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AFTER THE ARAB SPRING: THE PROBLEM OF FREEDOM OF RELIGION

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Summary

The 2011 "Arab Spring" arouses, in Western societies, expectations that often do not take into account the real context of the Islamic countries. As a matter of fact, the Western Secular tradition frequently obstructs the understanding of the strong religious feeling that pervades the social reality of the Islamic world, even if in a non-uniform way: the modernists, traditionalists and fundamentalists' school of thoughts have a different idea of the modern Islamic State. In order to clarify this diversity, the history of the relationships between State and Islam, the inter-relationship (in a degree that is unthinkable in Western culture) between State, religion and law and the consequent different perception of single individual behaviours have to be examined. This encounter-conflict with the Western political perspective became real in the Islamic States through the imposition of the Western law during the colonial period and – in the opposite direction – is taking place, today, in Europe through the increasing immigration of Islamic believers. The provision of *concordats* (a potential solution with other monotheistic religions) is not possible with the Islamic communities, because Islam does not take into consideration a hierarchically organized ecclesiastical structure and, therefore, the Western States cannot find a single and official interlocutor. This way, within each individual Western State, a frequently difficult coexistence between Western and Islamic States is growing, a coexistence that is leading to new forms of *legal pluralism*. On an international relations level, the economic difference between the Western States and those who took part in the "Arab Spring" make it difficult for these last countries to promptly build up a modern State. The potential models range from Iranian theocracy to Turkish Secularism, with innumerous intermediate solutions. Today, the tendency seems to go towards an Islamic State, as the Pakistani constitutional evolution shows: but any prediction is questionable, because the transformation process that started with the Arab Spring is just beginning. Finally, the Western constitution model struggles with the rigor of the Islamic religion that does not admit Muslim conversion to another religion. Whoever abandons Islam commits the crime of *apostasy* that the Coranic law punishes with death. The fundamental right of *freedom of religion* becomes, this way, an insurmountable obstacle for the introduction of a Western-style constitution in a State whose population is mainly Islamic.
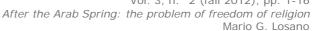
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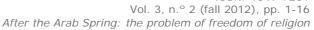## 1. The "Arab Spring": for when a summer of "liberal democracy"?

The analysis of the "Arab Spring", at this stage, can only be a provisional assessment that is bound to change very soon. As a matter of fact, that promising spring is not announcing a fruitful fullness of summer yet. Besides the metaphor, the anti-dictatorial uprisings have not yet generated political structures that are able to follow those of the Western democracies. We should also add that this evolutionary approach seems inevitable to Western people but actually – within the Islamic framework – it is not necessarily like that. We should just think about the problems related to the inclusion of Islam in the recently reformed constitutions (such as in Morocco in 2011) or those that are work-in-progress (such as Egypt in 2012).

A problematic aspect of the political comparison is about comparing homogeneous terms, because in politics the boundaries are more unstable and the terms more undefined than in natural sciences. It is not scientifically acceptable, for example, to compare the theory of the Communist State with the reality of the democratic State (and vice versa, of course).

To avoid this risk, the title should be specified: I don't think that today – facing the Southern Mediterranean countries upset - we should be interested, within this framework, in comparing the Islamic theology with the liberal-democratic theory. The problem that has been discussed for some decades and that has become extremely current today is *if* (and if so, *to what degree*) the basic structures of the liberal-democratic State can be transferred into a State whose ruling class and population mostly profess the Islamic religion. In brief: could Egypt, Libya, Algeria, Tunisia and Morocco become, in a reasonable timeframe, States with similar structures to those of the democratic States? In other words, could they have free and periodic elections, a rule-of-law State, independent institutions and free parties?

This question is dually poisoned. Firstly, an ethnographic poison. It has, in fact, *an implicitly positive judgment of value of Westerners about the superiority of their own political order*. Why should a liberal democracy, which is working for the Western countries, be necessarily welcoming to Islamic people? Can this liberal democracy be successfully exported? In some cases, it can (India, Japan, South Korea, and Southern Central America: obviously, with several nuances and with resounding autocratic falls). In other cases, it seems like it couldn't: Iran and Afghanistan are unsolved problems. After many years of war and democratization attempts we can still listen to these kinds of statements: "The Taliban were leaving the hanged man's corpse dangling for four days. We will do that for a shorter amount of time: let's say, fifteen minutes [...] Public

stoning will also still exist but we will use smaller stones"[1]. This statement was made by an Afghan Supreme Court judge in December 2001. Finally, Pakistan is grappling with an ambiguity that is not so compatible with the democratic models: we will come back to this State in §6.

Let's talk about the second poison. By accepting the Western model it implies *a separation between State and religion, in other words, the Secularism* that – in several ways – defines the Western States. Like this we return to the definitional issue. Islam, like all religions, is repository of an absolute truth, being incompatible with the relativism of a Secular State. According to the Catholic theologian Hans Küng, monotheistic religions are normally inclined to separate State and religion. However, in practical terms, there are theocratic States "whose state institutions essentially coincide with those of religion".

Theologically they are exceptions, but Islam is one of them: Küng writes that in it "it was impossible to separate the State and religion". God's sovereignty, in its broadest possible sense, was at stake. This is a phenomenon that we can equally find in Christianity, even if in exceptional cases, such as in the Geneva of the reformer Calvin, the Anabaptist reign of Münster in Germany and, above all, the Roman Ecclesiastical State founded in the VIII century and still existing as the Vatican"[2].

 By addressing the relationship between State and religion in Islam, we must avoid committing two errors that are actually made, even deliberately, over these restless days. A mistake in a pessimistic sense: to deny, *a priori*, that a democratic State could coexist with Islam. A mistake in an optimistic sense: to confuse democratic hopes with actual possibilities of the development of popular movements during these days.

