CIVILIZATION AND RELIGIOUS FREEDOM IN THE WEST AND IN ISLAM

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1. On account of the lack of knowledge about other civilizations and religions, in the West there is widespread use of certain words which do not convey the exact meanings of the original concepts that belong to different civilizations. To complicate matters, Western languages do not express concepts that have transcendent and immanent values at the same time, that is words that have a truly "universal" character. However, in other "civilizations" words are often used that express metaphysical meanings which can be understood on different levels of meaning, arranged hierarchically.

This problem has been around since the Middle Ages, especially as regards the sciences which were passed on through the Islamic world. The majority of the problems that lacerated Christian scholasticism originated from the difficulty to understand and translate certain concepts of an essentially symbolic and metaphysical nature like those of "time" and "eternity", which reflect a particular vision of the world, of history and of law.

In the Arabic language the concept of "time" is endowed with a whole series of shades of meaning that can express different perspectives: *al-dahr* is time in an absolute sense and is equivalent

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to one of the aspects of eternity, so much so that God Himself in a *Hadīth qudsī* declares "I am time", *Anā al-dahr*.

> *The descendants of Adam wrong me: they are offending time (al-dahr). Now I am Time, and the night and the day are in my hands.*[2]

The word *al-zamān*, denotes the "time of the world", which in certain cases can be translated by "the times". In fact one says "these days", "the decadence of the times", and so on. Finally the term *al-ayyām*, literally "the days", expresses "time" in relation to a people or a specific situation, a meaning which in Western languages expresses more or less an "epoch" or, better still, a "season", for instance when one speaks of "the seasons of life".

The symbolic dimension of the concept of "time" naturally also affects the historical perspective in a general sense. In a vertical hierarchy, starting from below, history distinguishes above all the events that have a contingent value, related to specific events, to particular "seasons": for example, the great battles of the Arab people before the Muslim age were called "the days of the Arabs", ayyām al-'arab. One could say that the activity of the great interpreters of the law corresponds to the great "seasons" of legal history which are reflected in the different schools.

Subsequently, in a more general perspective, the episodes that manifest the nature of "the times" of humanity can be distinguished: this is the vast context of annal-writing, *ta'rīkh*. From the legal point of view this corresponds to the laws that the religious communities have received in different ages as part of revelation.

Finally, men can be seen in their more universal perspective as descendants of Adam who have made a "pact" with God, placing their contingent reality in relation with the eternity of the spiritual dimension. Here the temporal dimension is detached from the simple

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[2] *Al-Bukhāri, Kitāb adab (the Book of Education)*, n. 200. Eternity, as non manifestation, is called *qidam*, while *azal* denotes the negation of a beginning, eternity *a parte ante*, just as *abad* denies any end, eternity *a parte post*. These terms are no longer proper when one refers to manifestation as an origin in time, udūth al-'ālam "the beginning of the world". In fact, within this structure Time appears as a mobile image of eternity that proceeds according to number (Plato, *Timeo*, 37d).

succession of events and assumes a symbolical and metaphysical value: it is the history of civilization, in Arabic *al-umrān*, which as we shall see corresponds to the universal principles contained in the primordial "pact" of the whole of humanity.

2. Although it may seem strange, in Western languages the use of the word "civilization" became current only since the beginning of the 19ᵗʰ century. Its etymological relationship with the Latin terms *civitas* and *civilitas* is only apparent, a result of a speculative reconstruction rather than of continuity in usage. The word *civitas* meant "citizenship", in the sense of the condition of living in a city. Some Latin authors used also the term *civilitas* in the specific sense of "the art of governing a city", thereby meaning "politics" (particularly Quintilian), an activity that should be considered above all in an ethical perspective, so much so that other authors mentioned it as an expression of "trustworthiness" and of "mildness" (especially Suetonius). Actually, nowadays we use "civilization" to translate the French word *civilisation*, which originally was only considered as a synonym of "progress", "an indefinite positive development", with a strong positivistic ideological connotation. The word *civilisation* itself was first entered into the dictionary of the Académie Franćaise in 1835, coincidentally in the years when France began the occupation of Algeria, during the renewal of the European powers' enthusiasm for colonization, who thus projected themselves as the defenders of modern civilization in the world. The new concept of "civilization" thus provided an ideal justification for colonialism in Western countries, who felt that they were invested with the universal power which in some way legitimized the political and economic exploitation of the colonized countries, since this was happening in exchange for the "civilization" process. During the 19ᵗʰ century the reality of colonialism was justified by the idea that "the white man had the responsibility" of necessarily extending his political and economic dominion over the other civilizations.[3] The substantial identity of civilization and progress shifted attention primarily to the material horizon of the peoples' life, while this context was traditionally considered extraneous to the deep meaning of "civilization", or at

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[3] S. P. Huntington, *Lo scontro delle civiltà e il nuovo ordine mondiale*, Garzanti, Milano 2000, p. 84.

least extremely marginal, no less than the geographical aspects of a specific country. This perspective did not change throughout the 20th century, not even when de-colonization led to the "West's cultural domination over other societies and the latter's need to imitate Western institutions and ways of life".[4]

Although considering a civilization as superior to another, past or present, may seem unbecoming, it is even worse that the "superiority" of that civilization is based only on the criterion of its technical and material development or, at best, on its political development; this carries the risk of simply declaring the "superiority" of the rich "materialists" over the poor "fatalists". In actual fact this paradox has only been observed occasionally.

> " It is paradoxical that in an age when Western thought is declaring the impossibility of access to a kind of "Truth" that is capable of founding ethical principles suitable to decide the great dilemmas which contemporary science is presenting every day; in an age which has pronounced the death of God, the death of the Subject, the end of History, the failure of ideologies, or in crude terms, has proclaimed disenchantment, the irrationality and insignificance of life, the body of Intellectuals who structure the Western Establishment and provide it with its "discoursive" legitimization in the Universities, in Publishing Houses and in the Media, goes on proclaiming the "superiority" of Western "civilization" and the universal character of its patterns of behaviour and its forms of social organization".[5]

Only recently political developments linked to the process of Europe's Unification seem to have launched a process of re-thinking the term "civilization". In this sense a reflection on the "roots" of Europe has begun, which includes the search for a more traditional character that is less tied to "progress" in the positivistic sense. It is not a coincidence that this is happening in relation to the concrete legal need to draw up a European Constitution, a document which should not only have a technical and political character, but also that of a "pact" between peoples, a prospect that calls to mind the

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[4] *Ibidem*, p. 85.

[5] Pietro Barcellona, *Le passioni negate*, Città aperta, Troina 2001, p. 15.

synthesis of the "art of government" and ethical strictness that the Latins expressed by the word *civilitas*. This latter term, moreover, with its meaning of "mildness" and "trustworthiness", allows a reference to faith and introduces the dimension of "civilization" which is typical of Judaism, Christianity and Islam, as of all the traditional religions in general.

