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Europe's Loud Silence:
A critical look at the issues of race and Afrophobia in the European Union

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“Not everything that is faced can be changed, but nothing can be changed until it is faced”
– James Baldwin (*As much truth as one can bear*, 1962)

“Across cultures, darker people suffer most. Why?”
– Andre 3000 (sweatshirt motto)

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Table of Contents

ACKNOWLEDGMENTS	4
ABSTRACT	5
1. INTRODUCTION	6
1.1 CONTEXT	6
1.2 RESEARCH QUESTION.....	8
2. THE LEGACY OF BELGIAN IMPERIALISM	11
2.1 TRACES OF AMBIVALENCE IN THE ‘MOTHERLAND’	17
2.2 THE SHADOW OF THE DOMINANT.....	19
3. RACE AND RACIALIZATION: WHAT ‘RACE PROBLEM’?	24
3.1 DISAVOWAL OF RACE IN CONTEMPORARY DISCOURSE	25
3.1.1 <i>White supremacy and the erasure of the Black experience</i>	28
3.1.2 <i>Otherness in a white majority: Between assimilation and self-preservation</i>	30
3.2 OPPORTUNITIES AND LIMITATIONS FOR A FRAMEWORK.....	32
4. INTERSECTIONALITY: A FRAMEWORK	34
4.1 STREAMLINING APPROACHES – EUROPEANIZATION OF INTERSECTIONALITY.....	36
4.2 EU GENDER EQUALITY AS THE ONLY EQUALITY FRAMEWORK?	38
4.3 THE INSTITUTIONALIZATION OF NORMATIVE FEMINIST INTERSECTIONALITY IN THE EU	39
4.4 EU EQUALITY LANGUAGE: MULTIPLE DISCRIMINATION VERSUS INTERSECTIONALITY	42
5. THE RACE EQUALITY DIRECTIVE 2000/43/EC	46
5.1 ORIGIN AND DISCUSSION OF ARTICLE 13 IN THE EC TREATY	48
5.2 ASSESSMENT OF THE RACE EQUALITY DIRECTIVE	53
5.3 INDIRECT DISCRIMINATION: A CRUCIAL WEAKNESS IN A LITIGATION-BASED SOLUTION	55
5.4 LIMITATIONS.....	58
5.5 EUROPEAN COMMISSION COMMUNICATIONS/JOINT REPORTS ON THE RACE EQUALITY DIRECTIVE	60
5.6 NATIONAL ROMA INTEGRATION STRATEGIES – AN EXAMPLE FOR THE FUTURE.....	64
6. CONCLUSIONS	68
BIBLIOGRAPHY	72

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Abstract

With the current refugee and migrant crisis consuming the continent, it seems easy to forget that there is a sizeable Black minority, which has been present in Europe for a very long time and continues to suffer from socio-economic and political inequality. In this thesis, I briefly contextualize the specific form of racism experienced by Black Europeans/People of African Descent in Europe. After that I explore possible explanations for why there exists to this day in European countries a reluctance to recognize the racism that these people continue to endure. The impetus for this study stems from the fact that there has not been a single national or European policy which specifically addresses the racial inequalities and discriminations experienced by Black Europeans, despite much previous research and evidence demonstrating the need for such a policy.

In examining these issues, the study employs critical race theory in order to understand the current weaknesses in EU anti-discrimination legislation, the dismissal of negative colonial memory, and the lack of intersectionality theory in institutions and policies. By conducting this critical analysis, my work advances our understanding of racism in Europe and illustrates its thesis through an in-depth discussion of racialization and the construction of the African as the “other”. The findings from this research show that the impact of vague anti-discrimination legislation, disregard for intersectionality theory and the absence of the memory of imperialism in EU discourse are more damaging than previously acknowledged in regards to the social inclusion of Black Europeans/People of African Descent in modern-day Europe.

I conclude that at this point a EU Framework for National Strategies to combat Afrophobia could represent a welcome first step, but would nevertheless ultimately serve more as a symbolic effort than a true catalyst in confronting entrenched racism and discrimination towards Black European/People of African Descent.

1. Introduction

1.1 Context

The changing dimensions of political culture should not prompt one to ignore the enduring significance of race and racism in contemporary Europe. As Paul Gilroy has written: “opinion formers have always found it easier to discover the problems of extreme racial nationalism in the fascinating shaven-headed forms of the neo-Nazi young and fit, than in the anonymous pin-striped indifference of those who might not profess their commitment to race hierarchy in public after dark but whose disinterested actions institutionalize it nonetheless”.¹ Given the rising popularity of far-right nationalists, it is easy to narrowly ascribe trends towards racism and discrimination to such groups alone. However, such manifestations of extremism are merely the outcome of years and years of racialized societies throughout Europe ignoring the internal struggle for human rights by their own marginalized communities. In view of this disturbing situation, one must consider what it will take to acknowledge the specific form of racism that People of African Descent and Black Europeans (hereafter: POAD and BE, respectively) are subjected to.

Afrophobia can be defined as “a specific form of racism that refers to any act of violence or discrimination including racist speech, fuelled by historical abuses and negative stereotyping, and leading to the exclusion and dehumanization of people of African descent”.² The complex history and circumstances behind Afrophobia shed important light on the very real problem of racism directed towards POAD and BE in current-day Europe. By evaluating the lack of intersectionality theory in European anti-discrimination law, the weaknesses of the Article 13 Directives, and the obliteration of the memory of past atrocities towards black people, I hope to reveal how the ignorance of their oppression maintains and even reinforces the existing system of racism in contemporary Europe.

¹ Gilroy, Paul. 2002. *There ain't no black in the Union Jack: the cultural politics of race and nation*. London: Routledge, xxxiv–xxxv.

² European Network Against Racism (ENAR): <http://enar-eu.org/People-of-African-descent-experience-widespread>.

Despite legal remedies for discrimination which EU and national legislation have provided, evidence from the FRA (Fundamental Rights Agency, a European Union organization), the UN's working group on people of African descent, and the European Network Against Racism (ENAR) establish that anti-black racism in the EU is still a reality. Criminal justice, education, employment, public and political life, media, housing, health, impact of migration and asylum policies and practices: major disparities between Black and majority populations are found in all these sectors. The recent instances of police brutality in France which resulted in the severe physical abuse of Theo and the death of Adama Traore³ are yet two further infamous incidents that demonstrate how Black people are particularly exposed to police violence – a phenomenon also reported in Belgium, Germany, the Netherlands, Portugal, Sweden and the United Kingdom. In Paris, France, research by the Open Society Justice Initiative showed that people perceived as “Black” were overall six times more likely to be stopped on the street and questioned by police than White people.⁴ In education, we likewise see discrimination and exclusion based on skin color. For instance, in Ireland a young teenage black boy was racially abused by a nun who called him a monkey, suggesting that he could climb trees.⁵ Adding to this problem is the conspicuous absence of the mention in school curricula of the societal contributions which of People of African Descent and Black Europeans have made.

Furthermore, higher unemployment rates of POAD and BE in all countries reveal the presence of discriminatory procedures in the hiring process as well as at the workplace. In Austria, a study showed that while 37% of applicants with Austrian names receive invitations to job interviews, this is true for only 18.7% of people of Nigerian origin – despite the same levels of qualification.⁶ Underemployment in positions that do not match their qualifications and underrepresentation in the workplace are additional impediments to these people's labor

³ First deemed an accidental death due to an infection, now a counter-investigation has found that Adama Traore's death was due to asphyxiation. On this see http://www.lemonde.fr/police-justice/article/2017/07/04/le-deces-par-asphyxie-d-adama-traore-confirme-par-une-contre-expertise_5155625_1653578.html

⁴ Open Society Institute. 2009. *Profiling minorities: A study of stop-and-search practices in Paris*. Open Society Justice Initiative. New York: Open Society Institute. Available at: https://www.opensocietyfoundations.org/sites/default/files/search_20090630.Web.pdf.

⁵ Michael, Lucy. 2015. *Afrophobia in Ireland: Racism against People of African Descent*. Dublin: ENAR Ireland. Available at: http://enarireland.org/wp-content/uploads/2015/11/afrophobia_mediumRes.pdf

⁶ ZARA. 2015. *Racism Report 2014*, 53. Available at: http://www.zara.or.at/_wp/wp-content/uploads/2015/03/Zara_RR14_web_fin.pdf

potential and their economic contributions. Further reinforcement of negative stereotypes we find in the media, which continually fail to produce accurate and balanced images which portray POAD and BE positively. Such negative media portrayals may explain why in Cyprus, Greece and Malta, the term “migrant” is used to describe all people of African descent, even when they are European citizens, as outlined by ENAR. Compounding the problem is the lack of Black people in the executive staff positions of public and private media throughout Europe.⁷ Problems in the housing sector and also the discrimination faced in the private rental market by POAD and BE are sadly highlighted by the recent tragedy of Grenfell Tower in West London.⁸ POAD and BE are reported to live in older parts of urban areas, often in cramped housing of poor quality.

These are just a few examples of the common experiences of POAD and BE which continue to exert a profound impact on their lives. Many factors contribute to the notable absence of formal proposals or strategic frameworks to combat Afrophobia. Among those factors is a lack of equality data collection⁹ in almost all Member States of the European Union except the United Kingdom. Because of this, it is nearly impossible to state how many people of African descent live in Europe. However, the European Network Against Racism submitted a Shadow Report on *Afrophobia in Europe* in 2015, which estimates that the Black population of Europe comprises approximately 15 million people – thereby making this one of the largest marginalized communities of Europe.¹⁰

1.2 Research Question

Despite all of this evidence and even with race equality legislation in the EU and tools to combat discrimination, no EU policy or even national policy has been developed specifically to combat

⁷ A report published in June 2015 by Ofcom, the United Kingdom communications regulator, revealed that 55% of Black ethnic audiences feel under-represented on British TV. The proportion of Black audiences who report being portrayed negatively by broadcasters stood at 51%.

⁸ See <https://www.theguardian.com/commentisfree/2017/jun/16/grenfell-tower-price-britain-inequality-high-rise> or <https://www.theatlantic.com/international/archive/2017/06/london-fire-grenfell-public-housing/530298/> for further information.

⁹ Equality data collection refers to any type of disaggregated data collected to assess the comparative situation of groups at risk of discrimination.

¹⁰ See European Network Against Racism. 2015. *Afrophobia in Europe: ENAR Shadow Report 2014-15*. available at: <http://www.enar-eu.org/Shadow-Reports-on-racism-in-Europe-203>.

racism and discrimination against People of African Descent and Black Europeans. With the increase in anti-migrant rhetoric, public and political support for anti-racism issues is on the decline. This thesis seeks to determine the reasons for the widespread reluctance of Europeans to acknowledge the existence of anti-black racism in Europe, and to examine the question whether the proposed EU Framework for National Strategies to combat Afrophobia and promote inclusion of POAD and BE would at this time improve their situation or simply serve as a symbolic attempt to address the issue. My work of course relates to that of a number of others, but while many academics and researchers address anti-black racism, its origins and effects in terms of individual countries, I strive in this study to determine the common factors between various nations that result in this reluctance to acknowledge Afrophobia. In doing so, I will demonstrate that varying attitudes towards racial difference are not indicative of varying levels of racism between Western European countries and the United States. Instead, this research proves that anti-black racism is highly comparable in these countries. The methodology employed to answer these research questions will utilize critical race theory in a European context by researching the sociology of race in Europe, the historical context of the colonial past, the applicability of intersectionality in European anti-discrimination law, as well as an in-depth analysis of EU legislation, such as the Race Equality Directive stemming from Article 13 of the Treaty on the European Union (EC Treaty).

Chapter II will assess the legacies of colonialism and imperialism that contribute to the racialization of European society and argue that they remain largely ignored in current-day skewed perceptions of the colonial past. This phenomenon will be viewed through the specific case of Belgium, which is a nation whose perception of its imperial history is particularly distorted. Chapter III will contextualize this denial of memory in terms of the racialization of society; this part includes an analysis of the continuing debate regarding the controversial figure of Zwarte Piet in the Low Countries, as well as a discussion of the concept of “othering”. Chapter IV will critically analyze intersectionality and its relevance in Europe. Here we will consider the application of this framework theory in the European context, as well as its mainstreaming capacities. The institutionalization of intersectionality in the EU will be discussed and we will examine how the term “multiple discrimination” has caused a setback in the implementation of intersectionality theory in Europe. Chapter V will assess the EU Race

Equality Directive and identify its main problems, especially in the development and context of anti-discrimination law throughout Europe, specifically addressing the deficiencies of Article 13 in the Treaty on the European Union. The European Commission influences much of this, and therefore an inspection of its influence on the Directive and subsequent other related directives will also be necessary. I conclude the present study by briefly analyzing the current National Roma Integration Strategies and considering whether their success or failure bodes well for a similar strategy to combat Afrophobia in Europe.

2. The legacy of Belgian imperialism

In writing about the colonial legacy of Belgium, I intend to illustrate how the past continues to influence the present as well as the future and maintains the status of negative perceptions of POAD and BE. Furthermore, highlighting the absence of discourse on imperialism and colonization in the EU makes it clear how everyday racism against POAD and BE is minimized and trivialized throughout Europe.

While studying colonial legacies throughout Western Europe, in particular Belgium, it has become apparent that not much research has been carried out on the conspicuous absence of imperialism and colonialism in EU discourse. Perhaps there is a simple explanation for this lack of discussion, or perhaps the same factors of racial ideology, white supremacy and scientific racism that justified the trans-Atlantic slave trade and colonialism now justify the disregard for or minimization of such memories. However that may be, time and time again, leaders and politicians have made clear what the conception of Africans in the eyes of Europeans is. This European image of Africans was made evident by Nicolas Sarkozy during his visit to Dakar, Senegal, in 2007: “Le problème de l’Afrique, c’est qu’elle vit trop le présent dans la nostalgie du paradis perdu de l’enfance.” (The problem of Africa is that it lives too much in the present in the nostalgia of the lost paradise of childhood).¹¹ The victims and descendants of colonization are supposed to come to terms with the atrocities of the past, but with the exception of a recent case in the UK in regards to Kenya,¹² there have been no financial reparations for those whose lives have been forever marred by the shadow of European imperialism. Unlike the American slave trade and slavery, not much public attention or academic focus has been directed at the legacy of colonialism. A lesser-known story of colonial terror is Belgium’s reign of the Congo. Therefore, I draw on this history to demonstrate how forgotten historical injustices impact the lives of POAD and BE today.

What separates Belgium’s colonial past and legacy from that of other colonizing nations is its inability to engage in a dynamic memory policy. The country serves as a glaring example of a

¹¹ http://www.lemonde.fr/afrique/article/2007/11/09/le-discours-de-dakar-de-nicolas-sarkozy_1774758_3212.html

¹² <https://www.theguardian.com/world/2013/jun/06/uk-compensate-kenya-mau-mau-torture>

society where “a decolonization of the mind has yet to occur”.¹³ This is showcased in many ways, most notably by the profusion of white colonial statues and street names that can be found in abundance throughout Belgium, whereas there is not a single tribute to a Congolese. Belgium’s memory of the past is influenced both by the “ways in which two (or three) generations of Belgians learned about their colonial history and by the effects of current identity concerns”.¹⁴

Let us begin by briefly summarizing the colonial history of Belgium. In the Scramble for Africa, the Belgian King Leopold II seized an area which was later to be called, ironically, the “Congo Free State”. What ensued has come to be known as a “forgotten Holocaust”. George Washington Williams, who was among other things an American army veteran and Christian minister,¹⁵ personally visited the Congo in 1890, where he witnessed the atrocities committed under Leopold’s rule. In a letter to the American Secretary of State condemning these outrages, “he used a phrase that seems plucked from the Nuremberg trials of more than half a century later. Leopold’s Congo state, Williams wrote, was guilty of ‘crimes against humanity’”.¹⁶

According to Martin Ewans,¹⁷ there are three distinct periods that one can distinguish during Belgian colonial and postcolonial history in the Congo: the Leopoldian era, the Belgian era, and the Mobutu era. Up until the turn of the century, “criticism was taboo and the record suppressed”.¹⁸ The change in transparency, however, came from two seminal works: Ludo de Witte’s *The Assassination of Lumumba* (2001; English translation of the Dutch original *De moord op Lumumba*, 1999) and Adam Hochschild’s book *King Leopold’s Ghost: A Story of Greed, Terror and Heroism in Colonial Africa* (1999). Both of these works made it impossible for Belgian society to continue to ignore its Leopoldian legacy. Yet, these texts were subject to

¹³ Goddeeris, Idesbald. 2015a. Colonial streets and statues: Postcolonial Belgium in the public space. *Postcolonial Studies* 18.4: 404.

¹⁴ Licata, Laurent & Olivier Klein. 2010. Holocaust or benevolent paternalism? Intergenerational comparisons on collective memories and emotions about Belgium’s colonial past. *International Journal of Conflict and Violence* 4.1: 48.

¹⁵ Williams, who served in the American Civil War, was a Christian minister, politician, lawyer, journalist and writer on African-American history. Shortly before his death he traveled to the Congo and fervently condemned the atrocities.

¹⁶ Hochschild, Adam. 1999. *King Leopold’s ghost: A story of greed, terror, and heroism in colonial Africa*, Loc 1943. Boston: Houghton Mifflin. Cited from the digital edition.