This short essay refrains from distinguishing between the great dichotomies (Sunnis and Shiites, Catholics and Protestants) and between the thousands of nuances essential to talk about a community of almost a billion- and-a- half believers that goes from Morocco to Indonesia. We will reflect through "paradigms", according to the definition by Kuhn, for whom paradigms are a global constellation of convictions, values and way of acting, shared by members of a community.

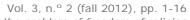## 2. State and religion in Islam: three schools of thought

The last century has been characterized by a deep evolution in the Islamic world in which we can distinguish today, three schools which frequently contrast with each other: the *modernists*, who are inclined to an occidentalisation of the Islamic world at least for social, economic and legal aspects; the *traditionalists*, who somehow correspond to the classic reformers, that is, to the Islam tolerant believers, open to Western culture and ready to renew – but not to repudiate – their own cultural tradition; and lastly, the *fundamentalists*, who profess the, also violent, denial of what comes from Western culture, the coming back of an integral belief of the past, the construction of a theocratic State and the rigorous and extreme use of the Coranic law.

It must be remembered, first, that the Quran has a more impregnable sacredness than, for example, the Gospels. The Quran is directly dictated by God to Muhammad,

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[1] Text quoted by Elisa Giunchi, *Afghanistan. Storia e società nel cuore dell'Asia*, Carocci, Roma 2007, p. 15.
[2] Hans Küng, *El Islam. Historia, presente, futuro*, Trotta 2006, p. 650. The excerpts quoted in the present essay are from the Spanish and the German edition of the book by Küng.

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whereas the Gospels are historical texts, each one with an author and a socio-linguistic context. We just need to think about the complaints that followed the (late) Quran translations (it was revealed in Arab and so in Arab it must be studied and recited) or the (late) printed edition (the Quran was written by hand and it should be perpetuated this way). For a synthesis of these issues I refer to my review of a recent book, journalistic but stimulating[3].

The mistake of the Western vision consists in ignoring the turmoil's plurality and in identifying the current Islam as just the fundamentalists, due to the violent acts that characterize their claims of responsibility in view of the seizure of power and due to the social underdevelopment that defines their achievements during the exercise of power itself. Fundamentalists have more media visibility but they are a minority compared to the people of the States that we keep calling "Muslim": by doing that we imitate the maniac Al Qaeda behaviour that identifies all the Western States as "Christians". But, when we talk about States we should only refer to the government structures and not to religion.

Three visions of the modern State in the lands of Islam correspond to these three schools of thought.

The consolidation of the regimes inspired by Islamic fundamentalism, today commonly called «fundamentalists», has opened up a discussion, on an international level, about the status of women in Islam. This discussion is often vitiated by ethnocentric and political prejudices. Islam admits a certain degree of women's freedom. Within the framework of the family right she has quite limited capacity, but a broader one within the contractual framework. The issue of women in current Islam is that these possibilities exist in doctrine but are differently (and often restrictively) applied in practical terms. Modernists are in favour of progressively approaching the Western models (for example: in Lebanon); traditionalists are in favour of a cautious female autonomy (for example in Egypt: especially for professional aspects and in Iran); and finally fundamentalists, going even further than the restrictive interpretation of the Quran writings (female segregation, the prohibition of education and work: for example, in Afghanistan).

To avoid incorrect generalizations, we have to take into consideration that, either in theory or in practice, a *single* Islam doesn't exist, neither does a *single* Christianity.
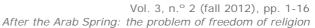
3. The relationship between State and religion in the history of Islam

The relationship between State and religion is radically different in Islamic and Western tradition. Early Christianity had to face a strongly structured State entity as the Roman Empire, in order to fight, had then to incorporate similar structures. Just think of how the Roman law shaped the canon law. On the other hand, early Islam found itself in an opposite situation: Muhammad's preaching emerges as religious preaching within the framework of nomadic tribes and uncoordinated cities. The Islamic State embryo begins when Muhammad is summoned from Mecca to Medina to integrate the tribes into a community: the State emerges from religion. In brief, the Christian religion had to

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[3]   Mario G. Losano, Review on: Carlo Panella, *Fuoco al Corano in nome di Allah. L'Inquisizione Islamica contro la stampa*, Rubettino, Soveria Mannelli 2011, 103 pp. "Sociologia del diritto", XXXIX, 2012, n. 2, pp. 184-187.

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adjust to the pre-existing Roman State, while the Islamic State had to shape itself on the pre-existing Islamic religion[4]. From the earliest days until today centuries of modernization, colonization and decolonization have passed, but this different origin is still perceptible.

The main difference between the two religions is clear within the boundaries of the law. Christianity recognizes the rule of law and, in particular, on a national level: cannot help but try to introduce into national law matters which it considers essential to its own religious views. We just need to think about the famous saying "Render to Caesar the things that are Caesar's" and the multitude of comments that have followed it through the centuries. However, nowadays it is difficult to specifically determine the boundary between State and religion, because science has shifted – and is still shifting – the boundaries of birth and death. We should mention, on one hand, the issue of therapeutic obstinacy and euthanasia and on the other, the issue of abortion and birth control: this one being one of the roots of the economic and social drama of the Islamic States. China had figured it out many years ago by launching the one-child policy, which became the source of many other social issues but unthinkable within an Islamic framework.

As a matter of fact, Islam also dictates the legal rules for social life and, therefore, the Islamic State has to follow these religious rules. The Christian citizen is bound by national law. The Muslim believer is – as such – liable to the Islamic law no matter which national State he is in.

Let's take for example Salman Rushdie's death sentence due to his *Satanic Verses*. An Iranian Ayatollah issued a *fatwa* that condemned to death an Indian-born British citizen who lives in the United Kingdom, where he committed the crime/sin of writing a book considered blasphemous. This sentence goes against all the Western's legal principles (based on the *territorial* concept of the law) but is actually, a direct consequence of the Islamic legal concept (based on the *personal* status law). Rushdie, as Islamic, is liable to the Islamic law, no matter which place he is in: for the Western culture this is an aberrant situation, because it leads to conflict between two political orders; for Islam it is a regular situation, because the Islamic law is of divine origin, therefore, it is superior to any human laws.