3. In the Muslim world, the Arabic word *'umrān*, which is usually translated by "civilization", actually denotes the sacred quality of a people, or of many peoples, therefore the "fertility" and the "spiritual frequentation" of a part of humanity, concepts that have a primordial value. In fact the Arabic root *'-m-r*, from which derives the word *'umrān*, means "to frequent", as of a place which is frequented by God and in which man is not alone or abandoned: the greeting "may you live" in Arabic is *'amara Llāhu manzilaka*, literally "may God inhabit your home (your body)!". Besides they also say that a man "frequents his Lord", *'amara Rabbahu*, meaning that he adores God with the ritual acts that are due to Him and that He has revealed.[6] The *'umrān* is therefore the spiritual dimension of a people, or rather of a religious community: it expresses the manifestation of the presence of God in it. Such a manifestation results both from religious practice and from the spiritual "taste" for religious practice itself, that is the extent up to which men "frequent" God and are "frequented" by Him: the concept of civilization, in the Islamic sense of the word, goes beyond the material and geographic consideration, but it essentially takes into account the spiritual qualifications of the individual persons, their "naturalness in adoration", *fiY ra*, that is "Adam's nature" of the man who was created "in His image": in reality this is the unchangeable tradition, *sophia perennis*, in Arabic *dīn al-qayyima*, which leads to "pacification in God", which is the etymological meaning of Islam.

The study of the history of civilization in the Islamic tradition, which is said to have begun only in the 14th century with the *Muqaddima* of Ibn Khaldūn, in reality is only the adaptation to historical science of primordial intellectual principles that are

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[6] A. De B. Kazimirski, *Dictionnaire Arabe Française*, Librairie du Liban, Beyrouth 1944.

therefore present in all traditions, and which can be summarized emblematically in the various spiritual characters of nomadic and sedentary peoples. In fact in the *Muqaddima* one reads:

> *[The Beduins] are nearer to the primordial nature, fiYra, and more distant from wicked habits. They are easier to "heal" (in a religious sense) than the sedentary communities. This is evident. One will later see that sedentary life, al-Hayāra, corresponds to the end of civilization, nihyāt al-'umrān, and to the beginning of decadence. It constitutes the last stage of wickedness and the opposite of goodness. It is therefore clear that the beduins are nearer to being good (believers) than the sedentary communities: "God loves those who fear Him".[7]*

This "sacred" science of civilization refers directly to the ancestral symbolism that can be traced back to Cain and Abel, who are considered by the Bible as the forerunners of the nomads and the sedentary peoples respectively. In fact Cain is the farmer and offers God the fruits of the land, while Abel, who like most nomadic people is a shepherd, sacrifices the first-born of his flock. The sacred story of the murder of Abel, Adam's more devoted son, by Cain corresponds to the predominance of the sedentary tribes, who are more secularized, over the nomads. The relationship between peoples is therefore subordinate first of all to the relationship between the different degrees of adherence to sacred intellectuality and of nearness to the primitive nature of man, since the sacrifice offered by Abel "pleases" God, contrary to Cain's. Emblematically, when Cain "took his distance from the Lord" he became a "builder of cities".[8] The version of the sacred story as told by al-kabarī contains four couplets that Adam is said to have pronounced on that occasion:

> *All cities are equal, man was finally corrupted. The earth is a salty desert, a horrible sight. Everything has lost its enjoyment and its colour; what was beautiful has retained its splendour only in parts. Oh dear, my son Abel has been*

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[7] Ibn Khaldūn, *Discours sur l'Histoire Universelle*, p. 247. The quotation at the end refers to the Koran, III, 76.

[8] Genesis, IV.

unjustly murdered. All his charm has become nothing beneath the earth. We had a neighbour who did not find death, and on this earth that was inhabited by him there's no good luck.[9]

A similar kind of symbolism is also found in the tradition of Asian peoples, where the opposition between Iran and Tūrān, more than to the simple geographical distinction between Persia and Turkestān, referred primarily to that between sedentary peoples (the name "Aryan", from Sanskrit *aryas*, denotes the "plough", hence agriculture) and the nomadic peoples, who from the 11th century onwards were identified with the Turkish populations by the Muslim historians.[10]

Even the sacred history of the Hebrew people unfolds as that of a nomadic people, and it remained like that at least up to the time of Solomon, so much so that foreign craftsmen had to be engaged to build the Temple in Jerusalem. The latter's destruction constitutes the return to a nomadic dimension that coincides with the "diaspora". The detachment from material life and the predisposition to follow God's appeal is also present in Christ's sermons, for example when he says "the foxes have holes and the birds of the air nests, but the Son of man hath not where to lay his head".[11] In the Islamic tradition the calendar itself is calculated from the moment of "emigration", the *Hijra*, which means the departure of the Prophet Muhammad and his Companions from the city of Mecca, their being forced to "migrate" to Medina. Not even when the city of Mecca was freed of the idol worshippers would the Prophet retrace his steps; he remained at Medina, where he is buried. The Koran often mentions the spiritual reality of emigration.

Those who have believed and who emigrated and have fought on the road to God and have given hospitality and help. These are the true believers.[12]

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[9] al-Jabarī, *Storia di Profeti e Re*, Guanda, Parma, 1993, p. 16.
[10] Cfr. René Guénon, *Il Regno della Quantità e i Segni dei Tempi*, Adelphi, Milano 1995³, pp. 142-143, note 4.
[11] Luke, IX, 58.
[12] The Koran, VIII, 74.

Christ himself had stated that "No man putting his hand to the plough and looking back is fit for the kingdom of God".[13] The opposition between nomadic and sedentary peoples is therefore not related to their degree of material development and organization, neither does it strictly refer to the external customs of the peoples, but it is a symbolic representation of the strength of their attachment to a spiritual perspective which can be defined as "the ocentric". In this sense the Islamic tradition often mentions the image of the nomad in the desert, who has no attachment to worldly goods except for those that are indispensable to his survival: it is precisely this essential nature that allows the full enjoyment of the constant miracle of divine omnipotence and mercy, just as only he who has really experienced thirst can thoroughly appreciate the miracle of water.

In cyclical sequences "civilizations", as defined in the Islamic sense, or more widely in the "traditional" or "Abraham's" sense, must reckon with phases of decadence due to the progressive prevalence of material and individual aspects. In the context of a general secularization there is however the possibility of renewing from time to time, as far as possible, the spiritual dimension, by instilling new life into the trunk of civilization. Thus the sequence of the different revelations is the answer to the spiritual need for a cyclic religious renewal.

This renewal of the sacred history of humanity can be linked, at least symbolically, to the great migrations that periodically engaged nomadic populations in conflicts with sedentary ones. Substantially this is the eternal dualism between the Letter and the Spirit, within which a religious dimension which lacks the necessary metaphysical tension would risk stifling the spiritual perspective, just as Cain "killed" Abel. From the traditional point of view the distinction between sedentary and nomadic peoples is not considered as an absolute opposition as much as the coexistence of two elements that must be balanced in each traditional civilization. In Arabia there was an ancient custom by which sedentary tribes donated grain and dates every year to the Beduin nomads as a kind of "fraternity tax", *khāwa* (or *ikhāwa*) by virtue of a primordial "agreement". It wasn't just a guarantee against their raids, as orientalists would interpret

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[13] Luke, IX, 62.

it, but the sedentary people's homage to their desert brethren who kept on living their ancestors' noble life, preserving their ancestors' spiritual perspective. On the present legal plane the symbolism of the relationship between the nomads and the sedentary tribes could correspond to that between Religion and the State.

