

The meaning of racial or ethnic origin under EU law

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25 November 2016, Brussels, LFarkas@migpolgroup.com

Structure of report and starting points

- ❖ Mark Bell: supercategory = ethnicity, Muslims, Roma, CEE migrants
- ❖ Erica Howard: (in)direct religious discrimination should come under RED, drafting history: ethno-religious groups
- ❖ social science: Solomos et al
- ❖ political science: multiculturalism (Modood, Parekh, Tryandafyllidou)
 - racialisation: Jews II Muslims
- ❖ minority rights - historical analysis
- ❖ intersectionality - not yet examined from REO perspective

Main findings

- ❖ composite and transversal ground (temporal and spatial)
- ❖ profusion of terms at int'l & domestic levels - **quest for identifying difference**
- ❖ constitutive elements protected of themselves: religion, language, culture/traditions, national origin, nationality + descent and colour
- ❖ false intersectionality: ethno-religious minorities, language, nationality
- ❖ racialisation: race making, race production - **constructionist analysis**
- ❖ what should courts address: identities v **ascriptions** (assumption, presumption, stereotypes)
- ❖ central category: foreign/er - xenophobia

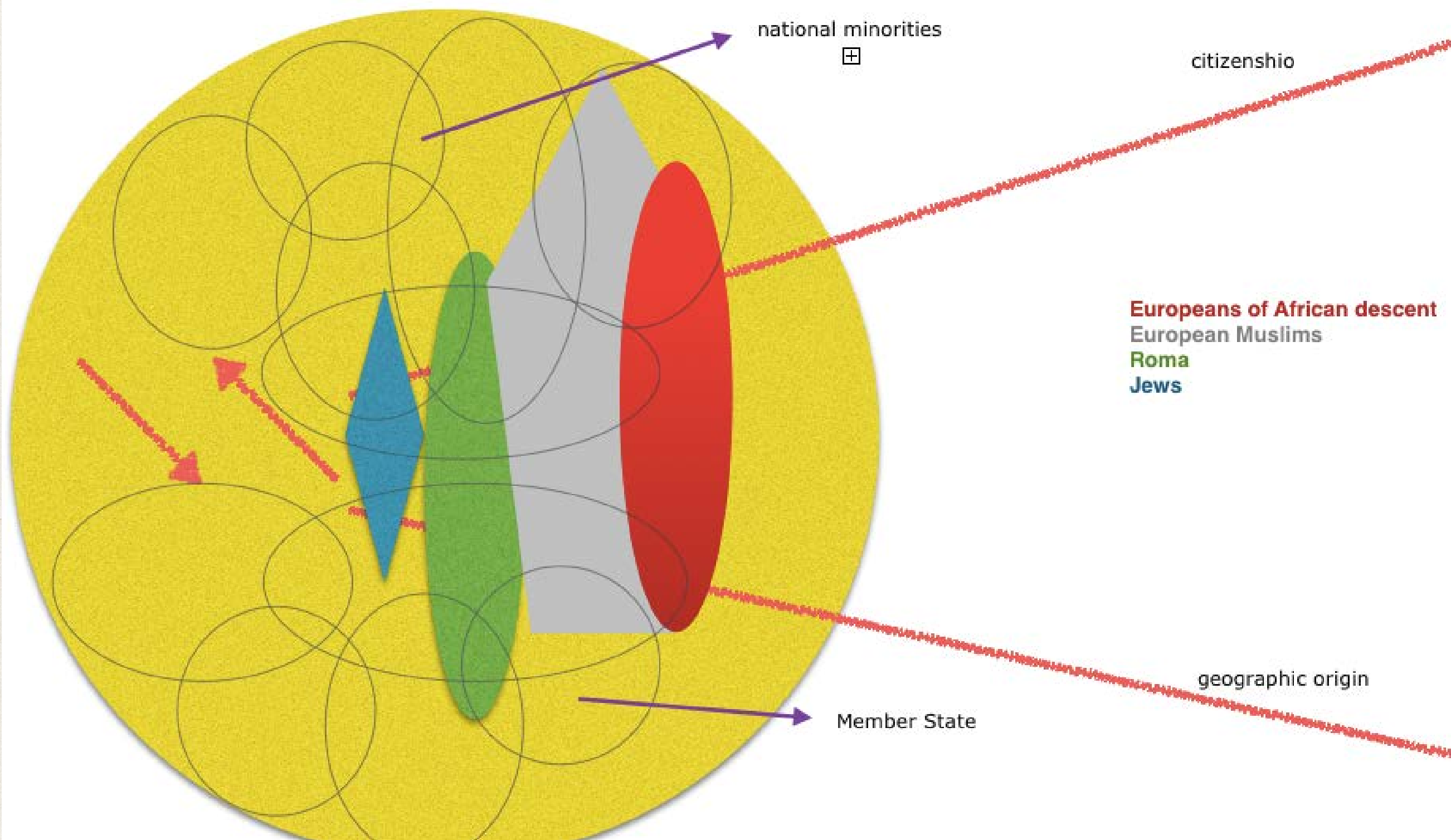
Main findings II

- ❖ ethnic origin not an organic European concept
- ❖ supercategory should instead be: origins (racial, ethnic, social, geographic = descent) OR use 'on the ground of racial or ethnic origin'
- ❖ Brandenburg legislation: on racist ground
- ❖ racism: domination, superiority must be part of analysis
- ❖ the European intent doctrine: ECtHR emptying the conceptual boundaries of direct and over-stretching indirect discrimination
- ❖ concealed direct discrimination: intent matters and the real/assumed homogeneity of groups must be analysed - potential impact on future case law

Racial or ethnic origin in Europe

European

Foreign



Composite and transversal ground

- ✦ Historio-legal analysis necessary
- ✦ Othering is contingent on historic period and geographic location