On top of all of this, there is another issue, which we will come back to later: you can enter Islam, but you cannot exit. The only exit is by death, which is also the sentence that follows the crime of apostasy.

The two legal concepts – Western and Islamic, territorial and personal – are incompatible. The misunderstandings emerge from the fact that Europeans see the State, power and borders according to their national model and the Islamic people according to their universal model.

We go back then to the homogeneity issue of the terms of comparison where we started. Most part of misunderstandings begins due to comparing two non-homogeneous terms, that is, of political order (democracy) and religion (Islam). Islam is a revealed religion, based on the absolute truth. Democracy is a political order

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[4] See, more extensively, my *Cristianesimo e Islam, Stato e diritto. Apertura della Tavola Rotonda: Le identità culturali e religiose*, in: Vincenzo Ferrari (curated by), *Filosofia giuridica della guerra e della pace*. Atti del XXV Congresso della Società Italiana di Filosofia del Diritto, Milano – Courmayeur, 21-23 September 2006, Franco Angeli, Milano 2008, 203-206 pp.

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founded on relativism: the multi-party system and the majority and minority rotation in power imply that the values of one and the other are interchangeable. It's the only way a parliamentary democracy could work.

Alternatively, these values should actually be compatible otherwise the democracy will commit suicide. We have seen it in the European dictatorships of the Twenties and Thirties that came to power using (and forcing) the parliamentary democracy tools.

Already in 1962, from the earliest years of the independence of Algeria, Ben Bella, the National Liberation Front (FLN) leader, had to resist the religious forces that wanted to create an Islamic state. These forces, as the Islamic Salvation Front, stood in the first multi-party elections in 1991 and won. Through a coup d'état, the military overthrew the pro-Islamic government and since 1992 FIS was outlawed. Secularism has been saved by sacrificing democracy.

Nowadays, one cannot exclude a similar chain of events in some of the States that are now fighting against their own dictatorial government. In short, no one can say whether the outcome of the current struggles will be democracy. These States have had very different histories (Tunisia, for example, as protectorate, Algeria, as a colony), but none of them have ever experienced a period of democracy. On top of the unknown aspects of a new political management, there is the risk of a response by the losing forces, eventually with the support of the Islamic fundamentalist groups.

This last risk has been prospected several times during the first three months of 2011. It helped the resigned dictators to ask for the help of the Western States that had supported them for decades and then they were forced to abandon them due to the people's rage; but that was also a Western populist alibi to take the distance from the ongoing revolutionary movements and, therefore, to cover up the inactivity of the European governments before the events.
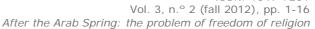
The risk of a response shouldn't actually be underestimated. In a less violent context, Spain, on 23 February 1981 - five years after an exemplary transition – defeated a coup d'état attempt, which today can be considered a historical relic, though not all of its aspects have been clarified.

If we look at post-colonial history, the satisfactory results are few.

4. The coexistence of the Islamic law and the European law in Europe

One of the consequences of the heavy Islamic immigration within Europe is the coexistence of the Islamic law (personal, as already mentioned) and the positive local law (that is, national). Immigrants bring social traditions with them, but also religious organizations and therefore, their legality is often at odds with the legislation of the host nation and, in general, with human rights. On the legal field, two potential solutions seem to be particularly complex in regard to the Islamic faith: a) the lack of a recognized and single hierarchy makes the provision of *concordats*, as takes place with other religions, almost impossible; b) we can actually try an agreement between two different legal systems; in this case, the multiculturalism becomes a legal pluralism, that is, the coexistence of two legal systems. The two directions – concordat or legal pluralism – need some further insights.

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a) *Concordat and Islamism*. Practical experience has shown, so far, that for a Western State it is difficult to accomplish a formal agreement with citizens of Islamic faith, since the Islamic faith does not take into account a single and official hierarchy as the only counterpart of the State. Consequently, the agreement made with an Islamic group is not recognized by others and the issue of a ruled coexistence remains unsolved.

An undoubted difficulty about regulating the relationship between Islam and the European democratic State is the non-hierarchic structure of Islam that, so far, did not allow provisioning a concordat equivalent to the existing ones, for example, between States and Protestant Churches.

The existence of a concordat does not exclude frictions and conflicts, especially in countries where the hierarchical-Church is strongly present, such as Italy and Spain. However, it guides the confrontation towards dialogue and not towards conflict, establishing forms and rules to achieve compromising solutions. Both Italy and Spain had provisioned a concordat with the Catholic Church, assimilating it into their own constitution. In both cases, the concordat does not exclude conflicts that cyclically become more intense or weaker according to the higher or lower contractual force of the Church before the State.

Let's take a look at some aspects of the Spanish situation. Legal issues arose with the inclusion of the concordat in the Secular constitution of the Second Republic. For the Secular State position, the speech of Manual Azaña on 14 October 1931, when the concordat was discussed in front of the Cortes, is exemplary. While addressing the concordat towards non-sectarian solutions, here is his famous statement: "Spain has ceased to be Catholic". Azaña then stated that he was referring to the *creative* "Spanish Catholicism", meaning the religious fervour that originated "a novel and a Spanish painting, in which you can experience at firsthand how much they are filled with religious belief".

The same, *mutatis mutandis*, happened with the current Spanish concordat, assimilated in the 1978 constitution. This way, a non-confrontational concordat opens the door to both sides' pressures. Hence the advantages that the Church is able to take from the Secular State: for example, tax exemption, the unique teaching of the Catholic religion in State schools and the appointment of teachers of religious education.

Spain, in 2011, had to face two exemplary problems regarding the relationship between State and Church.