From the traditional point of view the coexistence of the two perspectives allows the prosperity of a "civilization", or at least it keeps God's punishment away from it. What must be avoided is the prevalence of the secular dimension over the religious one. On this plane the Bible provides us with examples of cities "inhabited" by only a few "just" persons. In fact Abraham asked God to postpone the destruction of Sodoma so long as ten just inhabitants could be found in the city:

> *"Wilt thou destroy the just with the wicked? If there be fifty just men in the city, shall they perish withal? And wilt thou not spare that place for the sake of the fifty just, if they be therein?" (...) "I beseech thee", saith he, "be not angry, Lord, if I speak yet once more: What if ten should be found there?" And He (God) said: "I will not destroy it for the sake of ten".*[14]

Civilizations can therefore decline to the point that they are wiped out by God or are abandoned by Him. Anyway these aspects correspond to the end of civilization in a religious sense, *nihāyat al 'umrān*. Every civilization, in the traditional sense, has a fixed term, as the Koran also reminds us.[15] In fact, from an external point of view the balance between the Letter and the Spirit is destined to tip increasingly in favour of the former, just as the sedentary peoples are destined to prevail over the nomads, even though the latter will never totally disappear. The traditional historiographic vision thus ends up by corresponding to the eschatological one, which is common to all religious traditions, because the world is apparently destined to take on a less spiritual aspect, declining progressively until the Letter will appear to prevail on the Spirit and then the sacred heritage of civilization will only be preserved by those who, as the Gospel says, will adore God in "Spirit and Truth".

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[14] Genesis XVIII 23-32.
[15] The Koran, VII, 34.

In a parallel manner, in sacred history the spiritual "renewal" of the just will allow the preparation of the return, the *parusìa*, of Jesus Christ, son of the Virgin Mary, no longer as a Prophet but to announce the Hour of the Last Judgement, from which a new world and a new "civilization" will emerge. This would be the second "coming" which both Christians and Muslims await, and that will be the coming of the Messiah awaited by the Jews. It is quite singular that all the traditions agree in presenting the end as the moment when the attractions of a material and secularized perspective will spread as never before, to the point of raising the course dimension of this world to virtual spiritualism: many will be "seduced" by a kind of "religion of man".[16] Again the Christian and Muslim traditions agree in representing the negation of the spiritual "civilization" in the emblematic figure of the anti-Christ, *al-Masikh*, the one who will bring the abomination of desolation to the world. However when he will be challenged by Christ at the Door of Ludd in Jerusalem, the Impostor, *al-Dajjāl*, will dissolve "like salt in water", together with the illusions he brought.[17] It will be precisely the peoples of the West who will play the role of preparing Christ's coming: the Islamic tradition says that "the peoples of the West will continue to follow the Truth till the very end".[18] The end when "the sun will rise in the West".[19]

It is significant that in contemporary Arabic the Western word "civilization" is translated as: *aÿ...ra*, which in classical Arabic indicated the character of "sedentary" peoples, or rather of a "sedentary civilization": *'umr...n aÿ...ra*. This reduction of the concept of civilization to its purely material dimension is one of the marks of the "crisis" in which much of the Islamic world, particularly its Arab part, finds itself as a result of the combined activity of fundamentalist and nationalist movements. This activity started to assume a dominant role from the mid-twentieth century onwards and will be discussed further on. In reality, in that same period the whole world has had to confront a similar crisis insofar as it was thought possible, and in certain cases obligatory, to chop off the religious and civil roots of peoples to be able to adapt to so-called

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[16] Apocalypse, XIV, 18.

[17] The collections of *a Hadīth* contain numerous references to al Dajjāl.

[18] Qāī 'Iyā, *I miracoli del Profeta*, Einaudi, Torino 1995, p. 89.

[19] Al-Bukhārī, *Tafsīr*, 6/73.

"modernity". Only after having initiated a sort of "cultural revolution", which in countries like China led in a few years to the destruction of the traditional civilizations of entire peoples, has the spiritual and intellectual patrimony found in traditional civilizations been re-appreciated. Today, after many delays and still in very restricted environments, we are beginning perhaps to see the beginning of a "restoration" of those aspects of the traditional religious world which retain their vitality.

4. The "pact" of fraternity that bonded the nomads and the sedentary peoples was a reflection of the primordial "pact" that bonded the two groups in one community. By virtue of this unity all the Arabs, nomads and sedentary tribes, had preserved the rite of the pilgrimage to Mecca throughout the centuries, in spite of the fact that this had lost its "purity" before the Islamic age. This rite had been established by Abraham and Ismael, who had thus rebuilt the Ka'ba, "God's house", at Mecca. In its turn the pact of Abraham was only the re-actualization of a "pact", *'ahd*, stipulated between God and man at the beginning of time.

> *Abraham and Ismael raised the foundations of the House.*
> *"Lord, make both of us believers who are your subjects; make*
> *of our descendants a community which will be submissive*
> *to you; show us the rites that we shall observe! Pardon us!*
> *You are the One who always looks upon those who turn to*
> *you in repentance!"*[20]

The Islamic tradition isn't the only one that has kept the memory of this primordial pact. Naturally, even the Hebrews consider themselves the "people of the Alliance" and even Christian Arabs called the Old and the New Testaments respectively *al-'ahd al-atīq*, "the old pact", and *al-'ahd al jadīd*, "the new pact". Similar references are not lacking in all the civilizations. One of the oldest rites of the Romans, for example, was that of the "sacred Spring", *ver sacrum*, during which the youths born in a certain year were taken to the edge of the city with hoods over their heads, as *sacrati*, "consecrated to a god". In this rite some have seen "a return to a semi-nomadic

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[20] The Koran, II, 128.

condition, that characterizes peoples who remained close to their origins".[21] In Rome itself, the principle of the law was the preservation of the *pax deorum*, the "peace of the gods", which had been established directly by Jove ("peace" and "pact" have the same etymology). In the oldest legislation of the city, *leges sacratae*, the gods were the guarantors if there was violation of the law.[22] Up to the 3rd century B.C., at the time of the curule aedile Gneo Flavio, the procedural aspects of the law preserved a directly sacred character, because in this way the law became ritualized, and placed in correspondence with the divine order by means of a sacred knowledge which was only possessed by the members of the priesthood: even today Italian law speaks of the lawsuit as a "rite".[23]

In Islamic law the "pact", *'ahd*, is different from a simple "contract", *'aqd*, in so far as it binds the whole collectivity, while a contract may be stipulated between private citizens and binds only them. The prototype of the "pact" is therefore the original pact established by God with the entire progeny of Adam directly during the time that preceded the world's time.

> *And when your Lord drew out of the sons of Adam all their descendants and made them bear witness against themselves: " Am I not your Lord?" They said: "We testify it! (shahidnā)". And this so that you won't have to say, on the day of Resurrection: "In truth we did not know".*[24]

The reciprocal bond that God creates with mankind is that which promises future life after death to those who observe the pact, "salvation", in which transgressors cannot participate.

