

# **Ostracism, Tolerance or Recognition: Muslims in Europe**

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## **Abstract**

In the case of present day Muslims, one can note that discrimination is both direct and indirect and that it often comes from public institutions. This is the sign of a very tense general climate and of an inability or a refusal on the part of the political bodies to cancel these tensions.

**Keywords:** Muslims of Europe, Ostracism, tolerance, recognition.

## **1. Religious standards in modern societies**

According to the theses of modernisation and political neo-liberalism, people are supposed to be motivated by materialism. A whole part of Western history, i.e. the important part played by religion in social and public life, is ignored. However, the status that has been granted to religious standards is, along with the ideals of citizenship, equal opportunities, social solidarity, one of the pillars of all modern states. Historically, debates and conflicts around the religion issue and around the state versus church relations and separation are an integral part of the European political heritage and they give the tone to present day life.

Religious freedom is the first fundamental freedom to have been invented and it existed before democratic political systems. In the 16th century, the protestant Reform questioned Catholic supremacy over European states; it questioned the supremacy of monarchies of divine law. The conflicts caused by this uprising were so acute that they forced the parties to a compromise / the granting of the liberty of conscience and of cult to all Protestant streams.

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In the following centuries, the compromise was ratified by all European and North American states and religious freedom spread to other minorities, such as the Jews, in the first place. They have no centralised hierarchy, such as links to a particular state, and they were therefore a direct opposition to the Catholic archetype.

The creation of the liberties of conscience and of cult, as a basis to the concept of fundamental freedom, had two aims: protect the state and public institutions from the power of one or more religions, protect religious beliefs and institutions from a negative state intervention but it failed to clearly state how the separation should proceed. According to each country's historical and religious specificities, the relations between state and religion were codified step by step and this gave rise to four main types of relations between state and religion:

1. National church or religion of state (England, Scotland, Greece, Scandinavian countries<sup>75</sup>);
2. Privileges by means of cartels or arrangements given to one or several Christian streams whether it be major particular rights such as the right to institute a church tax, tax relief or the teaching of religion in public schools (Germany, Austria, Spain<sup>76</sup>, Italy, Luxembourg) or minor particular rights (Canada<sup>77</sup>);
3. Equality of cults (Netherlands, Belgium);
4. Lay system that excludes religious standards and legal pluralism (France) or on the contrary that includes the former and protects the latter (United-States);

This variety of systems mustn't let us forget basic differences in the relations between state and religion: religious freedom can be defined either as a negative right or as a positive right.

## **2. Religious freedom: negative right or positive right?**

Religious freedom as a negative right means that people are free to act without anybody having the right to interfere (Berlin

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<sup>75</sup> Scandinavian countries were then the only countries not to recognise such supremacy

<sup>76</sup> Islam is by 1992 act and the clauses of that act have not been implemented.

<sup>77</sup> Catholics in English-speaking provinces and Protestants in Quebec.

1959). Religious freedom has two individual prerogatives solely limited by the rights of the others, general interest or public order. The freedom of conscience allows people to demonstrate their faith and its precepts publicly and to spread them and to teach them without obstruction or damages. The freedom of cult implies that people are allowed to carry out the rites of their cult in public and private manner: gathering to officiate and having places to practice the cult. In this system, it is forbidden for people or for groups to intervene in the expression of a religious belief and it is forbidden for the state to do so except for security or public order reasons.

Few lay Western States have adopted the negative conception of religious freedom: the United States, France and Mexico. Besides French secularity and American secularity are opposed to pluralistic standards. France has often been out of order with the lay principle in order to control the civil society more easily (state funded religious sector) or in order to cater for its international interests (respect of the personal code of the immigrants' countries), whereas the American Supreme Court has so far always made sure that the State's non-intervention in favour of religious streams has always been strictly respected. Both the French and the American states can not support or establish a religion. There is however a major difference: the United States must protect the autonomy of intermediary bodies, communities, associations, and churches that create their own standards and that thereby reduce the state's cultural leadership. Subsequently it guarantees the right of any community of belief to exist and to multiply. This is why the Amish community has got particular rights such as a separate education system and no military obligation.

Religious freedom has a positive right that doesn't just mean that people are allowed to demonstrate and to practice their faith publicly and privately. It is also the right to act in all areas of life according to the values of the said faith and to demand a positive action from others or from the state in order to do so. It means that believers have the right to respect their values in social life. The state must, according to varying modalities, help maintain these institutions (place of cult, education network, charities, media, etc.).

This standard status is supported by a social and by a political argument. In compliance with the social argument, belief and religious practice are community facts, not just individual facts and they form a socially useful and a legitimate system of thought and

way of life. The political and democratic argument was summarised by the Luxembourg minister for religions as follows:

*“There are States like ours that are neutral and welcoming towards religious communities because they believe that religions play a public opinion part and that they must express themselves and I think it is normal that religious communities should be allowed to play an opinion part just as anybody else (entrevue, 30 January 2003).”*

This diverging approach to religious freedom is significant for accepting and accommodating minority religions. Knowing how important distribution is for the survival of a cultural universe there always are diverging views among supporters of one or the other system: teaching religion at public schools and the status of the religious private education. Adopting the positive approach to religious freedom means accepting that each majority or minority religion has the right to have its doctrine taught at public school. This would be unacceptable in a lay system where only the history or the culture of religions is allowed to be taught. It always means that a religious minority can oppose itself to an unequal treatment of its cult and to social and cultural ostracism that it might be a victim of in the name of its faith and if need be it could launch a legal action for discrimination.

