is clearly derived from the possession of State citizenship of one of the Member States, thus excluding approximately 17 million legal foreign residents (the so-called third-country residents).

By defining, in article 17 of the EC Treaty, European citizenship as: « Every person holding the nationality of a Member State shall be a citizen of the Union », Europe chose to privilege a definition of citizenship in terms of a status rooted on nationality, rather than in terms of relationships between people sharing a community of life. The differences remaining between European citizen’s and third-country nationals’ freedom of movement illustrates the marginal position in which these foreigners are maintained. Contrary to the logics organizing the relations between urban and village identities (Elias & Scotson, 1967), the long-term presence and residency of foreigners does not give them the legitimacy which seems to be required for a European belonging. Belonging to the European identity thus depends less on a life shared with people of different ethnic and cultural origins than on the adherence of one’s country of origin to the European project. Despite the length of their presence in certain European countries, foreigners have been denied citizenship only because of their nationality. The proximity or distance between nationals and foreigners is not so much linked to the length of residency as to the relations between the countries they are nationals of. By refusing to consider residency as an important factor for granting citizenship and rights, Europe has favoured a nationalistic logic and has given priority to agreements between States over the daily interactions within communities.
In addition to its legal aspect, the Europeanization underlying the creation of a European citizenship is also at the basis of the reframing of existing identities and of the production of new ones. These processes contribute to impulse new “imagined communities” (Anderson, 1983), pulling together opposite identities and pushing apart close identities, and to create an « imagined European community ». Indeed, the tension between the European level and the national level creates new identities and « new ethnicities » (Hall, 1991 ; Back, 1996). The traditional differentiation between nationals and non-nationals seems to be shifting towards a new division line between a shared “Western culture” (Fuchs, Gerhards & Roller, 1995) and an otherness defined at a higher – and trans-national – level. In countries such as Belgium, Denmark, France, Germany, Britain and the Netherlands, the foreigner is most frequently regarded as being Turkish, Arab, African or Asian (Fuchs, Gerhards & Roller, 1995) although most non-nationals are actually of European nationality. In addition these non-European foreigners are often more disliked than European foreigners. New boundaries between ‘us’ and ‘them’ are drawn between natives and immigrants from other EU-countries, on the one hand and immigrants from outside Europe and especially from ‘non-white-countries’, on the other hand. This differentiation between groups of non-nationals is not merely a populist phenomenon or an accidental and unintended consequence of official policy efforts to create a European identity. Although most European countries have active policies towards integration and multiculturalism designed at avoiding new ethnic cleavages, one cannot claim that the European political elite has had no part at all in creating new boundaries between different (ethnic) groups and is today merely faced with a phenomenon it has absolutely no responsibility in. Indeed, in official discourse it is always stated that the striving for European identity has as primary goal the furthering of possibilities for European integration, the downgrading of the importance of (ethno)nationalism and certainly not the creation of new internal boundaries. The primary aim is inclusion of European nationals in a common economic, cultural and political project. But this inclusion is, in practice, at the same time accompanied by internal exclusion of foreign residents of non-European origin. In the discourses on (European) rights not only have links been made to territoriality, personhood or human rights but, indeed, clearly as well to both historical and cultural ties and a common political project. As Bourdieu (1991: 221) stated: « What is at stake here is the power of imposing a vision of the social world through principles of division which, when they are imposed on a whole group, establish meaning and a consensus about meaning, and in particular about the identity and the unity of the group, which creates the reality of unity and the identity of the group ». In this respect, the issue of European identity supplies us with a telling example that categorization can entail both vision and division, inclusion and exclusion around identities.

