Can Religious Human Rights Discourses Help Integrating Muslim Migrant Communities Across Europe?

¿Pueden los discursos religiosos sobre derechos humanos ayudar a integrar las comunidades musulmanas migrantes en toda Europa?

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ABSTRACT: The perception of Islam as antithetical to European human rights values is widespread in Europe. Such perceptions complicate the task of integrating Muslim minorities across Europe. While incrementing respect to human rights norms among migrant communities is an important element of any integration policy, this goal should not be perused by forcing migrant communities to adhere to human rights norms based on purely secular grounds. The drafting history of the Universal Declaration of Human Rights is the ultimate proof that human rights can be justified from different political, philosophical and religious perspectives.

While European States cannot compromise their commitment to human rights, even in relation to migrant communities, still, they must allow other narratives on the importance and the meaning of human rights to emerge. Muslim migrant communities must be allowed to engage in *intra*-group religion-based dialogues to reevaluate their stance on human rights and to debate their meaning. After being given the opportunity to engage in internal debates on the significance of human rights, Muslim migrant communities should also be engaged in cross-cultural dialogues with the rest of community to generate a wider agreement on the meaning and the application of human rights. This two-fold strategy is consistent with the principle of subsidiarity, which suggests that for human rights be effective they must be seen as legitimate by all those small groups that are close to the individual. Such legitimacy cannot be imposed from the outside, it must emerge from within these small groups.

However, for these *intra*-group and cross-cultural dialogues to succeed, the separation of religion and State cannot be understood as the complete exclusion of religion from the public sphere. Individuals of different philosophical or religious convictions must have an equal access to public debates on the centrality of human rights in the European legal order.

KEYWORDS: Integration, human rights, subsidiarity, religion, cross-cultural dialogues.

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INTRODUCTION

The perception of Islam as antithetical to European values, especially to human rights norms, is widespread in Europe. Such perceptions make the integration of Muslim migrant communities a challenging task. A recent multi-country study on attitudes to religion found that 46% of the participants in France, 47% in Germany and 38% in the United Kingdom (UK) believed that Islam clashes with the values of their respective societies. 72 % of the participants in France and in Germany and 66% of the participants in the UK described themselves as either very or fairly concerned about the possible rise of extremism in Islam (de Waal, 2019).

These conceptions of Islam are not only found in populist sentiments, they are prevalent in the media, in political discourses and in official State policies (Ogan *et. al*., 2014). The assumption that Islam is anti-European is embedded in naturalization processes applicable to Muslim migrants across Europe. For example, some former naturalization tests in Germany required candidates to explain how they would react if, say, they discover that they have a gay son (Orgad, 2010). France rejected the application of a Muslim woman for citizenship, since wearing the *niqab* (full face cover) was deemed incompatible with gender equality, a central component of French values (Conseil d'Etat, 2008). The European Court of Human Rights (ECtRH) too played a role in reinforcing such perceptions. In *Dahlab v. Switzerland* the ECtHR assumed that wearing a headscarf is "imposed on women by a precept which is laid down in the Koran …hard to square with the principle of gender equality" (2001). However, such conceptions of Islam lack intellectual rigor, and are based on the assumption that there is one Islam, and *that* one Islam is static and inherently irreconcilable with liberalism and democracy.

One might ask why a commitment to human rights and to gender equality in particular have become the decisive criteria for legitimizing or rejecting membership in European societies. One answer could be that the use of culture to exclude others is tantamount to cultural racism, since it assumes that some cultures are superior to others. As Orgad argues, it is more legitimate to expect immigrants to subscribe to structural liberal-democratic principles that constitute a system of rules regulating human behavior in liberal democracies than adhering to cultural norms (2010). In addition, human rights constitute the core of European values. Article 2 of the Treaty of the European Union states that the Union is founded on "the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities" (European Union, 2012).

The use of human rights seems *prima facie* neutral, since human rights are believed to be universal. Demanding migrant communities and the public at large to respect human rights is also necessary for European States to meet their international obligation concerning the realization of human rights by all those under their jurisdiction (HRC, 2004). The problem lies in assuming that human rights must be grounded on purely secular theoretical grounds not shared by practicing Muslims and other religious constituencies in Europe. Enhancing the legitimacy of human rights and expanding areas of agreement between the diverse communities in Europe requires the engagement of myriad philosophical, religious and cultural perspectives, including Islamic perspectives on human rights (Boulos, 2019).

Religion has been selectively invoked by some European states to combat radicalization of Muslims in Europe in specific locations. For example, in 2017, Italy started to collaborate with *imams* (Muslim clergy men), who had to pass a prior security screening, to combat the radicalization of young Muslim inmates in Italian prisons (D'Emilio, 2017). The Radicalization Awareness Network (NRA), an umbrella network connecting various actors involved in preventing radicalization throughout Europe, called for the intervention of *imams* to help fighting radicalization inside European prisons by delivering "alternative narratives to soften the impact of extremist narratives in prison or on probation" (NRA, 2016: 8). The use of *imams* by States to combat radicalization in specific locations, while excluding religion from general debates on human rights, is paternalistic and disingenuous, and it reduces religious morality to a mere instrument that could be utilized only in cases of convenience for the state. This purely instrumental use of religion shows disrespect to the human agency of all those who find in religion a meaning of their human existence. For a believer, religion "is one of the fundamental elements in his conception of life" (UN, 198: preamble).