A Constitutional Court's sentence had recognized - after ten years! - that the dismissal by the bishop of a teacher of religious education was unfounded, because the reason for the dismissal was the fact that the woman in question "had a civil marriage with a divorced man". The Constitutional Court considered the dismissal as "a wound to her right of privacy". There are many other sentences and compensation acknowledgements to dismissed people on this topic[5].

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[5]   Events overview: *La Iglesia no puede prescindir de docentes por 'pecar' fuera de la clase*, "El País", 20 April 2011, p. 23. Comment: *Despido espiscopal*, "El País", 20 April 2011, p. 22.

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On the contrary, the High Court of Justice of Madrid prohibited in 2011 the so called "atheist procession", scheduled for Maundy Thursday at, more or less, the same time as the catholic processions. The sentence states that "the atheist procession" could represent "a punishment for the Catholic faith, which would be damaged": damage that, as it has been objected, is impossible to prove[6].

Nowadays, since science stretches the boundaries of life and death, conflicts are much more frequent between the Secular and the Ecclesiastical point of view on problems that were unthinkable half a century ago. These conflicts often represent an invasion of the Church in the fields of the State, when, for example - in the cases of abortion, the morning-after pill, therapeutic obstinacy, etc. - the Church recommends conscientious objections to doctors and pharmacists who work in public health facilities and who are, therefore, State employees.

In conclusion, the contrasts between State and Church are physiological; what matters is that the concordats indicate a path of dialogue in order to achieve a peaceful solution. However, the Western State is not capable of univocally determining, within the Islamic religion, the counterpart with whom to negotiate in order to achieve a compromising solution.

Added to this difficulty, in Italy, there is the unwillingness (to use the mildest expression) of Lega Nord and its local administrators, who have turned the conflict with immigrants (and especially with Islam) into an identity flag for their own electoral base. By doing this they are trying to make us forget that, during the more than three years of the last Berlusconi Government, ending in November 2011, they have not achieved a single point in their electoral program.

b) *Legal pluralism and Islamism*. By accepting specific practices of a certain social group, but not planned or even in contrast with the national law, disparities among the citizens arise. These disparities are often incompatible with the norms of each individual constitution. In other words, there is the risk that, over time, the national order would be informally modified, introducing punctual sentences based on the acceptance of a specific social group's behaviours.
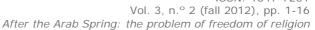
By wanting to establish a scale of punishable behaviours, some behaviours will fall into the laws in force. For example, arranged marriages, kidnapping of civilians and violence are crimes established by criminal code. In many cases, however, they are not perceived as a crime by at least one of the involved parties.

In other cases, it has been necessary to introduce specific criminal laws, since it was not possible to analogically interpret the criminal laws in force. For example, in the case of female genital mutilation, some laws are issued (like in Spain) that punish the crime even if it has not been committed in Spain.

When we go from these extreme cases to some more undefined situations, the application of these national laws can be difficult. Concerning arranged marriages, for example, some immigrant women consider a traditional fact and not a criminal offense, the practice of a family's prenuptial agreement on the betrothed, in other words, the minor age of one of the betrotheds.

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[6]   Events overview: *El TSJM atribuye a los convocantes una voluntad de "castigo a lo católico"*, "El País", 21 April 2011, p. 5. Comment: *Sentencia confesional*, "El País", 25 April 2011, p. 26.

In some cases, a Western judge will apply *ad hoc* measures in order not to punish behaviour without malice by both parties, who actually believe they have to act this way according to tradition or religious law. It's not unfounded the fear that, this way, disparities among citizens under the same national law emerge.

In order to avoid solutions based on the alternative use of the law[7] – that in the *Common Law* would generate binding precedents – the United Kingdom officially recognized in 2007 the Muslim Arbitration Courts, with the approval of the former Archbishop of Canterbury, Rowan Williams. They are informal courts, without official deeds registries, without any control over the judges' election: as informal (not hierarchical) as the Islamic religion is. This Islamic law acknowledgement is not accepted by all, because it generates a different treatment of the citizens of the same State. The movement "One Law for All" has emerged in the United Kingdom against this legal pluralism and demands the Common Law application to all citizens[8]. In my opinion, a legal investigation into these courts, within the classic framework of the Common Law, would be particularly interesting.

In Canada, since 2004, there is an "Institute of Civil Justice" that judges according to the Sharia. Thanks to this, around a million Muslims in Canada can take advantages of less restrictive laws. However, it's not clear if Muslims should necessarily use this court. As a matter of fact, some prefer the Canadian law. The result is a disparity in the evaluation of the same behaviour.

The increasing number of Islamic people in Europe and their strength as a group who can exercise pressure generates several demands that deviate from the actual models in the host society. For example, in France there is a discussion on the refusal of female Muslim students in taking part not only in biology classes but also literature classes (due to the fact that many classics deal with love relationships); on the introduction of special menus; on the refusal, by Muslim believers, of medical staff of the opposite sex from the patient; on the financing of courses, radio and television programs in a non national language; on the obligation of the veil, on arranged marriages. The French right parties are wondering: will we have to rename De Gaulle's beloved village Colombey-les-Deux-Églises with the name Colombey-les-Deux-Mosquées?
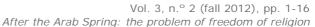
In 2002, in Germany, a Constitutional Court sentence allowed Islamic slaughtering, made by cutting the sheep, oxen and goat's throat: but with the mandatory authorization of the Karlsruhe slaughterhouse. However, the number of customers decreased and, finally, there were no customers.

In conclusion – some fear – it is dangerous to consider that the "cultural context" allows a diversion of the interpretation, although flexible, of the law: this alternative use of the law would justify honour killings, arranged marriages, etc. At minimum, applied in even less severe cases, it will generate evaluation disparities of the same behaviour.

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[7] On this topic cf. the literature quoted in my *La legge e la zappa: origini e sviluppi del diritto alternativo in Europa e in Sudamerica*, "Materiali per una storia della cultura giuridica", vol. XXX, Il Mulino, Bologna 2000, pp. 109-151.