If one has a lay negative vision of religious freedom and if one ignores cultural and legal pluralism, the above mentioned possibilities are out of reach and public debates around religion can easily become negatively influenced by political interests. As we shall see in this book, this is the case in France where funding for decent places for praying was put into question because of the Muslim community low budget and where this has led to a conflict situation regarding the secular basis of the Republic.

The study has shown that a positive approach to religious freedom has led to a better insertion of Muslim minorities. In the 80's and 90's Belgian, Danish, Dutch and British Muslims were allowed to demonstrate publicly and to practice their religion more easily than in other countries because many places of cult were opened, sometimes with public funds or with the help of a national church (Netherlands) because the visits of Imams from foreign countries were facilitated, because Islamic schools were founded, and because Islam started to be taught in public schools.

### 3. From Eastern Islam to the Islam of Europe

However, State versus religion relations are not the only cause to a possible symbolic and social rejection of a religion. In the case of today's Islam, in the area of the Western world where Muslims constitute the largest immigrant population, that is to say Europe, several processes help understand why some streams in favour of the native populations started targeting immigrants and Muslims, in the 80's in particular. In these processes, the image of Islam in the population at large changed. What used to be a colourful image of Eastern Islam and what used to be a complacent image of its followers as poor immigrants changed into the image of an archaic Muslim religion and culture that are glued in traditions from another era unable to conceive the person as an individual modernity and democracy. This political and moral stigmatization has become the background that explains and legitimates discrimination against Islam. It justifies and supports the reactionary theories.

There are four main processes in this theory: changes in industry and in the work market as a consequence of stock exchange and trade globalisation, unemployment, and changes in the middle classes are all part of the rise of ethno-nationalist movements. The social classes that had been the backbone of welfare states in the aftermath of World War II have become symbolically, economically and politically fragile and destabilized. This took place precisely when new Muslim generations started appearing on the public arena. These were born and socialised on European soil : this macro-sociological weft is somehow linked to the rise in vulgar animosity against Islam in the past twenty years.

This new visibility is not only due to there being more European Muslims; it is mostly due to their becoming present on the public arena. The sudden arrival of minorities in ideological worlds that had been defined by a national set, the legitimization of their requests, and their becoming new consumers and new objects of state intervention are political facts of the 1970-80's in North America and in Great-Britain but they didn't reach political circles and public opinions on the Continent until the 1980-90's, which is when a population of immigrants' children who were socialised in the west was able to use the precept of equality. Besides, this new development was taking place at a time when immigration was growing. This immigration was of humanitarian origin, it was illegal and/or uncontrollable. These three facts happening together at a time of economic reform has not made it easy

for public authorities to manage cultural pluralism, it hasn't made it easy for the losing social classes to accept religious and cultural diversity.

The failure of social and political democratisation in Muslim countries and the situation in Palestine have led in the 1970's to an increased power of Islam in civil societies, to an increase in the number of Muslim streams in favour of political violence and state control, and to the brain drain of the most Westernized people towards North America and not towards Europe.

In the name of the rule of competitiveness, of ethno-nationalism and notions of incompetence, mass media and other media largely contributed to public opinions' animosity towards illegal immigrants, also called the minorities, the "Muslims" and to the confusion in understanding Muslim countries' political drift. This counter-information contributed to Islam's negative image. Finally, terrorist and Muslim terrorist attacks on American soil in 2001 finished off the image of Islam as the problem file in Europe and they made the image of Islam visible in North America and in Australia, where it is not very present. Islam has become "the" security and civilisation file in the West and it has an alive and popular image being the third one-god religion and of having three emblematic facets of incompatibility with modern times: confusion between political and religious powers, denial of individual rights and in particular women's rights, and religious intolerance and violence.

In the face of amalgamations, stereotypes, omissions, is it necessary to remind the reader of the forms and bases of any type of discrimination in order to define ways of fighting it? Is it necessary to remind the reader that, if religious tolerance is a Western secular value, recognising all residents as fully-fledged members of the society where they live is a superior value and that it is socially and politically more efficient? This is the case in Canada. Canada is by no means "the" Western model for immigrants' insertion but since the aftermath of World War II, Canada has never experienced any violence related to immigration nor has it had any far right xenophobic movement that has been allowed to exist publicly even though this country is originally one of the most racist Western cultures- that of the British Empire - even though it receives large quotas of newcomers<sup>78</sup> every year among which Muslims for the

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<sup>78</sup> About 230,000 per year against a 30 million population.

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past fifteen years, and even though it has a large immigrant population percentage (19% in 2001).

#### **4. Forms and sources of discrimination**

*Discrimination means making a distinction between people based on illegal criteria, whether intentionally or not. Today, there are several characteristics that constitute the personal traits of a person or a group of people phenotype, national or ethnic origin, religion, language, age, physical or mental handicap, and sexual orientation. Discrimination imposes upon a person or a group of people obligations and disadvantages that are not imposed on other people or that impeach or restrain their access to possibilities that it are advantages made available for other members of society. It is a denial of equality and it challenges the right to equality.*

Discrimination can take three forms: direct, indirect, or veiled. It can have two sources: a person or an institution, whether private, public or stately. These forms and sources can criss-cross but according to the basis and the stake of discrimination (employment, freedom of cult, symbolic acceptance, etc.), one or the other form and source are more intense.