On its part, the European Union (EU) has long called for the initiation of cross-cultural dialogues for achieving two goals: to facilitate the integration of migrants communities in European societies, and to generate greater respect and support for human rights among the various migrant communities (European Union, 2005; European Union, 2016). However, it remains unclear how such cross-cultural dialogues would meet their desired objectives in the absence of political spaces that allow migrant communities to reevaluate the compatibility of their own religion or culture with international human rights norms, and to discover to what extent their religion or culture is supportive of human rights ideals. It is even less clear how Muslim migrant communities can be engaged in cross-cultural dialogues when they are requested under the pretext of secularism to dispose of their religious moral frameworks as a condition for participation in cross-cultural dialogues in public.

This article suggests that enhancing the legitimacy of human rights among Muslim communities in Europe might require the engagement of religious morality. At the heart of the Universal Declaration of Human Rights (UDHR) - the cornerstone of international human rights law- is the recognition that no single philosophy, ideology or religion can take credit for the adoption of the former (UN, 1948). Human rights can be justified from different political, philosophical and religious perspectives. Therefore, different communities and societies should be free to look for their own moral justification for human rights (Boulos, 2019). Furthermore, the UDHR implicitly embraces the principle of subsidiarity, i.e. the right of smaller human groups to pursue the common good reflected in the idea of human rights freely, and based on their own terms (Carozza, 2003; Glendon & Kaplan, 2019). This entails that migrant Muslim communities should not be expected or pressured into supporting human rights based on purely secular accounts; instead, they are entitled to engage in *intra*-group dialogues to reassert the meaning of human rights relying also on their own religious morality. Muslim migrant communities should also be engaged in cross-cultural dialogues where different justifications of human rights could be debated with the purpose of generating a wider agreement on the meaning and the application of human rights. These dialogues cannot be initiated if the separation of religion and state is understood as the full exclusion of religion from the public sphere. While the separation of religion and state must always be safeguarded, the full exclusion of religion from political affairs should not follow.

This article is divided into three main sections. The first section discusses the notion of universality underpinning the UDHR, which assumes that universality of human rights does not require uniformity in their theoretical justifications or in their implementation. The second section discusses the principle of subsidiarity and its implications for smaller communities within the State. The third section discusses the implications of the principle of subsidiarity for promoting human rights within Muslim migrant communities in Europe.

UNIVERSALITY BUT NOT UNIFORMITY

With the adoption of the UDHR, human rights became common moral standards applicable to all humans and to all societies. The preamble of the UDHR presents the declaration as "a common standards of achievement for all peoples and all nations" (UN, 1948). Scholars like Glendon, Lauren, Morsink and Walz claim that at the time of its adoption, the UDHR truly reflected a cross-cultural consensus (Glendon, 1997; Lauren, 2011; Morsink, 1999; Walz, 2001). They highlight the pivotal role played by Arab, Chinese, and Latin American representatives in drafting the UDHR. Glendon and Kaplan emphasize that the drafters of the UDHR –namely the French jurist René Cassin, the Chinese philosopher Peng Chun Chang, the Lebanese philosopher and diplomat Charles Malik, and Eleanor Roosevelt from the United States- "were universalists but not homogenizers" (Glendon & Kaplan, 2019: 7). They believed in a flexible universalism, and they fully understood that there are different ways to apply human rights to different social and political contexts.

The path to adopting the UDHR began with the appointment of the Committee on Theoretical Basis of Human Rights by the United Nations Educational, Scientific and Cultural Organization (UNESCO). This committee was composed of leading intellectuals of the time. These intellectuals engaged various stakeholders from different cultural, religious and political traditions, who, unexpectedly, were able to agree on a list of human rights that should apply to all humans and to all societies (UNESCO, 1948). The French philosopher Jack Maritain described this situation as follows:

> How," I asked, "can we imagine an agreement of minds between men who are gathered together precisely in order to accomplish a common intellectual task, men who come from the four corners of the globe and who not only belong to different cultures and civilizations, but are of antagonistic spiritual associations and schools of thought …?" Because … agreement between minds can be reached spontaneously, not on the basis of common speculative ideas, but on common practical ideas, not on the affirmation of one and the same conception of the world, of man and of knowledge, but upon the affirmation of a single body of beliefs for guidance in action (UNESCO, 1948: II).

Maritain distinguished between "rational justifications involved in the spiritual dynamism of a philosophical doctrine or religious faith" and "practical conclusion which, although justified in different ways by different persons, are principles of action with a common ground for similarity for everyone" (UNESCO, 1948: II). McKeon, who also served as a member of the Committee on Theoretical Basis crystalized the distinction between legal uniformity and theoretical uniformity as follows:

> The promulgation of a world declaration of rights depends…on the existence of a broad region of interpretation within which court decisions and administrative and legislative action have worked progressively to a practical definition and within which divergent philosophies have worked to less ambitious or conflicting theoretic bases. The declaration

> will not remove the sharp differences in interpretations…but it will provide a ground within which they may be brought to closer approximation (UNESCO, 1948: 33-34).

A day before the adoption of the UDHR by the General Assembly of the UN, Charles Malik, who served as the rapporteur of the drafting committee of the UDHR declared that the declaration was "a composite synthesis of all these outlooks and movements and of much Oriental and Latin American wisdom. Such a synthesis has never occurred before in history" (as quoted by Glendon, 2011: 216). The impact of the divergent political, philosophical, and religious traditions is evident in the language of the UDHR and in the list of rights protected by it. For starters, the declaration distances itself from the Anglo-American individualism by situating the individual in social groups that give meaning to her existence (Glendon, 1997). While the individual is the only bearer of rights, she also bears the duty to exercise her rights in a manner that is consistent with the rights and freedoms of others (Glendon, 1997). As for the unique contribution of the different cultural, philosophical and political traditions to the provisions of the UDHR, the United States and the UK contributed to the promotion of traditional political and civil liberties; Latin American States brought with them their own experience in drafting the 1948 Pan-American Declaration on the Rights and Duties of Man; India played a key role in advancing the principle of non-discrimination, expanding its application to women; the Soviet Union and Latin American States promoted social and economic rights; many smaller countries contributed to specific articles such as the article on freedom of religion and the article on the rights of the family (Glendon, 1997).