¹⁷ Ewans, Martin. 2003. Belgium and the colonial experience. *Journal of Contemporary European Studies* 11.2: 174.

¹⁸ *Ibid.*, 174

various criticisms – something which those who expose uncomfortable truths are accustomed to. Typical of such criticism is the following: “an era should be judged, if at all, by the standards prevalent at the time—thus the use of the *chicotte*¹⁹ should be seen against a background in which children of six or seven years of age were working in Belgian factories for as much as seventeen hours a day. Least of all should parallels be drawn with the Holocaust or other more recent atrocities”.²⁰ There was and still is a mixed picture of their country’s colonial past among Belgians: former colonial servants who see their work as responsible and positive on the one hand, as opposed to the tired Congolese who are just trying to make it by, day after day, in districts like quartier Matongé in Brussels. “For Belgians in general, the most common perceptions seems also to be a lack of relevance — it all took place long ago and in a far [away] country”.²¹ It is noteworthy in this connection that public debate and outrage about Belgium’s colonial past did not emerge again after the First World War – until Adam Hochschild (1998) claimed that Leopold II had been responsible for a “holocaust” in the Congo.

Continuing our brief overview of the Belgian Congo’s history, we find Leopold sending Henry Morton Stanley in 1864 to explore and charter territory for him in the Congo. Then during the great Scramble for Africa, Leopold acquires the Congo on behalf of his country in 1885:

He had learned from his many attempts to buy a colony that none was for sale; he would have to conquer it. Doing this openly, however, was certain to upset both the Belgian people and the major powers of Europe. If he was to seize anything in Africa, he could do so only if he convinced everyone that his interest was purely altruistic.²²

The Congo Free State (*Etat Indépendant du Congo*: EIC) was then established, but in truth it was a corporate state serving as Leopold’s personal property, the economy of which was based on forced labor. To Leopold it “was quite literally a personal project: the Association Internationale du Congo, which was in charge of the project, was part of Leopold’s private affairs”.²³ The many

¹⁹ A *chicotte* is a whip with knots traditionally made from dried hippopotamus or rhinoceros skin.

²⁰ Ewans, 2003: 178.

²¹ *Ibid.*, 179.

²² Hochschild, 1998: Loc 800.

²³ Kerstens, Paul. 2008. Deliver us from original sin: Belgian apologies to Rwanda and the Congo. In Mark Gibney et al. (eds.), *The age of apology: Facing up to the past*. Philadelphia: University of Pennsylvania Press, 189.

horrors perpetrated there included the use of women and children as hostages to make men work; the razing of villages; horrific torture, and the infamous hand cutting of rebellious Congolese.²⁴ Belgium gained tremendous wealth from the profitable trade of rubber, which resulted from the control of all indigenous populations in the area. However, as Hochschild notes, “few Europeans working for the regime left records of their shock at the sight of officially sanctioned terror”.²⁵ Such terror regimes, which can last for decades, must engender lasting effects on the entire memory of a people. Again we see a dissonance between the U.S. system of slavery and that of the colonial empires in Africa; “virtually no visitors except George Washington Williams stated the obvious: not only the porters but even the soldiers of the Force Publique were, in effect, slaves”.²⁶ Similar to certain other horrific regimes, Leopold ensured that the Congolese themselves also inflicted some of the torture on their brethren, because “[j]ust as terrorizing people is part of conquest, so is forcing someone else to administer the terror”.²⁷ Sadly, Joseph Conrad’s largely biographical portrayal of the events in the Congo in his novel *Heart of Darkness* is tellingly accurate. As Hochschild writes, Conrad admitted in the Author’s Note to the novel that the book was based on experience “pushed a little (and only very little) beyond the actual facts of the case.”

After the revelation of these atrocities gave rise to public outcry, Leopold was forced in 1908 to hand the colony over to the Belgian government, and it remained a colony of Belgium until 1960. Intriguingly, as Martin Ewans observes, there ensued a state of collective amnesia and denial in Belgium over the findings of Leopold’s activities in the Congo. This was partly due to the fact that from the beginning, Leopold had brilliantly created and nurtured a philanthropic and altruistic image of his work in the territory. It was therefore easy for him to assert – as was common with most European empires in Africa at the time – that his was a civilizing mission in the Congo. It was also partly due to Germany’s two occupations of Belgium: the victory of the First World War presented an opportunity to re-write history and find a new enemy who was not

²⁴ Hasian, Marouf, Jr. 2015. Alice Seeley Harris, the atrocity rhetoric of the Congo reform movements, and the demise of King Léopold’s Congo Free State. *Atlantic Journal of Communication* 23.3: 179.

²⁵ Hochschild, 1998: Loc 2109.

²⁶ *Ibid.*, Loc 2257.

²⁷ *Ibid.*, Loc 2134.

their king.²⁸ This reassertion of the legitimacy of Belgian colonial rule was useful, as Matthew Stanard notes, because by focusing on Leopold “it over-compensated for his terrible actions, and rooted imperialism in the past. If people questioned the legitimacy of their colonial rule, they now could point to an imperial tradition, even if it was invented”.²⁹ This skewed version of history has constituted a national tradition up until recently in Belgian society and its schools, due to this need to defend their empire.

After the initial embarrassment produced by these events, there came the Belgian era of exploitation in the Congo. This period was defined by a time of corporatist profit, because in order to continue amassing riches Leopold established private companies that essentially ran the Belgian Congo. It is found that “by 1938, some three million Congolese were engaged in compulsory agricultural labor, at similar levels of exploitation”.³⁰ The use of the chicotte, a cruel practice left over from the previous era, was still widespread. In addition, education for the Congolese was deemed unwelcome, as it could only lead to trouble in the colony.³¹ That is why by emancipation in 1960, there were only seventeen African university graduates in the Congo, and not a single professional. Independence would therefore also be filled with trauma for the Congolese, since despite the massive political organization there was no one left to run the country. As a result, “a combination of frustration and discontent erupted in severe rioting in Leopoldville at the beginning of 1959”,³² this took the Belgians by complete surprise. Belgium consequently followed the path of decolonization, but not before ensuring its own economic interests: “days before independence, the Belgian Government transferred the public participation in companies to the private sector in order to keep control of business ... and it sent a military expedition, ostensibly to protect the white citizens, but in reality to safeguard Belgian interests”.³³ Clearly, there was no lack of popular imperial culture in Belgium: “strong imperialistic sentiment was alive and well”,³⁴ even at the time of Congolese independence. Up until then there were expositions in Belgium of Congolese behind fences, which in essence

²⁸ Stanard, Matthew G. 2011. Learning to love Leopold: Belgian popular imperialism, 1830–1960s. In John M. MacKenzie (ed.), *European empires and the people: A comparative survey of popular imperialism*. Manchester: Manchester University Press, 139.

²⁹ *Ibid.*, 139.

³⁰ Ewans, 2003: 171

³¹ *Ibid.*, 172

³² Ewans, 2003: 172

³³ Goddeeris 2015: 398.

³⁴ Stanard 2011: 148.

engraved this primitive African idea for a long time in the minds of the Belgian people: “this control over the Congolese other reflected persistent and deep fears about Africans’ presence in the metropole”.³⁵

Given this historical scenario, one could reasonably question what new state of affairs could possibly arise in a chaotic nation where “there were no experienced political leaders, no educated citizenry, no indigenous administrators, no professional, commercial or military elite, no established middle class with a stake in the stability and well-being of the country”.³⁶ Following independence, the infamous dictatorship of Joseph Désiré Mobutu operated under the familiar model of the former Belgian king – that is, by profiting off the backs of impoverished subjects and amassing a fortune for the ruler. The IMF eventually intervened after years of incomprehensible spending resulted in a financial crisis. This intervention, however, only reinforced the profiteering of Belgian enterprises through structural adjustment policies³⁷ and did not in fact relieve the poverty of the Congolese.

Furthermore, the murder of Patrice Lumumba is “associated with the rise of President Mobutu, who during [his reign] would ruin the Congo, with Belgian support”.³⁸ Part of Belgium’s awakening of memory to the atrocities of the past came with the realization that the Belgian government played a central role in the murder of Patrice Lumumba, the first democratically elected prime minister of the Congo after independence. It is still debated to what extent the Belgian government had a hand in the assassination of Patrice Lumumba, but at the very least they “held a ‘moral responsibility’” in it.³⁹ We can draw here on De Witte’s work, who found that “at every stage leading to Lumumba’s murder, Belgium was implicated”.⁴⁰ A Parliamentary Commission which was established in response to these accusations did eventually find the government guilty and accepted de Witte’s hypothesis, even going so far as to set up a fund in the name of Lumumba for the Congolese people. However, if we consider the context of this apology, it was more a recognition of meddling in the national politics of the Congo, but not

³⁵ Ibid., 149.

³⁶ Ewans, 2003: 173

³⁷ See Akitoby, Bernardin & Matthias Cinyabuguma. 2004. Sources of growth in the Democratic Republic of the Congo: A cointegration approach. IMF Working Paper No. 4-114. Washington: International Monetary Fund.

³⁸ Kerstens, 2008: 197.

³⁹ Goddeeris, 2015a: 398.

⁴⁰ Ewans, 2003: 175.

necessarily an acknowledgment of the country's colonial past. As Paul Kerstens observed, one can see it as a "recognition of Belgium's courage in confronting that past".⁴¹

2.1 Traces of Ambivalence in the 'Motherland'

At this point, we now turn to the publication of Hochschild's book, the second critique of Belgium's record of "not-so-positive" colonization, and the second attack so to speak on the collective memory and identity of the Belgian people. Some scholars detect a certain sense of ambivalence to be found in the traces of colonialism left on the streets and practices of the Belgian state: "Once celebrated as a symbol of prestige, colonial memories now convey a sense of liability, or even guilt towards the past. Shame has replaced pride, leaving Belgium at a loss as to how to come to terms with this awkward legacy".⁴² And yet, we still see a contradiction to this sense of guilt, as to this day there remains a plethora of references to Leopold II in Belgium. Some representative examples can be found in Brussels on the "Boulevard Léopold II—for instance, a Restaurant Leopold II, a Café Leopold II, an Antique Shop Leopold II, a Residence Leopold II and a Bed & Breakfast Leopold II—[which] demonstrate[s] that Belgians are hardly concerned with their king's reputation".⁴³

Further evidence of such "double memory" of the past can be found in Valerie Bragard and Stephanie Planche's reflections on Belgium's museographic treatment of colonization, whose treatments range from the temporary to permanent exhibitions in Belgium addressing the country's past.⁴⁴ These confirm and coincide with the findings of Goddeeris on the colonial streets and statues in Belgium. Of those few examples that can be found it is clear that as a general rule "museums do not so much recount the story of what a nation once was, as its recollection of what it was, and its conception of what it subsequently is – or wants to be – today".⁴⁵ Many criticisms relate to the three main museums. The Royal Museum for Central

⁴¹ Kerstens, 2008: 201.

⁴² Bragard, Véronique & Stéphanie Planche. 2009. Museum practices and the Belgian colonial past: questioning the memories of an ambivalent metropole. *African and Black Diaspora* 2.2: 182

⁴³ Goddeeris, 2105a: 399

⁴⁴ Though it must be noted that there are "very few museums in Belgium that are explicitly devoted to the history of Belgian colonization"; this is largely due to the fact that the country exhibits a "general timidity in commemorating its national past" (Bragarde & Planche, 2009: 189).

⁴⁵ Bragarde & Planche, 2009: 186.

Africa⁴⁶ is constructed and set up in the same building that Leopold II used to glorify his colonial rule. “In other words, the museum’s structure is itself a ‘site of contestation’ and thus an object of analysis”.⁴⁷ Then there is the Musée Africain de Namur, whose “flagrant omission of the colonial violence is most startling”.⁴⁸ What we are left with is the Belvue Museum, which probably represents the most successful attempt at framing the colonial past in an accusatory manner. Though that part of its exhibition is limited, still it does place all of the blame on Leopold II, who is said to have “governed the Congo ‘autonomously and completely independent of the Belgian state’”⁴⁹ – thereby absolving Belgium as a country from any culpability. There is, nonetheless, a small section in the museum assimilating the “subjugation suffered by the Congo populations in Africa with that suffered by the Flemings at home and designates the Walloons as their common oppressor”.⁵⁰ In addition to the permanent museums, there have been some temporary exhibitions; yet “despite such alternative projects, Belgian museums seem to remain torn between two somewhat polarized versions of the colonial past”.⁵¹ That is to say, their struggle to come to terms with their past is embodied in their approach to commemorating that past:

The ambivalence displayed by museums therefore reflects the ambivalence with which Belgium approaches its colonial legacy as a whole: hesitating to recognize its own role as former aggressor and to bestow a status of former victim on the ex-colony, because of the consequences this would bear on the present.⁵²

As Stanard in his work on Belgian popular imperialism conclusively observes: Belgium was not a hesitant imperialist. A fascination for and focus on the Leopoldian era has “obscured the half century after 1908 during which Belgians not only sustained an empire but in many ways embraced it”.⁵³ What’s more, the lack of scholarly attention to Belgian colonial culture reflects

⁴⁶ However, we have yet to see what the current renovations which will be completed in 2018 will bring in the way of changes concerning the depiction of Belgium’s colonial past.

⁴⁷ Bragarde & Planche, 2009: 183.

⁴⁸ Ibid., 183

⁴⁹ Ibid., 184

⁵⁰ Ibid., 184. I find this comparison problematic, however, as the Flemish are part of the Belgian population whereas the Congolese are not. Are these two very different situations truly comparable?

⁵¹ Ibid., 185

⁵² Ibid., 187

⁵³ Stanard 2011: 151.

the ignorance of Belgium's takeover of the reigns in the Congo from Leopold and the resulting effects of colonialism on the Congolese and their economics.⁵⁴ Therefore, we cannot deal with accusations of modern-day racism by blaming leftover imperial attitudes on King Leopold II, for there was "a surprising level of grassroots support for imperialism".⁵⁵

2.2 The Shadow of the Dominant

With a study carried out by two scholars from the Université Libre de Bruxelles, on *Intergenerational comparisons on collective memories and emotions about Belgium's colonial past*,⁵⁶ we begin to understand the source of conflict toward admitting that Belgium engaged in what has been described by Hochschild as a holocaust of the Congolese people – as opposed to benevolent paternalism. In light of Hochschild's assertion, the researchers devised two studies to compare the "collective memories of and emotions associated with Belgium's colonial action in the Congo in different generations".⁵⁷ Their research investigates the effects of different representations in school of Belgian colonialism between two to three generations and their different identity functions, which lead to discrepancies in the ways of dealing with collective guilt. What they found was that the "three generation groups employ distinct strategies to avoid collective guilt"⁵⁸ and display varying levels of support for reparations, which "can be traced back to important differences in socialization between the generations".⁵⁹ As they infer, this indicates a large reliance on memory building and the social frameworks available at the time. There is a distinct correlation between the perception of past events and the identity narrative of a group and their values.⁶⁰ The authors observed "that students feel guilty for the immoral actions committed during the colonial period, whereas grandparents also feel guilty for having abandoned the Congolese".⁶¹ The students' present-day values clash with their country's violent past, whereas the grandparents embrace that historical past in a positive manner as representing their group's values. To exemplify this changing memory, Licata and Klein cite the case of the

⁵⁴ See Stanard 2011: 125.

⁵⁵ Ibid., 151.

⁵⁶ Licata & Klein 2010: 45–57.

⁵⁷ Ibid., 46

⁵⁸ Ibid., 53

⁵⁹ Ibid., 54

⁶⁰ Ibid., 55

⁶¹ Ibid., 55

activists who severed the bronze hand of a Congolese statue in Ostend which can be seen revering Leopold II. As the authors point out, in a summary which nicely encapsulates this idea of reconciliation with memory:

The Ostend anarchists demand not the destruction of the monument to the glory of Leopold II (which would fit the notion of oblivion), but that a critical comment be added to it to point out the incompatibility of Leopold's colonial act with today's values. That would change the monument's identity-related assertion from "We are a nation that colonized another for its own good" to "We are a nation that unfairly colonized another, but we have learned the critical lessons of that experience."⁶²

Belgium must nowadays come to terms with and openly admit its past misdeeds; but because this will change its current relationship with the Congo, there has been considerable hesitation. The reluctance to rename streets or place explicatory plaques near colonial statues is reflective of this hesitation.⁶³ Due to the Belgo-Belgian dispute, Belgium is unique, which adds another layer to two already conflicting memories: "a pre-existing national conflict on the country's values, identity and legitimacy as a unified entity".⁶⁴ Furthermore, the marginalization of the colonial question in academia is evident through the continued attempts by certain scholars throughout the decades to bring balance to the Belgian historiographical tradition.⁶⁵ Even Congolese historians have participated in the debate, although "they also failed to stand out in the dominant discourse ... and often avoided controversy".⁶⁶ It is noteworthy that Belgium stands at odds with most other former colonizing countries in that its postcolonial diaspora is considerably smaller than it should be, considering the size of its old colonial empire.⁶⁷ This has seemed to result in a feeble counter-voice movement towards postcolonial debate in Belgium – unlike other metropolises with larger and more established postcolonial immigrant groups. Additionally,

⁶² Ibid., 55

⁶³ "Such calls to reassess colonialism confront any former metropole with some kind of 'colonial dispute': 'in recasting parts of a heroic national history as exploitative and criminal', they lead the former colonial power to discard some of its national myths and 'founding epics', to recall forgotten aspects of the past, and to re-examine the roles it played in this past". (Ewans 2003: 186.)

