The biopolitics of otherness

Undocumented foreigners and racial discrimination in French public debate

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1. For the consequences of the sans-papiers movement on intellectual and political life, see J. Bentham (1997). For an analysis of the issue as a whole, see D. Fassin, A. Mortie and C. Quiminal (eds) 1997.

2. Publicization of racial discrimination also arose as a major issue in the British and North American debate, as shown by M. Banton (1999). For an approach to the phenomenon in France, see P. Bataille (1998).

3. While Foucault did not discuss the theme of immigration explicitly, his analyses are pertinent, from the administration of the suffering body which is inscribed in the logic of ‘help to live and allow to die’ of biopolitics (1976), to the handling of the racialized body which is incorporated in his piece on the ‘race wars’ (1997).

4. The collected works of Godelier and Panoff (1998) shed light on this question in relation to societies that are either socially or geographically distant, but are totally silent on the production of the body in the contemporary Western world.

5. These statistics for the period 1988-97 are published by the French Office for the Protection of Refugees and Stateless People (OFPRRA). The rise in 1998 does not contradict this analysis, since half of the agreements concern children of refugees who have reached the age of majority, leading Legoux (1999) to estimate the real number of new refugees to 2200.

6. These unpublished figures were obtained from the

The ‘immigration debate’ in France was marked in the 1990s by two important events: the growth of the ‘sans-papiers’ movement which brought the issue of undocumented foreigners to the fore, and the admission of the existence of racial discrimination in various social contexts. The significant issue here is less the phenomena in themselves than their eruption into public space, and the consequences for French self-perception and for French people’s relationship to otherness.

On the one hand, confronted with the social movement of undocumented foreigners and the support it received from community associations, intellectuals, artists and even elected officials, the French public became aware that those it had been accustomed to viewing as ‘illegal workers’ were in reality often men and women who had been settled legally in France for long periods of time. These immigrants were a heterogeneous group, and had entered into clandestinity for various reasons: they included wives or children who had joined husbands or fathers, themselves legal residents for years, young people who had come as children and been prosecuted for petty crimes in adolescence, students who had to abandon their studies after failing exams, and asylum-seekers whose claims had been rejected. In other words, this hitherto distant and illegitimate ‘Other’ suddenly appeared to the public and became socially acceptable. Furthermore, the effects of the increasingly restrictive legislation and administrative practices of the past 25 years brought to light the extent to which the state and civil society were responsible for the very production of this illegality. The ‘sans-papiers’ movement was widely supported, as a 1998 poll bears out: one in two French people, rising to two in three young people, were of the opinion that all undocumented foreigners should be given legal status. In a similar spirit, the socialist government elected in June 1997 was prompted to issue a ministerial instruction defining criteria for legalization from which 80,000 immigrants subsequently benefited, and promulgated a new law on the entry and residence of foreigners.

On the other hand, French people’s belief that France was promoting an almost unique model of republican integration, bypassing both the communitarianism and the xenophobia which often characterized other countries’ policies, was confronted with evidence that discriminatory practices based on assumed racial differences were multiplying in French schools, factories, offices, hospitals and night clubs, mostly targeting people of African origin. It became clear that inequalities had to be analysed not simply in terms of the traditional categories of social class, profession, or even nationality, but also from the point of view of origin, real or presumed, as identified through skin colour or foreign-sounding names. Officially presented as an effort to avoid further stigmatizing immigrants and their descendants, the denial of these practices had long served to enforce a law of silence within both the political and the scientific spheres. However, during the 1990s a series of studies, investigations, legal actions and public interventions by human rights and anti-racist groups gradually began to expose this blind spot. In 1998, for the first time, an official report by the High Council on Integration (Haut conseil à l’intégration) focused on the issue of racism through an account of discrimination in France and proposed the creation of an independent administrative body to address this question. As a result of this report, in March 2000, Prime Minister Lionel Jospin announced the appointment of a national Commission for the Study of Discrimination (Groupe d’é-tude des discriminations). The state thus recognized and revealed the gap between the ideology promulgated in the name of the republican ideal and the reality reflected in the daily lives of foreign residents and their families.