The drafters of the UDHR fully understood that the absence of a single theoretical foundation of human rights would undermine their universality. They also understood that the existence of different theoretical underpinning of human rights would give rise to disagreements concerning the exact meaning of rights, and disagreement on the harmonization and the balancing of conflicting rights. However, they believed and hoped that through constant interactions and cross-cultural dialogues, more common grounds would be achieved (Glendon, 1997).

Early claims against the universality of human where raised by colonial powers, who were worried about the implications of the UDHR for their colonies (Hogan, 2011). When the UN was working on the adoption of binding human rights treaties in 1950s, colonial powers sought to be exempted from the application of human rights to their colonies. They claimed that the peoples under their colonial rule did not reach the degree of civilization necessary for the exercise of human rights guaranteed in the UDHR (Hogan, 2011). Representatives of Muslim States such as Egypt and Iraq objected vehemently to this position (Hogan, 2011). In fact, thanks to the perseverance of an Iraqi woman delegate named Badia Afnan that Article 3 of International Covenant on Civil and Political Rights (ICCPR) was introduced (Walz, 2004). This article requires States to ensure the equal right of men and women to the enjoyment of all civil and political rights set forth in the covenant (UN, 1966a).

This account of the drafting history of the UDHR is not without a challenge. Alves claims that it is hard to argue that the adoption of the UDHR was fully consensual when it was approved with abstention of eight states out of fifty-four UN member States at the time (2000). He further claims that non-Western states participating in the drafting process were politically westernized. For example, Lebanon was ruled by Maronite Christians, India had just achieved its independence from Britain and China was Taiwan (Alves, 2000). Sachedina raises a similar argument by pointing out that the Muslim representation was minimal since

the representatives of Muslim countries were secularly educated. Even the representative of Saudi Arabia was a Lebanese Christian. Therefore, they could not have presented an Islamic perspective on human rights (Sachedina, 2007).

But as Alves points out, arguments against the universality of the UDHR raised, *inter-alia*, by leaders of Muslim States lose their appeal once we realize that human rights "became strongly entrenched in the minds of their own citizens" (Alves, 2000: 482), who relied on the UDHR in their struggle for freedom and for liberation from colonialism. Alves also points out that States who were excluded from the drafting process of the UDHR resorted to the same rights protected by the declaration to promote their own post-independence agenda, such as the call to end the apartheid regime in South Africa (Alves, 2000). In subsequent years, newly independent States promoted human rights treaties that were based on the rights recognized in the UDHR. For example, the International Convention on the Elimination of All Forms of Racial Discrimination was proposed by Afro-Asian countries who gained their independence after the adoption of the UDHR (Alves, 2000). Furthermore, the accession of many African, Asian and Muslim States to subsequent human rights treaties such as the ICCPR and the International Covenant on Social, Economic and Cultural Rights (ICESCR) weakens the attack on the universality of human rights (UN, 1966a; UN, 1966b). Alston points out that the 1992 Jakarta Declaration by the Non-Aligned Countries, and the 1993 Final Declaration of the Regional Meeting for Asia of the World Conference on Human Rights reaffirm the universal validity of human rights and fundamental freedoms (UN, 1992; UN, 1993a; Alston, 1994). Furthermore, in 1993, the representatives of 171 States adopted by consensus the Vienna Declaration and Programme of Action of the World Conference on Human Rights. In their declaration, States reaffirmed that all human rights are universal (UN, 1993b).

An-Naim argues that as a matter of concept, human rights are universal. However, the universality of rights should be defined and realized through "a globally inclusive consensus-building process" (An-Naim, 2016: 256). According to this view, all human beings in all societies must contribute to determining the content of human rights, and apply them in their own contexts. To remedy the underrepresentation of non-Western States in the adoption of the UDHR, An-Naim advocates the promotion of "an overlapping consensus over the meaning and implications of the universality of human rights" (An-Naim, 2010a: 38). He rightly emphasizes that generating legitimacy for human rights in every given society is necessary for maintaining the universality of rights and for securing their practical efficacy (An-Naim, 2010a). In many societies, religious convictions are too important to be excluded when justifying human rights or when attempting to achieve their effective implementation in local contexts (An-Naim, 2000). Likewise, Sachedina argues that the under-representation of Islamic perspectives in drafting the UDHR can only be remedied through a cross-cultural dialogue on the moral foundations of human rights. Muslim scholars who believe that the UDHR is a form of Western imposition incompatible with the moral teaching of Islam, would not reflect on their anti-Declaration position if confronted with purely secular arguments. Instead, they should be challenged on religious grounds, i.e. by arguing that Islam and the UDHR share moral grounds (Sachedina, 2007). Such approaches serve two goals. The first goal is conceptual, and it aims at providing a theoretical underpinning for human rights in Muslim societies. The second goal is practical. If religion is invoked to justify human rights violations, religion must be addressed to eradicate the same violations.