⁶⁴ Bragard & Planche 2009:187.

⁶⁵ For a more in-depth discussion on this, see Depaepe, Marc. 2009. Belgian images of the psycho- pedagogical potential of the Congolese during the Colonial Era, 1908–1960. *Paedagogica Historica* 45.6: 710.

⁶⁶ Goddeeris, Idesbald. 2015b. Postcolonial Belgium: The memory of the Congo. *Interventions* 17.3: 442.

⁶⁷ Ibid., 444, paraphrasing.

neither “left-wing writers nor Congolese have been able to challenge the general Belgian narrative”,⁶⁸ moreover, despite much scholarship abroad, hardly any such studies have been broadly introduced to the Belgian society through the local media and “therefore the general public in Belgium is not knowledgeable about recent important studies”.⁶⁹ The monopoly on postcolonial debate in Belgium is indicative of the ambivalence to the past and “confirm[s] the self-perception that the nation and the former colony have come to terms with their common past and are mutually respected by society”.⁷⁰

In this context, the question arises as to what is needed to reconcile this conflict between a negative and positive social identity when admitting to an uncomfortable past. In a continuation of Licata and Klein’s aforementioned study, Lastrego and Licata inquire whether public apologies by leaders for past atrocities can generate a degree of support for reparative actions without destroying social identity. The fact remains that “since Congo’s independence in 1960, no public excuse was ever uttered by Belgian official representatives to the Congolese people”.⁷¹ The authors argue that “the first important step in reconciliation processes is not to experience collective guilt but to change the representations of the past”.⁷² When public leaders make such statements and thereby recognize the past misdeeds, social identity can remain unthreatened and healing can begin. Furthermore, Licata and Lastrego found that “suffering seems to be an important element in the attitude of the dominants towards the defeated”.⁷³ Thus, when continued suffering of the Congolese people in present-day society as a result of the colonial past is pointed out, participants in their study reacted with more positive responses to reparations. Their conclusions underscore the need for such public apologies, even though they are just one step towards reconciliation. If Belgium can change the representation of its past and reveal the continued suffering of people from the Congo, then perhaps racism and discrimination can begin to be fought more efficiently.

⁶⁸ Ibid., 445.

⁶⁹ Ibid., 446.

⁷⁰ Ibid., 445.

⁷¹ Lastrego, Simona & Laurent Licata. 2010. “Should a country’s leaders apologize for its past misdeeds?” An analysis of the effects of both public apologies from a Belgian official and perception of Congolese victims’ continued suffering on Belgians’ representations of colonial action, support for reparation, and attitudes towards the Congolese. *Revista de Psicologia Social* 25.1: 62.

⁷² Ibid., 64.

⁷³ Ibid., 71.

All in all, it is estimated that at least 10 million people were killed when first King Leopold II and then Belgium governed the Congo, and who knows how many more have died because of the post-independence violence and recent wars. This is not meant to be a damnation of Belgian guilt, but rather a reminder that the histories of Africa and Europe are inextricably interwoven with each other. Europe must confront its violent past as an aggressor: to “successfully battle the many faces of institutionalized racial oppression, [they] must share the strengths of each other’s vision as well as the weaponry born of particular experience”.⁷⁴

The Congolese people remain largely unheard in this debate, due to the dominant Belgian narrative that has eclipsed so many of their voices. Much of this can be attributed to the fact that migration for the Congolese to Belgium was not allowed or was highly restricted during the colonial period and immediately following decolonization – unlike in France or Britain, for example.⁷⁵ But more importantly, it demonstrates the continued efforts on the part of Belgium to ignore a dark part of its past.

My purpose in describing the colonial history of Belgium has been to demonstrate the similarities between continental Europe and the USA and UK in terms of race relations. The dominant narrative often overshadows and marginalizes the narrative of the oppressed and creates a double memory, as we see in the case of Belgium. The racism that POAD and BE face today stems to a certain degree from a lack of recognition and atonement for the ravages of the colonial past, as well as from the continuation of a colonial empire in its modern day structural form.⁷⁶ In the goals and actions for EU institutions and Member States, the proposed Framework suggests that they raise awareness of the history of Afrophobia in Europe and its roots in colonialism. One way it proposes to do this, among other things, “would be by ensuring that textbooks reflect historical facts accurately regarding the transatlantic slave trade, slavery, colonialism, as lack or falsification of information leads to racism and related discrimination”.⁷⁷

⁷⁴ Blackshire-Belay, C. Aisha. 2001. The African diaspora in Europe: African Germans speak out. *Journal of Black Studies* 31.3: 284.

⁷⁵ See Swyngedouw, Eva & Erik Swyngedouw. 2009. The Congolese diaspora in Brussels and hybrid identity formation: Multi-scalarity and diasporic citizenship. *Urban Research & Practice* 2.1: 71.

⁷⁶ Therefore, questions arise as to whether and how the memory of imperialism and colonization is addressed in EU discourse.

⁷⁷ Towards an EU Framework for National Strategies to Combat Afrophobia and promote the inclusion of People of African Descent and Black Europeans. ENAR: unpublished manuscript, n.d.

Though there is a clear emphasis in the Framework to combat this ignorance of the past and address the underlying origins of anti-black racism, I fear that without public apologies by authorities or tangible reparations for the Congolese, perceptions will remain the same. In any case, in order to conceptualize the extent to which colonialism “linked state power and structural racism and maintained power by creating borders and formulating policies to police the borders”,⁷⁸ one must enter into a discussion of racialization “as colonialism’s first step to the demonization of the other”.⁷⁹

⁷⁸ Nnaemeka, Obioma. 2008. Racialization and the colonial architecture: Othering and the order of things. *PMLA* 123.5: 1749.

⁷⁹ *Ibid.*, 1749

3. Race and racialization: What ‘race problem’?

In this section, I introduce the concept of racialization in order to provide evidence of an existing racial hierarchy, prominent yet largely ignored in Europe, thereby further underscoring the majority population’s inability to process and accept racism against Black Europeans and People of African Descent as a concrete reality that could require an EU Strategic Framework.⁸⁰ It is imperative to draw attention to the many similarities continental Europe has with certain countries which are defined by their race relations, such as the US and the UK. Any disparities between European societies in terms of racism arise more from different approaches to racial difference as opposed to varying levels of racism. The common denominator is always the view of those who deemed Africans as “other and lesser”.⁸¹

To facilitate the beginning of this argument, one must understand how racism and racialization differ: “Steve Martinot argues that racism is the system, and racialization ‘the process through which white society has obstructed and co-opted differences in bodily characteristics and made them modes of hierarchical social categorizations’.”⁸² In the *The Others in Europe*, Didier Fassin points out how political transformations can result in changes of sentiment when it comes to the perception of race. By turning the term into a defined concept,⁸³ one can begin to understand racialization as different from race or racism. Fassin further observes that “analyzing racialization consists of accounting for a social phenomenon”.⁸⁴ He is not alone in this assumption; the threat of ignoring the phenomenon of racialization is evident, as it “can become a condition of long and even nearly permanent duration. In that case, all members of the racialized group are treated as if all they do, feel and think is caused by their race as it is conceived by the racially dominant population”.⁸⁵ I argue that this racialization has been systemic across Europe for a long time: “probably the only common European experience among many if not all Afro-descendants is their exposure to ... racism and systemic discrimination,

⁸⁰ Towards an EU Framework for National Strategies to combat Afrophobia and promote the inclusion of People of African Descent and Black Europeans.

⁸¹ Blackshire-Belay, 2001: 270.

⁸² Nnaemeka, 2008: 1748.

⁸³ Fassin, Didier. 2011. The social construction of otherness. In Saskia Bonjour, Andrea Rea & Dirk Jacobs (eds.), *The others in Europe*, 122. Bruxelles: Éditions de l’Université de Bruxelles.

⁸⁴ Ibid.

⁸⁵ Gans, Herbert J. 2017. Racialization and racialization research. *Ethnic and Racial Studies* 40.3: 343.

regardless of country, socio-economic conditions, gender, age, or level of education”.⁸⁶ There are many examples that show how pervasive the construction of otherness is throughout the continent of Europe. It is hardly believable that four hundred years of colonialism and slavery over an entire continent and peoples could have left practically no traces of degrading racial stereotypes and racial hierarchy in the culture, history, language and institutions of nations which were built on the wealth of that continent and the forced labor of its many people.

3.1 Disavowal of Race in Contemporary Discourse

In an in-depth analysis on how *Zwarte Piet* – the traditional companion of Saint Nicholas in the Netherlands and Flemish Belgium⁸⁷ – symbolizes the manifestation of ritualized degradation, Gloria Wekker shows how racist representations have become so much second nature to a society or culture that those representations do not even need to be explained.⁸⁸ As Gail Lewis notes, the arguments that arise out of conflict over Black Pete are illustrative of the “structural dynamics at play in the reproduction of power both within society and within the academy itself”.⁸⁹ Lewis offers an illuminating critique on the renunciation of race as a “meaningful analytic category in continental Europe ” (though not in Britain or the United States). She expands her argument by connecting the denial of race and racism to a convergence of three factors:⁹⁰ the memory of the Holocaust, politically correct discourse on multiculturalism and the investment in a national self-image of egalitarianism.⁹¹ However, unlike the memory of the Holocaust, little to no attention has been paid to the memory of colonial rule and domination that continues to eviscerate the continent of Africa. So the irony is clear: “even while elite and popular discourses across Europe are saturated with processes of racialization, there is a

⁸⁶ Thompson, Mischa. 2014. Introduction. In European Network Against Racism, *Invisible visible minority: Confronting Afrophobia and advancing equality for people of African descent and Black Europeans in Europe*. Brussels: European Network Against Racism, 21–22.

⁸⁷ Flemish Belgium has now changed it to a person in white covered in black stripes. See <http://www.independent.co.uk/news/world/europe/black-pete-black-faced-clown-cleaned-up-for-dutch-festivities-a6734991.html>

⁸⁸ Wekker, Gloria. 2016. “... For even though I am black as soot, my intentions are good”: The case of *Zwarte Piet/Black Pete*. In Gloria Wekker, *White innocence: Paradoxes of colonialism and race*. Durham: Duke University Press, 140.

⁸⁹ Lewis, Gail. 2013. Unsafe travel: Experiencing intersectionality and feminist displacements. *Signs* 38.4: 878.

⁹⁰ At least in most of Scandinavia and in other Germanic countries.

⁹¹ Paraphrasing/summarizing Lewis, 2013: 878.

disavowal of the relevance and toxicity of the social relations of race as a pan-European phenomenon, with a corresponding displacement of its relevance to a series of ‘elsewheres’.”⁹²

France is one of the more infamous examples (though by no means the only one) of such disavowal; though it is a society which is

[m]arked by the philosophy of human rights and fundamentally egalitarian, the reality of racist expressions and their consequences for the racialized populations are completely eluded. It is pointless to even try to look for it, as everyday racism simply cannot occur.⁹³

Unsurprisingly, the dangers of the French refusal to use ethnic and racial categories⁹⁴ in statistics in order to prevent hardening of ethnic and racial divisions leads, as Amiraux and Simon demonstrate, to the reinforcement of a white normative understanding and the negation of the experience of the dominated.⁹⁵ Perhaps, as these scholars conjecture, “one prefers not to study sociologically what one fears politically: racism and inter-racial relations remain largely under-analyzed, despite the emergence of strategies of research in this direction.”⁹⁶ And most importantly, “among the most damaging forms of everyday racism are those involving individuals in positions of authority, whose decision making power has the potential of making or breaking opportunities”.⁹⁷

But denial can never lead to complete erasure of the past. As further researchers in the domain of comparative racialization have noted, “[t]he ‘dark’ colonial remainders refuse to go away even after presumed worldwide decolonization and instead have come ‘home’ to the metropole, and the capitalist remainders of the international division of labor continue to haunt the happy narrative of globalization”.⁹⁸ In the case of Germany, Jamie Schearer asserts that “the visibility

⁹² Lewis, 2013: 870.

⁹³ Amiraux, Valérie & Patrick Simon. 2006. There are no minorities here: Cultures of scholarship and public debate on immigrants and integration in France. *International journal of comparative sociology* 47.3–4: 203.

⁹⁴ Ibid.

⁹⁵ Ibid., 204.

⁹⁶ Ibid., 201.

⁹⁷ Essed, Philomena. 2014. A brief ABC on Black Europe. In European Network Against Racism, *Invisible visible minority: Confronting Afrophobia and advancing equality for people of African descent and Black Europeans in Europe*, 57–75. Brussels: European Network Against Racism, 61–2.

⁹⁸ Shih, Shu-mei. 2008. Comparative racialization: An introduction. *PMLA* 123.5: 1348.

of the minority groups is tied to the willingness of the media and public institutions dominated by a White Majority ”.⁹⁹ It is only if the white majority allows the minority groups to participate that their voices will be heard. This is why “unveiling the history and legacies of transatlantic slavery and colonialism are crucial tasks some ethnoracial activists undertake to contextualize and explain present-day disparities and justify collective action seeking redress for injustice”.¹⁰⁰ These legacies and history can then be utilized to understand the forms of racism that are encountered by Black Europeans and People of African Descent. As Paul Gilroy avers in his authoritative book on racism in the United Kingdom, “people do not encounter racism in general or in the abstract, they feel the effects of its particular expression: poor housing, unemployment, repatriation, violence or aggressive indifference”.¹⁰¹ Far from supporting, for example, France and Germany’s trend of ignoring “race” as a concept, this illustrates that the continued emphasis on race as the cause of inequality must be addressed and analyzed, since it presents a hindrance to understanding racism as “a complex effect of the underlying problems”.¹⁰² Rather, one must address white supremacy in Western societies as the foundation of a colonial legacy and imperialism, which continues to oppress the lives and limit the opportunities of POAD and BE today.¹⁰³

If we uncover the racialization of European societies, we bring to light parts of society that would rather remain hidden. Racism as a symptom of the causal disease of white supremacy is a pill that is hard to swallow for the majority of European society. Racial micro-aggressions¹⁰⁴ permeate the daily life of Black Europeans and yet those who are privileged and unaffected expect them to be silent about such matters, since theirs is considered to be a post-racial society. In this chapter, I will use a short discussion of Black Pete in the Netherlands and Flemish Belgium as an expression of the very thought that is behind the erasure of the Black experience in Europe today. I will also give examples from recent events throughout Western European

⁹⁹ Schearer, Jamie & Hadija Haruna. 2014. Making the Black experience heard in Germany. In European Network Against Racism, *Invisible visible minority: Confronting Afrophobia and advancing equality for people of African descent and Black Europeans in Europe*, 163. Brussels: European Network Against Racism.

¹⁰⁰ Fleming, Crystal M. & Aldon Morris. 2015. Theorizing ethnic and racial movements in the global age: Lessons from the Civil Rights Movement. *Sociology of Race and Ethnicity* 1.1: 117.

¹⁰¹ Gilroy, 2002: 149-50.

¹⁰² Ibid., 150.

¹⁰³ All people of color in fact.

¹⁰⁴ Merriam Webster defines micro-aggressions as comments or actions that “unconsciously or unintentionally express a prejudiced attitude toward a member of a marginalized group.”

nations that highlight the effects of Afrophobia on a daily basis. I will demonstrate that at this point the reality is that most white Europeans will not accept people with black skin as part of the dominant narrative and as “true European citizens”. This is clearly one of the greatest obstacles to the eradication of racism in Western society.

3.1.1 White supremacy and the erasure of the Black experience

Firstly, it is imperative to define everyday racism and racial micro-aggressions in the context of Western society. Racial micro-aggressions are a form of everyday, institutionalized racism that can take conscious or unconscious form through verbal or non-verbal assaults.¹⁰⁵ These assaults can be layered or cumulative based on intersections of other marginalized statuses and they often have psychological and physical effects on people of color that are exacerbated in their academic and work life. Research has suggested that racial micro-aggressions as a concept is “a useful tool ... to identify the often subtle acts of racism”, which are manifested as everyday events and “systemically mediated by institutionalized racism, and guided by ideologies of white supremacy that justify the superiority of a dominant group”.¹⁰⁶ There is often confusion among white people about actions or expressions that they construe as irony or ignorance, but which are in fact negative stereotypes that reduce people of color to race-based generalizations. Many may think that this reaction towards verbal and nonverbal slights as systemically racist is a recent trend born out of political correctness. However, as Dr. Derald W. Sue – a leading expert on micro-aggressions quoted by Tanzina Vega – points out, “[a]s more and more of us are around, we talk to each other and we know we’re not crazy’ ... Once, he said, minorities kept silent about perceived slights. ‘I feel like people of color are less inclined to do that now’”.¹⁰⁷ One has to understand that micro-aggressions and consequently racism derive from the foundation of white supremacy. Therefore, it is not surprising that those who are part of the dominant race would not recognize – or refuse to recognize – the larger systemic origins and consequences of micro-aggressions at the individual level. Micro-aggressions are, as Huber and Solorzano observe, “the everyday reflections of larger racist structures and ideological beliefs that impact People of

¹⁰⁵ Lindsay Pérez Huber & Daniel G. Solorzano. 2015. Racial microaggressions as a tool for critical race research *Race Ethnicity and Education* 18.3: 298.