- ✦ religion

- ✦ language

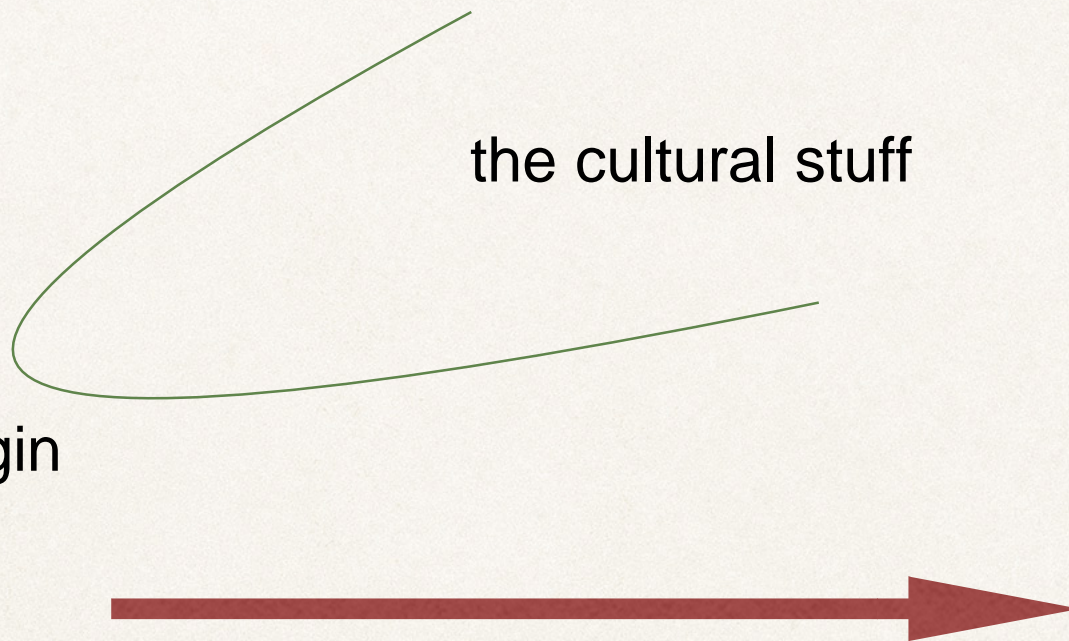
- ✦ national origin

the cultural stuff

nation state

- ✦ races

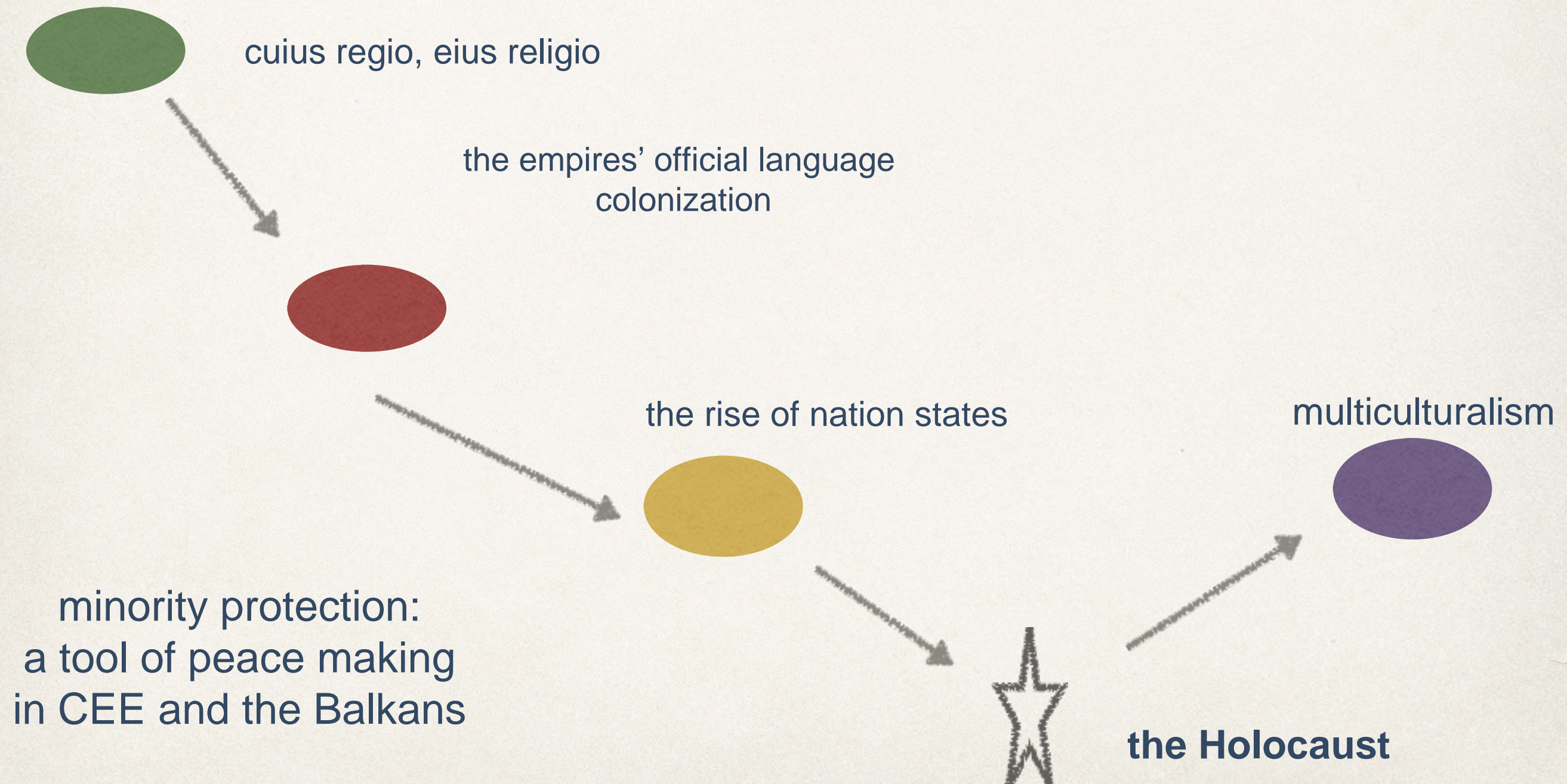
- ✦ ethnic origin - race = phenotype?



Constitutive elements

- ❖ religion, language, culture, customs, shared history, sense of belonging to group, origin = common descent from a geographic location, colour
- ❖ test for establishing whether one or a combination of some amount to discrimination on the ground of racial or ethnic origin: racialisation, constructionist analysis
- ❖ false intersectionality: ethno-religious groups if racialised, the mental/cultural inferiority/retardation of racial groups

Evolving concept



Profusion of terms in int'l law

- ❖ European minority rights regime - League of Nations - not for Western Europe
 - ❖ religion, language, national origin, race
- ❖ International standard setting in UN
 - ❖ ICERD Article 1: race, colour, descent OR national or ethnic origin
 - ❖ ICCPR Articles 26 (national or social origin) and 27 (ethnic minorities: religious, linguistic, national)
- ❖ European standard setting
 - ❖ Article 14 ECHR: race, colour, religion, national or social origin, association w a nat'l minority