The invocation of religion to justify human rights is not unique to Muslim societies. In the US and elsewhere, debates on the morality of the death penalty or on the absolute prohibition on torture are influenced by religion (Perl & McClintock, 2001; Brugger, 2014; Waldron, 2006). Hogan suggests that the language of human rights should be understood "as a language of situated individuals who carry with them their comprehensive doctrines", such as religion (2009: 226). She further argues that the success of the human rights project depends on "particular religious and cultural traditions coming to believe that they have a stake in promoting these categories" (Hogan, 2009: 229). As Ignatieff puts it, "human rights has gone global by going local" (2003: 7). The human rights discourse would only be impoverished by the marginalization of comprehensive doctrines such as religion.

The UDHR itself was influenced by religious morality. When explaining the duty to "act towards one another in a spirit of brotherhood", articulated in the first article of the UDHR, Cassin stated that it corresponds to two iconic biblical rules: "love thy neighbor as thy self", and "you shall not oppress a stranger, for you once were strangers" (as quoted in European Agency for Fundamental Rights, 2017: 8). Glendon also highlights the impact of two social encyclicals of the Catholic Church on the UDHR: *Rerum Novarum* issued by issued by Pope Leo XIII and *Quadragesimo Anno* issued by Pope Pius XI (Glendon, 2008). Phrases, such as the inherent dignity and worth of the human person resonate with the language of the encyclicals. Some specific rights, such as the right to form trade unions and the worker's right to just remuneration and also resonate with the language of these encyclicals. However, as Glendon explains, these encyclicals were integrated into the UDHR through secular channels. They were already incorporated in the constitutions of Latin American and other countries, where Christian Democratic or Christian Social parties held political power (Glendon: 2008).

Using religion to justify human rights norms and to mobilize local communities to take action for their protection does not mean that religion and human rights are inherently reconcilable. In many societies, the rejection of the universal human rights project is motivated by the belief that international human right norms are incompatible with religion. Some scholars such as Okin go as far as arguing that religions, like most cultures, "have as one of their principal aims the control of women by men" (1999: 13). Even Islamic law scholars, shuch as An-Naim recognize that common interpretations of Islam are inconsistent with international human rights standards especially in relation to women's rights, freedom of conscience and the rights of religious minorities (1990). However, the defense of human rights in those contexts cannot be achieved by requiring people to relinquish their faith or by disregarding their religious convictions. Nussbaum reminds us of the good things religion has brought into human life, including religion's "role in people's search for the ultimate meaning of life", and in "transmitting moral values; in giving people a sense of community and civic dignity; in giving them imaginative and emotional fulfillment—and, not least, its role in many struggles for moral and political justice" (1999: 106). Heiner Bielefeldt, the former UN Special Rapporteur on Freedom of Religion or Belief warned about dangers of turning concrete conflicts between freedom of religion and other human rights "into an abstract antagonism on the normative level" (UN, 2013:2). Bielefeldt recognized that in all traditions there are individuals and groups who use religion as a positive resource for the promotion human rights often in conjunction with innovative interpretations of religious scriptures. In focusing on women's rights, Bielefeldt further stated that:

> the impression that freedom of religion or belief and equality between men and women allegedly constitute two essentially contradictory human rights norms seems to be widely shared. This can cause serious protection gaps. For instance, efforts to explore and create synergies between freedom of religion or belief and gender equality are sometimes ignored or even openly discouraged. Moreover, the abstractly antagonistic misconstruction of the relationship between freedom of religion or belief and equality between men and women fails to do justice to the life situation of many millions of individuals whose specific needs, wishes, claims, experiences and vulnerabilities fall into the intersection of both human rights (UN, 2013:2).

Azizah Al-Hibri argues that in many Muslim societies, social practices and norms that discriminate against women are erroneously viewed as religious (Al-Hibri, 1999). She attributes this confusion to the pluralistic nature of Islam. She argues that Islam was revealed as a world religion, therefore it accommodated the local customs of the divergent Muslim societies (Al-Hibri, 1999). With time, discriminatory and harmful practices that originated from local cultures were perceived as religious mandates. Furthermore, Islamic jurists who were influenced by their own patriarchal local cultures, read their own cultural bias into Islamic scriptures (Al-Hibri, 1999). In order to discredit and delegitimize such practices, scholars and activists must expose the cultural bias embedded in them. Muslim societies would be more open to change and reform once a distinction is made between practices that originate from culture and those reflecting religious morality (Al-Hibri, 1999; Wadud, 1999; Wadud, 2009; Mernissi, 1991). Muslim scholars today are using a similar religion-based approach to discredit and delegitimize serious human rights violations such as gender discrimination, gender violence, female genital mutilation, discriminatory family law regimes, and the criminalization of apostasy (Al-Hibri, 2000; Al-Hibri, 2003; Quraishi, 1997; Ahmad, 2000; Al-Hibri, 2005; Saeed, 2017).

An interesting example of an institutional adoption of this methodology is the reform of the Moroccan family code the "*Moudawana*" of 2004, which was promoted, inter alia, by feminist activists who challenged the traditional interpretation of religious texts without abandoning their commitments to religion altogether (Harrak, 2009). The reform was adopted by a special royal commission appointed by King Mohamed VI to review family laws in Morocco in an attempt to reconcile Islamic family law with international human rights standards. The mandate of the royal commission, which was composed of men and women from different disciplines and political and ideological backgrounds, was defined as follows:

> to conduct a fundamental review of the Personal Status Code … upon their fidelity to the provisions of Sharia (religious law) and Islamic principles of tolerance, and encouraged the use of ijtihad (juridical reasoning) to deduce laws and precepts, while taking into consideration the spirit of our modern era and the imperatives of development, in accordance with the Kingdom's commitment to internationally recognized human rights. (Family Code of Morocco, 2004).