In sociological terms these two phenomena – sudden increased awareness of undocumented foreigners and recognition of racial discrimination – are distinct, one referring to the legal status of men and women moving transnationally in the context of globalization ( Kearney 1995), the other linked with social representations and practices vis-à-vis immigrants and their descendants within a national framework (Bonilla-Silva 1997). Nevertheless, at the level of individual experience they are more closely connected than they might seem, since, for example, the illegitimate status of undocumented foreigners nurtures the negative perception of immigrants in general and, reciprocally, racism provides an ideological basis for restricting the legitimacy of transnational movements. More importantly, however, the two phenomena have an anthropological trait in common which has passed largely unnoticed in the heated debates that they have provoked in France. Albeit in different ways, both manifest an unprecedented form, at least in the French context, of management of immigrant populations.

In the case of undocumented foreigners, as all other possibilities of getting a residence permit were progressively restrained by successive legislation, health and illness have increasingly become the most legitimate ground for awarding legal status from the point of view of both the state authorities and lawyers and advocates of the immigrants’ cause. In the same way, while civil and political rights have increasingly become the most legitimate ground for recognition of racial discrimination – are distinct, one linked with social representations and practices, the widely recognized legal right to health care has hardly been challenged, even by the most conservative participants in the immigration debate. The suffering body has imposed its own legitimacy where other grounds for recognition were increasingly brought into question.

In the case of racial discrimination, the political change resulted from another form of bodily inscription. Until very recently, as far as immigrants were concerned, the only differences that the French were prepared to acknowledge related to culture, either promoted or stigmatized: the only inequalities that they allowed themselves to examine derived from nationality, i.e. from a legal definition of identity. All other distinctions, particularly those based on physical traits or biological characteristics, were unani mously condemned, to the point of defining the political boundary between the acceptable and unacceptable, between legitimate political parties and the extreme right. Thus denied, racial discrimination was assumed to be inexistent, in spite of all proofs to the contrary. For the state and also for civil society, the current recognition of a discrimination apparently based in ‘nature’, unacceptable though it is, is thus a radical innovation. The racialized body has become the most illegiti mate object of social differentiation, yet one whose existence can no longer be denied.

The two phenomena in fact correspond to two different
The recognition of bodies

In France, as in most Western European countries, the question of illegal immigration has become a critical public policy issue. The creation of the Schengen space represented an attempt to bring a policy solution at the European level – but one whose limits are clearly revealed by the continuing influx of immigrants from the Balkans to the Italian coast and from Africa to Spanish beaches. The rhetoric surrounding this question has been clearly exposed in the public debate: on the one hand, the rich countries cannot absorb ‘the poverty of the earth’, as former socialist Prime Minister Michel Rocard put it; on the other hand, strict regulation of the undocumented is a prerequisite for integration of the documented, justifying the slogan ‘zero illegal immigration’ devised by Charles Pasqua, former conservative Minister of the Interior.

Yet this apparently coherent argumentation has been contradicted by the evidence that a rapidly growing number of undocumented foreigners do not correspond to the stereotype of the ‘clandestine’, but rather have a certain legitimate claim to legal status through the number of years they have spent in the host country, the services they have provided, the family ties they have developed, or the threats they would face if they should return home. This evidence debunks the official rhetoric, indicating that the country is confronted not only with poverty from abroad, but also with the results of its own political processes, and that the boundary between documented and undocumented is much less clear than was previously maintained, since it is possible to lose or gain residence permits depending on changes in legislation. Thus, the question is less about who is legally present than who can legitimately claim legal status. In publishing the ministerial instruction of 24 June 1997, which specifies the various criteria for legalization of undocumented migrants, and in proposing the law of 11 May 1998 which defines the conditions of entry and residence for foreigners, the French government took this shift into account by drawing new boundaries of legitimacy for immigrants.