> *Those who sell cheaply the pact with God and their oaths: see, these people will never share the future life, God will not speak to them; he will not look at them on the Day of Resurrection; he will not purify them, and a sorrowful punishment awaits them.*[25]

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[21] R. Del Ponte, *La religione dei romani*, Rusconi, Milano 1992, p. 23.

[22] Ibid. p. 24.

[23] M. Brutti, "La giurisprudenza pontificale", in M. Salamanca (ed.), *Lineamenti di storia del diritto romano*, Giuffré, Milano 1979, pp. 323-330.

[24] The Koran VII, 172.

[25] The Koran III, 77.

The original pact is the only one and it has been stipulated with the whole of humanity because originally all men belonged to one sole community of believers that offered God a pure cult: the community of Adam.

> *And the men formed one community: then disputes arose among them and were it not for an ancient Decree of your Lord, their disputes would have already been decided.*[26]

Later on this sole community was divided, as the Biblical myth of the tower of Babel also narrates. Since then different communities of believers exist, to each of whom God has sent a Messiah and a law.

> *To each community We have given a law.*[27]

The primordial pact synthetically contains the rights and duties of humanity towards God, therefore these are "universal" in the etymological sense of the term ("universal" derives from *Unum versus*, "turned towards One"). The "pact" is therefore a premise of the sacred law and its foundation, since it is by virtue of this that it assumes a ritual and sacred value. It is in its being a practical application of the "spirit" of the primordial pact that the law acquires vitality and an operative importance within human society: if it weren't for this vitality the law would have been just a "letter", a simple collection of regulations whose binding character would lie exclusively in the coercive action of the constituted authority, notwithstanding any "universality" and "intelligence" of the law.

Each community has its own law that is observed by virtue of a "pact" which is unique and is renewed within every community. Every religious community therefore deserves respect and recognition, but this has no bearing on the diversity of cult and law, since finally every community observes the pact with God to the extent that it abides by its own religion: this is the foundation of religious freedom.

It is no coincidence therefore that in the Islamic world the relationship that binds the State to non-Muslim communities is considered a "pact", *'ahd*, and is called *dhimma*, "protection",

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[26] The Koran X, 19.
[27] The Koran V, 48.

"obligation". Similarly, even foreigners cho resided in the State enjoyed the same protection by virtue of the same pact. In their regard, however, one used the word *amān*, "security", or *jiwār*, "hospitality". The full legitimacy of the cult for the Hebrews – in those times this was the only community which was different to the Muslim one – is witnessed by the "Medina Charter" itself, which is one of the very first examples of Islamic "constitution" (622 A.D.).

> *Article 25. The Hebrews of the Banū 'Awf comprise one community with the believers. The Hebrews preserve their religion and the Muslims their own. This is valid for them and for their clients, except for those who have committed misdeeds or treachery: these are dangerous to themselves and to their own people.*[28]

In this sense, in the Islamic world the universal premises of freedom of worship of the religious communities were affirmed.

5.   In the Western world the concept of religious freedom was established only very recently, and assumed a prevalently ideal and philosophical nature, which has been positively applied in our time, and sometimes not even now. Perhaps it is this long laboured process that leads many Western persons to consider religious freedom as an exclusive product of "progress", and therefore also of Western "civilization".

The concept of freedom has in effect a more juridical nature than that of "civilization". In Roman law the *status libertatis* corresponded to the full rights and duties of the citizen, and distinguished him from the *servus*. As everybody knows, even the slave could regain the *status libertatis* through manumission and was then called *libertinus*. At first religious adherence did not comprise limitations on the level of juridical ability, but the concept of "freedom" apparently did not immediately recall that of "religious freedom"; even though the Roman world can be generally defined as "tolerant",

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[28] Ibn Hishām, *Kitāb al-Sīrah Rasūl Allāh*, ed. F. Wüstenfeld, Göttingen 1858, pp. 341-344; Italian transl. in V. Fiorani Piacentini, *Il pensiero militare nel mondo musulmano*, pp. 261-264.

in so far as the practice of different pagan rites was largely tolerated in the Empire.

However there's a tendency to over-estimate the religious freedom of the age. In reality the pagan cults of antiquity were much more similar to one another, and homogeneous between themselves, than is generally thought, so much so that in many cases one could speak of different aspects of the same *religio*. Besides, the different cults were tolerated in so far as they were all obliged to offer sacrifices to the figure of the Emperor. Since it was not strictly tied to a legal principle, religious freedom could meet obstacles in the Empire's lack of unity and political stability. Besides, even in the times of Cicero, ancient laws prohibited the practice of cults that were outlawed by the public authority and this tradition was restored during the Imperial age within the framework of the persecution of Christians.[29] Having reached its peak in the reign of Diocletian, the persecutions stopped only in 311 A.D., when Galenus finally issued the edict of tolerance.

In those days tolerance was seen as a gracious concession by the authorities, who had the power to concede religious practice to certain cults. On the juridical plane tolerance was therefore an aspect of the State's internal policy, to which it remained strongly linked in the following centuries. This ethical dimension of politics seems to have grown thanks to the recognition of different "civilizations", which is the essence of the primordial "pact".

The Norman dynasty, for example, which had conquered large parts of Europe between the 12th and the 13th centuries, had multiple relations with the Islamic world; suffice it to mention Frederick II and the role of the Templars, and it was a model for the organization of the state and moderation in religious matters: one can mention the autonomous status of the Islamic colony of Lucera in Puglia.[30]

In the Middle Ages, episodes of intolerance were limited but, from the 15th century onwards the Inquisition, and the Reformation in the following century, brought moments into Western history when intolerance was rife and almost uncontrolled. From the 16th century up to the French Revolution Europe was continuously ravaged by

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[29] V. Arangio-Ruiz, *Istituzioni di diritto romano*, Jovene, Napoli 1984, p. 62.
[30] Amad 'Abd al-Waliyy Vincenzo, *Islām, l'altra civiltà*, cit., pp. 316-319.

the so-called "religious wars". "Religious" intolerance was for a long time the unit of measurement of European politics, to the extent that the same Protestants and Catholics who used the concept of tolerance to defend themselves from persecution, once they came to power did not hesitate to use the same pitiless intolerance which they had previously suffered on their adversaries. The concept of "tolerance" is therefore historically inconstant and juridically short-lived, because similar cases in point could be determined in various ways according to circumstances. A paradigmatic image of all this is the difficult "tolerance" that was accorded to Jews in Europe up to the 20th century.

The long period when religion was used as an instrument for political purposes brought about a diffident frame of mind towards religion itself, which showed up clearly since the Enlightenment. The thinkers of that age had an ambiguous attitude towards the religious factor, and they managed to reflect on the need for more liberal relations between the State and the religions (Locke),[31] the expression of secular tolerance (Voltaire)[32], as well as displays of anti-religious secularism (Rousseau). Even those voices who could have contributed to overcome confessional exclusivism in the light of an increasing "recognition of otherness", remained isolated and unheard for a long time (Castellion).[33] Ruffini, one of the fathers of Italian ecclesiastical law, had already pointed out the limits of the Enlightenment's reflections on religious freedom.