The reform was progressive in many respects. For example, the preamble of the *Moudawana* states that one of the aims of the reform is to remove any terminology that degrades and debases women (Family Code of Morocco, 2004). The reform upheld the principle of gender equality by placing the family under the joint responsibility of both spouses (Harrak, 2009). The reform also recognized the right of women and men to dissolve marriage through divorce under the judicial supervision of a judge, ending by this the right

of the husband to repudiate his wife unilaterally (Harrak, 2009). Polygamy was allowed under 'compelling circumstances', and only with the approval of a judge (Harrak, 2009). The reform also raised the minimum age of marriage for girls from 15 to 18 (Harrak, 2009). The reform of the *Moudawana* demonstrates the potential of a religion-based approach to human rights in achieving greater legitimacy to international human rights law, even in States that lack strong democratic traditions.

THE PRINCIPLE OF SUBSIDIARITY

The principle of subsidiarity has gained a momentum in international human rights reasoning (Besson, 2016). Carozza defines subsidiarity as "the principle that each social and political group should help smaller or more local ones accomplish their respective ends without, however, arrogating those tasks to itself" (2003: footnote 1). The negative aspect of this principle requires the State or larger groups not to arrogate to themselves tasks which can be effectively undertaken by smaller groups situated closer to the individual. The positive aspect of subsidiarity recognizes the inherent right of the State to concern itself with the common good and to interfere when smaller groups are unable to achieve their ends by themselves (Carozza, 2003). The *subsidium* of the larger group should aim at helping the smaller one achieve its goal "without supplanting or usurping the latter society's freedom to pursue its own legitimate purposes" (Carozza, 2003: 58). Elsewhere Carozza argues that subsidiarity is "a principle that guides the allocation of authority among communities, and that calls for intervention and assistance as well as immunity and autonomy" (2016: 51). The principle of subsidiarity should not be reduced to localism, nor should it be based on utilitarian considerations regarding the efficiency of the distribution of power. Instead, Carozza argues that subsidiarity is a principle of justice that requires larger communities to protect the legitimate autonomy of smaller communities and to provide them with the help needed to fulfill their ends (Carozza, 2016). Subsidiarity is based on a personalistic view of the individual, who is endowed with inherent and inalienable dignity. However, subsidiarity views the individual as socially situated, whose flourishing can only be achieved in association with other people. As Carozza puts it, "the value of the individual human person is ontologically and morally prior to the state or other social groupings" (Carrozza, 2003: 43). All social groups from the family to the international order must serve the end of the human flourishing of the individual.

Carozza argues that the principle of subsidiarity is embedded in the UDHR and in the ICCPR and ICESCR commonly referred to as the International Bill of Human Rights. The three instruments constituting the International Bill of Right recognize and protect the social dimensions of human life, including family, religious affiliation, association and assembly, cultural life and education, since they do not view the individual as living in "isolated, existential loneliness" (2003: 46).

The great contribution of social groups to the flourishing of the human person is recognized by the UDHR. According to Article 29(1) of the UDHR, the free and full development of the individual and her personality can be achieved only through belonging to a community. Article 28 of UDHR states that "Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized". This formulation suggests that the realization of human rights involves a variety

of groups and not only States. Glendon and Kaplan emphasize that the successful realization of human rights depends on paying attention to "the attitudes, ideas, values, relationships, and institutions within which individuals, families, and communities are embedded" (Glendon & Kaplan, 2019: 11). They further argue that international treaties and national laws cannot fulfill by themselves the promise of respecting and promoting human rights for all, in the absence of popular human rights culture (Glendon & Kaplan, 2019). Eleanor Roosevelt best captured the importance of small social groups for the realization of human rights in a speech celebrating the tenth anniversary of the UDHR. Roosevelt reminded her audience that human rights begin in

> small places, close to home –so close and so small that they cannot be seen on any maps of the world. Yet they are the world of the individual person; the neighborhood he lives in; the school or college he attends; the factory, farm, or office where he works. (Amnesty International, 2017).

Fostering support and respect for human rights in those small places is a key for guaranteeing the full realization of human rights and freedoms. The principle of subsidiarity requires states to respect the autonomy of those small human groups in achieving the common good reflected in human rights based on their own moral frameworks.

The principle of subsidiarity is no intruder to European human rights regimes. The Council of Europe designates a central role for principle of subsidiarity in the functioning of its main institutions. The ECtHR has developed the doctrine of "margins of appreciation" as one articulation of subsidiarity. This doctrine assumes that domestic authorities are usually better equipped than a *supra*-national court to make assessments on the appropriateness, necessity or reasonableness of national domestic measures, since they are more familiar with national particularities, traditions, sensitivities and debates (Gerards, 2011; Greer, 2010). Furthermore, the Council of Europe has long recognized the role of local and regional authorities in the promotion of human rights. It created the Congress of Local and Regional Authorities to strengthen local and regional democracy in all member states of the Council of Europe by fostering political dialogue between national governments and local and regional authorities. In recognizing the importance of the principle of subsidiarity in the promotion of human rights, the Congress of Local and Regional Authorities had emphasized that local and regional authorities "have a key role to play in the day-to-day application of the fundamental values of democracy and human rights" (Council of Europe, 2016: 54). Even the EU anti-discrimination directives adopt the principle of subsidiarity by assuming that local authorities are in a better position to assess allegations of discrimination. They also encourage the establishment of local bodies to address the issue of discrimination (Grigolo, 2011). The emergence of the concept of a 'human rights city' in Europe and elsewhere is an additional exemplification of the principle of subsidiarity, which assumes that the proximity of cities to their inhabitants, makes them a key player in promoting human rights (Grigolo, 2011).