[8] Visit the website: www.onelawforall.org.uk. This organization has also published an information booklet: *Sharia Law in Britain. A Threat to One Law for All & Equal Rights*, June 2010, 34 pp.

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5. The Islamic States from the point of view of the empirical State

In its moderate or modernist version, Islam is compatible with institutions with some degree of democracy, even if in many cases we talk about "authoritarian democracy"[9]. On the other hand, in its fundamentalist version, Islam supports a theocracy that is incompatible with the democratic-liberal structures of the State. In between these two extremes there are a range of possibilities either focused on an evolution towards more accomplished forms of democracy, or on an involution towards more undeveloped forms of autocracy. This is for now the unanswered alternative before the events of the southern edge of the Mediterranean.

We have two examples, in two non-Arab States. *Iran*, heir of the Persian Empire, is the prototype of a confessional and theocratic State. Unfortunately, the George W. Bush policy (through the two senseless wars in Iraq and in Afghanistan) elevated it to a regional power: a status that without unexpected external aid would hardly have been achieved. On the other hand, *Turkey* – through Atatürk's option for Secularism – has chosen the path towards occidentalization under the trusteeship of the army, in a limited democracy open to evolution as well as involution[10]. The election victory of the (moderate) Islamic party produced, in some Western conservatory environments, alarming reactions, as if the presence of a confessional party could represent a danger for democracy.

We are forgetting, this way, that the Western democracy is full of confessional parties: the Christian democracies of the States of the European Union did not create any worries. In addition, we can also find in Western cultures Catholic banks and Catholic insurance companies. Islamic banks, that is, those that follow the precepts of the Quran on aleatory business and interests, opened branch offices in Europe; and also in Italy, some traditional Italian banks have opened *Islamic banking* sectors due to the increasing number of Islamic clients.
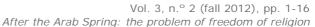
If Secularism according to the Turkish model prevails, the European Union can open its doors despite the strong economic and social non-homogeneity. Again putting aside the generous desires and long-term prospects. In the next ten years Western democracies will have to deal with new governments – hopefully democratic ones – which won't present a different situation from the current ones on economic, demographic and cultural levels. Let's examine briefly, the data for the GDP per capita, for the youth rate and for literacy in the States of the Southern edge of the Mediterranean and in some States of the Middle East: Morocco, Algeria, Tunisia, Libya, Egypt, Jordan, Syria and Yemen.

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[9] This, apparently contradictory, form of government has been identified in the Bonapartist form of government in France and in the 'Berlusconian' form of government in Italy: Mauro Volpi, *La democrazia autoritaria. Forma di governo bonapartista e la V repubblica francese*, Il Mulino, Bologna 1979, 229 pp.; Antonio Gibelli, *Berlusconi passato alla storia. L'Italia nell'era della democrazia autoritaria*, Donzelli, Roma 2010, 121 pp.

[10] In the Spanish press the "Turkish model" has been pointed out, many times, as the potential way out of the current uprisings, even if there are many objections, such as the following one: "Tal modelo, de existir, no lo sería nunca de democracia. En Turquía, lo que existe es un ejército que se ha arrogado un derecho de vigilancia sobre lo que votan los ciudadanos" (José María Ridao, *Artistas no invitados*, "El País", 25 February 2011, p. 27).

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GDP per capita: is about 3-4.000 Euros per year, with the Yemen depression (1.700 Euros/year) and Libya's peak (12.000 Euros/year). Similarly, the per capita income is between 1.600 in Syria and almost 9.000 Euros in Libya[11].

The economic appealing for these EU-Mediterranean countries (for Northern Europe, the notorious PIGS) is made clear by the following data for the per capita annual income of Greece (22.160), Italy (27.250), France (32.600) and Spain (24.700). As a matter of fact, the low-income level explains why the increase of food price (bread in particular) has been one of the fuses of the uprisings: at the beginning they were called "bread riots", like in nineteenth century Europe. Only in a second phase did the Western countries understand that the insurgents wanted bread and freedom.

Youth rate: "youth" refers to young people aged from 14 to 29 and is about 30% of the total population[12]. On the other hand, if we take into consideration the segment aged between 0 and 25, (who are the people that will enter the labour market in the coming years), the rate is about 50% (with a peak of 65,4 in Palestine)[13]. In Spain, young people aged between 14 and 29 represent the 17,2% of the population.

Literacy: it varies from 90% (Jordan) to 50% (Yemen) of the population[14]. In Spain it reaches 98%. Access to education gave young Arab people the possibility of knowing new daily life and political models, but did not offer them either a labour market with the means to accomplish those models or a political life in accordance with the new models.

Unemployment: By comparing the European Union data during the present crisis, the percentage of the unemployed in the population does not seem unsustainable, ranging from 14% in Tunisia to 8,7% in Egypt[15]. But the analysis of the quality of the employment and the data themselves should be further explored. 2010, expected 20% for Spain, 8,5% for Italy and almost 10% for the Euro zone.

Data cross-checking, even if merely indicative, explains why any prediction for the near future would be – in the first months of 2011 – not only uncertain but also potentially pessimistic.

Any form of government that follows, means that the Southern Mediterranean States will go through an uncertain phase. The low GDP and low-income do not allow investments capable of reinserting, in medium terms, the great amount of young people that are facing the labour market and not even the improvement of the quality of employment. The support of the Western countries will need time and the current hesitations and delays do not foreshow anything good. A Marshall plan for the Southern

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[11] Per capita annual income in euros. Morocco, 2000; Algeria, 3255; Tunisia, 2550; Libya, 8970; Egypt, 1400; Jordan, 2500; Syria, 1600 ("La Vanguardia", 20 February 2011, p. 6; source: World Bank, 2008).

[12] Young people aged from 14 to 29 of the total population: Morocco, 28,1; Algeria, 31,4; Tunisia, 27,2; Libya, 27,9; Egypt, 28,6; Jordan, 29; Syria, 30,7; Yemen, 29,8 ("El País. Domingo", 6 February 2011, p. 2; source: World Bank). Besides the rates, the total values should also make us reflect: for example, in Egypt, young people are around 30% of a population of 80 million inhabitants.