Discrimination is direct when one or more illegal criteria are explicitly evoked to deny a right or a freedom. This form is the easiest to identify and to sanction, and therefore it is the least spread except at times when animosity against cultural, religious or racialised groups rises. Employment denials, or physical assaults, or attacks on goods explicitly perpetrated in the name of an illegal criterion are examples of direct discrimination. Any type of direct discrimination, whatever its reason may be, should give rise to a legislation that forbids it and that sanctions it, to periodical and targeted information campaigns on every citizen's rights in the face of various forms of ostracism, and to support by public authorities in favour of NGO's that help victims.

Discrimination is indirect when a measure has an unequal effect on a group of people that can be identified according an illegal criterion without the author of the measure having explicitly wanted that effect (Helly, 2004a). This is called discrimination by prejudicial effect. A good example for this is the request of a particular weight or size to get a job as a police officer or fireman: this prevents many immigrants from East Asia from getting that kind of jobs.

Finally, discrimination is veiled and free floating when frequent and recurrent practices in the civil society give an inferior status or a closed social space to groups of people, with for example, an over-representation in some areas in schools, associations, clubs and social networks (work, neighbourhood, friends, intermarriages). These practices are difficult to prove and to quantify and they have more to do with the right to choose one's own way of life and one's own social relations.

One can also mention that type of discrimination according to its source whether it is a person, a group of people **or an** institution, a company, a public or state agency.

Institutional discrimination is direct when laws, public measures, corporate, organisations regulations intentionally exclude people from the enjoyment of a right that others have. This form of discrimination by a state might seem absent from democracies but is indeed present. Laws that were adopted in 2001 for reasons of public safety and the fight against terrorism often proved this and the high number of legal disputes on this issue in North America show that some groups are victims of aggressions in their fundamental freedoms. There are other forms of direct discrimination by the state such as restricted access to foreigners to some professions in France and in the field of religious discrimination. We shall see some examples of religious discrimination by European States below.

Systemic discrimination is a particular example of discrimination. It involves all forms and sources of possible discrimination and it refers to the sum of individual or collective acts of individual measures whether past or present which are together the only factors able to explain the inferior status given to some social categories with in the first place cultural minorities<sup>79</sup>.

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<sup>79</sup> Black and feminist movement in the 1950-1960 has showed how behaviours in the civil society such as racism and sexism were giving inferior statuses and unequal opportunities to black Americans and to women. They stated that racism or sexism didn't originate in some isolated individuals but that it was a structural process that was part of the American society and that criminalizing them would not be enough to diminish and compensate equality deficits and marginalization among the black population. Today let us just think about the consequences for the ostracised groups of the middle classes choosing to live in the outskirts of cities in order to avoid the less advantaged neighbourhoods or to register their children in cultural homogenous private schools. In order to diminish the

Systemic discrimination has to do with controlling legal, social, and economic inequality factors, i.e. human capital: age, education, professional qualifications, work experience and knowledge of the official language or languages in the case of immigrants. When these traits of personal merit, considered as legitimate sources of inequality, do not explain the statistical distribution of social ranks, employment, business branches, places of industrial sectors, places of residence, school registration such as detained by categories of people spotted by illegal discrimination criteria (gender, religion, ethnical origin, phenotype, ...), then this is a case of systemic discrimination.

Women or people from immigrant minorities being under-represented in some occupations compared to men or people from a majority group are a case of systemic discrimination when differences of merit between people do not cater for that particular distribution. Nepotism, inter-group avoidance, sexist, racist, xenophobic recruitment, evaluation, workforce and management practices, protectionist fellowship, etc. all seem to be the only possible causes for status differences.

Surveys on systemic discrimination are totally unrelated to a simple statistical comparison of traits of populations from various religions or ethno cultural origins such as a residential concentration, a stronger representation at the bottom of the salary scale, a strong proportion of school dropouts and over presentation in unskilled employment, high unemployment or morbidity rates. This type of comparison doesn't make it possible to conclude that the deficits experienced by some groups are due to discrimination. To assert this, the human capital factor would have to be checked first.

In Canada, such research taking account the auto-identification of the registered population has shown that racialised minorities' income is by 8 to 10% lower than it should be. This deficit is entirely due to discrimination (Pendakur, 2000). Inter-generational social mobility and residential segregation surveys could show the effects of a systemic discrimination based on religious differences.

Legislations or state programs aim to reduce the impact of systemic discrimination. The most efficient and most well-known are

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political and social promotion historical deficit, black Americans have demanded that the state take measures (Myrdal, 1944; Pard. 1950; Moynihan, 1965; Parsons and Clark, 1965; etc.).

the *Affirmative Action Programs* that were adopted by the Lyndon Johnson administration in the 70's in order to improve female presence and racialised minorities presence in colleges and universities in the federal public administration<sup>80</sup>.

## 5. Discrimination against Muslims

*Religious discrimination* is a trespass to the liberty of conscience or to the liberty of cult. This trespass is most of the time not distinguishable; it can take three forms and it can originate in the two sources that were mentioned above.

Direct religious discrimination against Muslims has two main forms that have also been experienced by other religious minorities in Western history particularly by Jews. These are hate crimes and denial of places of cult. In Europe there is in addition of this the absence of respect of governmental agreements or of laws concerning Islam. This shows that hostility against Islam converts is well present in the "highest" spheres of European societies.