> *But Rousseau's disbelief, which rather than leading him to respect conscience, as we shall see, made him the promoter of the most tyrannical compulsion of all religions; and the tolerance of Voltaire, marked by too much sarcasm, were not suitable to find the right way for those souls which were still full of a strong faith. And the strong contrast could not come out of better words than those that the sharpest*

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[31] M. Tedeschi, "La libertà religiosa nel pensiero di John Locke", in *Vecchi e nuovi saggi di Diritto ecclesiastico*, Giuffré, Milano 1990, pp. 443-468.

[32] See G. Carobene, *Tolleranza e libertà religiosa nel pensiero di Voltaire*, Giappichelli, Torino 2000, with an anthology of readings.

[33] M. D'Arienzo, "Libertà di coscienza e tolleranza in Sébastien Castellion", in *Studi di Diritto ecclesiastico e canonico*, "Quaderni della Scuola di specializzazione in Diritto ecclesiastico e canonico", N. 7, Jovene, Napoli 2002, pp. 115-130.

*mind in Switzerland ever had, who according to Grimm
was the wisest man of the age, that is Alberto Haller, who
wrote to a friend: "I don't love tolerance, when it is brought
to me by Voltaire".*[34]

The ambiguity of the philosophers of the Enlightenment, especially
on the legal plane, was reflected negatively during the French
Revolution, when phases marked by the freedom of worship
alternated with attempts to impose a secular and radical "civil
religion". Only the Constitution of the 22nd August 1795 put a stop
to the anti-religious persecutions which had marked Robespierre's
attempt to apply Rousseau's ideals to the State. After the excesses
of the Revolution, almost as a reaction to them, the idea spread that
religious intolerance could be overcome only when the public context
would have assumed a "non-religious" character, progressively
defined as "secular" in the wider sense, in which the different
religions would no longer have any reasons for conflict. In this sense,
avoiding the harsh "sarcasm" of Voltaire, secularism may be seen as
having overcome the long period of conflicts and as being an
important destination in the history of Western political thought.

In 19th century liberalism it was programmatically formulated in
Cavour's motto "a free Church in a free State".

Although the modern science of law has contributed considerably
to the consolidation of the secular and liberal dimension of Western
thought, the concept of religious freedom has been affected for a
long time by the largely individualistic and materialistic philosophical
perspective which produced it. Many of the first theoreticians of
religious freedom were principally concerned with pronouncing the
principle that everyone is free to be religious or not, ignoring the
aspects where such "freedom" is substantiated. The concept of
secularism itself, a point of arrival in the long and tormented road
of Western history, appeared from the beginning as a philosophical
and ideological perspective, rather than a model of a juridical system.

*Secularism thus remains an ideology on the tendential level
like all ideologies, and also relative in time and space,*

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[34] F. Ruffini, *La Libertà religiosa*, Feltrinelli Milano 1992, (1st edition, Torino 1901),
   p. 183-184.

*certainly not a panacea but a concept that needs further
examination, and any attempt at its legal definition is not
only difficult but it also contrasts with legislation and the
actual reality which do not allow that it be fully considered
as a constitutional parameter of the issues concerning the
religious factor.*[35]

On the legal plane certain issues were still undefined, and some
still are: the specific relations between the State and the different
religious communities, the regulations that should be observed by
the different communities in relationships between them within the
context of the State, and, finally, the character of some fundamental
rights of the "religious" individual, like those concerning life after
death.[36]

It has therefore been necessary for generations of jurists to work
on the preparation of concrete legal solutions for the problem of
respect for religious freedom, each of which naturally has positive
and negative aspects, but on the whole they constitute one of the
most important aspects of Western legal heritage. During the 20th
century Western states have experimented with a wide range of
"ecclesiastical" models, starting with the confessional State that
should be more or less "liberal" towards the other "tolerated" or
"admitted" cults (like the majority of the European states during
the 19th century and also today Greece, England, Ireland, Denmark,
Finland or Sweden up to the year 2000), then the separatist model
according to which the religious context should have no contacts
with the State (as in the USA and in France since 1905) and, lastly
and above all, the systems based on "pacts" and "negotiations"
between the State and religious faiths, which recover a concordatory
right of an old legal tradition, which are applied in Italy and Spain.

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[35] M. Tedeschi, "Quale laicità? Fattore religioso e principi costituzionali", in *Scritti
di diritto ecclesiastico*, Giuffré, Milano 2000, pp. 69-70.

[36] Apparently after death certain fundamental rights cease, e.g. the right to
perpetuity in burial. On the contrary, for example, article 4 of the Cairo Declaration
on human rights in Islam (1990) reads: "Every human being has the right to the
inviolability and protection of his good reputation and of his honour during his
life and after his death. The State and society shall protect his remains and his
burial place". Similarly, it is noteworthy that the Hebrews call their cemeteries
the "place of the living".

The "translation" of religious freedom from its philosophical dimension to the solidly juridical one apparently requires a last effort, especially towards more convergence of the ecclesiastical policies of Western States, with a view to establishing a common European policy. In fact more attention must be given to the effective presence of Islam on the continent, a recent phenomenon which has already made it the second faith as regards numbers of practising members. A fresh effort to adapt to this situation is necessary to avoid that Islam enters into a condition of inferiority with respect to other cults.

The problem now emerges about which model of relations between the State and the religious faiths could guarantee in principle more religious freedom. For some years now absolute separatism, which according to some is the most perfect "secular" model as embodied in the French law of 1905, is under fire in France itself, where a process of rethinking "secularism" should change it from "passive" to "active", that is without excluding the intervention of the State in religious matters. The law against "sects" (May 2001) is a step in this direction, as is the direct drawing up of rules for forming a Representative Assembly of Muslims in France, which should happen before spring 2002. Even in the United States, where separatism has been consolidated since the 19th century, the Supreme Court, with its restrictive interpretation of the first amendment to the American Constitution, has taken a series of rather disputable decisions, which apparently deny the possibility of implementing absolute separatism, by giving, for example, preference to the State over the Christian confessions.[37]

Without touching the principle of secularism, which in Western legal systems is the indisputable foundation of religious freedom, the concrete experience of the European States has brought to the fore the pact model inferred from the Italian Constitution, that was later also applied in Spain. Such a system fits into the concept of relations between State and Church that follows the Romanistic tradition of "concordats", revising it however in a "pluralistic" key. Both these perspectives, as we will see, are significant points of

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[37] M. Tedeschi, "Alle radici del separatismo americano", in *Saggi di Diritto ecclesiastico*, Giappichelli, Torino 1987, pp. 213-254.

contact with Islamic legal tradition.[38] The "pacts" or "agreements" that the modern Italian State shall stipulate with the religious confessions must obviously not be conceived as "open" trade union negotiations, nor as treaties in the context of international law. Such "pacts" not only have an indisputably high symbolic and sacred value, at least concerning the confessions, but, as we have seen, even from the "secular" point of view they are linked directly with the universal foundations of religious freedom.