Europeanization as an image of the social world is a symbolic order that is potentially based on an ethnic division of the European world. By the categories it mobilizes and the categorizations it creates it redefines European populations well beyond their national identity. Thus, Europeanization creates social as well as legal norms along with social representations. If the production of legal norms seems to characterize the process of Europeanization, one may wonder if this process is not just as noticeable in the changing social representations, for instance in the definition of majority and minority groups. The different processes of European enlargement have led to bringing peoples and identities closer, endlessly renewing European identity. The accompanying rhetoric often insists on the proximity and shared destiny of the States and populations joining the European Union (cf. the debates over references to Christendom in the European Constitution or over the accession of Turkey). This so-called proximity is however more of a performative act of speech than the reality of the world lived in. Several Eurobarometer surveys indicate that the fear of the Other is fairly strong in Europe. This has
been confirmed over the years by the development and the implantation of extreme right wing and populist parties that use racism as their favorite electoral argument. This fear of the Other is not only concerned with new immigrants, but also with old migrations whose legitimacy and recognition are never granted and are always questioned. People who are descendants of these migrations are often victims of what has been called a European racism (Balibar, 1992; Rea, 1998). Old migrations, especially those assimilated to colonial migrations, not only from the viewpoint of the former colonial power but of the whole European continent, and the descendants of immigrants who claim a specific identity linked to Islam are now “colonized” not only within the national boundaries (Rex, 1973) but also within the European boundaries. The slip from racism to Islamophobia, from the fear of new immigrants to the fear of Muslims are to be seen as expressions of the rejection of the Other.

2.5. Denials of recognition and construction of the Other

Despite the fact that many immigrants and their descendants have become nationals, they are not necessarily perceived as fellow citizens or as European citizens. Some of them remain stigmatized as outsiders such that their image becomes assimilated to that of the new immigrants or the “eternal immigrants”. Despite their social, economic and political integration, some foreigners are assigned an identity of otherness that may not be of their own choosing. Victims of racial and ethnic discrimination, they continue to suffer from a lack of legitimacy and more specifically from a denial of recognition (Honneth, 2002; Rea, 2001; Sanchez-Mazas, 2004a). In addition to being excluded from national cultures, immigrant groups are excluded from the emerging European identity, which is increasingly homogenised by political discourses and media imagery. As a consequence, their identity becomes marginalized and stigmatised both in the national and the European contexts. Within the latter, the borders of identities are shifting thus redefining relations between majority and minority groups. In this context, and regardless of their national origins, ethnic groups of non-European immigration are stigmatized and treated as “minorities”.

From a social psychological perspective, the redefinition of majority-minority relations may be analyzed in terms of the link between the image of “us” and the image of “them”. According to the theory of self-categorisation (Turner, Hogg, Oakes, Reicher, & Wetherell, 1987), certain important conceptual distinctions – individual and collective behaviour, personal or group identity – can only be explained in terms of the link between self-categorisation and the categorisation of others which is usually expressed in a perceived contrast between “them” and “us” at different levels of categorization. Moreover, according to this approach, the solidarity that is necessary to the emergence of a collective organised behaviour can only materialise through identity constructions that define the borders of the community in whose name one acts. The political and legal redefinitions of minorities have a direct impact on the identity constructions of the groups themselves, be they a minority or a majority. It is thus possible that at the European level, the construction of otherness is also expressed through the contents of the image or stereotype that is assigned to populations of extra-European origin, an image characterized by the duality established in the elaboration of an identity of “us” in contrast to an “other” (Condor, 2004; Khosrokhavar, 1996; Licata & Klein, 2002; Lochak, 1995; Said, 1980/1997; Sanchez-Mazas, Van Hunskerken, & Gély, 2005). Cultural and religious themes, especially around Islam, are undoubtedly a privileged means of establishing new definitions of “otherness” (Jodelet, 2005), definitions that could produce a homogenisation of these diverse populations into a category of the “other within” which can comprise both foreigners de jure and nationals of immigrant origin. Such a categorisation facilitates the spread of discourses and arguments (Lamont, 2002) that inspire a
xenophobic way of thinking that is traditionally found in areas such as employment or social rights (Sanchez-Mazas, 1999; Sayad, 1991; Windisch, 1978). This way of thinking seems to coexist today with a discourse of differentiation that brings cultural identities to the fore (Taguieff, 1987) and with a discourse of security that uses the figure of the threatening foreigner (Van der Walk, 2002). All of these processes converge to produce a new definition of the Other in Europe.

