

**Denial and Acknowledgement of Human Rights Abuse: Implications for Law**  
**Nijmegen Seminar**  
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“Leafing through the annals of the Court, an uninformed observer would be justified to conclude that, for over fifty years democratic Europe has been exempted from any suspicion of racism, intolerance or xenophobia. The Europe projected by the Court's case-law is that of an exemplary haven of ethnic fraternity, in which peoples of the most diverse origin coalesce without distress, prejudice or recrimination. The present case energises that delusion ... Frequently and regularly the Court acknowledges that members of vulnerable minorities are deprived of life or subjected to appalling treatment in violation of Article 3; but not once has the Court found that this happens to be linked to their ethnicity. Kurds, coloureds, Muslims, Roma and others are again and again killed, tortured or maimed, but the Court is not persuaded that their race, colour, nationality or place of origin has anything to do with it.”  
(Dissent by Judge Bonello, European Court of Human Rights, Judgment, *Anguelova v. Bulgaria*, (*Application no. 38361/97*), 13 June 2002)

Applying methodologies from the disciplines of sociology and, to a lesser extent, psychology, Stanley Cohen has explored the role of denial, and human efforts to overcome denial, in responses to “atrocities and suffering”.<sup>1</sup> Cohen explores a number of categories of denial, including denial in good faith; denial as outright lying; other cases of “partly” knowing, when the denying subject is in neither of the above mental states. He has also explored distinctions between literal, interpretative and implicatory denial of human rights violations, as well as a number of other categories. Building on earlier work by Cohen, Petrova and others have explored typologies of denial of racism.<sup>2</sup>

This focus on denial of human rights abuse and denial of racism as a sociological phenomenon has not yet been extended adequately to the field of law. A rigorous study does not yet exist of implications in particular for the rule of law in the liberal legal order of the phenomenon of denial. The present research aims to explore the links between denial (and, by extension, acknowledgement) in a sociological sense, on the one hand and the legal order on the other, as it responds to human rights issues, in particular those involving racial discrimination. Primary questions concern:

- How does denial of human rights abuse or denial of racism manifest itself in a legal context, and in particular in supranational legal processes?
- How does law – and in particular supranational judicial instances -- cope with denial, as well as with the legality of denial?
- Above the level of the individual perpetrator or act, what does the presence of denial of racism or denial of human rights abuse illustrate about the rule of law in the liberal democratic order?
- How does denial manifest itself or work in a context where there is political pressure for change? Where does denial fit in legal ordering surrounding continuity and rupture?

The seminar will explore some of these issues by discussing several case studies from domestic and international jurisdictions. Participants are invited to reflect upon recommendations as to possible fruitful areas of research in this regards, as well as to relevant literature.

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<sup>1</sup> Cohen, Stanley, *States of Denial: Knowing About Atrocities and Suffering*, Cambridge: Polity Press, 2001.

<sup>2</sup> Petrova, Dimitrina, “The Denial of Racism”, in *Roma Rights 4/2000, Racism: Denial and Acknowledgement*.