> *On their part the Muslims should take into account the legal principles that are the foundations of our legal system and of the relative limits of public order. Without an agreement they would be forced to live and operate in a context of common law, under those conditions that are easily comprehensible in a Country with a strong Catholic majority, and that in the past did not allow them an easy development. One should remember that no law was ever enacted with them in mind, and therefore one must not lose the opportunity that is now being offered to them for the first time, to have their rights recognized by the law on the basis of an agreement.*[39]

The State and religious confessions are situated on different planes. These contexts, however, can and must coexist within the same "civilization", just as they can naturally coexist within a person who is a "citizen" and "religious" at the same time. The system of "agreements" provided for by article 8 of the Italian Constitution may be one of the highest manifestations of religious freedom because it is not only the premise for effective freedom of worship but also the premise for protecting the religious context from interference and manipulation of any kind, by acknowledging that religion is one of the fundamental aspects of "civilization". In this sense the

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[38] From the point of view of legal history, in fact, it is perhaps not a coincidence that one of the very first "concordats" was precisely that "legacy of Sicily" conferred by Urbanus II on Roger, count of Calabria and Sicily, on the 5th July 1098, on the occasion of the island's changeover from Muslim domination to the Normans, when the latter had preserved a good part of the state structures of the former.

[39] M. Tedeschi, "Aspetti giuridici dei rapporti tra ordinamento italiano e Islam", in *Scritti di diritto ecclesiastico*, Giuffré, Milano 2000, pp. 332-333.

"secularism" of the State is displayed by keeping the same attitude towards all the religions, without preference to one or discrimination towards another. On the other hand, as the Muslim jurists themselves strongly recommend, religious confessions cannot shirk from the observance of the constituted order, by virtue of which religious practice is permitted and guaranteed against the dangers of arbitrariness and anarchy.[40]

At present the protection of religious freedom corresponds to one of the most significant aspects of the Western world, by virtue of which it can achieve emancipation from the strictly nationalistic and positivist dimension which is inherent in the meaning of *civilization*. In fact, without abandoning its secular dimension, the State can take up the defence of what constitutes the essence of all "civilizations", in "Abraham's sense", that is the protection of spirituality. In this way the perspective of the inevitable "clash" between civilizations, theorized by certain politologists during the last quarter of the 20th century who did not succeed in distancing themselves from an essentially materialistic and colonialist concept of "civilization", will be overcome.[41]

6. Similarly to Roman law, classical Islamic law, *hurr*, "free", denotes principally someone who is not a "slave", *'abd*, but the term also has an ethical value that can be translated by "nobility of character", "gentleness" and "readiness to suffer for a noble cause". "Freedom" is therefore identified with the manifestation of the original nature of man, *fiYra*, which is noble and generous. In the traditional Islamic perspective the achievement of "freedom" corresponds to the freedom from all that hinders the manifestation of the original nature in which man was created by God. The aim of divine law itself is to bring man back to his spiritual origins, coherently with the etymological meaning of *sharī'a*, which means "a path which leads to the stream".

Contrary to Western law, in the Islamic world the dimension of freedom strictly implies the perspective of religious freedom. This

[40] Al-Ghazālī, *Kitāb al-iqtijād fī 'l-ĭtiqād*, cap. 3, cit. in D. Santillana, *Istituzioni di diritto musulmano malichita*, Roma, p. 29.

[41] With particular reference to the well-known theories of S. Huntington.

implication lies under both the religious and the strictly legal aspect. The juridical ability of the free man is actually called *dhimma*, a word which also denotes the foundation of an obligation. The *dhimma* is therefore both the possession of the "right" to freedom, and the obligation towards divine law which guarantees freedom itself. One should note that the term which in Islam denotes "religion", *dīn*, derives from a root which expresses the idea of "being in debt", with particular reference to the fixed-term debt. The word *dhimma*, thus defines also the legal status of the religious communities that are different from Islam and are present in the State, and in this sense the word is generally translated by the word "protection". The classical Islamic State, that is the caliphate, "protected" and recognized the other religious communities which could not only practice their own cults but also enjoyed considerable legal autonomy, especially in the context of what Western law defines as "personal status".

I have had other occasions to clarify the fundamental dimension that the recognition of other religions has in Islam, and therefore here I may avoid insisting on this determinant aspect.[42] Here I wish to stress the fact that in Islam religious freedom is a legal principle contained in that of freedom in general. On the other hand Islamic law does not refrain from reminding us that the *dhimma* concerns a primordial pact whose violation will be punished till the end of time, as asserted by the Prophet Muhammad in the *ahādīth*, the prophetic "sayings", which have a well-known value as a legal "source".

> *In the Day of Judgement I myself will act as prosecutor towards anyone who has oppressed a person who was under the protection of Islām.*[43]

The *dhimma* is essentially a "pact" between the Islamic State and the religious communities that are different from Islam, and it therefore belongs to the legal context, which is directly reflected in "religious freedom". The greatest difference in the Islamic world, when compared to Western law, is the solidly "religious" and "community" character that religious freedom has acquired. Being

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[42] Amad 'Abd al-Waliyy Vincenzo, *Islām, l'altra civiltà*, Mondadori, Milano 2001.

[43] Balādhurī, *Futū*, p. 162, cit. in I. Goldziher, *Introduction to islamic Theology and Law*, Princeton Univ. Press, Princeton1981, p. 35.

a legal-religious principle, rather than a philosophical one, it showed up on the actual life of the communities, each of which, as we have seen, operated within the original "pact", continually renewed with the State, which recognized and "invested" the different confessional representatives.

In fact Islamic law charges the community, the *umma*, with a series of collective obligations which cannot be seen as simply personal duties. It is in fact a collective obligation, *fary kifāya*, that concerns the entire community but which, performed by a group of Muslims, exempts the others from performing it, contrary to the ritual duties, like prayer, which are the duty of each individual with no exceptions, as a personal obligation, *fary 'ayn*. A series of actions considered as particularly useful to the good of the whole community have the legal status of "collective duties". In fact the following activities are equally considered as *fary kifāya*:

1) to do one's best in any way for sciences related to the law (a context which comprises almost the whole Islamic knowledge, since in the traditional dimension nothing is truly extraneous to a sacred perspective), as well as giving legal responses, *fatwā*;
2) keep away from Muslims (and from the ahl al-kitāb, the peoples of the book, that is Jews and Christians) what is harmful to them, as, for example, hunger, by feeding the hungry when alms and public funds cannot provide enough;
3) the office of the judge, qāḍī, held in very high esteem;
4) testimony in a lawsuit, compulsory to the individual who is required to do so by authority;
5) the supreme office of the imam, that is the caliphate, which can be compulsory to the individual who possesses all the qualifications required by law;
6) order the good and prohibit the bad;
7) cultivate the most important occupations that are necessary to life;
8) answer greetings, that is love the other believers as yourself;
9) perform the last rites to the dead;
10) ransom Muslim prisoners from the hands of the enemy;

11) The *jihād*, the "effort for a spiritual aim", considered
as something "internal" as well as "external" and that
in certain circumstances that are dangerous to the
community may also become military action.[44]

A firman (edict) of the Ottoman Sultan Mehmet III, dated March
1602, clearly indicated that the "pact" of the *dhimma* should have
been considered a *far? kifāya*, a collective obligation for the
community and a *far? 'ayn*, a personal obligation for the sovereign
and his governors.