Asylum and humanitarianism

Two changes are particularly remarkable, both for the inverse relationship of their statistical trends and for the underlying significance of these trends. These concern the right to asylum and the humanitarian rationale.

Over a period of ten years from the end of 1980s, the number of foreigners granted political asylum in France decreased sixfold, gradually stabilizing at under 2000 refugees per year. This decrease results from two distinct but related changes: the number of claims submitted fell by a third, and the proportion of those granted was halved.1 The significant decrease in the number of refugees obviously does not derive from a more peaceful world in the 1990s; it essentially results from the intensification of border officials’ practice of driving back asylum seekers, and from the strictness of administrators who assess the claims submitted. The prevailing attitude of officials at the French Office for the Protection of Refugees and Stateless People (OFPRA) is to view claims with suspicion; in fact, only one in ten applications for political asylum is approved. The Geneva Convention is thus applied in an increasingly restrictive manner, especially as France has introduced a ruling that restricts the granting of political asylum to victims of state persecution: this interpretation of the treaty has allowed officials to reject nearly all applications from Algerians as coming from victims of Islamic terrorism (at least until the end of the 1990s, when a specific right to ‘territorial asylum’ was created, although parsimoniously implemented).

At the same time, another category of foreigners was being granted increasingly numerous legal permits: people with illnesses, or more specifically, people with life-threatening pathologies who are declared unable to receive proper treatment in their home countries. Once these two criteria (severe pathology and absence of therapeutic alternative) have been confirmed by medical experts, the patient receives a temporary legal permit, formerly endorsed for ‘humanitarian reasons’ and now simply for ‘medical care’. This status is doubly precarious, because it must be renewed every three to twelve months and because it is frequently accompanied by a prohibition against working. Although there are no national statistics available for this time period, local figures indicate that in the département with the largest number of claims for legalization, applications for this humanitarian permit increased sevenfold over the course of the 1990s, reaching 1000 per year; three-quarters of these were favourably assessed. At the national level, after the 1997-98 campaign for legalization, 10 per cent of residence permits were granted on medical grounds. This evolution reflects a political concern to respect the European Convention on Human Rights, transgressions of which have previously led to several rulings against the French state by the European Court of Justice.

The correlation between the marked decrease in political asylum and the increasing recognition of humanitarianism is not mere coincidence. Associations defending the rights of immigrants and state immigration services alike are currently asking asylum-seekers whose claims have been refused whether they might have a ‘pathology to put forward’, leading them to increasingly treat the humanitarian rationale ‘as a priority’ and political asylum ‘by subsidiarity’, as a senior official at the Ministry of the Interior has put it. Thus greater importance is ascribed to the suffering body than to the threatened body, and the right to life is being displaced from the political to the humanitarian arena. It is more acceptable for the state to turn down an asylum claim, declaring it unfounded, than to reject a med-
National Front leader: ‘Mr Le Pen asks good questions to which he gives bad answers.’ During this period, state and local governments of both the right and the left threw themselves into a legislative competition that aimed to set increasingly restrictive immigration policies. This contributed to the ‘immigration question’ being placed at the centre of public debate (Lochak, 1997).

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Découverte.