No one knows the real scope of job refusals, grade advancement, accommodation, administrative office services, refusals for reasons of religious belonging – that are direct trespass to the liberty of conscience in the case of any religious group and whatever the country. The only thing that is known is that it exists and this is attested by testimonies and some claims with tribunals. Surveys that show rejecting of Muslims are neither forms nor reliable indicators of direct discrimination. They deal with attitudes, they do not deal with behaviours, and the current impact on social desirability or respectability when people were asked to answer questions to do with racism, xenophobia or intolerance gives a distorted idea about the recorded answers.

### 5.1. Hate crimes

Hate crimes based on the rejection of a religion are perpetrated by people. They trespass the liberty of conscience and the liberty of cult and in addition to this they trespass the rights to dignity, security, integrity, and quiet enjoyment of goods. When they are denounced, they are easy to sanction and they are indeed sanctioned

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<sup>80</sup> Some programs of historical preparation or positive discrimination have been adopted in Canada, in Great-Britain and in the Netherlands in order to increase egalitarian access of the members of racialised or linguistic minorities to education and to employment in public institutions.

in many Western countries. They consist in behaving in hostile manner towards a person or a group, in publicly abusing, in publicly inciting to hate, in physical assaults. All these are direct denials of the liberty of conscience. In addition, they are actions of vandalism against mosques and in this case they are to be considered as trespass of the liberty of cult.

In the case of Muslims, hate crimes nowadays are mostly abusive language, attacks against people in the street and vandalism against mosques. However the United Nations' special report (Diène, 2003, 2 and 4) on forms of hostility towards Arabic people and Muslim people in general after September 2001. noted recurrent facts in some countries : physical assaults in Great-Britain and Germany, and in particular against women wearing the hidjab; increased number of disputes on various issues between "Muslims" and the rest of the population in Denmark; attacks against places of cult in the Netherlands (90 from 11<sup>th</sup> of September to 2<sup>nd</sup> of October 2001, *Association of Anti-discrimination Centres*); bomb attacks against mosques in Australia, increased number of malice actions against people, tombs and buildings in France (169 were declared in 2002 with one third in the North of France and in Ile-de-France, Zappi, 2003); defamatory harassment, attacks against people and hostile graffiti on the walls of mosques in the United-States. In Canada (Helly, 2004a), hate crimes mostly consisted in verbal threats in the street and attacks against places of cult.

In addition, since 2001, hate crimes in the shape of diatribe against Islam are no longer the prerogative of extreme right movements. Nowadays, intellectuals, journalists, men and women alike express their repulsion for Islam without inhibition (Geisser, 2003). In an interview in the magazine *Lire* in September 2001, the writer Michel Houellebecq said : "*The most stupid religion after al,l is Islam*". A pamphlet by Oriana Fallaci entitled *La Rage et l'orgueil*, sold more than one million copy in Italy and in France. It is yet another compilation of insults against Islam and against Muslims. Its author was sued for racist abuse in October 2003. On the 24<sup>th</sup> of October of the same year the founder of the newspaper *Le Point* said that he was "islamophobic" and associated Islam with a "*de-bility of various archaisms*" (Cesari, 2004, 100-133).

The amount of denounced hate crimes is a useful indicator of discrimination against a religious group but it is done at random. Hate crimes are only rarely reported by their victims and their witnesses do not report them

According to a recent survey on the subject carried out in 2002 in France, 48% of the French people who were surveyed said they were willing to report racist behaviour to the police<sup>81</sup>. In addition, compiling hate crimes is not obligatory in all countries and when it is, it is most commonly done according to different and inadequate procedures within the same country.

Two conditions are necessary for the compilation of hate crimes to be reliable and to serve the qualitative indicator of a growing, stable, or regressive religious discrimination climate. One of the two conditions is obvious but is not admitted in some countries: the right for the police to identify victims according to their religion. The second condition is the imposition of similar claims recording procedures and standards every year in every city and possibly in every country in order to make reliable comparisons (mentioning the reason for discrimination, the type of aggression, etc.)

In order to be meaningful the compilation of hate crimes requires yet another condition: that the members of the discriminated group trust the police. This implies regular relations between the police and the community sectors and the sanction of any bad treatment or ethno-religious discrimination by the police force. The example provided by the FBI in recording hate crimes against Muslims shows how important it is to set terms and conditions when reporting discrimination to official agencies. For a number of years Muslim organisations have urged Muslim victims of hate crimes to report these to the police or the community associations. This worked well after the September 2001 attacks: in 2001 the FBI reported for 481 crimes whereas the *Council on American Islamic Relations* (CAIR) reported 1,700 hate crimes from September 2001 to February 2002 (Abdelkarim, 2003).

It can be deduced from these results that it is useful to grant public funding for the compilation of hate crimes by ethnic associations linked to a religious group and defending individual rights on the condition that these associations are also provided systematic standards for data collection. There being such standards mustn't hide the fact that any increase or decrease in the number of registered claims for hate crimes can only be considered if other external factors are checked and measured such as an information

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<sup>81</sup> Zappi S., « 2002 : racism progresses, anti-Semitic acts are becoming more numerous », *Le Monde*, 29 March 2003.

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campaign against discrimination by public agencies, a famous  
cause come to a happy end, an NGO campaign, etc.