Considering that, in accordance with what God Almighty, Lord of
the Universe, has commanded in His Book about the community of
the Hebrews and of the Christians, who are peoples of the *dhimma*,
their protection and defence and the safeguard of their lives and
possessions are a *perpetual and collective duty* of all the Muslims
and a *necessary obligation* that is encumbent on all the sovereigns
of Islām and the honourable governors.

> *It is therefore necessary that my concern, that is high and
> spiritually inspired, tends to ensure that, in accordance with
> the sharī'a, each of these communities that pays its taxes
> to me, in the days of my imperial reign and in the period of
> my happy caliphate, live in tranquillity and peace of mind
> and may go about their business, that nobody hinders them
> from doing it, and that nobody offends their person and
> possessions, in violation of God's command and in
> contravention of the Holy Law of the Prophet.*[45]

The relations that bound the religious communities of the State
could be different, but they were all included in the unitary regime
of the *dhimma*: the principle was in force that different cases in
point, like the various cults, could be governed in different ways,
barring the principle of the freedom of worship and the legal
autonomy of the respective communities, submitted to their
respective confessional authorities. For instance, under the 'Abbāsids,
the Hebrews, were entrusted to the government of an exilarch *ra's*

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[44] See Khalil Ibn Isāq, *Sommario del diritto malichita*, vol. I, Milano 1919, pp.
386-387.
[45] B. Lewis, *Gli ebrei nel mondo islamico*, Sansoni, Milano 1991, p. 48 (My italics).

al-jālūt, an official representative of the Hebrew community at the caliph's court in Baghdād, and of the *gaon*, a representative of the Talmud academies of Iraq. The Hebrew exilarches, together with the Nestorian *Catholikoi* and the orthodox patriarchs resided in the capital city where they obtained their investiture from the Caliph in confirmation of the original "pact". These same communities did not hesitate to appeal to the Caliph when they did not reach agreement on a candidate.[46]

Besides the principle of the "freedom of worship", the Islamic State was keen to guarantee also the "freedom of religions", that is the safeguard of the respective confessional contexts. The Islamic State was very careful not to let confessional pluralism be used as a pretext to create conflicts within the State and tended to reduce the risks inherent in proselytism, which is extraneous to the Islamic tradition, where monasticism and missionaries are unknown. So long as the "classical" model of the Islamic State could survive, from the Umayyad and 'Abbaside Empires up to those of the Ottomans and Moguls, "religious" peace was practically general and persecution was absolutely unheard of,[47] while with the end of the respective States interethnic conflicts arose which often had a "religious" character: for example, the violent conflict between the Druses and the Maronites in Lebanon in 1860 coincided with the entry of that country in the French sphere of influence; the massacre of the Armenians in Anatolia happened after the revolution of the Young Turks had toppled the Caliph 'Abd al-Hamīd in 1908; the first clash between Hindus and Muslims took place in 1893, after the Mogul state had ceased to exist following the revolution of 1857 against the English.

However, the system of the *dhimma*, with its consequent distinctions especially in the fiscal sector, could have lent itself to manipulation. At first, in fact, the *jizya*, the scaled taxes that the "people of the Book" had to pay the State, compensated for the non payment of the *zakat*, or ritual alms, that Muslims paid in their

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[46] C. Cahen, entry *dhimma*, *The Encyclopaedia of Islam*, Brill, Leiden 1999.

[47] With the only exception of the caliph fāimide al-Hakīm (985-1021), who destroyed the Holy Sepulchre in Jerusalem, and who was literally mad. In the end he disappeared mysteriously or, more probably, was made to "disappear" by his own subjects.

turn.[48] The difference in the fiscal regime could have led to forms of discrimination against minority groups. Some of the apologetists and the literalist theologians would have liked to force the meaning of the text of the Koran that, when referring to the *jizya* as a personal tax or "capitation" ("from the hand", *'an yadin*), add the words *wa-hum Hāghirūn*, which literally means "and making themselves small (in the sense of submitted)".[49] In this way there have been sporadic attempts during the centuries to link the payment of the *jizya* to forms of "humiliation" towards religious minorities. In actual fact the meaning of the text of the Koran simply indicated that the payment of the *jizya* should have symbolized the submission to the authority of the State, as every tax shows in principle. In fact the fiscal treatment of the subjects, in its formal difference, turned out to be substantially fair.

> *The condition of one who had to pay the jizya was not worse*
> *than that of the Muslim who had to pay the zakāt, since*
> *the former was exempt from paying it by definition.*[50]

The more important jurists had always stigmatized every sort of bad treatment meted out to those who were subject to the *dhimma*. In fact one reads in the *Kitāb al-Kharāj* di Abū Yūsuf, one of the first treatises on public law (8th century):

> *Not one of the dhimma people must be beaten to make him*
> *pay the jizya, nor must he be forced to stand in the sun, nor*
> *anything of the sort: He should rather be treated with*
> *indulgence.*[51]

Most of all it was the jurists and the learned ones, who embodied the most spiritual dimension of Islam, who were the point of reference for the observance of the universal principles of religious freedom. On their example the State put into practice the *dhimma* system without the restrictions that some would have liked to include in it:

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[48] Exemption from paying the *jizya* was conceded to minors, women, senior citizens and the mentally ill.

[49] The Koran IX, 29.

[50] C. Cahen, *L'Islamismo*, Feltrinelli, Milano 1969, p. 112.

[51] Abū Yūsuf, *Livre de l'impôt foncier*, Geuthner, Paris 1921, p. 189.

Without any doubt the jurists' attitude, more than that of commentators and theologians, reflected more precisely the practice of the Muslim governors and administrators.[52]

The system of government of the various communities, the *millet*, as it was called by the Ottomans, was so deeply rooted in the Islamic legal mentality that it was also applied in international law, since foreign "guests" were placed on an equal footing with the *dhimmī* (those who were subject to the *dhimma*), as we have seen. The internationalization of the *dhimma* system turned out to be a Trojan horse at the time of the "capitulations" with which the Western states created veritable "colonies" in the Ottoman world, and allowed them to interfere widely in the internal policies of the State. This opened a deep crisis in the Ottoman social and political setup. When confessional pluralism was progressively abolished during the 19th century, it was already too late: when the caliphate ended (in 1924) the pluralistic tradition of the Islamic State was seriously compromised.

Many of the States that were born out of the Ottoman collapse adopted Western-type constitutions and set aside the "pact" tradition regarding "ecclesiastical law". The adoption of the Western "confessional" model by the majority of the new Islamic States brought many problems on the implementation of religious freedom. Consequently in many States the result was that, paradoxically, legislation of Islamic origin that should have been only applied to Muslims was actually imposed on everybody, Muslims and "peoples of the Book". In certain cases the discriminatory aspects against minority groups became excessive, especially because of the pressure of the fundamentalists who claimed that they should substitute the pluralistic and moderate tradition which is essentially juridical and spiritual. In some cases the more evidently "secular" aspects were assimilated, and purported to transform "religious freedom" into "freedom from religion", to the extent of hindering not only the religious freedom of the non-Muslim minorities, but also of the Muslims themselves.

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[52] B. Lewis, *Gli ebrei nel mondo islamico*, Sansoni, Milano 1991, p. 21.