¹⁰⁶ Ibid., 298

¹⁰⁷ Dr. Derald W. Sue interviewed by Tanzina Vega; in Vega, Tanzina. 2014. Students see many slights as “racial microaggressions”. New York Times March 21, 2014. <https://www.nytimes.com/2014/03/22/us/as-diversity-increases-slights-get-subtler-but-still-sting.html?mcubz=1>.

Color's lives".¹⁰⁸ I believe that if white people can recognize these micro-aggressions in their own conduct and that of their peers, then there is hope of eradicating racism in a way that goes beyond policies and anti-discrimination law.

In the case of Zwarte Piet, or Black Pete, in the Netherlands and Belgium, we see how black people's offense at the caricature is construed by the white population as hurt feelings and a misunderstanding of the vague origins and traditions behind this figure.¹⁰⁹ Lemmens addresses the debate in a legalistic manner, but his assertions have far-reaching implications for all sectors of life, and they are reflective of the views of the defenders of Zwarte Piet. Lemmens does not argue that opponents to Zwarte Piet do not have sufficient reason to see it as an example of negative stereotyping. However, he does assert that because it does not create negative feelings towards black people and only induces negative feelings in black people, it is dubitable how justified legal prohibitions to ban it would be, especially in the context of freedom of expression.¹¹⁰ Here lies the crux of the matter: white supremacy and the erasure of the black experience. In his discussion, Lemmens fails to see, as do so many others, that the figure of Zwarte Piet does not **create** negative feelings towards black people, because those feelings – or better, prejudices – **already exist**. What the image of Zwarte Piet does is mock and belittle black people, which enforces an existing system of oppression and discrimination. Furthermore, Huber and Solorzano stress that “this unconscious intent of perpetrators make[s] confronting micro-aggressions difficult for People of Color, and is one way racism can be perpetuated while rendered invisible. This is the danger of subtle racism”.¹¹¹ For a black person to protest the image of Zwarte Piet means standing up against the majority of the population – and that takes a great amount of courage. The risk of ostracism, confrontation or ambivalence by others is high; many people are simply not willing to put themselves in such situations, and understandably so. Therefore, accounts of disapproval expressed by the small black population may not be as numerous as would normally be representative of that same group of people.

¹⁰⁸ Huber & Solorzano, 2015: 302.

¹⁰⁹ See Lemmens, Koen. 2017. The dark side of “Zwarte Piet”: A misunderstood tradition or racism in disguise? A legal analysis. *The International Journal of Human Rights* 21.2: 120–141.

¹¹⁰ See Lemmens, 2017: 132.

¹¹¹ Huber & Solorzano, 2015: 309

Nor is the tradition of Zwarte Piet, however misunderstood that tradition may be,¹¹² an isolated occurrence of the use of black face in Europe. In October 2016 an entertainment show with about 5.9 million viewers, streamed an episode depicting the reunion of a long-lost father and daughter as a gag. The punch line was that the father now had become black after being in South Africa for years, and the actor was wearing black face. The producers again minimize this racist humor by reducing it to a mere matter of hurt feelings,¹¹³ but, in fact, it “functions as a license issued by and for the Oppressor to dehumanize those they oppress with a joke, normalizing their violence and downplaying its effects with a chuckle”.¹¹⁴ The normalization of racist stereotypes is not a new phenomenon: it stems from a long tradition of oppression, and the old racist tropes have not lost their meaning for those targeted by them. Lemmens argues in his paper that the objective elements of racist crime are not achieved by those who dress up as Zwarte Piet, “since one of the conditions to be fulfilled in this respect is, according to case law, that the words or utterances are ‘objectively’ offending, that is: they should be offending in the eyes of third parties, not only of those that profess to be targeted”.¹¹⁵ The administrative courts seem to agree with him, as the court case in November 2013 objecting to the inclusion of Zwarte Piet in the annual parade ended with the town’s mayor having to reconsider the presence of Zwarte Piet.¹¹⁶ This was based on the right to respect for people’s private and family life as it presents a negative stereotype. Again, the message is clear: “treating racist oppression as a feeling of hurt, avoids addressing it as a structural problem”.¹¹⁷ For further proof of the destructive effects of everyday racism, direct links have been made between everyday racism and the motivations of political racism in the Flemish part of Belgium.¹¹⁸

3.1.2 Otherness in a white majority: Between assimilation and self-preservation

Upon closer inspection of ex-colonial nations we begin to see a common thread: the ironic paradox of a long history of African presence in Europe, yet the enduring perception of black

¹¹² See Lemmens, 2017 discussion on this and Wekker, 2016.

¹¹³ See <http://www.tagesspiegel.de/medien/ard-show-verstehen-sie-spas-macht-scherz-mit-blackfacing/14757728.html>

¹¹⁴ See ISD’s <http://bethechangenetwork.tumblr.com/>.

¹¹⁵ Lemmens, 2017: 131.

¹¹⁶ Wekker, 2016: 145.

¹¹⁷ Ibid., 145.

¹¹⁸ See Billiet, Jaak & Hans De Witte. 2008. Everyday racism as predictor of political racism in Flemish Belgium. *Journal of Social Issues* 64.2: 253–267.

people as foreigners and their being treated as such.¹¹⁹ In Germany, the history of addressing racial difference is difficult at best, and it continues to affect the way Afro-Germans are seen: “in the German construction of social reality, they cannot be German by blood and therefore are African, the other”.¹²⁰ A common encounter and exchange between a white person and a black person (in Europe as well as in the USA) is the question “where are you really from”? This question, though often posed without harmful intent, implicitly and explicitly suggests that if one’s skin is black or brown, then one cannot belong to a Western nation. The question “where are you from” – “no, where are you **really** from” is one that POAD and BE are all too familiar with. There is a deep-seated discomfort with accepting people of other colors, especially black, as “true Europeans”: “They constantly remind Blacks and people of colour that they don’t belong to the ‘norm’,” said Anne Chebu, the author of “Anleitung zum Schwarz sein” [sic] (*Introduction to being Black*).¹²¹

For POAD and BE there is a fine line to tread between assimilation and self-preservation. If White Europeans do not see POAD and BE as real citizens then they will never respect them. Consequently, efforts at a Strategic Framework in the EU must address these deep-rooted cultural micro-aggressions against people of color. Culture is a marker of social inclusion, it has a powerful way of telling people what they can and cannot be; and for people of color the options are rather limited. Social equality does not have to mean the “elimination or transcendence of group differences”,¹²² as Iris Marion Young astutely notes. Furthermore, by ignoring how the point of view of a white majority is established and constantly reaffirmed, “one misses how the weight of society’s institutions and people’s assumptions, habits and behavior toward others are directed at reproducing [these] material and ideological conditions”.¹²³ In other words, the maintenance of white normative values continues to damage any positive sense of group difference or representation to POAD and BE.

¹¹⁹ See Blackshire-Belay, 2001.

¹²⁰ Ibid., 270.

¹²¹ <http://www.theafricancourier.de/black-people-in-germany/black-life-in-todays-germany/>

¹²² Young, Iris Marion. 2011. *Justice and the politics of difference*, 195. Princeton: Princeton University Press.

¹²³ Ibid., 196–7.

3.2 Opportunities and Limitations for a Framework

Part of the EU framework plan to combat Afrophobia as proposed by ENAR addresses goals and actions for EU institutions and member states. Those include raising awareness of the construction of a European identity and notions of race and ethnicity as well as the long-standing presence of people of African descent and Black Europeans in Europe and its former colonies. There is no doubt in my mind that the EU framework is necessary and vital for remedying the problem of Afrophobia. But my concern is that the realization for white Europeans that they are contributing to a racist society is – and will be – unsettling. However, without this realization real change cannot be achieved. As the ENAR Afrophobia Shadow Report¹²⁴ notes, “[t]here needs to be a full awareness and understanding of the pervasive nature of racism and the way in which it manifests itself for people of African descent and Black Europeans”.¹²⁵

Can an EU framework enforce the change that is necessary, especially concerning the construction of a European identity, as mentioned above? As we can observe through integration procedures and assimilation demands, the majority members’ need for those deemed foreign to adhere to the cultural norm is powerful. Antoine Roblain from the Université Libre de Bruxelles argues that attitudes towards integration are highly dependent on the immigrant adopting the host culture. At an international conference hosted by the MAM (Migration Asylum Multiculturalism) Network,¹²⁶ Roblain remarked how one of the main aspirations of human beings is to minimize threats, and the perception of immigrant groups adopting the host culture resulted in more positive general attitudes towards them.¹²⁷ Yet here we see a contradiction: the continued emphasis towards people of color as foreign and the desire for them to adopt the host culture. What Marco Antonsich observed, after examining the demands of assimilation among white ethnic majorities in Western Europe, is that from the perspective of the majority group

¹²⁴ ENAR Afrophobia in Europe ENAR Shadow Report 2014–15.

¹²⁵ Ibid., p. 4

¹²⁶ MAM is a network of scholars from the Université Libre de Bruxelles (ULB) who have been working together for almost ten years on Migration, Asylum and Multiculturalism. The team is composed of researchers in sociology, law, political science, social psychology and geography.

¹²⁷ For further information, see Roblain, Antoine, Assaad Azzi & Laurent Licata. 2016. Why do majority members prefer immigrants who adopt the host culture? The role of perceived identification with the host nation. *International journal of intercultural relations* 55: 44–54.

“assimilation can hardly mean mutual accommodation and change. In other words, assimilation is largely perceived as a one-way process”.¹²⁸

I am addressing the integration of migrants briefly only to highlight the never-ending demands put on newcomers to assimilate to the host or normative majority culture. These conditions reflect the tendency of the white majority to “include a certain degree of homogeneity in cultural values and skills among the population”. Difference “or ‘otherness’, [is] perceived as a problem that require[s] a policy solution”.¹²⁹ Although, as mentioned previously, the way nations view racial difference and define the other may vary, the idea is the same: the other is “regarded as a menace to European and national identities (a.k.a. white, western, Christian and formally democratic)”.¹³⁰ It might be too grand a task to require a framework that addresses this fear which drives ordinary Europeans to vote for the right wing or to commit hate crimes. It would require changing the foundations of a society that relies on fear of the other in order to remain dominant. Who then can address this? Can we even stop fear, or just contain it? Until change is brought about at a fundamental societal level, it will be hard to combat the “strong and broad reluctance to recognize and acknowledge the existence of Afrophobia in Europe”,¹³¹ even with a concrete framework.

¹²⁸ Antonsich, Marco. 2012. Exploring the demands of assimilation among white ethnic majorities in Western Europe. *Journal of Ethnic and Migration Studies* 38.1: 74.

¹²⁹ Fassin, 2011: 51.

¹³⁰ Fassin, 2011: 119.

¹³¹ Momodou, Jallow & Julie Pascoët. 2014. Towards a European strategy to combat Afrophobia. In European Network Against Racism, *Invisible visible minority: Confronting Afrophobia and advancing equality for people of African descent and Black Europeans in Europe*, 265. Brussels: European Network Against Racism.

4. Intersectionality: A framework

My aim in this chapter is to examine the institutionalization, or lack thereof, of intersectionality theory. Intersectionality refers to a method of studying “the relationships among multiple dimensions and modalities of social relationships and subject formations”.¹³² I argue that there is a lack of this theory in European law and policy, which, though showing much growth in gender equality legislation,¹³³ has not transitioned to policy addressing racial discrimination. How does the absence of intersectionality theory play a role in Europe today in denying the experiences of marginalized Black Europeans/POAD and encouraging the sustained mainstreaming of colorblind policy and theories in national as well as transnational bodies? What I am trying to demonstrate, using racial formation and intersectionality theory, is how the very systems that are being used to combat anti-discrimination rely on racially normative and imperialistic positions as foundations, without questioning how those came to be rationalized as normative in more elaborate power dynamics. This, I argue, is one part of the challenge that remains on the path to devising and implementing a framework to fight Afrophobia in the EU.

Most importantly, the adoption of intersectionality can promote our understanding of social inequalities. Intersectionality has the capacity to challenge deeper forms of oppression, which anti-discrimination law and policies lacking intersectional approaches cannot. Intersectionality will continue to come up throughout this thesis, as by its very definition it is inextricably linked to the development of equality policy.

The origins of intersectionality are often attributed to Kimberlé Crenshaw, who, in an effort to set forth a Black feminist critique, presented the term intersectionality “as a heuristic term to focus attention on the vexed dynamics of difference and the solidarities of sameness in the context of antidiscrimination and social movement politics”.¹³⁴ More recently, she has discussed the scope of applicability of intersectionality theory, which despite various debates and tensions has proven to encompass a wide range of disciplines, when understood properly. However, as

¹³² See McCall, Leslie. 2005. The complexity of intersectionality. *Signs* 30.3: 1771–1800.

¹³³ Although they have inherently had a white feminist orientation.

¹³⁴ Cho, Sumi, Kimberlé Williams Crenshaw & Leslie McCall. 2013. Toward a field of intersectionality studies: Theory, applications, and praxis. *Signs* 38.4: 787.

Patricia Hill Collins reveals, the emergence of intersectionality is more accurately attributed to an evolution as a field of study within academia.¹³⁵ Collins conjectures that this association of the theory with one black woman minimizes its “important connections among the core ideas of community organizing, identity politics, coalitional politics, interlocking oppressions, and social justice”.¹³⁶

In order to understand the lack of intersectionality within global frameworks, and more specifically within Europe, it is critical to identify outstanding critiques. Devon Carbado outlines the prevailing criticisms of the theory. Among them a few criticisms stand out particularly, for instance, “intersectionality is only or largely about Black women, or only about race and gender” or “intersectionality is an identitarian framework”.¹³⁷ What these criticisms fail to realize is that the theory was built on the very premise of “developing doctrinal alternatives to bend antidiscrimination law to accommodate claims of compound discrimination; and revealing the processes by which grassroots organizations shape advocacy strategies into concrete agendas that transcend traditional single-axis horizons”.¹³⁸

As previous researchers have noted and I will discuss in further detail later, Europe currently favors constructing anti-discrimination policy around the term “multiple discrimination” as opposed to intersectionality – which, I argue, minimizes the range of measures that could be applied in achieving equality.¹³⁹ This is evidenced by the establishment of various civil society groups “that remain stratified by single identity categories”,¹⁴⁰ for example, the European Network Against Racism (ENAR), the European Women’s Lobby (EWL), and the International Lesbian and Gay Association-Europe (ILGA-Europe).¹⁴¹ Single axis approaches – as opposed to intersectional ones – to combating discrimination, as well as gender- and race-neutral policies,

¹³⁵ Collins, Patricia Hill. 2015. Intersectionality’s definitional dilemmas. *Annual Review of Sociology* 41: 10.

¹³⁶ *Ibid.*, 10.

¹³⁷ Carbado, Devon W. 2013. Colorblind intersectionality. *Signs* 38.4: 812.

¹³⁸ Crenshaw, Kimberlé. 1995. Mapping the margins: Intersectionality, identity politics, and violence against women of color. In Kimberlé Crenshaw et al. (eds.), *Critical race theory: The key writings that formed the movement*, 785. New York: New Press..

¹³⁹ See Johanna Kantola & Kevät Nousiainen. 2009. Institutionalizing intersectionality in Europe. *International Feminist Journal of Politics* 11.4: 460.

¹⁴⁰ Goldberg, Suzanne B. 2009. Intersectionality in theory and practice. In Emily Grabham et al. (eds.), *Intersectionality and beyond: Law, power and the politics of location*, 232. Abingdon: Routledge-Cavendish.

¹⁴¹ Kantola & Nousiainen, 2009: 461.

make possible, for example, the widespread assumption that due to the enforcement of legal equality the violent foundations of slavery, colonialism and genocide have been eradicated¹⁴² and play no further role in the lives of POAD and BE. However, as we have seen in previous discussion, the injustices of the past remain highly influential in the present.

It is necessary to further delineate how these erroneous interpretations of intersectionality overlook the ways in which “[i]ntersectionality reflects a commitment neither to subjects nor to identities per se but, rather, to marking and mapping the production and contingency of both”.¹⁴³ This, in turn, is where the “legal system’s complicity with the foundational violence of slavery, genocide and heteropatriarchy”¹⁴⁴ comes into play, according to Dean Spade. Intersectionality siphons its very existence from the imbedded racialization that forms the core of Western societies. To state this in the words of Crenshaw, “intersectionality neither travels outside nor is unmediated by the very field of race and gender power that it interrogates”.¹⁴⁵ Yet, what has become part of a global trend is the misappropriation of intersectionality to white feminist projects, as Patricia Hill Collins, a well-known scholar on inclusive intersectionality, realized in a keynote address that she gave in Brazil on US Black feminism and intersectionality. “[A] small group of Afro-Brazilian women scholar-activists approached [her] ... [and] were surprised by [her] argument that US Black feminism and intersectionality were interconnected knowledge projects”.¹⁴⁶ Rather, they had attributed it to white feminists, who were far removed from their own experiences. But in fact, as Hill observed, “their experiences resonated not just with the guiding assumptions that shape contemporary intersectional scholarship on work, social issues such as violence, and the significance of identity politics, but also with the broader themes from US Black feminism as a social justice project”.¹⁴⁷

4.1 Streamlining approaches – Europeanization of intersectionality

Now that the concept of intersectionality has become somewhat clearer, the question arises how to adapt it in order to promote social equality in Europe. Two main types of intersectionality are

¹⁴² Spade, Dean. 2013. Intersectional resistance and law reform. *Signs*: 38.4: 1033.