All States should have a legislation that defines hate crimes and that allows them to be combatted and to target the disclosure of racial and religious hate particularly on the World Wide Web. Hate crimes are one of the most traumatizing and violent forms of discrimination. In the absence of efficient legislative and administrative measures, the impunity of their perpetrators shows the indifference of a society and of its political agencies towards the victimisation of entire categories of the population, in this case Muslims and Jews, main victims of present day hate crimes.

## **5.2. Refusal of Mosques**

Refusing the funding of mosques or of their renovation, forbidding Muslim squares in cemeteries, denying licences for spaces for prayers on work and education places, in hospitals and in prisons for example, are all forms of direct trespass of the liberty of cult and they are often perpetrated by institutions. This book reports cases of more or less strong illegal resistance to the building of mosques or to their renovation in Cheratte in Belgium (A. Manço and collaborators), in Schaerbeek in Belgium (U. Manço) and in Roubaix in France (Marongiu), and to the licence to erect Muslim squares in Gent in Belgium (Zamni and Kanmaz) and in Granada in Spain (Raya Lozano).

The presence of a mosque, unlike anonymous or invisible halls of prayers is an apparent sign of Islam community life in the urban landscape. The distinction between these two types of place of cult is not so much due to its size; rather it is linked to their visual impact. An open hall for prayer in back shops or in flats can be ignored by non-Muslim neighbours and by the authorities but mosques ostentatiously show religious belonging and they are the scene for cultural, social, educational and religious activities. They are also the living proof of the presence of Islam in a neighbourhood or in a city. What used to be an invisible Islam has now often become an unwanted problem when applications for mosques are made.

Any project to build a mosque implies negotiations with various categories of non-Muslim interlocutors and the islamisation of the urban landscape has often been confronted to resistance per se. Whatever the justification or ever the claim expressed by Muslims, the first step in a file for the building or for the furnishing of a

mosque has often been rejected by communal interlocutors or by neighbourhood associations. This resistance however, follows a cycle that is related to the degree of acceptance of Islam in a local and national context and this cycle depends on a number of factors that leave no space for generalization.

For example, in countries where immigration started a long time ago such as in France, Great-Britain, Belgium and the Netherlands, resistance to mosques has faded since the 80's. The situation seems stable in France and in Great-Britain but the recent rise in popular hostility against Muslims in Belgium and in the Netherlands heralds no similar development in those countries.

In France mosques have been built (Lyon, Evry, Mantes-la-Jolie), others are being built and negotiations were engaged between the municipality and the associations' delegates. The mosque projects in Marseille and Toulouse are examples that show that the resistance of the local authorities to the building of a mosque is no longer on the agenda; the current reasons for construction delays are a power struggle between Muslim associations. The struggle has been exacerbated by the French policy on Islam.

In Great-Britain, in the case of Bradford, Sean McLoughlin (2005) highlights the absence of conflict in the building of mosques and the insertion of Islam in the urban space. He says that Muslim population concentrations in Bradford is one of the reasons however the non conflict aspect of a mosque project is always the result of communication between neighbours, public authorities, delegates and Muslim leaders. For that matter, a new generation of educated association leaders, particularly in France and Belgium, have improved their negotiation skills compared to those of the first immigrant generation. This explains why it has been possible to have mosques projects licenced. The social peace around the mosques that have been built also explains why more projects are now more accepted by neighbourhoods and by the authorities. Muslims inevitably use this argument in their talks with the political authorities.

By contrast, in countries where Muslim immigration is a recent phenomenon such as Spain or Italy, resistance is still strong. For example, the mosque construction project in Lodi in 2001 gave rise to resistance from the local population and decision makers. This shows the overall attitude towards most mosque projects in Italy. In Spain there is a ten year deadline and the Spanish Andalusia

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and Granada authorities have been hesitating and delaying on and on the Alhambra Muslim square project (Raya Lozano, in this book; Cesari, 2002, in the printing press). This indeed shows that the animosity against Muslims is still very alive in this country.

Germany is a different story. Turkish immigrants have been in Germany for a long time but they have only been recognized as permanent residents for a short time. Mosque projects still face many obstacles. In 2001 the Municipality of Berlin did not allow the construction of the "Mevlana" mosque in the Kreuzberg part of the city.

The refusal to let mosques built has rarely been expressed as such. However, the arguments put forward at local level to justify the refusal of the building of a mosque are everywhere the same : noise and traffic nuisance, incompatibility with existing urban planning projects, non-compliance with safety standards, etc. One fact is revealing on the content of the refusals. Beyond technical obstacles, refusals everywhere are linked to a generalized reasoning over Islam that tends to systematically associate Islam with threats to domestic order. In Europe, this reasoning is linked to Islam being considered as a religion and a civilisation that have direct impact on the negotiations between the authorities and the Muslim groups in the urban space and this attitude against Islam was strengthened after the September 11 2001 events. Islam as a national threat and as an international problem became an international threat. The municipality of Berlin refusing the building of the Mevlana mosque in 2001 shows that Islam is associated with national safety and international problems and that this justifies the resistance to the presence of Islam in the urban landscape.

Resistance is always justified by the Muslims' marginal social and economic condition which makes it more difficult for them to get funds in order to build mosques and which often prompts them into looking for funds abroad. This constraint is yet another cause for the refusal or mistrust on the part of the public authorities. The social and economical marginality of Muslims has yet another consequence: the building of mosques in the urban outskirts on less costly and less desired plots of land. This constraint is often considered by Muslims as yet another sign of their being considered as second class citizens.