The theory of the struggle for recognition (Honneth, 2002; Markovà, 1999) and its application to the issues of racism and xenophobia (Fischbach, 1993; Sanchez-Mazas, 2004a) suggest an analysis of these phenomena in terms of the denial of recognition, which can take various forms such as a denial of rights (citizenship rights, social rights, freedom of movement...), a denial of social esteem such as negative opinions of the culture and/or religion of the Other, or a denial of "voice" which delegitimizes the demands and aspirations of these groups, especially in a public sphere perceived as secular and needing to protect itself from the influence of religion. Different forms of denial of recognition are likely to occur simultaneously when public discourse mixes together under the expression of "immigration issues" different problems linked to immigration per se - such as those understood as the flow of entries (legal and/or illegal) into a territory, or those due to the presence (often definitive) on this territory of immigrant populations. The constitution of a European identity and the shifting of the ethnic boundaries of the figure of the foreigner are certainly at the source of the shifting of the denial of recognition from one sphere to another, from the field of rights to the field of social esteem thus allowing immigrants access to national citizenship at the same time as denying them the recognition afforded to native European citizens. The acquisition of formal national citizenship is thus combined with an image that they are unwilling to adopt the dominant cultural model and that they have not yet shown a proof of the required allegiances in terms of values or of way of life necessary for their recognition as European citizens. According to the social representations approach (Doise, 1990; Jodelet, 1997; Moscovici, 1961), practises and beliefs are intimately linked, the former being guided by the latter so that the judgements held about minority groups risk being translated into acts of discrimination on the level of institutions, employment or at school It is important however to emphasise on the one hand, that prejudiced actors are not necessarily fully aware of their prejudices (Devine, 1989), and on the other hand, that nowadays prejudices most often have subtle or latent forms compatible with democratic ideals (Dovidio & Gaertner, 1991; Dovidio, 2000; Pettigrew & Meertens, 1993). As a result of anti-racist legislations, of anti-discrimination policies and of the strong moral condemnation of racism, discrimination occurs surreptitiously, in a manner which makes it difficult to spot and denounce.

In the context of these processes of redefinition of identities and the emergence of multiple and often implicit or diverted forms of denials of recognition, a study of the way minorities perceive their stigmatisation and their experience of injustice seems essential. This study is all the more important in a legal and institutional context in which anti-discrimination policies are implemented. These policies have an impact on the representation minority groups have of justice and injustice (Tyler, Boeckmann, Smith, Ho, 1997) and, in our view, this impact is not independent of the impact that could be observed on their identities. This is the context in which we suggest to examine the link between the construction of identities, the perception of justice and of discrimination at an individual and collective level. Our focus will be on an individual action which may be the most common anti-discrimination act and even the only one possible available to the individual actor: the act of filing a complaint against acts of racism or discrimination. What are the overt and implicit motivations of such an act? Is it simply done for instrumental individual interests? Or does it claim to "represent" the interests...
of the “community”? And which interests in particular? Are there underlying collective and/or expressive identity claims?

An understanding of the effectiveness of anti-racism and anti-discrimination institutional tools would be well served by a study of the identity constructions and representations of justice that underlie concrete acts aimed at using these tools, especially in a context that is marked by the emergence of potentially contradictory norms. On the one hand, a broadening of the rights of minorities and of the tools used to fight against discrimination suggests a growing protection of the members of minority groups. On the other hand however, public policies, discourses and representations are evolving towards heightened and stricter expectations in matters of cultural conformity, which are particularly associated with the emerging European identity, and which may facilitate acts that discriminate or disqualify members of these groups.

Our social psychological approach is thus at the crossroads of the study of the redefinitions and shifting of identities and of the study of the evolution of the legal and institutional means of action against discrimination. Its main object is the study of the use of legal action by the actors concerned by anti-racism legislations in order to show the nature and evolutions of the complaints expressed by presumed victims to anti-racism and anti-discrimination organisations. The aim is also to look for the social psychological factors that are likely to steer actors towards pro-active behaviours motivated and justified by claims of injustice (Renault, 2004), and to distinguish such behavior from other reactions to stigma and discrimination such as those aimed at the reversal of the stigma (Wieviorka, 2001), revolt (Rea, 2001) or other forms of collective action (Guimond & Tougas, 1994); in a word, and to use the terms of Hirschmann (1975), we would like to study acts involving “voice” instead of “exit” strategies.