 - ❖ EC Treaty Article 12: EU nationality
 - ❖ FCNM - Advisory Committee: also religion, nationality and migrant status
 - ❖ RED, EU Charter (also national origin, religion and colour), Framework Decision (religion)

Ethnic origin: a super-category or an alien concept in Europe?

- ❖ UK: ethnicity
- ❖ France, Belgium, Finland, Brandenburg: origins
- ❖ CEE: national, linguistic, religious minorities
- ❖ Czech Republic: also the Vietnamese
- ❖ Poland: difference between national and ethnic minorities (kin state, cf Jews v Roma)
- ❖ no minorities: Belgium, France, Greece, Cyprus

Ethnicity, really?

- ✧ Timishev

- ✧ distinction b/w racial and ethnic



essentialising racial:
phenotype

- ✧ profiling

- ✧ Chechens a national minority

- ✧ CHEZ

- ✧ 'together with' - ascription: stereotype, assumption

- ✧ criminality - stereotype

Concealed direct discrimination

- ✧ Biao v Denmark

- ✧ legislative history - Albuquerque concurring , Chamber dissent

- ✧ CHEZ

- ✧ detailed analysis by CJEU

- ✧ Strasbourg case law referenced: Nachova, Sejdic & Finci, not DH, nor Timishev

- ✧ homogeneity of group based on stereotype/assumption: Roma district

- ✧ analogies and differences: Nikoloudi, Maruko