Bentham, J. 1997. Repercussions from the 'idea of race' can also be seen as a reduction of the social to the biological, but in an inverse sense (Banton 1977). It challenges the notion of a common humanity by differentiating among people at the deepest level of their being, looking for the marks of origins. 33 Racial discrimination is founded on an insurmountable difference, because it is inscribed in the body, indeed even in the genes (Simpson 2000). Twentieth-century France gave less credence to racial discourse than did many other European and North American countries, despite the fact that certain French intellectuals and doctors were attracted to racial theories associated with eugenics, and that in certain periods the French state developed conceptions of the nation which employed biological reference. (Wiewiora 1993). Any suggestion that difference or inequality is founded on biology has been considered illegitimate and even illegal, since it can be prosecuted under the 1881 law prohibiting the ‘incitement to acts of discrimination, hate or violence on the basis of origin or racial or religious affiliation’. In this respect, French republican ideology is grounded in the universalism of natural law (Amstelle Repercussions from the
low-cost housing developments today concentrate high proportions of immigrants and their families. Thus, although restrictive policies were efficiently reducing flows from abroad (between the 1990 and 1999 censuses, the number of foreigners fell by 9%), the populations seen as outsiders paradoxically became more visible. Meanwhile, practices of racial discrimination became more and more obvious on the labour market where industry could ask for ‘bleu-blanc-rouge’ candidates (meaning ‘whites’), in access to private housing where black skin or Arabic names were common negative selection criteria (as proved by ‘testing’), and in interactions with administrative bodies, especially within welfare services (Simon, 1998). According to the annual poll of the National Consultative Commission on Human Rights, in 2000, 70% of French people found ‘the presence of people of non-European origin disturbing’. And the 500 calls received each day by the hotline for victims of ‘racial discrimination’, opened in 2000, indicate that this opinion poll does translate into fact. It would certainly be incorrect to assume that racism is a novelty for France: collective violence against foreigners, whether Italians at the end of the 19th century or Algerians in the 1960s, shows how far xenophobia could go. Two new elements must nevertheless be taken into account. First, discrimination is directed not so much against foreigners as against people seen as illegitimate members of French society, whatever their nationality (the majority of them are French and born in France): racism can thus no longer be hidden behind a legal definition. Second, discrimination has begun to be recognized for what it is both by the perpetrators and by the victims (on this point, there is a striking contrast between the youth of the ‘second generation’ and their parents): whether supported or denounced, racialization of society has become a public reality.

This recent shift is significant in that it clearly identifies the object of discrimination. If racism was previously seen as the rejection of foreigners, the discovery of internal boundaries dividing a French community which finds it increasingly difficult to perceive itself as national contrasts with the official discourse prevailing until the 1990s. Nationality no longer suffices to define the basis for exclusion of the Other: the concrete criteria according to which a landlord refuses housing, an employer rejects a job application, a policeman decides to check for identity papers, a nightclub owner chooses who enters his establishment, must be considered. These are phenomenological criteria that tend primarily toward appearance, particularly skin colour, and mainly target people not identified as European, specifically
those coming from North and sub-Saharan Africa. The underlying division of the world is no longer French vs non-French, nor even French-origin vs non-French-origin, but European-origin vs non-European-origin.

Scientific debate is not spared the effects of this change, which bear on social realities as much as on scientific means of accounting for them. One of the most virulent intellectual controversies of the 1990s occurred between two researchers at the National Institute of Demographic Studies (INED) with respect to statistics about the foreign population: beyond the technical problems of definition and calculation, what was at stake was the scientific relevance of and the political justification for taking into account ‘origin’ in addition to nationality. Introducing statistical distinctions based on this criterion – using the category ‘Français de souche’ (of French stock) – was tantamount to legitimizing a more profound difference than that which is established using legal status: it is only to recognize a social reality, argued one; it institutionalizes a racialized discourse, replied the other.

The avatars of racial discrimination

One might ask at this point, is this difference ‘racial’, or is it possible to make a more socially acceptable argument that it is ‘cultural’? Is the distinction between European and non-European populations – or more often and more implicitly, between populations of European and non-European origin – not at heart a cultural incompatibility more than a biological unassimilability? Indeed, this argument has often served to keep discrimination free from the suspicion of racism (Taguieff, 1991). French public policy has for a long time maintained an ambiguity on the subject of immigrant/immigrant-origin populations, promoting, on the one hand, a rhetoric of equality and universalism, and on the other, special modes of treatment for these populations’ problems, such as housing or health.