2.6. Integration and risk management

The transformation of identities in Europe as a result of the assignment of systems of belonging and the demands that arise from them tend to influence the debates around new immigration policies. Whereas past national immigration policies have mostly been blind to the cultural specificities of immigrants, it seems that this will no longer be the case in future. Even if European States refuse to acknowledge themselves as immigration countries like the United States or Canada, Europe seeks to implement immigration policies that incorporate demands for cultural conformity, while being different from the American policy of racial quotas imposed from 1924 to 1954. Europe as a political community, intends to use its control over immigration in a utilitarian perspective, as an answer to needs in population and competencies (Bribosia & Rea, 2002), but also in an identity perspective. When European countries called upon Moroccan, Algerian, Turkish and Pakistani workers they did not bother themselves over the cultural or religious identity of these populations. They were first and foremost a workforce. Without directly translating into material political measures, cultural and ethnic identity is becoming a preoccupation of policy makers. This is proven by the developing operational cooperation between Member States in the struggle against illegal immigration, in the surveillance of external borders as well as in matters of integration of third-country citizens. With the help of the Commission, Member States have thus set up a network of contact points on immigration matters. The 19th November of 2004, in its conclusions, the Council of Ministers of Justice and Internal affairs adopted common principles on integration. The use of these techniques is not set within a legally-binding framework. However, they do participate in the Europeanization process and may have an influence on Member States.
Political and media discourses use a rhetoric of peril (Hirshman, 1994), thus broadening classical discursive registers. Immigrants have often been represented as a danger for the stability of welfare legislations, on the one hand, and for public peace, on the other. They are suspected of either working in conditions that threaten competition or of unlawfully taking advantage of the benefits of the welfare State. Moreover, the inextricable link between immigration and delinquency leads to systematically question immigrants’ irreproachability. From then on, migrants are perceived to be either delinquents or trouble-makers. Since the integration of older migrations and the assertiveness of minority identities, these two discursive registers have been complemented by the rhetoric of threat on the specificity of the European identity and on the external security. The growth of majority or minority multiple identities feeds the theory of the “clash of civilizations”. Certain cultural or religious specificities, particularly those linked to Islam, are seen to be dangers for the European identity. Numerous disagreements appear in Europe on subjects linked to the management of cultural diversity (the Islamic veil, gendered space-division, dietary laws, religious feasts, etc.). These conflicts or litigations are regulated either socially (negotiation, mediation, etc.) or by the judiciary (use of courts). As a consequence of several acts of terrorism (attacks in Madrid and London), the radical Muslim in particular feeds the discourse on the danger to internal and external security.

These new discursive registers lead to the implementation of precautionary risk-management measures aimed at new migrations. The perceived risks linked to certain cultural characteristics are becoming an important factor in the choice of the new recruitment areas for new migrants. While still fulfilling their duty of assisting refugees and protecting the foreigners already settled on their territory, Member States increasingly intend to control the cultural identities of migrants. They are thus adopting the principle that the right to emigration finds its limits in the right for a political community to preserve its specific way of life (Walzer, 1997 ; Habermas, 1996). The introduction of integration criteria (prior to new migrants entering the territory) in certain public policies indicates that European States are seeking to control the entrance of immigrants onto European soil on a basis of cultural belonging. This is notably the case of the new flux of migrants in Southern European countries with Eastern European immigrants replacing North Africans.