The second half of the 20th century brought great delusions and big questions. The talismans of the mysterious West did not produce any miracles; the potions offered by the various foreign quacks did not cure the ills of the Western countries and peoples; the constitutional governments, contrary to expectations, did not produce health, riches or strength; independence only solved a few problems but raised many others, and freedom – now understood as the reasons of the individual against his fellow countrymen and his coreligionists – seems to be more distant than ever. Many remedies have been tried, imported from the East and the West, from Europe and America, North and South, but none have been effective, and an increasing number of Muslims have begun to look at their past – at least at what is felt to be their past – to diagnose the present problems and to find remedies that may procure future welfare.[53]

7. While the Islamic world is actually rediscovering the importance of the essential foundations of the "pact" which is right at the origin of "civilization", even the Western world is going through a phase of deep rethinking. In fact the numbers of those who no longer recognize themselves in the essentially positivist and colonialist perspective of the concept of *civilization* are on the increase. And increasingly frequent are the interventions of those who wish for a more explicit statement on the Hebrew and Christian "roots" of Western civilization, even though some of them, unfortunately, conceive these roots as "anti-Islamic". The issue is not devoid of legal consequences, so much so that the debate which preceded the opening of the proceedings of the European Constituent placed before everything else precisely those relative aspects of the qualification of the term "civilization" and of the religious and intellectual "roots".

The true Mediterranean roots of Europe should be traced back to "Abraham's monotheism", because this corresponds effectively to a unitary tradition, whose overall equilibrium would be lost if one of its elements were to be lacking. The need for the diversity and co-presence of Hebraism, Christianity and Islam is particularly evident

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[53] B. Lewis, Il linguaggio politico dell'Islam, Laterza, Bari 1991, p. 132.

on the legal plane of religious freedom. Particularly, those periods when relations between Islam and Christianity were more intense coincided with the periods of happier freedom.

One often forgets that in actual fact the Inquisition was only established during the 15th century, at the peak of the Humanistic age, when relations with the Islamic world had become more indirect. In one of the earliest European works in favour of religious tolerance, Locke's *Epistola de Tolerantia* (1689), the author argued that it would have been unjust if in Europe procedure was different to that in Istanbul, where the Muslims did not persecute differences of opinion on religious matters.[54] Besides, Islamic law could help draw attention to religious freedom with regard to the community, that is on the specific contents that the principle of freedom took on in relation to the material life of religious communities. This would have contributed to form a more "universal" concept of human rights. Even among Western jurists, whose contribution to the development of religious freedom is undeniable, although attitudes which are openly "secular" and "anti-religious" are still frequent, the definition of human rights itself is increasingly opening up to the recognition of the particular status that the communities assume, particularly religious ones.

> *Human rights are the inalienable powers that in temporal succession and spatial extension scan the rhythm of the individual's emancipation as a person and as a community ...*[55]

It was not by coincidence that certain "pacts" signed in the UN headquarters after the "Universal Declaration" of 1948, as well as that on "Civil and Political Rights" of 1966, show that they are more inspired by the "will (...) to safeguard groups and communities".[56]

Reciprocally, the example of a European State that stipulates agreements with religious confessions may stimulate the countries having an Islamic majority to take up again legislation in matters of religious freedom that corresponds more with the Islamic juridical

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[54] Cfr. F. Ruffini, La Libertà religiosa, Feltrinelli Milano 1992, (1st edition, Torino 1901), p. 67.

[55] G. Capozzi, Diritti dell'Uomo. Filosofia, Dichiarazioni, Giurisdizione, Jovene, Napoli 2001, p. 98.

[56] G. Carobene, "Sulla protezione internazionale della libertà religiosa", in Il diritto ecclesiastico, n. 2, 1997, p. 371.

tradition, naturally without ignoring the Western liberal tradition. This would place Italy in a decidedly central position within the development of ecclesiastical law, not only in Europe but also in the Mediterranean, so long as the resistance of those who want the "closure" of the door of agreements, to bar the Islamic confession, which purportedly is governed on the basis of common law, in a status which is evidently inferior to that of the Christian and Hebraic confessions, which have already signed agreements, is overcome.

The Islamic juridical experience, even in the light of the errors committed during the Ottoman period of the capitulations, could in its turn be useful to the Italian government so as to avoid the internationalization of the system of agreements, that is the pointing out of confessional representations that are strictly linked to foreign nations or to international political movements. This would not be in line with article 8 of the Constitution that provides for the representations to be a "national" expression of Italian citizens who belong to a particular faith. On the other hand, the efforts of some European governments, even if they belong mostly to the separatist tradition, like the French one, seem to be heading decidedly towards the constitution and the recognition of "European" Islamic representations. Even the recent events should provoke further reflection on the risks that result from the political influence of associations, or even nations, that are in some way linked to fundamentalist doctrines or movements.

Modern states seem to be called to an "active" and not "hostile" kind of secularism which would lessen the pressure exercised by fundamentalist movements over the religions and their legitimate representatives in order to subdue them for their own political reasons. Better relations, even on the legal plane, between the Mediterranean countries are therefore extremely desirable. Unfortunately a kind of incommunicability persists between countries belonging to the Islamic tradition and those of Romanist origins, which is mostly due to lack of comprehension of some of the peculiar characteristics of the respective legal systems, as I have tried to show. Consequently a very wide space for intellectual intervention and reflection is opening up for the near future.

There is one last point that requires our attention. In Western thought the possibility of proselytism is sometimes considered as one of the fundamental aspects of religious freedom. In actual fact only Christianity practices proselytism and missionary activities,

and in these last centuries these phenomena have been linked to colonialism and to the establishment of the "progress" of Western "civilization". It would therefore be a step forward towards the definition of a truly "universal" kind of religious freedom if we were to consider placing limits to "proselytism", in so far as this could be expressed above all as the assertion and witnessing of a religion, but not as a negation or denigration of another. Unfortunately proselytism has been widely practised in the past centuries, by the side of and in support of the action of the colonial powers and the post-colonial policies. This is one of the motives of the particular formulation of the second comma of article 10 of the "Cairo Declaration on Human Rights in Islam" (1990), which is rightly considered as one of the points of major discord with the "Universal Declaration of Human Rights" of the UNO (1948).

It is forbidden to exercise any form of constriction on the individual or to exploit his poverty or ignorance in order to convert him to another religion or to atheism.

Religious freedom, as the Catholic jurist Rescigno proposed in the Sixties, must not appear only at the head of relations with the State, but also of the relations between the various confessions.[57] It is here that one sees the juridical importance of inter-religious dialogue, which the Italian Islamic Religious Community (CO.RE.IS) has been trying to put in motion for many years on a more concrete and less demagogical basis, by establishing very good relations with the Italian Hebraic Communities and in the hope of an effective opening on the part of the Catholic Church.

The principal aim of this short study is to clarify the peculiar aspects of some principles that are universally relevant to the Western and to the Islamic worlds, in the hope that better acquaintance may bring peoples together, guiding them to spiritual and intellectual pluralism, which is one of the deepest and safest roots of "civilization".

> 15 March 2002
> 1 MuHarram 1423
> (on the first day of the Islamic new year)

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[57] P. Rescigno, "Le società intermedie", in Persona e Comunità, Il Mulino, Bologna 1966, pp. 29-68.