Finally, let's note that the resistance to building mosques expressed whatever the nature of the project at stake. Four examples (in this book, among others) show that Muslims have been willing

to negotiate the architectural feature of mosques such as minaret or the modes of functioning (call for prayer). These examples also show that no ongoing project ignores the constraints tied to the immediate urban environment. But the islamisation of urban space is not limited to the simple technical questions. A recent trend that was identified in parts of Rome, Granada, Roubaix or Cheratte shows this. We are talking about a relatively new and often incomprehensible fact in secularized European social spaces; we are talking about the organisation of cultural and social activities proposed to all of the neighbourhood population that are often part of mosque association project currently under consideration (Cesari, 2005). In Berlin, for example, the organizers of the Mevlana mosque project have been trying to get state funds to set up social services and education services for all residents in the neighbourhood.

### **5.3. Violation by the state of agreements and acts on the status of Islam**

Direct institutional discrimination against Islam by governmental agencies is even more serious and incoherent when legal acts that were adopted or signed by the state are not implemented. This is often the case in Europe. When such an event occurs, it should be followed by a claim to legal agencies because in a democracy rights of minorities are not electoral gadgets but unavoidable and granted rights. It is inconceivable that minority groups should spend energy and human and financial resources to make their constitutional right to equality of treatment respected by the state. However, in Europe, the conflicting relations between cultural minorities and majorities is so much in favour of the latter and the spirit of defence of fundamental freedoms is still so much in its infancy that these denials of rights are frequent and often marred by politics. In countries where religious freedom is indeed considered as a positive right or where the equality of cults is deeply settled, the denial of equality of Islam with majority cults is frequent. Here are two present day examples of this: in Belgium, the freezing of financial funding for Islam since 1974 is a serious trespass of the equality of cults. The same goes for the violation, in no way justified by obvious security reasons, of the 1998 agreements establishing the rules for setting up the national body that represents Belgian Muslims and for the interference since May 2004 of the central government in the election of that body. Both trespass the principle of the liberty of cult and put Islam in a situation of inequality in relation to other organized religions. This type of

interference in the management of other recognized cults in Belgium would be unthinkable. The start to the year 2005 leaves hope for changes albeit slow and partial, but positive in the first reported file.

The violation of the 1992 governmental agreements clauses that recognise Islam in Spain is yet another example of direct denial of rights by a state. The January 26, 1992 Spanish law has recognised the Muslim cult through the Islamic Commission of Spain (CIE) which consists of the Spanish Federation of the Islamic Organisations (FEERI) set up in 1989 and the Spanish Islamic Community Union (UCIE) set up in 1990. These federations were made up of the first associations of converts from Ceuta and Melilla and people from the Middle-East, all members of liberal professions or diplomatic staff.

The 1992 act grants tax relief and legal advantages to Muslim places of cult and it recognises that they are assured and certain. However it fails to be respected by the Spanish state or by municipal and regional administrations. Having said this, the exacerbated divisions between converts and Muslim immigrants do not favour its enforcement (Cesari, 2004; Helly, in printing).

#### **5.4. Indirect discrimination, conflicts of standards and obligation to make reasonable adjustments**

In terms of systemic discrimination as a reliable indicator of the status granted to a particular social category, nothing can be asserted as for Muslims or as for any other religious groups. There are no statistical surveys about the social, occupational or residential status according to the human capital of people and their religious orientation.

By contrast, a form of indirect discrimination that is little recognised by law and yet very active in the case of religious minorities is visible and that is the strength of cultural majorities. When interacting socially, people continually implement cultural, moral, religious standards and on the basis of these they create distinctions between people and groups and they create skewness and hierarchies between people that generate inequalities.

The expression of a minority cultural choice is therefore constrained by the choices that are shared by the majority of a popula-

tion, a group or an institution. The terms cultural<sup>82</sup> majority, charter groups, dominant culture are used to describe these interpretations as a whole that are rarely explicit, that are taken for granted and that determine daily relations among people in the main aspects of their social lives.

This explains why employed people from a religious minority are ignorant in this matter in most companies. The managers of these companies belong to a majority culture. Another example illustrates the situations created by this "cultural blindness": it has to do with the various possible interpretations of this principle of separation between the state and the Church by the American Supreme Court. This separation may simply mean the fact that it is forbidden for the state to allocate funds to religious institutions or it can also mean that it is forbidden to fund religious institutions and that it is forbidden for any public building to have symbols or to have practices that refer to a majority and historical religion (cross, crib, bible, etc.). In the first case an abstract non historical general rule defines the scope of the law; in the second case, the interpretation takes account of a sociological reality and the pre-gnance of Christian traditions and considers religious minorities and majorities equally.

Today the issue is no longer just to tolerate and to protect the expression of a religious belief and of a cult but to *allow without prejudice the expression of minority beliefs, to erase the stigma around them, and to correct any indirect discrimination created by a majority Christian standard. Recognizing that minority religious groups are an integral part of society and admitting that they have the right to be visible on the public arena is the issue today.*

In the case of Muslim followers, the different standards that cause a discrimination are related to practices that are easily managed by adopting adjustment measures : diet for hospitalised patients, for children at school, for prisoners or for fostered children, creation of a hall for prayers on the workplace and in education institutes, children punishment methods that include youth protection laws and parental authority protection laws, different outfits for girls, particularly during physical education classes, the respect

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<sup>82</sup> Constructed on the basis of various concepts (culture, language, religion, sexual orientation, agenda, national origin and therefore they are numerous and changing inside the society.