¹⁴³ Carbado, 2013: 815.

¹⁴⁴ Spade, 2013: 1031.

¹⁴⁵ Cho et al., 2013: 791.

¹⁴⁶ Collins, 2015: 15.

¹⁴⁷ Ibid.

often addressed: political and structural. However, I find Yuval-Davis' concept of situated intersectionality the most illuminating. A discussion of political intersectionality is necessary here, as it leads to an overview of the institutionalization of intersectionality in the EU equality framework. The focus of political intersectionality, which investigates "how inequalities and their intersections are relevant to political strategies and how strategies regarding one axis of inequality are seldom neutral toward other axes",¹⁴⁸ is important because it best addresses the EU's equality regime in its current form. As Crenshaw first defined the term, "[t]he concept of political intersectionality highlights the fact that women of color are situated within at least two subordinated groups that frequently pursue conflicting political agendas".¹⁴⁹ In a broader sense, elucidated by Lombardo and Verloo, "Crenshaw's concept of 'political intersectionality' urges policymakers and activists to reflect on the dynamics of privilege and exclusion that emerge when people at the intersections of different inequalities are overlooked."¹⁵⁰

As for the aforementioned criticism that intersectionality produces an identitarian framework, many have challenged this claim, for intersectionality more accurately concerns "overlapping identities"¹⁵¹ and their relationship to structures of power. As Jennifer Jihye Chun, George Lipsitz and Young Shin astutely note, intersectionality "primarily concerns the way things work rather than who people are".¹⁵² It is true, as Yuval-Davis notes, that "while originally developed as a counter to identity politics that emphasize (as well as homogenize and reify) uni-dimensional versions of identity, some of these intersectional approaches have become a kind of fragmented identity politics, in which the focus is no longer, for instance, women or Blacks, but Black women".¹⁵³ However, as scholar Mieke Verloo observes, Crenshaw understood intersectionality as the escape from the problem of identity politics.¹⁵⁴ Cho et al. recognize that Verloo "attributes the preservation of inequality to the social construction of categorical pairs

¹⁴⁸ Verloo, Mieke. 2013. Intersectional and cross-movement politics and policies: Reflections on current practices and debates. *Signs* 38.4: 899.

¹⁴⁹ Crenshaw, 1995: 363.

¹⁵⁰ Lombardo, Emanuela & Mieke Verloo. 2009. Institutionalizing intersectionality in the European Union? *International Feminist Journal of Politics* 11.4: 479.

¹⁵¹ Cho et al., 2013: 797.

¹⁵² Chun, Jennifer Jihye, George Lipsitz & Young Shin. 2013. Intersectionality as a social movement strategy: Asian immigrant women advocates. *Signs* 38.4: 923.

¹⁵³ Yuval-Davis, Nira. 2015. Situated intersectionality and social inequality. *Raisons Politiques* 58: 93.

¹⁵⁴ Verloo, Mieke. 2006. Multiple inequalities, intersectionality and the European Union. *European Journal of Women's Studies* 13.3: 212.

that repeatedly classify (and reclassify) people into ‘two exclusive and exclusionary groups’ thus expressing what we might call a form of structural realism.”¹⁵⁵

4.2 EU gender equality as the only equality framework?

Ironically, the current practice of EU equality law and policy maintains the very patterns of identity politics that are detrimental to the expansion of intersectionality theory and the path towards eradicating inequality. This is mainly due to EU equality law being heavily reliant on gender equality regimes; this trend varies from region to region, but the commonality exists. Verloo has noted this relation between structural interventions and identity categories within the EU and its “policies that address the (re)production of inequalities for members of intersectional groups competing over resources and (dominant) gender-egalitarian norms and laws, as gender equality regimes are the leading template for other equality regimes”.¹⁵⁶ For example, Constanza Hermanin and Judith Squires observe that there has been a competition between those who pursue gender equality and those who campaign for ethnic minority and religious group recognition, which has resulted in “anxieties that a multiple equalities agenda may undermine rather than facilitate gender justice”.¹⁵⁷ In the case of Belgium, for example, “equality policies were and are still primarily about gender”.¹⁵⁸ Gender mainstreaming takes the fore in Belgium, and pro-active equal opportunity policy continues to favor and focus on gender.¹⁵⁹ However, ethnicity **is** considered in gender equality policies in Belgium, though the focus rests mainly on migrant women, as Celis et al. explain.¹⁶⁰

Where intersectionality has been institutionalized, that has been thanks to civil society.¹⁶¹ On the other hand, one can observe how varied the institutional frameworks of countries across Europe

¹⁵⁵ Cho et al, 2013: 799.

¹⁵⁶ Ibid., 798–9.

¹⁵⁷ Hermanin, Costanza & Judith Squires. 2012. Institutionalizing intersectionality in the “Big Three”: The changing equality framework in France, Germany, and Britain. In Andrea Krizsán, Hege Skjeie & Judith Squires (eds.), *Institutionalizing intersectionality: The changing nature of European equality regimes*, 108. Basingstoke: Palgrave Macmillan.

¹⁵⁸ Celis, Karen, Joyce Outshoorn, Petra Meier & Joz Motmans. 2012. Institutionalizing intersectionality in the Low Countries: Belgium and The Netherlands. In Andrea Krizsán, Hege Skjeie & Judith Squires (eds.), *Institutionalizing intersectionality: The changing nature of European equality regimes*, 141. Basingstoke: Palgrave Macmillan.

¹⁵⁹ Ibid., paraphrasing.

¹⁶⁰ Celis et al., 2012: 141.

¹⁶¹ Hermanin & Squires, 2012: 115.

have become, even when one compares France, Germany and the United Kingdom with their next-door neighbors Belgium and the Netherlands. This is proof of how colonialism and racialization have transformed and pervaded “the political and discursive opportunity structures that were embedded within the institutional legacies and patterns of mobilization in each country”.¹⁶² As Nira Yuval-Davis remarks, this is also illustrative of situated intersectionality, which analyzes and relies on the “geographical, social and temporal locations of the particular individual or collective social actors”.¹⁶³ Though colonial legacies and racial formations produce differences in relation to the types of bodies that are found in each country, there still exist similarities, such as how in the Netherlands “[t]he Ministry of Justice follows a policy of strictly neutral legal language which is said to encompass all citizens”; this leads to “resistance against diversity”¹⁶⁴ and evokes a likeness to France’s uniform citizenry.¹⁶⁵ And these similarities, among a wide array of differences, are proof of the fact that despite integrated institutions or integrated policy, none “suffice to adequately tackle intersectional inequality since in both cases there is a need to adapt the institutions and to actively change existing routines and interpretations”.¹⁶⁶ Is it mere coincidence that most Western countries (with the exception of the UK) started with gender equality legislation, and now most of them have experienced devolution from intersectional approaches?

4.3 The institutionalization of normative feminist intersectionality in the EU

The results and pitfalls of this single-axis approach come in various forms. Kantola and Nousiainen evaluate the neglect of intersectionality in equality law, which explains how EU policy on multiple discrimination, “although so far unsupported by binding legislative requirements, seems to have been a catalyst for the trend of unification in member states.”¹⁶⁷ Europe has progressed in the “widening of gender equality policies” but with an unwanted result: the strengthening of identity politics. Currently, as Verloo points out, “the question of which

¹⁶² Krizsán, Andrea, Hege Skjeie & Judith Squires. 2012b. European equality regimes: Institutional change and political intersectionality. In Andrea Krizsán, Hege Skjeie & Judith Squires (eds.), *Institutionalizing intersectionality: The changing nature of European equality regimes*, 210. Basingstoke: Palgrave Macmillan.

¹⁶³ Yuval-Davis, 2014: 95.

¹⁶⁴ Celis et al.. 2012: 131.

¹⁶⁵ Hermanin & Squires, 2012: 93.

¹⁶⁶ Verloo, 2013: 903.

¹⁶⁷ Kantola & Nousiainen, 2009: 472.

categories one is seen as belonging to now matters even more, as some categories are protected, and the protection offered to different categories is uneven”.¹⁶⁸ In an analysis of the unevenness in the protections offered by EU equality policies, Lombardo and Verloo conclude that the “EU legal framework is merely juxtaposing inequalities rather than intersecting them, and is not giving equal importance to the different inequalities”.¹⁶⁹ This is supported by the trend that they trace in the history of EU institutions concerning equality bodies. This development began in the 1990s with the establishment of integrated bodies for all inequalities (EWL, ENAR, ILGA), followed by a move towards more specific bodies.¹⁷⁰ However, the authors argue that the structure of the bodies is not as important as the need for them to coordinate action on intersectionality “to avoid excluding particular axes from policy measures”.¹⁷¹ In the case of Belgium, anti-discrimination laws still do not offer the opportunity to base complaints on intersecting discriminatory grounds.¹⁷²

With this evaluation, Verloo touches upon the underlying disease, rather than just the symptoms. She borrows her analysis partly from Charles Tilly in order to explain that inequality policies focused on combating discrimination by individuals are ineffective.¹⁷³ In fact, “all parts of society [need to be] examined for existing measures that enable exploitation or opportunity hoarding”,¹⁷⁴ otherwise these institutions cannot facilitate intersectional outcomes. In more concise terms, there is a risk of losing “a conceptual category useful for challenging power relations between women and men”, as well as losing “a representation of inequality as a structural and institutional problem, [and not] a problem of discrimination between individual citizens”.¹⁷⁵

How then does the EU address inequalities that border intersectional experiences? In an in-depth examination to understand how EU policies interpret these inequalities through institutionalization, Krizsán et al. determine that “equality institutions are one of the most

¹⁶⁸ Verloo, 2013: 900.

¹⁶⁹ Lombardo & Verloo, 2009: 478.

¹⁷⁰ Ibid., 485.

¹⁷¹ Ibid., 486.

¹⁷² Paraphrasing Celis et al., 2012: 144.

¹⁷³ Verloo, 2013: 904.

¹⁷⁴ Ibid.

¹⁷⁵ Lombardo & Verloo, 2009: 489.

specific expressions of equality policies”,¹⁷⁶ and it is therefore necessary to evaluate these equality regimes in order to understand the place that intersectionality has and could have in them. What is illuminating about this work is that they “presuppose that ongoing equality institutional and legislative changes in Europe and debates and struggles around them can create the preconditions for intersectional practices, but don’t inevitably lead to intersectional practices”.¹⁷⁷ Integrated equality bodies naturally exist in Europe: the European Commission has enforced their creation, specifically since the Article 13 Directives were established. Using soft law recommendations, the Commission ensures that all protected inequalities are covered.¹⁷⁸ This trend has “shaped the content and direction of processes of Europeanization in the field of equality policy in the last decade in Europe”,¹⁷⁹ as Krizsán et al. note. However, as reported by UNIA,¹⁸⁰ the Interfederal Centre for Equal Opportunities in Belgium, the EU anti-discrimination laws “are often insufficient for certain victims and do not always have enough impact”.¹⁸¹ In a recent report,¹⁸² UNIA considered 10 years of anti-racism and anti-discrimination law in Belgium and published 27 recommendations based on its experience with over 17,000 cases. It found that Belgian legislation stands out for its protection of 19 criteria,¹⁸³ as opposed to the six criteria laid out by the EU directives. However, despite this, UNIA still notes in its report that though “Le Décret du 10 juillet 2008 portant le cadre de la politique flamande de l’égalité des chances et de traitement, par exemple, se réfère explicitement à des critères protégés ‘individuels ou attribués par association’ ... Ce n’est pas encore le cas dans la loi antiracisme et la loi antidiscrimination.” (The Decree of 10 July 2008 on the framework of the Flemish policy on

¹⁷⁶ Krizsán, Andrea, Hege Skjeie & Judith Squires. 2012a. Institutionalizing intersectionality: A theoretical framework. In Andrea Krizsán, Hege Skjeie & Judith Squires (eds.), *Institutionalizing intersectionality: The changing nature of European equality regimes*, 8. Basingstoke: Palgrave Macmillan.

¹⁷⁷ Ibid., 22.

¹⁷⁸ Ibid., 13. Paraphrasing.

¹⁷⁹ Ibid., 13.

¹⁸⁰ Unia describes itself “in a nutshell” as follows: “Unia is an independent public institution that combats discrimination and promotes equal opportunities. We have interfederal competence, which means that, in Belgium, we are active at the federal level as well as the level of the regions and communities.” From <http://unia.be/en/about-unia>; see there for more information.

¹⁸¹ See <http://unia.be/en/articles/the-antidiscrimination-laws-10-years-later-unia-highlights-the-major-trouble-spots>.

¹⁸² UNIA report on the Evaluation of federal anti-discrimination legislation (2017). Available at: [http://unia.be/files/Documenten/Publicaties_docs/Evaluation_2e_version_LAR_LAD_Unia_PDF_\(Francophone\).pdf](http://unia.be/files/Documenten/Publicaties_docs/Evaluation_2e_version_LAR_LAD_Unia_PDF_(Francophone).pdf).

¹⁸³ See <http://unia.be/en/articles/the-antidiscrimination-laws-10-years-later-unia-highlights-the-major-trouble-spots>.

equal opportunities and treatment, for example, refers to one or more protected characteristics. This is not yet the case in the [federal] Anti-Racism Act and the Anti-Discrimination Act.).¹⁸⁴

So far, EU anti-discrimination law contributes by “harmonizing the material scope of protection of all grounds, which removes the first of these obstacles ... the latter, taking the focus off the comparator requirement – is still lacking in EU anti-discrimination law”.¹⁸⁵ Other researchers duly note that “equality institutions are differentiated by their functions: gender equality agencies serve political administrative functions, consultative equality bodies serve consultative functions, and anti-discrimination bodies serve legal-enforcement functions”.¹⁸⁶ This is the case in Belgium, where there are two equality bodies: UNIA, which deals with all forms of discrimination specifically at the federal level, and then the Institute for the Equality of Women and Men. This multiple division demonstrates how equality institutions themselves are constructed to approach the different ways of addressing “inequalities and their intersections, and that distinguishing between these different forms of interventions is important”.¹⁸⁷

4.4 EU Equality Language: Multiple Discrimination versus Intersectionality

I find that using the term “multiple discrimination” encourages an element of comparison in the conception of discrimination, and yet this terminology permeates the EU equality domain. Kantola and Nousiainen state that intersectionality has strongly entered EU political discourse in the form of multiple discrimination, and increasing attention has been paid to it. But as they argue, by constructing intersectionality in terms of multiple discrimination, it has promoted narrow approaches to equality by focusing on anti-discrimination policy¹⁸⁸ within a framework of inclusion versus exclusion. Since its inception, as Crenshaw and others point out, intersectionality has “challenged the putatively universal subject of anti-discrimination law”.¹⁸⁹ It is therefore necessary to understand and promote the evolution and study of intersectionality “as a larger critique of rights and legal institutions”. This must be done in order to actively

¹⁸⁴ UNIA report on the Evaluation of federal anti-discrimination legislation (2017), 68.

¹⁸⁵ Kantola & Nousiainen, 2009: 466.

¹⁸⁶ Krizsán et al., 2012a: 11.

¹⁸⁷ Ibid., 11.

¹⁸⁸ Kantola & Nousiainen, 2009: 460, paraphrasing.

¹⁸⁹ Cho et al., 2013: 791.

demonstrate how detrimental it is that EU equality law focuses on “narrow demands for inclusion”, as opposed to viewing them through the broader lens of power relationships situated outside of the logics of sameness and difference. Multiple discrimination is a term that endangers the struggle against inequality and deeper forms of oppression. Even a straightforward impression of the term evokes the idea that there is a sort of double discrimination occurring: A black woman faces two discriminations – one that black people experience, and then one that women experience. This representation does not evoke the true reality that intersectionality does, and thereby perpetuates negative effects: “the multiple [discrimination] approach ... produces ‘an additive model of politics leading to competition rather than coordination among marginal groups for fringe levels of resources rather than systemic reform that could transform the entire logic of distribution’.”¹⁹⁰

The continued use of multiple discrimination, in lieu of intersectionality, is concerning. In fact, it resembles the same ideology of justice that Iris Marion Young critiques in her seminal work *Justice and the politics of difference*: that of an ideal of assimilation. It is this objective to transcend group difference that, to cite her own words, “usually promotes equal treatment as a primary principle of justice”.¹⁹¹ We cannot treat people equally according to the same standards without them falling prey to those who are advantaged or privileged. As Young further emphasizes, if this is the case, “a politics that asserts the positivity of group difference is liberating and empowering. In the act of reclaiming the identity the dominant culture has taught them to despise ... and affirming it as an identity to celebrate, the oppressed remove double consciousness”.¹⁹² What binds these two ideas together – that of intersectionality and the politics of difference – is their emphasis on distinction. As Young duly notes, though all oppressed groups face a common condition in an abstract sense, the similarities end there, because “it is not possible to define a single set of criteria that describe the condition of oppression ... Consequently, attempts by theorists and activists to discover a common description or the essential causes of the oppression of all these groups have led to fruitless disputes about whose

¹⁹⁰ See Kantola & Nousiainen, 2009: 462; Hancock, Ange-Marie. 2007. When multiplication doesn’t equal quick addition: Examining intersectionality as a research paradigm. *Perspectives on Politics* 5.1: 70.

¹⁹¹ Young, 2011: 157.