[13] Young people aged from 0 to 25 of the total population: Morocco: 47,7; Algeria 47,5; Tunisia, 42,1; Libya, 47,4; Egypt, 52,3; Syria, 55,3; Yemen, 65,4 ("La Vanguardia", 19 February 2011, p. 8; source: Google Maps, Courrier International; "El País", 21 February 2011, p. 6; source: World Bank and others).

[14] Literacy rate of the total population: Morocco 52,3%; Algeria 69,9; Tunisia, 74,3; Libya, 82,6; Egypt, 71,4; Jordan, 89,9; Syria, 79,6; Yemen, 50,2 ("El País. Domingo", 6 February 2011, p. 2; source: World Bank).

[15] Unemployment rate of the total population: Tunisia, 14,2; Algeria, 13,8; Jordan, 12,7, Syria, 10,3; Yemen, 11,5, Morocco, 9,6; Egypt, 8,7; Libya, missing data. The situation is not different from the oil-rich States, like Iran and Saudi Arabia, where the unemployment rate is slightly more than 10% ("El País", 21 February 2011, p. 6; source: World Bank and others).

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Mediterranean would be useful, of course, but – applied to those societies – how much time will it need to take them not to the 20.000 per capita incomes of the EU PIGS but to the 7.000 of current Turkey? With the increasing economic crisis in Europe, no one is talking about these projects anymore.

Revolutions create expectations in regard to fast improvements that, most of the time, have been disappointing. Liberal democracy, with its social status, costs money and in the Southern Mediterranean there is a lack of money (or it is terribly distributed). Liberal democracy requires political experience and this is also missing in the Southern Mediterranean. The material difficulties that will follow the uprising can open the way to political adventures.

The problems come from the fundamentalists, but not only from the Islamic fundamentalists. Let's just mention the weight that the protestant fundamentalism had in the republican administrations of the United States[16] and that, on a popular level, manifested itself through publicly burning the Quran, provoking sanguinary reactions against seven UN employees in Afghanistan[17]. An optimistic prediction points to the Turkish model: an authoritarian democracy that can be improved. A pessimistic model refers, on the other hand, to the involution towards an Islamic State, like in Iran.

Let's not forget that a very different vision, in contrast to the demonized Western vision of the Islamic fundamentalism, exists: the Adl Wal Ihssane (Justice and Spirituality) organization (illegal but tolerated in Morocco) representative, Nadia Yassine, compares this organization to the Latin-American liberation theology for putting out of misery the Moroccan *bidonvilles*[18]. If organizations like this one would become a party they would have relevant weight on the elections and they could lead the revolution towards a non-democratic but Islamic State, as happened in Iran.

Iran is today, an example of the Islamic theocracy. But the current situation has been shaped by Western interventions. The Prime Minister Mohammed Mossadeq undertook several democratic reforms, but in 1953 – due to the oil nationalization – was defeated by an Anglo-American[19] coup d'état that allowed Reza Shah Pahlavi to return to power, until the Khomeini's revolution in 1979.

6. An example of an Islamic State: Pakistan.

Colonial heritage can bear different fruits. The British colony of India, after the independence in 1949, was divided into two States according to the religions prevalent in the area: the Indian population practices Buddhism and Hinduism, while Pakistan practices Islamism. Under the same colonial lineage, India is today one of the great world democracies, while Pakistan is a dictatorship that struggles between an interested loyalty to Western culture in the fight against Afghan terrorism and a
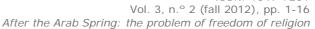
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[16] A standard text is Georg M. Marsden, *Fundamentalism and American Culture*, Oxford University Press, Oxford 1980, XVI-351 pp. (second edition). A curious combination emerges from the title by Fabio Zanello (curated by), *American Mullah: voci del fondamentalismo cristiano americano*, Coniglio, Roma 2009, 63 pp.
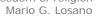
[17] Western newspapers didn't spent too much time talking about the embarrassing Quran charge in a trial streamed on the internet: Antonio Caño, *Matanza por la quema de un Corán*, "El País", 2 April 2011, p. 3 r p. 4; "El País", 3 April 2011, p. 6 e p. 7; "El País", 9 April 2011, p. 12.

[18] Interview to "The Guardian", cit. in "La Vanguardia", 20 February 2011, p. 6.

[19] Stefano Beltrame, *Mossadeq. L'Iran, il petrolio, gli Stati Uniti e le radici della Rivoluzione islamica*, Rubbettino, Soveria Mannelli 2009, XIV-287 pp.

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dangerous indulgency towards the extremist fringes of Islam[20]. The analysis of which shape this State is gaining can be enlightening.

The modern Pakistan law has three stratifications: an original tribal one (and partially preserved), an Islamic one and a third based on Western Common Law. The Indo-Pakistani world has been among the first to develop a modern law that would take into consideration two civilizations: the Anglo-Islamic law. It was, however, a reform imported from the outside whereas there was an Indo-Islamic reformism with its own tradition set in the context of the pan-Islamic movement. The most serious contrasts took place between the Western law introduced by the colonizers and the Islamic law that resorted from the independence. Some norms of the Islamic law, in fact, are in contrast to Western values, such as legal certainty, human rights protection, equal rights for citizens (being, therefore, in contrast also to the treaties that confirms them, even if subscribed by Islamic States).

The autochthonous reformism found its path only when India and Pakistan got separated, in 1947, and when an Islamic State was founded in Pakistan. Thirty years after the independence, the influence of the Islamic «revivalism» was visible in the Pakistani legislation with the prohibition of alcoholic beverages, gambling, prostitution and nightclubs.