The principle of precaution is aimed at ethnic minorities whose practises and cultural and religious claims seem to endanger the compromises negotiated within European States between the historical national components. After a time of acknowledgement of diversity in certain European countries such as the Netherlands and Sweden, multiculturalism is now being questioned (Joppke & Morawska, 2003 ; Jacobs, 2004). New policies that focus more on cultural conformity are being put forward. The will to offer positive discrimination policies in order to help the effective integration of the descendants of immigrants is often expressed. However, there is also a tendency to reintroduce more active integration policies that are found in immigration countries and that are articulated along two axes: knowledge of the national language and knowledge of the rules of democracy and of the state of law. Schools are increasingly spaces where cultural conflicts appear and oppose the legal prescriptions to favoured treatment requested by minority groups. These conflicts are most often interpreted as conflicts of civilization without acknowledging the underlying lack of recognition. Culturally or religiously connoted conflicts sometimes give rise to a re-colonization of immigration (Liauzu, 1992 ; Balibar, 2001) that is in some cases expressed in a will to diminish the legitimacy of the citizenship of the new nationals. Often the definition of « risk groups » or « risk behaviour » is decided by public institutions and their agents. Teachers and
policemen are the agents who are most often in contact with foreigners and whose discourse most often carries references to cultural differences or who can be brought to formulate answers to the issues they face in cultural or ethnic terms. In their daily actions, these institutional agents produce discourses and practises that have roots in the vision of a European social world divided into ethnically defined groups. They are at the heart of the ethnic redefinitions and of the identity displacements of European populations.

2.7. Identity mobilization

The assertion of their identity by minorities cannot be understood as a mechanical consequence of the discourses and practices of majority groups: ethnic groups are always stake-holders in the construction of their identity. Belonging to a group comes about through an imputation and a subscription process: it is in as much as a person recognises him/herself or is recognised by an ethnic group that ethnicity is manifested by distinctive features (Barth, 1968). Seen from this angle, here culture is not « a given », an « already here » but a resource that can be used by groups to create and recreate their borders. To do so, these groups mobilize the most diverse symbolic marks from the most trivial to the most subtle, sometimes including the emblem of their own racial or ethnic stigmatisation that they turn around to use as the banner of their identity (Sayad, 1991 ; Eriksen, 1993). Even if they are strongly stigmatised, ethnic groups are not without agency which enables them to face up to new contexts. The production of « us/them » relations by the surrounding society is mirrored by a symmetric construction, which inverts the order of inferiority. Such a process supposes that the actors consciously (in some measure at least) perceive this categorization and the attributes that bring it to life. However, it must be added that this sensitivity is strongest amidst opinion leaders and social entrepreneurs. Their role is absolutely crucial when identities are studied under the angle of mobilization.

Whereas, in the past, associations linked to immigrant communities were mostly to be found around the issues of the defence of social (equal treatment with nationals) or civil rights (security of their stay, rights of appeal before the courts) or in the area of anti-racism and anti-xenophobia struggles, today new associations are emerging as an answer to the process of Europeanization or of globalization. Similar to what happened in the United States where the struggle of African Americans for civil rights largely gave way to an Afro-centrism that places the debate on the cultural level (Fauvelle-Aymar et al., 2000 ; Guedj, 2004), associations are appearing in Europe around an agenda that hesitates between political and cultural demands on a national or trans-national basis. Social disembedding is spreading to ethnic minorities that can constitute trans-national networks, which organize movement of people and merchandise (Basch et al., 2000). These emerging networks, favoured by the new communications technologies can take on different forms, from the reinforcement of ties to the country of origin to the creation of a true archipelago of identities uniting (Appadurai, 1996) communities present in several European Union countries in a single ethnoscape. Trans-national identities are thus born on European territory, nationally disembedding themselves and sometimes becoming diasporas (Cohen, 2001) such as the Turkish, Moroccan, Pakistani, Albanian, Congolese communities, etc. in Europe.

The construction of ethnic borders by minority groups is now happening in the national spheres and at the European level. Whether the issues are certain religious specificities such as the Islamic veil or the affirmation of the « black » culture amongst many youths of African or West Indian origin, this new process of « voice » (Hirshman, 1975) is spreading to all minority groups in Europe. New forms of discursive assertiveness often come from younger
generations who refuse the denial of cultural difference and more so its stigmatization or derogation (Jacobs, 2005). The identities carried by these new generations are often not in accordance with those of their parents: they are more generic than the old national references.

Associations and individual actions with a collective reach (such as strategic litigation in favour of minority ethnic groups) are working towards the development of a multicultural citizenship in Europe, without necessarily taking on the classical form of the new social movements (Martiniello, 1997). Everything indicates the need to pay attention to the development of these identities – and of the associations that are their spokespersons – in order to understand how tomorrow European identities are shaped.

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