¹⁹² *Ibid.*, 166.

oppression is more fundamental or more grave”.¹⁹³ Young outlines the criteria to determine if a group is oppressed; they include five elements, of which one or more is necessary to determine the position of oppression: exploitation, marginalization, powerlessness, cultural imperialism, and violence.¹⁹⁴ In essence, what Young’s argument suggests is a divergence from Europeanized strategies that assert discrimination as the only primary wrong that women and people of color endure, instead of addressing group oppression as the primary wrong.¹⁹⁵

The purpose of any comparative analysis of the institutional consequences that the European equality agenda has had in relation to the concept of intersectionality since it came out in 2000¹⁹⁶ is to understand what it has provided “in terms of interaction between different inequality categories at the level of both policy and politics”.¹⁹⁷ I would argue that this aforementioned division is “promoting particular institutional solutions to overseeing anti-discrimination law and equality policy”, thereby perpetuating single-axis frameworks and not eliminating “the main obstacle to intersectional legal justice ... the tendency to think in unitary ways about discrimination”.¹⁹⁸

This is the unfulfilled potential of intersectional politics, which “can only be fulfilled by enabling participation that goes beyond responding to predetermined positions to permit the exercise of meaningful power in the construction of contexts”.¹⁹⁹ This is how intersectionality theory began in the U.S:

Feminists of color saw connections between the rigid structuring of law that rationalized narrow and mutually exclusive approaches to intersecting patterns of subordination, on the one hand, and the single-axis frameworks within progressive, antiracist, and feminist discourses that were being contested by feminists of color elsewhere, on the other.²⁰⁰

¹⁹³ Ibid., 40.

¹⁹⁴ Ibid.

¹⁹⁵ Ibid., 196.

¹⁹⁶ Ibid., 5.

¹⁹⁷ Ibid., 17.

¹⁹⁸ Ibid., 21.

¹⁹⁹ Bassel, Leah. 2010. Intersectional politics at the boundaries of the nation state. *Ethnicities* 10.2: 155.

²⁰⁰ Cho et al., 2013: 790.

It may be that the beginnings of such realizations are taking shape in Europe, but I argue in the next chapter that the Article 13 Directives stand in the way of true progress here. At this point, I must delve into a discussion of the Article 13 Directives, most notably the Racial Equality Directive. The Framework by ENAR proposes that any strategies to combat discrimination and racism should take intersectionality into account and that member states should develop national antiracism strategies that address specific challenges to POAD and BE. However, I will illustrate in the next chapter how the space available for intersectionality theory within EU equality frameworks and institutions is insufficient and therefore unable to provide a suitable environment for a European-wide framework on Afrophobia. Consequently, any attempt to do so may result in potential failures.

5. The Race Equality Directive 2000/43/EC

In this chapter, our study will focus on Council Directive 2000/43/EC²⁰¹ – its general applicability, its origins and its deficiencies – which was created to combat racism experienced by certain groups of society and not simply discrimination based on individual grounds. Researchers who have particularly contributed to this subject are Mark Bell, Helen Meenan, and Terri E. Givens, among others. This chapter lends support to my theory that the deficiencies of the Race Equality Directive contribute to the many reasons why a European framework to combat Afrophobia has to date not yet emerged. Consequently, I believe, the evolution of EU anti-discrimination law and policy has led to and maintained a hierarchy of inequalities. It should be noted that it is not my intention in this chapter to discuss the effectiveness of anti-discrimination law and policy in each Member State that can be taken under the Article 13 Directives, nor do I assume that things cannot change. These Directives – Council Directive 2000/43/EC and Council Directive 2000/78/EC, the Race Equality Directive and Equal Employment Directive, respectively – are just the commencement of Europe’s advancement towards a more intersectional system in terms of anti-discrimination and equality law.

Beforehand, we must first clarify some distinctions between conceptions of equality in international and domestic human rights law. In essence, equality requires that those who have been disadvantaged be given the opportunity to achieve as much as the more privileged members of societies. However, the privileged or advantaged do not have it in their interest to equalize society in this way. Arguing that true equality would restrict freedom is a common technique. Equality and human rights must both be justified in the eyes of society or else they will not be accepted. The European tradition is to combine freedom with equality and rights with duties. This is quite problematic in that it limits equality to an individualistic perspective. Despite the many conceptions of equality that have been proposed, one should not deny the inequality that many groups have suffered.

²⁰¹ Hereafter referred to as the Race Equality Directive – Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin, OJ 2000 L 180/22.

If the first article of the Universal Declaration of Human Rights states that all human beings are created free and equal, then it is self-evident that “equality cannot be realized where racism persists”.²⁰² Equality is a multifaceted concept that includes equal opportunities, equal treatment and diversity, as well as non-discrimination. I attempted to consider where cases of social injustice, such as racial and gender inequality belong when considering approaches to equality. In *Racism and Equality in the European Union*, Mark Bell elaborates on two types of equality: formal equality, representative of individual justice, and substantive equality, representative of group justice.²⁰³ Formal equality relates more to direct discrimination where one or more situations can be compared. Equality is seen as rationality: if someone is denied a job because of the color of his or her skin, then that would be directly opposing formal equality. Formal equality has the capacity to protect individuals, but it does not recognize collective disadvantage as such. Therefore, it concerns itself with justice by the identical treatment of individuals, ignoring their diverse backgrounds and situations. This disregards the concept of treating different situations differently and takes away attention from an understanding of how the inequality came about. It also presupposes that individuals can be judged entirely on merit, without taking into account aspects regarding gender, race, ethnicity, etc.²⁰⁴

Bell then discusses substantive equality, which is the version of equality that attempts to eliminate inequality by focusing on collective experiences of discrimination by individuals who share common characteristics. This concept acknowledges that there are entrenched inequalities and that there need to be remedial effects taken to reverse them. However, substantive equality also has its limits when it comes to taking discrimination into account, because there is a difficulty in defining the fundamental goal of equality of opportunity or outcome. Where equality of opportunity does not concern itself about equal outcomes as long as discrimination played no part, equality of outcome strives to ensure that all groups should have proportionate representation and participation economically and politically. This foray into the types of equality is meant to demonstrate that there is not a unitary conception of equality in relation to

²⁰² Bell, Mark. 2008. *Racism and equality in the European Union*. Oxford: Oxford University Press, 27.

²⁰³ *Ibid.*, 27.

²⁰⁴ See Fredman, Sandra. 2016. Substantive equality revisited. *International Journal of Constitutional Law* 14.3: 712–738.

human rights; in fact, perhaps there cannot be one single approach, as any proposal would have its limitations.

However, this lack of consensus on the meaning of the “right to equality” becomes apparent in the elaboration of Article 13, which states as its purpose in Article 1 of the Race Equality Directive “a view to putting into effect in the Member States the principle of equal treatment”.²⁰⁵ Before we can discuss the right to equality further, it is necessary to outline the naissance of the Race Equality Directive.

5.1 Origin and Discussion of Article 13 in the EC Treaty

The emergence of Article 13 marks the beginning of the European Union’s human rights approach to equality²⁰⁶ and the expansion of the principle of non-discrimination, which was reaffirmed by the proclamation in December 2000 of the Charter of Fundamental Rights.

Article 13 Treaty establishing the European Community (as amended by the Amsterdam and Nice Treaties)

1. Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation.

2. By way of derogation from paragraph 1, when the Council adopts Community incentive measures, excluding any harmonisation of the laws and regulations of the Member States, to support action taken by the Member States in order to contribute to the achievement of the objectives referred to in paragraph 1, it shall act in accordance with the procedure referred to in Article 251.²⁰⁷

²⁰⁵ RED, Art 1, para 1.

²⁰⁶ Allen, Robin. 2007. Article 13 EC, evolution and current context. In Helen Meenan (ed.), *Equality law in an enlarged European Union: Understanding the Article 13 Directives*, 44. Cambridge: Cambridge University Press.

²⁰⁷ Green Paper on public-private partnerships and Community law on public contracts and concessions /* COM/2004/0327 10.

The incorporation of Article 13 into the EC Treaty was a result of the Amsterdam Treaty concluded in 1999, and the first two Directives deriving from this Article were the Race Directive and the Employment Equality Directive:²⁰⁸ “Article 13.1 EC empowers the Council to take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation”.²⁰⁹

Three aspects of the Article 13 legislation stand out as impediments to the full realization of equality in the EU: the principle of subsidiarity, the use of specific terminology and the maintenance of normative systems, embodied in its emphasis on individual litigation and mainstreaming anti-racism policy. As the editors of *Institutionalizing Intersectionality* emphasize, though the scope of equality thinking has been expanded in the EU, it “has not been accompanied by a levelling of the protection across inequality grounds, but rather has resulted in the creation, recreation or maintenance [sic] of hierarchies between inequalities”.²¹⁰ The evolution of anti-discrimination law itself has a complex history in Europe, but it helps explain how judicial case law on non-discrimination, the main function of anti-discrimination law, “has aims other than the combating of societal oppression and marginalization”.²¹¹ As Kantola and Nousiainen indicate, the reasons for the creation of the first anti-discrimination provisions during European integration were to expand transnational economic exchange, as opposed to social considerations.²¹² EU enlargement was more than just adding an extensive amount of new members; it was a “deepening of supranational governance in terms of enforceable rights under EU law and European level social policy”.²¹³ This heightened governance is complicated and has not always boded well for anti-discrimination law.

Helen Meenan summarizes the scope of Article 13 Directives in her volume on equality law in the European Union.²¹⁴ The particular emphasis of this book²¹⁵ is on the enlargement of the EU

²⁰⁸ Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin (published in OJ L 180 of 19 July 2000) and Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation (published in OJ L303 of 2 December 2000).

²⁰⁹ Treaty on Functioning of the EU (EC Treaty) Article 13.

²¹⁰ Krizsán et al., 2012b: 210.

²¹¹ Kantola & Nousiainen, 2009: 463.

²¹² Ibid.

²¹³ Ibid.

²¹⁴ The volume was published in 2006, so it was not able to analyze the “full measure of the challenges presented by the new anti-discrimination grounds. Nor do [they] have the full measure of diversity arising from combinations of

in 2004 and 2007, which had considerable influence on European equality law. There is a well-known argument in Europe that there is a hierarchy of equality, yet the authors of Meenan's volume are arguing that "on its own [the argument] may not be the most effective platform on which to argue for a leveling up of protection or a dismantling of (negative) differences in treatment".²¹⁶ Yet, Meenan's findings include the contention that an expanded approach to anti-discrimination is necessary, perhaps not unlike "a complete theoretical model of the operation of race discrimination law: an interaction between three tiers of normative systems, that is, law, selection criteria, and culture",²¹⁷ as proposed by some. A broader approach would better allow courts to see discrimination as institutional and systemic; a result of the interactions of normative structures.

Meenan outlines the three key characteristics of the Directive that have been successful:

it applies to all persons, beyond the field of employment and requires the Member States to establish an equality body to promote equal treatment on grounds of racial or ethnic origin. This third feature has proven particularly successful, as victims are more likely to approach an NGO or equality body rather than the courts, for fear of victimization and issues of cost.²¹⁸

As the author notes, the European Year of Equal Opportunities for All in 2007 provided a renewed initiative for further progress on anti-discrimination, especially outside the labor market, as proposed by the Commission.²¹⁹ It is important to remember, however, that Article 13 Directives were— and still are — implemented under the influence of sex and nationality

protected grounds, much less the ability of the Article 13 Directives to deal with them". See Meenan, Helen. 2007. Introduction. In Helen Meenan (ed.), *Equality law in an enlarged European Union: Understanding the Article 13 Directives*, 3. Cambridge: Cambridge University Press.

²¹⁵ The volume was written at the beginning of the development of the Fundamental Rights Agency, so it was not able to take certain evolutions into account; however, they will be explored later in the present study. The reason I focus on these readings is the fact that the time immediately after 2000 was the catalyst for the evolution of an EU-wide strategy to combat racism, and therefore its effects permeate the landscape of today.

²¹⁶ *Ibid.*, 4.

²¹⁷ *Ibid.*, 5.

²¹⁸ *Ibid.*, 7.

²¹⁹ Paraphrasing Meenan, 2012: 8.

discrimination law. This is crucial in explaining the absence of more specialized approaches towards collective discrimination legislation in combating racism against Black people.

It seems clear that the largely anti-discrimination model represented in the Article 13 Directives is based (primarily) on a “traditional model which sees the discrimination as a set of individual acts of prejudice, and the role of the law as being to establish who is at fault and to require compensation”.²²⁰

Does this claim still ring true today? Have there been lasting effects on anti-discrimination legislation? If so, then would this explain Europe’s difficulty in addressing racism against POAD and BE as a group? Luke Mason believes so, because as he notes, this traditional model contradicts the nature of cases of discrimination, which “are not discrete instances of wrongdoing but, rather, the continuous interaction between different normative systems that cast and recast disadvantage in society”.²²¹ This interaction of normative systems is highly important in legal measures to combat race discrimination. As Mason argues, without addressing the complex relationship between the normative systems of selection criteria and different ethnic cultures, the law cannot regulate how the former reflects the competing claims of the latter.²²² In such cases, courts cannot then determine whether certain “processes [are] unfairly disadvantag[ing] members of particular groups”.²²³ When applied to the consequent directives, Meenan argues that the Race Directive, therefore, falls short of addressing “the complexity of how individuals experience discrimination and in respect of the Employment Directive that multiple and overlapping discrimination is therefore unlikely to be recognized adequately”.²²⁴

Another important term that is problematic with respect to race discrimination is “multiple discrimination”, which, as discussed earlier, is “slowly emerging as a key issue at [the] EU level”.²²⁵ The European Commission also agreed to a call for tender²²⁶ for a study to promote understanding of the causes and effects of multiple discrimination in the EU. Regarding my

²²⁰ Ibid., 24.

²²¹ Mason, 2010: 1738.

²²² Paraphrasing *ibid.*, 1732.

²²³ *Ibid.*

²²⁴ *Ibid.*, 26–7.

²²⁵ *Ibid.*, 5.

²²⁶ Invitation to Tender VT/2006/01

foregoing discussion on intersectionality and equality concept theories that are circulating in the EU, it is important to interpret them in terms of their application through Article 13 Directives, as Meenan has begun to do. Her research leads her to perceive even before the Amsterdam Treaty the use of the idea “indirect discrimination” as a tool in combating systemic discrimination. The understanding of indirect discrimination in the EU varies between gender discrimination and discrimination based on nationality. As Sandra Fredman defines indirect discrimination, “a practice, policy or criterion which applies equally to all can be held to be discriminatory if it has a disparate impact or puts an individual at a particular disadvantage because of her sex, race, disability or other protected characteristic”.²²⁷ Applied to an understanding of equality, the concept has taken the fore in all three Article 13 Directives, “whose language on indirect discrimination speaks of putting persons at a ‘a particular disadvantage’ rather than ‘a considerably smaller number’ being able to comply”.²²⁸ Kantola and Nousiainen see this as an element of comparison in the definition of discrimination: “‘one person is treated less favorably than another is’ (which is the definition of direct discrimination), or a person is ‘put at particular disadvantage compared with other persons’ (the definition of indirect discrimination)”.²²⁹ Furthermore, they argue that “in terms of intersectional discrimination, legal scholars suggest that there are two prerequisites for a functioning protection that include (1) legal harmonization of the legislation concerning the protected grounds, and (2) a definition of discrimination that does not focus *on a comparator*”.²³⁰

There has also been a shift from the concept of formal equality to substantive equality preceding the Article 13 Directives. This allows the prohibition of indirect discrimination, a crucial aspect of progress towards non-discrimination legislation. However, Meenan uncovers many differences in terminology “that may stand in the way of achieving full equality in practice for subgroups”.²³¹ Other research has noticed this shift as well, and argues that in order for substantive equality to be an effective concept, it “should be developed in a multi-dimensional

²²⁷ Fredman, 2014: 13

²²⁸ Meenan, 2012: 20.

²²⁹ Kantola & Nousiainen, 2009: 466.

²³⁰ Ibid., 466.

²³¹ Meenan, 2007: 23.

format, which recognizes and addresses the distributional, recognition, structural and exclusive wrongs experience by out-groups”.²³²

5.2 Assessment of the Race Equality Directive

Despite the flaws of Article 13, the derived Race Equality Directive was, as mentioned earlier, a very progressive piece of work in terms of its legal implications. According to Lombardo and Verloo, “the level of protection by the Race Equality Directive is also stronger than for other inequalities, as it includes measures to improve implementation”.²³³ As discussed earlier, through the uneven development of the EU’s legal equality framework, there has been considerable differentiation between the axes of inequality, especially in relation to the scope and level of protection.²³⁴

Moreover, the language of the directives often stresses the need for positive action on behalf of member states, but the delegation of positive action often contradicts the use of indirect discrimination that is predominantly being used as a tool to combat systemic discrimination. Meaning, when the directive²³⁵ suggests provisions that would appear to be better able to eliminate racial discrimination by addressing entrenched inequalities, rather than “through the use of a simple adversarial judicial model”. We are in fact observing that these provisions “are better understood as reflection more of an ambivalent position regarding the elimination of such discriminatory practices” because by delegating this responsibility to member states to act as they see fit, the result is “as is presently the case in the vast majority of member states, the freedom to take no action in this regard”.²³⁶ This reflects, as I have argued before, the notion that much of the EU’s propaganda towards fighting racism and discrimination based on race is at its core a rather ineffective symbolic gesture. This is evident in the words of the Race Directive, for while it “sends out a strong message against racial discrimination, it does relatively little to

²³² Fredman, 2014: 30.