Putting the principle of subsidiarity into practice requires some initial clarification regarding the obligation of states to guarantee the full realization of human rights. International law imposes both negative and positive obligations on States. For example, Article 2 of the ICCPR states that "[e]ach State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction". The UN Human Rights

Committee (HRC), which monitors the ICCPR, stated that the duty to respect is of a negative nature; it requires the State to refrain from violating the rights enumerated in the covenant. Furthermore, if the state imposes limitations on one of the rights protected by the covenant, those limitations must be permissible under the provisions of the covenant (HRC, 2004). The duty to ensure entails positive duties of a complex nature. As a minimum, States must adopt legislative, judicial, administrative, educative and other appropriate measures in order to fulfil their legal obligations (HRC, 2004). States are also expected to raise levels of awareness concerning the human rights guaranteed by the covenant, not only among public officials, but also among the population at large (HRC, 2004). Furthermore, States are requested to prevent violations of rights committed by non-state actors. The latter could be attributed to the State if it fails to take appropriate measures or to exercise due diligence to prevent, punish, investigate or remedy the harm caused by non-state actors (HRC, 2004). Some human rights treaties explicitly impose positive obligations on States. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) imposes several positive duties on States for the realization of gender equality (UN, 1979). Among those duties, the duty to "take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women" (Article 2.f). In addition, States are required

> [to] modify the social and cultural patterns of conduct of men and women, with a view to achieving the elimination of prejudices and customary and all other practices which are based on the idea of the inferiority or the superiority of either of the sexes or on stereotyped roles for men and women. (Article 5.1).

In meeting its positive obligations, the State must work on changing societal attitudes that tolerate human rights violations. Supranational tribunals have interpreted the duty to prevent human rights violations to encompass cultural measures, including educational programs for the public *(Velasquez Rodriguez v Honduras, 1988; González et al. ("Cotton Field") v. Mexico, 2009).* The positive duty to promote the enjoyment human rights was found to include, *inter-alia*, the duty to promote tolerance, raising awareness, and even building infrastructures (*Social and Economic Rights Action Centre (SERAC) v Nigeria*, 2001).

Positive duties such as raising awareness and educating the public do not necessarily obligate European States to use religious discourses to promote human rights among Muslim communities. But as a minimum, States are required to facilitate *intra*-group dialogues among Muslim migrant communities on human rights issues, and to remove barriers that hinder their ability to reevaluate their own stance on human rights based on their own internal moral frameworks.

However, subsidiarity should not be conflated with a non-intervention policy. As Bielefeldt unequivocally stated "as a human right, freedom of religion or belief can never serve as a justification for violations of the human rights of women and girls" (UN, 2013: 8). Respecting the right of religious communities to rely on their religious morality in searching for answers on the meaning and the legitimacy of human rights does not absolve the state from its responsibility to prevent human rights violations committed by members of those communities in the name of religion or culture. The State is under the obligation to identify risk situations through processing relevant information from local authorities, such as the police force of social services, and to react when an individual is at risk of being deprived of her liberty, such as the case of gender violence, child marriage, forced marriage or any other

human rights violation. In addition, when human rights violations are committed by private actors, the State has a clear legal duty to respond to the violation by holding the perpetrator accountable, and remedying the harm inflicted on the victim (HRC, 2004).

FROM THEORY TO PRACTICE

The prospects of abolishing harmful practices that are tolerated or justified by religious discourses are slim if religious morality is not engaged to achieve the desired societal change. The engagement of religion cannot be simply discredited under the pretext of secularism. International human rights law does not require the absolute separation between religion and state. It even allows the establishment of an official religion if such establishment does not result in discrimination against adherents of other religions or against non-believers in exercising their right to freedom of conscience, and in the realization of other human rights, such as the right to hold public office or the right to access public services and resources (HRC, 1993). Not all liberal democracies in Europe endorse full separation of religion and state. The UK has an established church (Lomtatidze, 2011). Italy has an endorsed church and it recognizes the special place of the Catholic Church in the history of the country (Constitution of Italy, 1948: Art. 7). Article 16.3 of the Spanish Constitution declares that "[n]o religion shall have a state character. The public authorities shall take into account the religious beliefs of Spanish society and shall consequently maintain appropriate cooperation relations with the Catholic Church and other confessions" (1978). States like Germany, Italy and Spain have adopted cooperationist regimes that allow them to cooperate with religious institutions through the allocation of budgets for schools or other social services operated by religious organization, or even for paying the salaries of clergy persons (Lomtatidze, 2011).

Furthermore, the separation between religion and state should not be equated with the separation of religion and politics. An-Naim argues that the State must be secular and must not enforce any specific understanding of religion, or enforce religious doctrines through its institutions. Only secularism can safeguard political pluralism in heterogenic societies. This, however, should not prohibit religious constituencies from expressing the moral implications of their faith in the public domain (2010b). Citizens hold divergent religious, philosophical and political convictions. European Muslims and other religious contingencies are equally entitled to debate policies or legislation based on their convictions. An-Naim subjects the use of religious morality in the public sphere to 'public reason' (An-Naim, 2011). He strongly opposes the promotion of public policies based on the argument that a divine will requires so. Public policies, even if they are motivated by religious morality, must appeal to broader moral principles that could be shared by other fellow citizens (An-Naim, 2011). Religious morality could be the driving force behind a public policy, but the policy itself must be promoted "based on the sort of reasoning that the generality of citizens can accept or reject, as well as make counter-proposals through public debate, without reference to religious belief or doctrine" (An-Naim, 2011: 9).