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of religious festivals by students<sup>83</sup> or the respect of burial practices. These particular standards do give rise to conflicts because accepting them means recognising religious plurality in a society and then to a leadership of a particular religion and a particular culture said and believed to be unique and national.

The precept of equality is central and the new religious minorities originated in the immigrant population are large. Therefore, legislation in all countries should force people to adopt adjustments that would allow minority religious and cultural standards to be respected as long as, obviously, these have no negative impact on the rights and liberties, or security or public order. Cultural adjustment should not be a compromise or a type of tolerance. It should be a legal obligation in line with the democratic principle stating that no cultural standard other than those of the respect of liberties and human rights and democracy should prevail (Helly, 2000a).

The obligation of adjustment should go along with buoys that take account of the constraints of people, companies, institutions that have to follow them. For example, the Canadian Supreme Court stated that when adopting an adjustment aimed at reducing indirect culturally motivated discrimination actions, no excessive constraints should be imposed on the person on or the incriminated institution, such as too high costs or substantial disadvantages (safety standards) or a trespass on rights of other people or of collective bargaining<sup>84</sup>. Hence, the Court judges invented the notion of *reasonable adjustment* stating that such adjustment was a “minimal disadvantage and that it was the price to pay for the liberty of religion in a multicultural society”.

### **5.5. Indirect discrimination and the fight against terrorism**

In all Western countries, the fight against terrorism has given rise to measures that have shown to be trespasses to the liberty of conscience of Muslims. All antiterrorist laws or measures that have this objective and that were adopted before or after 2001 trespass the fundamental freedoms of all, given that police and counterintelligence agencies now have increased powers when searching for

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<sup>83</sup> By setting up, for example, mobile learning days, which would allow children of the orthodox, copt, muslim, christian and other faiths to celebrate their main festivals on their respective dates.

<sup>84</sup> Ontario Commission for the Rights of the Individual c. Simpson Sears Ltd, (1958)2, R.C.S., 536.

information and when controlling citizens. However, they are mostly targeted at Islam followers and at those that are mistakenly assimilated to Islam followers such as Copts, Maronites and Melkites and they caused strange confusions<sup>85</sup>. This shows in the French law on “daily safety” that was adopted on November 15, 2001. It was adopted at the National Assembly debates. It includes a list of points on the fight against terrorism that amalgamates inland safety delinquency and terrorism and that intensifies ostracism against young people in the outskirts, young people often being of Muslim culture. Two measures of this law in particular bear no relation with terrorism and major delinquency and will have no impact (Cesari, 2004, 59-60) in the matter. These are the measures to do with quietness in collective building staircases and those to do with a maximum six-month imprisonment sentence for the people who compulsively fail to pay public transports.

## **6. Symbolic recognition and cultural change**

The forms of discrimination described above are caused by the negative perception of Islam by a significant portion of Western populations. It is the result of an accumulation of stigma connected with this religion particularly in Europe where this minority has historically been part of the lower classes and where it is prejudiced by its class, unlike Muslims who settled in North America. These stigma come from a less privileged immigration past, where people used to be poorly educated and live on low incomes, used to have a religious difference negatively perceived over the past century, a colonial history in many countries, a little-educated religious staff, where they were marked by the impact of the conflict in the Middle-East, and by Islamic fundamentalism.

Besides, in Western Europe, the socialization of populations by schools, public institutions, the mass media and the political elites to a national specificity of the history of their country and of the vocation of their state has given the tone over the past twenty years but it has left traces behind. The most virulent of these traces is the xenophobia against classes that are stepping down the social scale. This xenophobia is exacerbated by far right parties in Ger-

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<sup>85</sup> If in North America the situation is similar, critics and militants in organisations for the defence of freedoms and Muslim organisations are explicitly and actively against local police and border officials paying particular attention to “Arab” and “Muslim” types.

many, Austria, France, Flanders, and in the Netherlands. The European enlargement to countries with a strong national tradition and religion (Poland) and where anti-semitism is still part of the political arena (Hungary) is yet another side of the difficult recognition of the Muslim difference as a component of European societies.

The recognition of Islam followers as full members of the society where they live means that the public authorities have to interfere with a view to transforming, on the one hand, the definition of social belonging and, on the other hand, the public institutions' culture. These interventions can be classified as follows:

- Stating clearly and explicitly in public speeches that the Muslim population has a legitimate place in society ;
- Training public services staff to accept religious plurality and professional sanction of any discrimination behaviour;
- Training teachers and adding education to religious plurality to the curriculum;
- Training staff in social control bodies such as the police and tribunals to implement discrimination laws or measures;
- In schoolbooks, systematically eliminate stereotypes regarding Islam, revising colonial history regarding Muslim and other countries, including a description of current international relations and of the most widespread religions;
- Recruiting by the state of immigrants and of their children in the form of a positive action program or special programs in order to enlarge the means of social mobility for the new generations of Muslims and in order to break their real or perceived imprisonment in some industries and in order to diminish their complaints on this issue;
- Negotiating with the media and with large organizers of campaigns of fight against discrimination and of recruitment measures of people from Muslim origin;
- Defining standards in order to facilitate the opening and the enlargement of prayer halls and the size increase of existing places of cult, the building of burial sites, and contributing to a just funding of minority cults where legally allowed;
- Enabling minorities to defend their rights by giving public support to their community. It is not necessarily about funding

religious organisations. It is possible to subsidise non-religious associations that operate various social educational cultural activities held in Mosques.