²³³ Lombardo & Verloo, 2009: 480.

²³⁴ Ibid., 481.

²³⁵ Article 5 and 6 of the Race Equality Directive.

²³⁶ All quotes from Mason, 2010: 1742.

address its underlying causes, opting instead to delegate the choice of whether and how to do this to other actors”²³⁷.

Additionally, as Meenan suggests, many subgroups face discrimination on a Europe-wide basis and, therefore, positive action at the national as opposed to Community level “may be an impediment to its efficacy”.²³⁸ According to Robin Allen, “it is important to bear in mind that the focus in assessing whether there has been discrimination will differ according to the protected group in question”.²³⁹ As Lombardo and Verloo reflect, “anti-discrimination is largely a symbolic tool for a Union in search of legitimacy”.²⁴⁰ To support this claim, they cite the EU’s exclusion of class in its multiple discrimination framework. A lack of policies addressing poverty lets slip an important factor in the marginalization of many groups. As Kantola & Nousiainen state, “[w]hile class may be and often is used as a criterion of making distinctions based on prejudice, it also evokes identity politics and issues of distributive justice that are beyond what anti-discrimination law can address”.²⁴¹ The principle of the right to equality should be developed in substantive terms, but an emphasis must be put on a multi-dimensional approach “that is capable of addressing race and gender as social constructs”.²⁴² If it cannot do so, then it cannot respond to real wrongs as experienced by out-groups. Fredman makes a case for locating the concept of equality in a social context as opposed to “abstract formulaic terms”.²⁴³ In so doing, anti-discrimination legislation can “create a complex and dynamic conception of the right to equality, which build on existing understandings but also invite[s] further development and evolution”.²⁴⁴

No doubt the most comprehensive author to deal with the subject of the Directive in terms of its impact on anti-racism policy in the European Union is Mark Bell. In his thorough research concerning the origins of the Article 13 Directives, Bell analyzes the divergence or evolution from seeing anti-discrimination as solely a labor law issue (referring to the European Labor

²³⁷ Ibid., 1744–5.

²³⁸ Meenan, 2007: 23.

²³⁹ Allen, 2007: 48.

²⁴⁰ Lombardo & Verloo, 2009: 490.

²⁴¹ Kantola & Nousiainen, 2009: 469.

²⁴² Fredman, 2016: 731.

²⁴³ Ibid., 1.

²⁴⁴ Ibid., 738.

Law). This is a promising development, but the Race Equality Directive leaves much to be desired. European “social law” is predetermined to focus on equality, especially within the labor sector. However, the EC treaty does not necessarily allow the EU to legislate in areas outside of labor which are considered social sectors (housing, education, etc.), due to the amount of public expenditure such legislation requires. Furthermore, treatment of racial discrimination varies between countries.²⁴⁵ France, for example, addresses it mainly through penal law, whereas the UK regulates it under labor law just like gender discrimination; and finally, countries such as Italy and Spain with large influxes of migrants in the 1990s are more inclined to regulate racial discrimination through the tools of immigration law. Bell notes that “the association of norms on racism with ‘justice’ policies is also evident in European Union policy discourses”.²⁴⁶ Yet he points out most advertently that the Directive has become nestled firmly into the body of citizenship rights; this is evidenced by the placing of Article 13 in the “principles” part of the EC Treaty. This implies that the Directive is seen as a fundamental instrument for the protection of individual rights. Though again this shows progress, it could also indicate a departure from being an instrument for group protection, something that is crucial to combating modern racial discrimination and that needs to be addressed in the law. Yet, as Bell states, “the role of employment guidelines in providing a springboard to the adoption of the Racial Equality Directive” cannot be overlooked,²⁴⁷ as it is what allows European social regulation to expand through the open method of coordination – which the Employment Equality Framework Directive²⁴⁸ espouses.

5.3 Indirect discrimination: A crucial weakness in a litigation-based solution

A crucial weakness of the Race Equality Directive is that it does not go further than “a *prohibition* of the selection criteria favoring one particular culture over another, given the complexity of the problem at hand”.²⁴⁹ Articles 2(1) and 2(2)(b) of the Directive ban indirect discrimination, which makes it appear as if it is taking seriously discrimination experienced by disadvantaged groups due to the application of norms. However, as Mason points out, the

²⁴⁵ Bell, 2002: 387.

²⁴⁶ *Ibid.*, 388.

²⁴⁷ *Ibid.*, 390.

²⁴⁸ Directive 2000/78/EC.

²⁴⁹ Mason, 2010: 1739.

“prohibition of this form of discrimination turns out, in fact, to be quite illusory”.²⁵⁰ This is because the Article 2(2)(b) in fact mainly explains when the prohibition does not apply and uses the same method that it would employ to deal with cases of direct discrimination. Indirect discrimination is much more complicated than direct discrimination and therefore, when the Directive allows courts to regulate such cases in the same fashion, it “leaves much interpretatory and applicatory room for maneuver for judges, both in terms of the existence of indirect discrimination in any given case, and in what they consider to be legitimate aims, and means proportionate thereto, in terms of the possible justification of such discrimination”.²⁵¹ This emphasis on litigation is what is most concerning because, as Bell observes, “institutionalized forms of discrimination, which, by their nature, are deeply entrenched, may be less susceptible to individual litigation”.²⁵² Additionally, the Directive delegates the task of weighing up the competing values, creating a conflict between different cultures within the normative system and the law’s own dispute resolution forum – the courts.²⁵³

However, litigation on behalf of a group can be much more effective in many circumstances where there is indirect discrimination, which – as discussed – can be hard to prove, considering that there might be no overt discriminatory acts. As Bell concludes, the Directive has become more of a transversal policy commitment to anti-discrimination,²⁵⁴ which makes it possible for member states to start applying anti-discrimination policies and laws in new ways, encompassing a broader scope and hopefully a more integrated approach. However, its model of enforcement through individual litigation with no obligation of positive actions may be insufficient. So far this limitation has been argued to exist both in general²⁵⁵ and in particular, in the case of discrimination faced by historic ethnic communities like the Roma.²⁵⁶ Parallel to the directives on gender, member states must designate a body for promoting equal treatment.²⁵⁷

²⁵⁰ Ibid., 1739.

²⁵¹ Ibid., 1740.

²⁵² Bell, 2002: 397–8.

²⁵³ Paraphrasing Mason, 2010: 1740.

²⁵⁴ Bell, 2003: 398.

²⁵⁵ See Shaw, Jo. 2005. Mainstreaming equality and diversity in the European Union. *Current Legal Problems* 58: 255–312; and Verloo, 2006.

²⁵⁶ See Bell, 2007.

²⁵⁷ Lombardo & Verloo, 2009, 480.

Bell argues that although the Race Directive was strong “compared to other areas of EU anti-discrimination law”,²⁵⁸ it created the idea that race and ethnic origin had higher levels of protection, as compared to gender, age, and disability, for example. And yet, this hierarchy is still not necessarily reflected in the Union’s commitment to combating racism.²⁵⁹ Bell examines three separate policy elements to explore his argument and illustrate the framework of the EU’s anti-racism policy: legislative initiatives, mainstreaming anti-racism, and institutional commitments.²⁶⁰

Bell raises the question where the choice to “isolate race in a separate Directive”²⁶¹ stems from. As is by now common knowledge, the Directive was pushed through within an extraordinarily short amount of time, due to the political consensus that arose from the sudden emergence to power of Jörg Haider’s Freedom Party in Austria.²⁶² Bell then launches into a discussion of mainstreaming anti-racism policy that describes its ascendancy into the status quo; yet, as he points out, “this has not guaranteed genuine and thorough policy integration”.²⁶³ The institutional commitment to anti-racism policy has taken the shape of what is now known as the Fundamental Rights Agency (FRA) – or, as it was formerly called, the European Union Monitoring Centre on Racism and Xenophobia. The focus of its mandate was “the compilation of *comparable* data on racism in the Member States”.²⁶⁴ Due to reasons that reside within the colonial legacies of nations that I discussed earlier, such data collection is often forbidden, rendering the former EUMC’s mandate nearly impossible to fulfill. Furthermore, as Mason argues, in terms of litigation-based solution, “this ambivalence towards the use of statistics in finding discrimination is utterly anachronistic given the enormity of the role placed on courts by the directive, as it potentially deprives the courts of the means by which to perform their epistemic function, that is, to discover ‘the facts’”.²⁶⁵

²⁵⁸ Bell, 2007: 178.

²⁵⁹ Ibid., 178–9.

²⁶⁰ Ibid., 181.

²⁶¹ Ibid., 183.

²⁶² Mason, 2010: 1734

²⁶³ Bell, 2007: 192.

²⁶⁴ Ibid., 194.

²⁶⁵ Mason, 2010: 1741.

Bell goes on to assert that the diversity of grounds for discrimination poses various problems, especially with a “strategy based on individual litigation [that] is unlikely to prove sufficient to break the cumulative disadvantage experienced in education, housing, healthcare and the labour market”.²⁶⁶ Despite his conclusion that the Race Equality Directive could be applicable and/or relevant to the unique types of discriminations that are experienced by those in out-groups, he is not sure whether an anti-racism policy addressing group discrimination could arise in Europe based on this trajectory. That leaves little hope for the Race Equality Directive, taken in its entirety, as well as for its scope as a useful tool in the struggle against the systemic racism that People of African Descent face every day.

5.4 Limitations

Although Europe’s material scope of indirect race discrimination is quite broad, the main limitation that exists is that it does not cover difference of treatment based on nationality, nor third country nationals or stateless persons. In an analysis of the Directive by the Open Society Institute, Frederic Van den Berghe outlines the precise limitations in terms of race that the Directive poses to judicial interpretation. These begin with the concerning fact that “the directive does not provide any definition of the words *racial* or *ethnic origin*”.²⁶⁷ In addition, it seems to ignore the definition of the concept as stated in Article 1 of the International Convention on the Elimination of all Forms of Racial Discrimination (ICERD), which includes color, descent and national or ethnic origin within the concept of “race”.²⁶⁸ Furthermore, the Directive in Article 5²⁶⁹ elaborates on positive action, yet as the author notes, “[t]o undertake positive action, disadvantages must first be established and the means to eliminate them must be proportional”.²⁷⁰ This poses an interesting problem, because if nations do not acknowledge the

²⁶⁶ Ibid., 200.

²⁶⁷ Van den Berghe, Frederick. 2010. “Race” in European law: An analysis of Council Directive 2000/43/EC, 2. New York: Open Society Institute.

²⁶⁸ International Convention on the Elimination of All Forms of Racial Discrimination.

²⁶⁹ “With a view to ensuring full equality in practice, the principle of equal treatment shall not prevent any Member State from maintaining or adopting specific measures to prevent or compensate for disadvantages linked to racial or ethnic origin.”

²⁷⁰ Van den Berghe, 2010: 2.

lasting disadvantageous effects of colonialism and slavery, how can any positive actions be undertaken?

Due to variations of the definition of race and the consequent framing of race within each society, there are important differences in race policy between countries in the EU. To demonstrate this, as Terri Givens observes, Erik Bleich establishes in his 2003 book *Race Politics in Britain and France* how in Britain, “the frame for race policy is based on a multicultural approach that emphasizes racism based on color and identifies with problems of racism in North America. In France, the frame is based on the country’s experiences with anti-Semitism and rejects any comparison with North American issues”.²⁷¹ In evaluating the bearing of the Race Equality Directive on anti-discrimination policy and Black people in France, Givens concentrates heavily on the “the transposition of the Race Directive into national law and implementation, focusing on the development of France’s equality body”.²⁷² As mentioned previously, France rejects the very concept of race. The term “race” is not written into its constitutional law: rather, France prefers “the concept of a French people comprised of French citizens”.²⁷³ This ideology has naturally had an impact on the decision to prohibit data collection based on ethnicity or race, most prominently because “Article 1 of the 1958 Constitution, which provides for ‘equality before the law of all citizens without distinction of origin, race, or religion’ has been interpreted to prohibit the drawing of [such] distinctions”.²⁷⁴ What therefore happens is that public policy does not aim to combat racism but rather discrimination,²⁷⁵ as Gwenaële Calves astutely notes.²⁷⁶ France has done its part in applying the Article 13 Directives to national law under the Jospin government, namely with the law no. 1006-2001 of 16 November 2001 and the law of social modernisation no. 2002-73 of 17 January 2002.²⁷⁷ Then, under the Chirac government a national equality body was created, which is another requirement of the Directive.

²⁷¹ Givens, Terri E. 2014. The impact of the European Union’s Racial Equality Directive on anti-discrimination policy and black people in France. In European Network Against Racism, *Invisible visible minority: Confronting Afrophobia and advancing equality for people of African descent and Black Europeans in Europe*, 118. Brussels: European Network Against Racism.

²⁷² Ibid., 120.

²⁷³ Ibid., 123.

²⁷⁴ Ibid., 123.

²⁷⁵ Ibid., 125.

²⁷⁶ Calves, Gwenaële. 2002. Il n’y pas de race ici: Le modèle français à l’épreuve de l’intégration européenne. *Critique Internationale* 17: 173–186.

²⁷⁷ Givens 2014, 129.

Yet, it is most remarkable to note that “in the French case, the ongoing influence of the radical right and domestic unrest influenced the quick passage of legislation that implemented most of the 2000/43/EC’s main terms and continued to influence the strengthening of this legislation”.²⁷⁸ There is a distinct similarity here to the hastened circumstances under which the Race Directive itself was created.

5.5 European Commission Communications/Joint Reports on the Race Equality Directive

In 2004, not long after the EU added ten new member states, the European Commission published the manuscript of its “Green Paper on Equality and Non-Discrimination in an Enlarged European Union”. The paper contains the Commission’s analysis of the progress made to date in the Union with respect to the two Article 13 Directives. In terms of implementing and transposing anti-discrimination legislation into member states national laws, the Commission saw significant improvements. Yet it does recognize the fact that “legislation is but one component of action to combat discrimination”²⁷⁹ as embodied by the Community Action Program.²⁸⁰

It is interesting to note the aims of the program, which – though progressive and necessary – do not address the underlying origins of discrimination. One example of their aims is to “promote and disseminate the values and practices underlying the fight against discrimination, including through the use of awareness-raising campaigns”.²⁸¹ It would be illuminating to explore this further and to evaluate the awareness-raising campaigns in order to discover what information they are disseminating.

Nonetheless, one cannot deny that with the creation of the Article 13 directives, as the Commission states, “The EU has put in place a strong legal framework to combat discrimination. The immediate challenge will now be to ensure the full and effective implementation of this

²⁷⁸ Ibid., 131.

²⁷⁹ EC Green Paper 2004, 12.

²⁸⁰ Council Decision 2000/750/EC.

²⁸¹ EC Green Paper 2004, 12.

framework”.²⁸² However, evidence suggests that the situation has not improved, because in 2004 the Commission noted: “there is evidence that racist acts and racial discrimination have increased in recent years”,²⁸³ as uncovered through reports by the European Union Monitoring Centre on Racism and Xenophobia.

Two issues stand out most prominently among the observations of the Green Paper. Firstly, the “lack of mechanisms to collect data and monitor trends and progress in Member States” had at the time still not been improved and even hindered the actual appraisal of existing challenges and the effectiveness of the new legislation in terms of combating discrimination. Secondly, there has been and still is a tendency for member states to “deal with gender equality alongside measures to combat discrimination on the other grounds set out in Article 13”.²⁸⁴ This appears highly problematic, because the reason this is done is to integrate approaches to address multiple discrimination. By itself this measure is effective and highly important; however, it would be more appropriate to streamline an approach that deals with intersectionality and/or the racialization of European society. As the Green Paper explains, “the Racial Equality and Employment Equality Directives draw inspiration from earlier EEC legislation on equality between women and men. Many of the definitions and legal concepts used in the two Directives have been inspired by gender equality legislation and/or the case of the European Court of Justice in the field of gender equality”.²⁸⁵ The Green Paper’s consultation process – as Rolandsen Agustín²⁸⁶ argues – shows that the Commission privileges responses that best fit its own frame of an integrated approach and at times seems to play the NGOs against each other, giving more credit to some claims over others.²⁸⁷ Furthermore, as Lombardo and Verloo indicate, “the Commission’s increased attention to multiple discrimination does not reflect a shift towards an approach that is based on intersecting inequalities, but rather shows that inequalities are treated separately in Commission policy practice”.²⁸⁸

²⁸² EC Green Paper, 21.

²⁸³ Ibid., 21.

²⁸⁴ Ibid., 28.

²⁸⁵ Ibid., 11.

²⁸⁶ Agustín, Lise Rolandsen. 2008. Civil society participation in EU gender policy-making: Framing strategies and institutional constraints. *Parliamentary Affairs* 61.3: 505–517.

²⁸⁷ Lombardo & Verloo, 2009: 488.

²⁸⁸ Ibid., 484.

In a more recent Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions which followed the Green Paper discussed above,²⁸⁹ the observations and feedback from national authorities and other stakeholders are assessed. Of concern again was the lack of data collection – without which it is nearly impossible to monitor the implementation of EC anti-discrimination legislation²⁹⁰ – and the fact that legislation cannot on its own appropriately deal with the complex reasons of inequality experienced by certain groups: “positive measures may be necessary to compensate for long-standing inequalities suffered by groups of people who, historically, have not had access to equal opportunities”.²⁹¹ How exactly though are member states supposed to enforce this? How would they actually go about publicly acknowledging these historical circumstances in a way that ensures recognition and understanding? An EU Framework on combating Afrophobia could provide the solution here, as it would encourage the implementation of strategies that encompass these facets of society. However, as we will see shortly with the Framework for the Roma, not much has changed in their situation despite some improvement here.