Habermas argues that the institutional separation between religion and state should not impose "undue mental and psychological burden for those of its citizens who follow a faith" (Habermas, 2006: 9). He is more open to the use of religious morality in the public domain and he argues that citizens of faith should be allowed "to express and justify their convictions in a religious language if they cannot find secular 'translations' for them" as long as they

accept that the language of faith must remain outside the sphere of political decision-making (2006: 10). This entails that the government and all State institutions can never rely on religion to justify their actions. The State must remain neutral with respect to worldviews and justify laws only in a language accessible to all people (Portier, 2011). According to Habermas, specifying and implementing a system of abstract rights in local contexts requires deliberative procedures within the political polity where moral arguments are used to debate different positions on the precise content of rights (Flynn, 2003). All participants of this deliberative process must have equal opportunities to present their claims and views on the matter (Habermas, 1996).

In addressing the integration of migrant societies in their receiving States, the European Union Action Plan (The Action Plan) on the integration of third country nationals encourages the active participation of migrants in the political, social and cultural life of their receiving States. The Action Plan calls for adopting measures that promote a positive approach to diversity. The Action Plan seems to adopt a deliberative approach by advocating and promoting cultural-dialogue and diversity programs (European Union, 2016). The Hague Programme on strengthening freedom, security and justice in the European Union (the Hague program) states that the successful integration of immigrants and their descendants is necessary for stability and cohesion within European States. The Hague program acknowledges that integration "is a continuous, two-way process involving both legally resident third-country nationals and the host society" (European Union, 2005: Article 1.5). It further recognizes that integration of migrants "relies on frequent interaction and intercultural dialogue between all members of society within common forums and activities in order to improve mutual understanding" (European Union, 2005: Article 1.5). The idea of a cross-cultural dialogue presumes that each group is bringing its own moral frameworks to the table. The White Paper on Intercultural Dialogues (the Paper), launched by the Council of Europe Ministers of Foreign Affairs, defines intercultural dialogue "as a process that comprises an open and respectful exchange of views between individuals and groups with different ethnic, cultural, religious and linguistic backgrounds and heritage, on the basis of mutual understanding and respect" (Council of Europe, 2008:17). The Paper further emphasizes that:

> dialogue with those who are ready to take part in dialogue but do not – or do not fully – share "our" values may be the starting point of a longer process of interaction, at the end of which an agreement on the significance and practical implementation of the values of human rights, democracy and the rule of law may very well be reached (Council of Europe, 2008:17).

When debating human rights, An-Naim emphasizes that

> cross-cultural universality must be undertaken in good faith, with mutual respect for, and sensitivity to, the integrity and fundamental concerns of respective cultures, with an open mind and with the recognition that existing formulations may be changed – or even abolished – in the process. (An-Naim, 1994: 122).

Engaging Muslim communities in 'cross-cultural' dialogue does not mean that they have to renounce their moral frameworks and conceptions of good life as a condition for embarking on this task. Likewise, their participation in the political, social and cultural life of the receiving state should not depend on them relinquishing their moral cargo.

But before Muslim communities can engage in a cross-cultural dialogue on the meaning and the centrality of human rights in the European legal order, they must be given the chance to engage in *intra*-group dialogues on these issues. Such internal dialogues have the potential to generate a wider acceptance of human rights norms from an internal perspective. Such *intra*-groups dialogues cannot take place if religion is excluded from the public sphere. Muslims should not be expected to debate such issues in private settings. Any social or religious reform project needs the public sphere and the media to mobilize larger number of participants. Muslims themselves must be visible *as Muslims* in the public sphere for such projects to be possible.

However, policies common in some European states, particularly those banning conspicuous religious signs (such as wearing the headscarf in public institutions) under the pretext of protecting gender equality and secularism, do not contribute to empowering Muslim women, nor do they facilitate the integration of Muslims in European societies. On the contrary, they require Muslims to become invisible *as Muslims* in the public sphere. Policies that aim at limiting the construction of worship places, such as the ban on building minarets also aim at making Muslims invisible in the public sphere. Göle argues that in European democracies "social actors become citizens by becoming public. Which implies a certain visibility" (as quoted by Hancock, 2013: 139). The notion of 'visibility' was historically associated with the claims of feminist and by LGBTQ movements. The organization of yearly parades, such as "Gay Prides" or March 8th demonstrations, are the ultimate symbolization of visibility (Hancock, 2013). Visibility is closely associated to recognition (Brighenti, 2007). Brighenti argues that recognition is "a form of social visibility, with crucial consequences on the relation between minority groups and the mainstream" (Brighenti, 2007: 329). For marginalized groups, such as racial and sexual minorities, being invisible is tantamount to being deprived of recognition. Brighenti claims that 'fair visibility' is found between a minimum and a maximum thresholds of visibility. Those who are situated below the lower threshold of visibility become socially excluded (Brighenti, 2007). Policies that aim at making Muslims invisible in the public sphere are not merely symbolic, they send the message that Islam has no place in the public domain is Europe; those who chose to identify in public as Muslims will always remain outsiders. This symbolic rejection could lead to further alienation of Muslim communities. Alienation puts people and communities on the defensive. Instead of debating the implications of their faith for human rights, Muslim migrant communities find themselves obligated to defend their moral frameworks instead of reevaluating them. Jonker & Amiraux argue that the stigmatization of Muslim communities made them withdraw from the public sphere. Muslim leaders and activists ceased to participate in public events that addressed Islam or the Muslim minorities in Europe. Jonker & Amiraux further emphasize that "study circles, roundtables, boards, advisory committees, and hearings lost their Muslim participants" (Jonker & Amiraux, 2006: 11) as a result of stigmatization of Muslim communities. They further highlight the theatrical dimension of the public space comparing it to a stage. Individuals and groups compete on this stage "for the ownership of definitions concerning the nature of being Muslim and the meaning of Islam" (Jonker & Amiraux, 2006: 14). This competition on the meaning of being a Muslim in Europe is intimately related to the question of the compatibility of the Islam with universal human rights values.