Differently from Iran, the foundation of an Islamic State in Pakistan did not have popular roots; however, Islam was favourably accepted by broad layers of the population; even if it has been imposed to justify the regime that did not have a formal legitimacy because it emerged from the coup d'état of July 1977 by Muhammad Zia ul-Haq. In 1977 an Islamisation process of the Pakistani penal code began, which represented a step backwards – at least from a chronological point of view – compared to the Anglo-Islamic law of the colonial and united India. This tendency was reinforced in 1979 with the promulgation of the *Hudood Ordinances*, so called due to the type of punishment they were inflicting: the *Zina*[21] *Ordinance* is part of this group and is related to crimes against sexual morality, which is particularly important to the fundamentalists.

This ordinance refers to a series of crimes, among which it is better to reflect only on rape, adultery and fornication (*zina*) crimes that have almost identical punishments, also because the police tend, actually, to reduce rape to fornication: on the records the two crimes are kept separated. Rape happens when there is sexual intercourse between two non-legitimately married persons and against the will of one of the parties. Fornication and adultery are consensual sexual intercourse between two non-legitimately married persons. The legal case history is complex and it is necessary to reflect on some points of the ordinance: for a full examination there is an Italian investigation that shows the legal features about this topic[22].
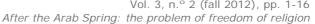
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[20] One of the most recent and liable descriptions of this State is Elisa Giunchi's book, *Pakistan. Islam, potere e democratizzazione*, Carocci, Roma 2009, 220 pp.

[21] Elisa Giunchi, *Radicalismo islamico e condizione femminile in Pakistan*, L'Harmattan Italia, Torino 1999, p. 107. This interesting book, which arose from a doctoral thesis at the Cambridge University, analyses several sentences of the Pakistani Islamic courts. Others can be found in the broader English text of the thesis of 1994, entitled *The enforcement of the ordinance by the Federal Shariat Court in the period 1980-1990, and its impact on women*, consultable at the Cambridge University Library.

[22] *Offence of zina (enforcement of hudood) ordinance*, N° VII, 1979: aims «to bring in conformity with the Injunctions of Islam the law relating to the offence of *zina*» and, more precisely, «to modify the existing law relating to *zina* so as to bring it in conformity with the Injunctions of Islam as set out in the Holy

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Punishments are based on classical Islamic rigor: if the offender is an individual in full possession of his/her rights (*muhsan*: adult, free, Muslim, not insane, who has had sexual intercourse only with his/her lawfully married partner; or, if not married, virgin), adultery is punished with stoning (which is not mentioned in the Quran) and fornication is punished with whipping - one hundred lashes. In the case of rape, if the offender is *muhsan*, the punishment is stoning: if not, the punishment is one hundred lashes or «any other punishment that the court would judge appropriate, including the death penalty». These are the maximum penalties, but there are a number of cases that provide the possibility of reducing them; in addition, the rule of evidence hinders the condemnation of the maximum penalties for these offenses. However, these brief explanations already provide an idea about the severity of these punishments and the discretionary power of their application.

In Pakistan, after the institution of the Islamic courts that, since 1978, works side-by-side with the pre-existing courts, a constitutional reform was introduced in 1985, the Islamic law as the State law. Pakistani judges can override the positive law and refer, through the constitution, to «another» law. A typical example of this gap of values can also be found in the sexual crimes ordinance, a framework in which deep-rooted contrasting values coexist.

A study on 156 sentences referring to that ordinance comes to the conclusion that «starting, above all, from the introduction of the art. 2-A in the Constitution, the judges of the Federal Shariat Court had explicitly referred to the Islamic law sources, ending up even suspending statutory law norms to apply the not-codified S*haria*»[23]. The issue of how the Islamic law recall would be either an end (that is, coming up to the purity of the origin in contrast to Western corruption) or a means (to affirm the existing political and socio-cultural *status quo*) is still open. However, it's a fact that previous legal norms, promulgated according to Western principles, are nowadays partially unapplied.

7. The difficult transition from postcolonial Islamic States to Western style democracies

The history of the relationship between Islam and Europe has been mainly a history of conflicts. Hans Küng points out five clashes between Islam and Christianity: "Christianity", it should be noted, and not "democracy", because the confrontation takes place not between a religion and a political system, but between the religions, that is, between homogeneous elements. The first clash between Islam and Christianity is between Islam and Byzantium; the second took place with the conquest of Spain; the third during the Crusades; the fourth with the Ottoman expansion towards Vienna; the fifth with the colonialism of the XIX and the XX centuries. We are interested in this last phase of this long tradition, because it created both social (unsuccessful development) and psychological premises (resentment) of the current tension.

The key date of this unequal encounter is 1798, the date of the Egyptian Campaign by Napoleon. The discontinuous consequences of modernization can be evaluated

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Quran and Sunnah». The full text is in *Hudood Laws in Pakistan*. Foreword by Gul Muhammad Khan, Kausar Brothers, Lahore s.d., pp. 144.

[23] Elisa Giunchi, *Radicalismo islamico e condizione femminile in Pakistan*, L'Harmattan Italia, Torino 1999, p. 107.

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comparing the evolution of Japan and Turkey, or India and Pakistan. In both typical cases, Islam seems to play a role of restraint in modernization.

In the final clashes of the XIX and XX centuries, the Islamic States – and the Ottoman Empire in particular - tried to adjust to Western culture on a technological and economic level, but with limited success. The common anti-Western (and anti-American) resentment that nowadays permeates the great Islamic masses (and, the former Third World, in general) started from here.

8. Democracy and apostasy: "Whoever changes his religion, kill him"

The three monotheistic religions are strict concerning the prohibition of abandoning religion. When, in the IV century, Christianity became a State religion, under Constantine, apostasy transformed itself from sin into a crime against national security. However, Saint Augustine rejected the death penalty for apostates. Eight centuries later this position became radical with Saint Thomas Aquinas, who admitted the death penalty for whoever abandoned Christian faith. The Inquisition court emerged from this concept.