To take an example from the medical arena, ethnopsychiatry, funded entirely by public money, gives specific treatment to both psychological disorders and cases of social deviance referred for diagnosis and treatment by doctors, social workers, even judges, when the patients or the delinquents happen to be of non-European origin and when this origin is presumed to be a source of particular difficulties in interpretation and handling. Cultural singularity, advocated by those in favour of this type of therapy, has in fact an essentially ethnic and even racial substrate which, along with the failure to take into account the social dimension of immigrant experiences, results in a form of ‘naturalization’ of culture, explicitly considered as an hereditary characteristic of the individual. 1 More generally, one can say that all extreme thinking about difference, whether it be in the name of biology or culture, rests upon the recognition of the suffering body imposes a legitimate measure of return to politics through the denunciation of this principle by the victims and their supporters.

In the first case, the reduction in political asylum applications, and the denial of racial discrimination thus seems to have in fact an essentially ethnic and even racial substrate which, along with the failure to take into account the social dimension of immigrant experiences, results in a form of ‘naturalization’ of culture, explicitly considered as an hereditary characteristic of the individual. 1 More generally, one can say that all extreme thinking about difference, whether it be in the name of biology or culture, rests upon the recognition of the suffering body as principle of an illegitimate order allows for a shared political values: the recognition of the racialized body can produce an inequality in terms of sickness and death. In the terms of Jean-Jacques Rousseau’s famous discourse on inequality, the recognition that a ‘natural or physical’ difference, socially constructed as racial discrimination, can be at the origin of the most unacceptable ‘political’ or ‘moral’ inequality of all – inequality of life expectancy – would probably be the most radical invalidation of the human rights rhetoric so deeply bound to the French self-perception.

A two-sided biopolitics

According to Agnes Heller (1996), biopolitics is ‘intimately linked to the question of identity politics’. I have tried to show that it also implies necessarily a politics of otherness. Based on the recognition of ‘difference of bodies’ which have race, sex, ethnicity and genes as their foundation, biopolitics, as she interprets it, is ‘ultimately defending the Body itself, its nature, integrity and health’. By renouncing ‘membership in a common political body’, biopolitics thus exemplifies a retreat from, and even a negation of ‘politics’ in the Arendtian sense of the recognition of human diversity from a universal perspective. However, examination of French immigration politics in the 1990s allows for a less pessimistic and more nuanced reading.

The contemporary biopolitics of otherness in France rests on one major foundation: the recognition of the body as the ultimate site of political legitimacy. But this recognition takes two parallel paths. On the one hand, the suffering body manifests itself as the ultimate (but not unique) resource, supplanting all other social justifications for immigrants to be granted legal status and residing in a basic right to keep oneself alive as long as possible. This is a minimalist vision, but one which tends toward a universal horizon. On the other hand, the racialized body extends from the foreigner to the national and introduces internal frontiers founded on physical difference. This is a discriminatory concept, which creates hierarchies between people. In the first case, the reduction in political asylum is a corollary of the rise in the humanitarian rationale: the recognition of the suffering body imposes a legitimate order defining citizenship on purely physiopathological grounds. In the second, threats to human diversity lead to a response by civil society and the state, reminding us of the political value: the recognition of the racialized body as principle of an illegitimate order allows for a measure of return to politics through the denunciation of this principle by the victims and their supporters.

That is to say, despite common perceptions, biopolitics does not proceed by one logic. It demonstrates a tension, inscribed in the body, between the supreme universality of life (which allows a sans-papiers with AIDS to be recognized by the state in the name of his/her pathology) and the exaltation of difference, for which biology offers an apparently insurmountable foundation (allowing each person to perceive a natural source of inequality in the physical characteristics of others). If we can recognize, in an unusual form, the eternal anthropological theme of the unity and diversity of the human condition, the questions raised here certainly call for a renewed commitment from social scientists to the critique of the contemporary foundations of politics.