The media is also crucial for creating spaces of visibility and debates on the meaning of being a Muslim in a liberal democratic society. Mouffe claims that the media could play a

pivotal role in creating an agonistic public space "in which there is the possibility for dissensus to be expressed or different alternatives to be put forward" (Carpentier & Cammaerts, 2006: 974). When visible disagreement on issues such as human rights are subjected to reasoned argumentations, greater visibility of other positions would emerge, and participants themselves would better understand the inherent limits or inconsistences in their own positions and may be triggered to revisit them (Dahlberg, 2018).

However, not only the media fails to create spaces where dissensus could emerge on the shared grounds between Islam and human rights, it reproduces prejudice against Muslim communities in Europe. For example, a study on the coverage of Muslims in British Media concluded that 80% of most common discourses on Muslims in the British media associate Islam or Muslims with threats, problems or clashing with dominant British values. The idea that Islam is "dangerous, backward or irrational" was present in 26% of stories analyzed by the study; the idea that the a 'clash of civilizations' exists between Islam and the West was present in 14% of stories; and the idea that Islam is a threat to the British way of life, was present in 9% of the stories analyzed by the study. By contrast, only 2% of stories portrayed Muslims as supportive of dominant moral values (Moore et.al, 2008). Khir-Allah studied British and Spanish media reporting of laws banning headscarves in public institutions and of personal stories involving such bans. Her study suggests that in both contexts the official line of newspapers was negative on the practice of veiling, associating it with discrimination and oppression (2017). However, some differences existed between the two contexts. In the Spanish context, even when Muslim women were quoted as defending the decision to wear a headscarf, challenging the hegemonic narrative on the veil, their voices were stigmatized and preconditioned by the journalist's narrations along the article (Khir-Allah, 2017). Khir-Allah claims that the limited engagement of veiled women in mainstream media only reinforces the dominant negative views of the head scarf and presents them as the absolute truth (2017). In the British context, while the hegemonic discourse on the headscarf remains negative, it is less intensive than the one used by Spanish media. In British media, veiled women are not treated as the "outsider" or the "other", they are treated as British women. Even if the veiling as a practice is criticized or portrayed as ignorant, veiled women were not portrayed as such. Most importantly, the engagement of veiled women in media debates on regulating the wearing of religious attire enriched the British readers with alternative accounts on the significance of the headscarf (Khir-Allah, 2017). If Muslim citizens in Europe are still portrayed as the 'other' by the media, it is hard to imagine how new immigrants would feel confident to engage in cross-cultural dialogues, bringing their own moral frameworks to the table.

Furthermore, for any *intra*-group dialogue to take place, some forms of organization and association are necessary. For example, the establishment of civil society groups that address human rights challenges within Muslim communities from a religious perspective might be crucial for initiating such dialogues. This entails that the State should not exclude such organizations from obtaining public funds simply because the State is secular and cannot fund civil society groups that organize religious communities, or use a religious discourse in their public activities.

CONCLUSIONS

While respect for human rights is considered a legitimate goal of any integration policy, lowering resistance of Muslim newcomers to human rights standards cannot be achieved if the newcomers are expected to abandon their own moral values. The UDHR was based on two important tenets. The first tenet is the recognition that no single moral foundation could be credited for legitimizing human rights. Human Rights could be justified and legitimized by multiple moral, political, cultural and religious perspectives. The second tenet assumes that the successful realization of human rights depends on their acceptance and support by various social groups in which the individual is situated. The UDHR envisions the individual as situated in various social groups that play a vital role in her human flourishing. As the principle of subsidiarity suggests, mobilizing small groups to achieve the common good reflected in the idea of human rights should show respect to their autonomy and their moral frameworks. This, of course, does not mean that the State is no longer under the obligation to intervene when the group is unable to secure the human rights of its members.

If weak adherence to international human rights norms constitutes one of the barriers for the successful integration of Muslim migrant communities, two dialogue channels need to be opened. The first channel is internal; it allows different Muslim communities in Europe to engage in *intra*-group dialogues on the compatibility of Islam with modern human rights norms. Advocating a modern and egalitarian reading of Islam could lower internal resistance to human rights norms and would weaken the view that international human rights norms are incompatible with Islam.

The second channel for dialogue is a cross-cultural one. The success of cross-cultural dialogues depends on the opportunities available to Muslim Communities to debate internally the compatibility of their religion or culture with human rights. What Islam allows or does not allow must be debated by the members of Muslim communities themselves and not imposed by self-appointed leaders or some popular representation of Islam the media. Once such debates are facilitated, cross-cultural dialogue can generate wider agreements and compromise if all the parties are allowed to bring in their own comprehensive worldviews to the table. When religion forms the core of the person's comprehensive world views, she should not be expected to dispose of her own moral values, in the name of secularism, as a condition of a successful integration in Europe. Here, it becomes necessary to make a nuanced distinction between the separation of religion and state and the separation of religion and politics. While the former is a central characteristic of the European legal order and should never be jeopardized, the latter guarantees the right of individuals of different philosophical and religious convictions to participate on an equal footing in public deliberations on one of the main challenges facing European societies today, i.e. adherence to human rights norms, viewed as a central component of European values.

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