Islam is equally as harsh. In the Quran apostates seem to be condemned to sever punishments only in the afterlife. Although a handed down saying in *Sunnah* states that the Prophet expressed the need to punish the apostate in this world: and to punish him by death.

Until today, Islamic States recognize the right to convert to Islam but not to abandon it. The death penalty for apostasy is justified by fundamentalists referring to the State: as it is based on religion, any attack against religion is an attack on the stability of the State.

This ambiguous behaviour of the Islamic States is clear in the underwriting of the Universal Declaration of Human Rights in 1948, whose art.18 sanctions "the freedom to change religion or belief". Already at that time, Afghanistan, Iraq, Pakistan, Saudi Arabia and Syria refused to sign it. The signatory States to the human rights treaties do not always truly apply them[24]. On the 25 November 1981 the "U.N. Declaration on Religious Intolerance and Discrimination" was approved. A group of Islamic States obtained that in art.1 the "change of religion" would not be mentioned. In the same year, an "Islamic Declaration on Human Rights"[25] was approved.
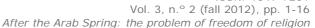
In 1981 the "Islamic Council of Europe" presented a *General Islamic Declaration on Human Rights*[26]. The German Arabist, Martin Forstner, professor at Mainz University, believes that the Islamic States are willing not only to accept this declaration but also to actually apply the human rights established by it. These rights, on the other hand, do not totally coincide with the catalogues contained in the democratic constitutions

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[24] On inadmissible reservations and other application peculiarities cf. Deborah Russo, *L'efficacia dei trattati sui diritti umani*, Giuffrè, Milano 2012, XVI-322 pp.

[25] See also: Tecla Mazzarese – Paola Parolari, *I diritti fondamentali. Le nuove sfide. Con un'appendice di carte regionali*, Giappichelli, Torino 2010, 302 pp. (with texts in Italian of the human rights declarations in different continents, pp. 155-302: in particular, *Dichiarazione del Cairo sui diritti umani nell'Islam*, pp. 253-259; *Arab Charter of Human Rights*, pp. 261-276); AA. VV., *Les droits de l'homme et l'Islam. Textes des sorganisations arabe et islamiques*, Universitè de Strasbourg 2010, Strasbourg 2010, 327 pp. (2ª ed.); Anne Duncker, *Menschenrechte im Islam: eine Analyse islamischer Erklärungen über die Menschenrechte*, WVB, Berlin 2006, 142 pp.

[26] The German version can be found on the website: www.dadalos.org/deutsch/Menschenrechte.

and, therefore, according to Forstner, it is illegal to relativize the freedom of religion. Based on the "deeper analysis of the Arab version of the text", he states "that the human rights proclaimed in it do not completely coincide with UN human rights and that, actually, the most important ones, such as freedom of religion, are not even mentioned"[27]. In other words, the Arab text defines human rights in a different way compared to the 1948 Declaration[28]. The age-old question of the difficulty of translating into non-UE languages concepts and institutions that do not exist (or exist in a different form) in other cultures is a difficulty that is an addition to all the others so far encountered.

In the Islamic world there are also more open-minded points of view. The "Zentralrat der Muslime in Deutschland" (ZMD), for example, in the 20 February 2002 declaration on the relationships of Muslims with the State and the society States: "They [the Muslims] also accept the right to change religion, meaning, to have any other religion or even no religion"[29].

Undoubtedly, the difficulty of translating the Western concepts into Arab may have played an important role; but the incompatibility between the Islamic State and apostasy remains. So, how could a Western style democracy reconcile with Islam? The incompatibility, in regard to the essential aspect of freedom of religion (therefore, the change of religion) seems insurmountable today.

In conclusion, the key-question is: "Chaos would not be created in the concept of the law, if – by assuming an approach of cultural relativism – the contents of fundamental human rights would depend on the diverse ideas of values of different cultures?"[30]. Küng (and Forstner, who expressively cites Küng) proposes to elaborate in different cultures "a set of values that would also contain freedom of belief and religion" and to try to make it acceptable by different cultures, in order to achieve "a common basis of basic ethical values": this is Küng's world ethic project called "Weltethos"[31]. Maybe in the future the "world ethic" that Küng is hoping for – in which he also includes "the absolute freedom of religion and belief"[32] – will allow Islam and democracy to reconcile: but it is an extremely remote expectation to guide us through the solution of the current problems.

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[27] Martin Forstner, *Das Menschenrecht der Religionsfreiheit und des Religionswechsels als Problem des islamischen Staates*, Verlag des Verbandes der wissenschaftlichen Geschichte Österreichs, Wien 1991, pp. 105-186 (excerpt from "Kanon", 10, 1991).

[28] The right to religious freedom "se ve almenos relativizado, si no neutralizado por completo, cuando, en una consideración más detenida del texto árabe, se constata que los derechos humanos en él proclamados no se corresponden plenamente con los de la Naciones Unidas y que precisamente aquellos que plantean problema, como, por ejemplo, el derecho a cambiar de religión, no son siquiera mencionados" (cit. in Hans Küng, *El Islam*, cit., p. 656).

[29] Cit. in Hans Küng, *Der Islam. Wesen und Geschichte*, Piper, München 2007, note 18, p. 863.

[30] These considerations are contained in the paragraph *Rückfrage: Religionsfreiheit – auch zum Religionswechsel?* (pp. 700-702). The quote is at p. 702 by Hans Küng, *Der Islam. Wesen und Geschichte*, Piper, München 2007, 891 pp.

[31] Forstner refers to Hans Küng (Hg.), *Dokumentation zum Weltethos*, Piper, München 2002, 304 pp.; bibliography pp. 267-304. Dissenter: Benjamin Pommer, *Menschenrechte als Basis eines Weltethos? Vorbehalte aus Afrika gegenüber dem Universalitätsanspruch der Menschenrechte*, Grin Verlag, 2010, 33 pp. (http://ebooks.ciando.com/book/index.cfm/bok_id/72814)

[32] Küng, *El Islam*, cit., p. 656.