These interventions in favour of the ethnic community were adopted by Canada in the 80's. They have so far been successful. They were implemented by federal programs such as "Multiculturalism" by means of provincial and municipality programs. They helped reduce racism and xenophobia in one of the societies that is most marked by the "white civilization" superiority and they helped change it into a society that accepts cultural plurality (Helly, 2004b).

Given the psychological background behind any intolerant attitude<sup>86</sup> and the pregnance of socialization over nationalism, it wouldn't be possible to try and eliminate cultural discrimination and in particular religious discrimination. However, one can try to control it by criminalizing it and by making it socially wrongful. This is why the role played by the State in its symbolic values and in its actions is central.

In a democratic society, it is up to the citizens' initiative and responsibility to defend their rights. Discrimination becomes an all-powerful handicap when people of groups that are its victims do not have the means to respond to it. Therefore, it is a central democratic measure to enable cultural and/or religious minorities to have their rights respected. State funding to ethnic and non-ethnic associations that train their members to defend their rights has been one of the important chapters of the Canadian Multiculturalism Program. One should be wary of any argumentation against this particular forms of support in the fight against violation of democratic regulations or of human rights by ethnic organisations. Any public funding can and must follow ethical and accountancy regulations and it is easy to allot human resources to the monitoring of the implementation of charters, of yearly or biannual elections, and of the control of their activities. Once again, Canada is a good example of this as 10% of the immigrant population are members of one or the other association.

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<sup>86</sup> In particular, identity security due to the loss of collective sets of references, with, among others, the weakening of social protection in the nineties, cheaper immigrant labour, the non-equivalence of citizenship and civil and social rights, since immigrants have been granted these rights, the new rights of social classes that question secular hierarchies (women, homosexuals, etc.).

## **7. Reducing social and economic inequalities**

One shouldn't talk of religious discrimination as racism or xenophobia without looking at all the immigrants' social conditions and those of their children. Comparing the conditions of integration of immigrants and their children in Europe and in North America brings to light some basic processes, whether these conditions are social, economical, symbolical or institutional. The keys for immigrant integration are their insertion on the workplace in conditions of equality and the social mobility of their children at the same level as that of the other members of the society. Both conditions go hand in hand and the State and political reasoning on the social equality is inefficient if it is not possible to install an equal insertion capacity on the work market and at school.

Besides anti discrimination measures, positive action programs or programs that target immigrants and their children, useful measures are well known: they are part of the common law social policies aimed at improving the fate of any underprivileged social category:

- School support for children with learning difficulties; teaching of the mother tongue of the immigrants with the view to its impact on subsequent learning processes; study grants for children from low income families; etc;
- Mixed social accommodation programs in order to avoid the formation of poor ethnic neighbourhoods;
- Vocational training and adult education programs.

## **8. Conclusion**

In the case of present day Muslims, one can note that discrimination is both direct and indirect and that it often comes from public institutions. This is the sign of a very tense general climate and of an inability or a refusal on the part of the political bodies to cancel these tensions.

The legislations that forbid discrimination and that criminalize it are not enough to control the impact of this climate because they belong to a formal conception of rights. They are based on the idea that religious affiliation is a free personal choice because the law protects it. Typically they seem to ignore the abstract universalism

of rights, they seem to ignore prevalent processes in any given society, such as that of the predominance of cultural majorities that are responsible for many veiled denials of rights and for systemic discrimination.

Equality of rights has four forms: equality before the law, equality when the law is implemented, equality of protection by the law, but also equal enjoyment of the law. The notion of equal enjoyment of the law is central when inserting Muslim minorities and any group in a social, political, and cultural position of inferiority. It makes it possible to counteract inequality impacts of the formalist and abstract conception of the universalism of rights and equality. *This identical treatment for all by the law can cause inequalities and respecting true equality often requires that distinctions be made between people.* After twenty years of university and legal arguments triggered by the book by J. Rawls (*Theory of Justice*, 1971) and the reply by M. Sandel (*Liberalism and the Limits of Justice*, 1982), one can only admit that this is the case (Helly, 2000b, 2002).

The conclusion is that any public policy aimed at really integrated Muslim populations along with other populations that do not belong to the European cosmogony has to follow two paths. It must introduce or strengthen measures and laws that protect these populations as residents in a country; it has to adopt programs aimed at reducing their stigmatization and educating the population at large so that a new social conformism that values social cultural plurality comes about.

Invoking the abstract universalism of rights in order to reduce deficits in the insertion of socially and economically underprivileged and victimised categories is not very useful. Given that the number of unskilled or little-skilled jobs has steadily decreased since the 80's as a result of globalization and given the increased competition among qualified workers, refusing programs that target the new Muslim generation in order to widen their possibilities to move up the social ladder and not responding to their legitimate request to have their beliefs and their cult respected, can only increase their economic marginalisation and their political and cultural alienation. In some countries, the religious criteria is an illegitimate criterion of public intervention but the criterion of the country of origin, or the cultural reference, or the crisscrossing of criteria (social and economical status, mother tongue, place of residence, ...) can be useful.

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