The latest publication by the Commission is a joint report on the application of Council Directive 2000/43/EC which appeared in 2014.²⁹² At this juncture, the Directives have been fully assembled into the national laws of Member States. Concern is evident in the area of equality data collection – which the Directives do not require, even though it is still crucial in the fight against discrimination.²⁹³ Moreover, the Commission and Council emphasize that “EU law, specifically the Data Protection Directive, does not prevent the member states from collecting data to produce statistics provided that the safeguards set out in the Directive are respected”.²⁹⁴ Additionally, as discussed earlier, diverse concepts of discrimination, such as indirect discrimination, posed difficulties for member states in transposing them accurately.²⁹⁵ This

²⁸⁹ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions - Non-discrimination and equal opportunities for all - A framework strategy.

²⁹⁰ 3.4 Communication.

²⁹¹ 3.3 Communication.

²⁹² Joint Report on the application of Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin Brussels, 17.1.2014.

²⁹³ Joint report, 5. Paraphrased.

²⁹⁴ Joint report, 6.

²⁹⁵ Joint report, 8.

sustains my argument on the use of the term multiple discrimination: as Lombardo and Verloo mentioned in 2009, “there are no procedures to coordinate work systematically around the intersection of different inequalities”.²⁹⁶

However, the Commission notes that the Directives “do not contain any specific provision on multiple discrimination, but both refer to the fact that ‘women are often victims of multiple discrimination’”.²⁹⁷ Yet forcing member states to include this in their national laws without any explanation regarding the intricacies of such types of discrimination is careless, to say the least. This leads to another problem: specifically, “Directive 2000/43/EC does not define the concepts of racial or ethnic origin. It is up to the Member States to decide whether they define these concepts in their national law. Some Member States only refer to ‘ethnic origin’ or ‘ethnicity’ and do not use the concept of ‘race’ or ‘racial origin’ at all in their national legislation”.²⁹⁸

The Commission further notes the relevance of the Roma most pertinently in the scope of the Directive, which would signify recognition of their intersectional position. That, however, begs the question: why not POAD and BE? They are also a “particularly sizeable and vulnerable ethnic group”²⁹⁹ who face entrenched social exclusion and prejudice. My theory is that Roma have more of a claim to European citizenship in the eyes of society, while POAD and BE are not so viewed. This does not imply that the tribulations faced by Roma are any less abhorrent or meaningful, but it raises certain questions concerning colonial legacies that perhaps apply more to POAD and BE than to the Romani. The discourse on the Roma situation displays an awareness of their marginalization; nevertheless, it does not occur within those same discourses to exhibit equal concern for other marginalized groups. In order to assess this statement more closely, I now turn to a brief analysis of the EU Framework for National Roma Integration Strategies up to 2020.

²⁹⁶ Lombardo & Verloo, 2009: 484.

²⁹⁷ Joint report, 9.

²⁹⁸ Joint report, 5.1, 11.

²⁹⁹ Joint report, 5.4, 12.

5.6 National Roma Integration Strategies – An example for the future

The Race Directive has been put into effect by Europe in the form of the National Roma Integration Strategies. Without delving too far into the historical context in which Roma social exclusion and oppression arose, it is important to note that the former Special Rapporteur for Minority Rights in his presentation to the Human Rights Council on Roma people determined “anti-gypsyism as a special kind of racism, an ideology founded on racial supremacy, a form of dehumanization and institutional racism, nurtured by historical discrimination which is expressed by violence, hate speech, exploitation, stigmatization and the most blatant kind of discrimination”.³⁰⁰ The description of the Roma situation has a remarkable resemblance to the same obstacles People of African Descent face. As Nira Yuval-Davis et al. hypothesize, the “contemporary racialization of Roma”³⁰¹ is more than just the intersection of race and class; this is mainly due to the fact that the “process of EU accession and enlargement has been one of the key reasons for the emergence of a focus on Roma within EU policy circles”.³⁰² As they note, this seems to be confirmed by the EU statement of its “special responsibility towards the Roma”.³⁰³

However, an overview of the EU Roma policy reveals that the issue of Roma communities was mainly raised to public attention when the Union was expanding into Eastern countries. Aidan McGarry takes note of this and postulates that the consequently allocated funds known as PHARE³⁰⁴ were simply a “veiled motive to reduce the incentives for westward migration by combating discriminatory practices in order to improve Romani access to socio-economic provisions”.³⁰⁵ This would lead one to assert that the EU’s push toward an expanded Roma policy comes mostly from a concern for economically driven benefits. The acceding countries established the bare minimum requirements to improve the situation of Roma – and Roma

³⁰⁰ Cited from Yuval-Davis, Nira, Georgie Wemyss, and Kathryn Cassidy. Introduction to the special issue: racialized bordering discourses on European Roma. *Ethnic and Racial Studies* 40, no. 7 (2017): 1047.

³⁰¹ Ibid., 1049.

³⁰² Ibid., 1052.

³⁰³ <http://www.ohchr.org/EN/Issues/Minorities/SRMinorities/Pages/StudyProtectionRoma.aspx>.

³⁰⁴ PHARE: Poland and Hungary: Assistance for Restructuring their Economies

³⁰⁵ McGarry, Aidan. 2012. The dilemma of the European Union’s Roma policy. *Critical Social Policy* 32.1: 129.

remain highly marginalized in these societies. McGarry also believes this result stems from the EU's reluctance to engage in the politics of recognition, because it prefers a politics of redistribution. Politics of redistribution in this case refers to treating the Roma "as a social group with fundamentally social problems and is unwilling to recognize the ethnic identity of minorities within the EU polity".³⁰⁶ On the other hand, the politics of recognition "hold[s] that because Roma are seen and treated in categorical terms – as a group – policy provisions must recognize this".³⁰⁷ An ideal substantive equality approach would address this and accommodate difference by "removing the detriment but not the difference itself".³⁰⁸

Moreover, as Yuval-Davis et al. point out, this puts the sovereignty of nations at stake, because it would recognize certain national minorities and increase secession demands if it were to be implemented at the EU level.³⁰⁹ The EU's method of mainstreaming comes into play again when concerning Roma integration: "Roma are treated as individuals who suffer from discrimination when accessing socio-economic provisions which ignores the racial and/or ethnic motivation of their discrimination".³¹⁰ This is key in understanding how anti-discrimination policy can fail when applied in heavily racialized societies in a majority-normative fashion.

One of the Framework's other major faults is that it does not focus enough on specific discrimination measures³¹¹ – a key factor and difference in proposals toward a strategy against Afrophobia. The European Roma Policy Coalition and the Decade of Roma Inclusion Secretariat at the occasion of the Extraordinary Meeting of the EU Platform for Roma Inclusion in Brussels in 2012 "voiced the concern of about 50 Roma civil society representatives that achieving social inclusion requires sustained attention to discrimination".³¹² Focusing on social inclusion ostracizes Roma even further, whereas more emphasis on widespread discrimination would help to alleviate collective oppression. Roma identity differs from that of POAD and BE, as it is (arguably) an expert-political construction; that being said "the narrative that Roma people are

³⁰⁶ Ibid., 129.

³⁰⁷ Ibid., 131.

³⁰⁸ Fredman, 2016: 733.

³⁰⁹ McGarry, 2012: paraphrasing 131.

³¹⁰ Ibid., 132.

³¹¹ As discussed with ENAR's Senior Research Officer Ojeaku Nwabuzo.

³¹² Vermeersch, Peter. 2013. The European Union and the Roma: An analysis of recent institutional and policy developments. *European Yearbook of Minority Issues* 10: 356.

primarily the victims of their neighbours' ignorance or hatred seems most likely to undermine social solidarity, whereas an agenda of systemic discrimination would attract larger constituencies".³¹³ The EU Framework to combat Afrophobia therefore proposes plans with a heavier focus on systemic discrimination: an important discrepancy between the two frameworks.

More importantly, the EU continues to "pursue an ethnicity blind approach to minority protection ... [which] ignores the prejudice which Roma endure ... the fact that they are seen and treated in categorical terms".³¹⁴ Yuval-Davis questions the Europeanization of Roma problems, which risks Europeanizing the solution, inevitably leading to a "homogenizing process, in which realities of local and national contexts and relations disappear".³¹⁵ As Peter Vermeersch theorizes, the fault of the Roma Strategies lies in the emphasis on adopting new policies and institutions as opposed to fixing problems on the ground.³¹⁶ Roma are depicted as a burden on the local economy and thereby elicit more hatred instead of recognition as equal citizens; and as Vermeersch notes "there are currently no strong and effective responses to [this] practice".³¹⁷ As I discussed earlier, the racialization of society permeates throughout daily life. Projects and policies alone cannot effectively change the mindset of people without proper definition of the underlying cause. The EU Council attempted to recognize this issue in 2014, Vermeersch observes, as it included in its conclusion a statement to develop a better framework of integration.³¹⁸ As Saul Alinsky once said, "Unless we can develop a program which recognizes the legitimate self-interest of white [majority] communities, we have no right to condemn them morally because they refuse to commit hari-kiri".³¹⁹ It is therefore imperative to promote policies that emphasize the benefits for both the minority and the majority, especially at the local level. Vermeersch sees this as a fault in the current policy image of Roma programs: they "are too

³¹³ Surdu, Mihai & Martin Kovats. 2015. Roma identity as an expert-political construction. *Social Inclusion* 3.5: 13.

³¹⁴ McGarry, 2012: 133.

³¹⁵ Yuval-Davis et al., 2017: 1053.

³¹⁶ Paraphrasing Vermeersch, 2013: 345.

³¹⁷ Ibid., 345.

³¹⁸ Ibid., 356.

³¹⁹ Saul Alinsky quoted in Hewitt, Roger. 2005. *White backlash and the politics of multiculturalism*, 29. Cambridge: Cambridge University Press.

often interpreted or portrayed as bringing resources to Roma that might otherwise have gone to non-Roma, while in fact they are lose-lose policies”.³²⁰

Is a European-imposed strategy for national implementation imaginable for POAD and BE, as it has been for the Roma? Considering neither of these categories of people represents a monolith, it would be necessary to continue to evaluate the current weakness of the NRIS and emphasize better-integrated anti-discrimination initiatives. Of essence is ensuring that any policies do not further ostracize people of African descent as “other” – which the Roma inclusion policies unfortunately do.³²¹

The Article 13 Directives were the result of “the longer term construction of support for anti-racism laws combined in 2000 with short-term political circumstances”.³²² Therefore, these Directives, specifically the Race Directive, were not created and certainly cannot be expected to fight the oppression of the marginalized societies. However, the intentions of the Directive were to establish a framework for member states to address racism and discrimination in their society and for the EU to provide a foundation and Community-level support; which they do, but with little enforcement. Moreover, the EU and Member States must tackle through means of this legislation the underlying causes of discrimination in a highly racialized society, which the Directives alone are not equipped to enforce. Additionally, the Race Directive still fails in its inapplicability to collective action on behalf of groups and its mainstreaming approach rebuffs attempts by civil society or NGOs to direct the attention of governmental authorities to categorical discriminations against entire groups of people using intersectional approaches.

³²⁰ Vermeersch, 2013: 358.

³²¹ Surdu & Kovats 2015: 14. See the entire article for in-depth discussion on this topic.

³²² Bell, 2007: 183.

6. Conclusions

Little attention has been paid to the frequent occurrence of Afrophobia in Europe and its impact on POAD and BE. There seems to be a conscious attempt to make realities for black people invisible by ignoring the socio-economic and political conditions that specifically affect that part of the population. I chose to focus mainly on those POAD and BE who form part of the long-term citizenry of Europe. Illustrating the challenges that black citizens face will also serve to highlight the challenges that new migrants or refugees will indubitably encounter.

This thesis has endeavored to illustrate how despite significant changes and improvements in EU anti-discrimination policy and equality institutions, there is much left to be addressed and treated in order for a framework combating Afrophobia to be implemented and succeed. I have outlined the reasons why, I believe, there continues to be a reluctance to recognize the inferior position POAD and BE occupy in Europe.

The innovation of my thesis resides in the fact that it examines the until now unexplored question of why there has not been a Framework for People of African Descent and Black Europeans in the EU. Given the wealth of material on the study of racism against black people in Europe, as well as the effects of colonialism and subsequent discourses, I have sought to put all of these aspects together in order to show how pervasive and entrenched anti-black racism is and to explain its consequent invisibility. My work was much inspired by the efforts of ENAR to promote an EU Framework for People of African Descent and Black Europeans. However, my study differs in that I do not simply investigate the necessity of such a framework but indeed ask why it does not exist already.

I have argued that the colonial past of many European nations continues to affect the daily lives of People of African Descent and Black Europeans. These countries must acknowledge the wealth and privilege that they have acquired because of the exploitation of African nations. Without a deep and thorough acknowledgment of that past, anti-discrimination policies are

feeble insofar as they do not reflect the historical realities of the marginalized. This lack of awareness of the past compounds the contemporary ignorance of Afrophobia in Europe: one cannot fight a problem if one does not realize it exists. In the chapter on racialization, I attested to the fact that the underlying nature of racism pervades all aspects of society; therefore, ending racism will take an acknowledgement of their own privilege from the majority white population. Racism begins with small things, micro-aggressions – the defense of blackface traditions, people assuming a black person grew up in poverty, constantly fielding the question ‘where are you from’. However, before long, the small things become limited economic opportunities, ethnic police profiling, and poor health outcomes. These acts can start innocently enough, yet one racist transgression quickly results in another. In order to improve the situation of People of African Descent, European institutions, governments, and communities need to take a long, hard look at entrenched anti-black racism and acknowledge the fear, isolation and anxiety black people experience because of this.

For the common thread throughout Europe remains the persistent idea that because black people look different, they can never truly be a part of European society. Until people recognize the struggle of a Black existence in a majority White society, they will not accept these grievances as more than hurt feelings or fits of political correctness. Similarly, there is the unfailing view to see the outbursts of racist violence in the United States as something foreign to continental Europe, thereby implying that racism is less rampant here. But with the rise of hate crimes and hostility towards migrants and refugees, the chronic difficulties facing People of African Descent and Black Europeans are becoming more exposed. If critical race theory and intersectionality theory were better and more fully integrated into anti-discrimination policy and law, then in turn, these policies and laws could be better instrumentalized to address racism as part of a larger system of oppression. The deficiencies of the Race Equality Directive, as I have outlined in a previous chapter, restrict the ability of equality law in Member States to interrogate through the lens of existing systems of racial hierarchy the ways in which anti-discrimination legislation is written. It is the inability of EU anti-discrimination policy to go beyond the symptoms of racism and interrogate the root causes, which makes advocating for the need of an Afrophobia Framework so difficult. Attempting to combat Afrophobia within the same system that reinforces the establishment of racial hierarchies poses significant challenges.

All this still leaves open the question: when the EU does implement a strategy framework, would it only serve as a symbolic effort to combat discrimination and racism through institutions that are not conducive to the improvement of the lives of People of African Descent and Black Europeans? Without a doubt, a European Strategy is absolutely necessary for Member States to adopt, especially considering these nations have developed concrete strategies concerning the inclusion of women, the disabled and the Roma to name a few. In order for Afrophobia to be fought, it must be labeled, exposed and condemned. A Strategic Framework would aid in dismantling the harmful and biased perceptions of People of African Descent in Europe. Through my research, however, I fear that the current European landscape of anti-discrimination policy is wrought in a nest of social and historical ignorance about what race means and where it comes from. People have not been made to believe anti-black racism is important. Therefore, the hope with this Strategic Framework to combat Afrophobia is to change this way of thinking and challenge the racial hierarchy that perpetuates it. What I am trying to say is that “centuries of diligent activism, statistical tracking, policy making and scholarship only begin to address the damage of racism”³²³ as we can see in the United States. Hence, my concern is that if and when the aforementioned Framework is implemented it will be considered as the solution to racism and not the beginning of a long process.

Although this thesis has attempted to provide adequate detail on elements concerning the reluctance of European society to address Afrophobia, and expressed the pressing need for a Strategic Framework; there is much left to be explored in order to realize Europe’s internal human rights struggle. Nevertheless, I hope that this contribution continues the process of increasing understanding through conversation and engagement before it is too late.

In the United States, it took a Trayvon Martin, Sandra Bland and Philando Castile for people to start embracing an awareness of racial processes and white supremacy. Alas, it may take another

³²³ Fleming, Crystal. "The French Approach to “Anti-racism”: Pretty Words and Magical Thinking." *Aware of Awareness*. May 07, 2015. Accessed July 10, 2017. <https://awareofawareness.com/2015/05/07/the-french-approach-to-anti-racism-pretty-words-and-magical-thinking/>.

Theo, Emmanuel Chidi Namdi³²⁴ and Adama Traoré for Member States to agree to a European Strategic Framework to combat racism against Black Europeans and People of African Descent.

³²⁴ See <https://www.theguardian.com/world/2016/jul/08/widow-nigerian-man-beaten-death-italy-granted-refugee-status-chinyery-emmanuel-namdi->

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