

## **The Place For Others in Islam**

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*“Allah does not forbid you respecting those who have not made war against you on account of (your) religion, and have not driven you forth from your homes, that you show them kindness and deal with them justly; surely Allah loves the doers of justice. Allah only forbids you respecting those who made war upon you on account of (your) religion, and drove you forth from your homes and backed up (others) in your expulsion, that you make friends with them, and whoever makes friends with them, these are the unjust.” (Qur’an, 60: 8–9)*

*“And if your Lord had pleased, surely all those who are in the earth would have believed, all of them; will you then force men till they become believers?” (Qur’an, 10: 99)*

The following text consists of two logical units. The first deals with the general Islamic principles and precedents, from what we might call the early normative history of Islam that might serve as a theoretical basis for co-existence in Islam. The second part is more concerned with those norms of Islamic law that concern non-Muslims. The aim is to show that even in classical Islamic law, although it was formulated centuries ago and although many of its provisions are considered subject to change, it is possible, without far-fetched interpretations, to find sufficient materials for the solid justification of co-existence with a high level of tolerance between Muslims and non-Muslims. This part is based on the works of the contemporary Muslim writers Yusuf al-Qaradawi, Fathi ‘Uthman, Fahmi Huwaydi, Rashid al-Ghannushi, and others. Before we proceed to the first part, however, it would be appropriate to make some comments on method, which are important for the understanding of the Other in Islam.

### **I. INTRODUCTION: COMMENTS ON METHODOLOGY**

First, in a text of this kind it is impossible to overemphasize the importance of the fact that in Islam (at least today), there is no ultimate or central religious authority that could hand down a final judgment on this, or any other, question. At the moment, especially after September 11, 2001, a real war is being waged among Muslims for the “soul of Islam.” We may hope that this is a healthy state of creative tension. In that spirit, it is very important to remind the reader right from the start of the wide range of different orientations within both classical and contemporary Islam, which sometimes have had very different implications for our theme. One of these orientations, for instance, is the “inclusivism” of Ibn ‘Arabi, whose tradition continues to be cultivated by the Muslim lovers of perennial philosophy. The most numerous and therefore most important orientation, however, is the one that follows the

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mainstream of Islamic legal thought (*'ulama'*, *fuqaha*) and that uses the methodology of Islamic law in its reflections on this issue (although often in a very inconsistent way). This is the normative Islam that is "recognized" by the majority of Muslims, even when they do not practice it. From this position one can speak both from the pulpit, and from the prayer-niche, and from the lectern, for this discourse has its listeners among the ordinary Muslims that are the most important. The methodology of this orientation guarantees that the opinions arrived at will not be easily rejected as "imported" or as an alien implant in Islamic thought, even if we might not always like the views we hear from these circles. It is also important to say of this orientation that it houses a multitude of sometimes conflicting liberal and exclusivist groupings whose thought is constantly evolving. Since this is not an academic debate, but an attempt to strengthen co-existence, we have been guided mainly by those views that support that endeavor.

Second, as is well known, the sources of Islam are the Qur'an (the God's revelation to Muhammad, peace be upon Him) and the Sunna (the words and acts of the messenger Muhammad). All the rest (such as the consensus of Islamic scholars and legal analogy) are auxiliary sources or, to put it better, methods for the derivation of norms from the fundamental sources. This is the conviction of the majority of Muslims, and it is therefore very important that every opinion on co-existence is supported not only by rational arguments, but also by scriptural ones.

Third, while on the subject of the sources of Islamic teachings, it should be emphasised that the structure of the Qur'an is very unusual for the modern reader. The Qur'an is a seemingly incoherent mosaic. Therefore, to understand the Qur'anic teaching on some issue, it is important to use thematic interpretation, which takes into account all Qur'anic texts on that issue and arranges them first by chronological order, then by their scope (general and specific), and by their importance (central or otherwise). In the present case, we have tried to make an effort along those lines.

Fourth, the history of Islam for the most part is not normative and authoritative, except partly with regard to the first three generations. Therefore, we will for the most part cite examples and precedents from that period. We have paid far less attention to later history, which is evidence for or against the Muslims, but not against Islam.

## **II. THEORETICAL JUSTIFICATION FOR RELIGIOUS CO-EXISTENCE IN ISLAM**

The primary aim of this section is to point to some general principles and precedents from the early history of Islam that should never be overlooked when examining the place of the other and the theoretical justification of religious co-existence in Islam.<sup>2</sup> While some of these

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<sup>2</sup> In the contemporary world, including the Balkans, the 'other' is usually a member of another ethnic group or nation, hence the real problem is the co-existence of nations and ethnic groups rather than the co-existence of religions. Even so, it is worth recalling that the discrimination, hatred, and killing of other human beings because of their ethnic, racial, or national affiliation is, from an Islamic point of view, a sad and demented thoughtless thing. One might say that Islam is blind to ethnicity, nationality, and race (though Muslims are not). While it does not scorn every form of identification with the tribe, the ethnic community, or the nation, Islam never considers such identification, as opposed to religious identification, to be a reasonable basis for significant divides between people. In the following, therefore, we will only speak about religious co-existence.

principles and precedents are well known and frequently cited, others could well be said to have been unjustly neglected.

### **Living with the “Other” as a dilemma for the believer**

Let us begin by noting that living with the “other” does represent a problem for sincere but inadequately informed believers, Muslims included. The dilemma of the ordinary believer can be put as follows: If what I believe in is the truth and all else is a lie, and if God wants me to exert myself to the utmost to spread the Truth and suppress falsehood, then how is it possible to legitimize the other and at the same time remain true to my convictions?

It should be noted at the outset that the premises from which our friend departs are unquestionable, as far as the majority of Muslims is concerned. The Qur’an addresses the believers in the clear words: “*The truth is from your Lord, therefore you should not be of the doubters.*” (Al-Baqara/The Cow, 2: 147). The book of God, sincere and open as it is, turns to the non-Muslims addressing them as “unbelievers,”<sup>3</sup> in the very same chapter where it invites them to tolerance and co-existence: “*O ye that reject Faith! I worship not that which ye worship, nor will ye worship that which I worship. . . . To you be your Way, and to me mine.*” (Al-Kafirun/The Disbelievers, 109: 1-6). There are too many texts like this in the Qur’an to mention all of them here. And yet, the conclusion that suggests itself to our friend is not correct. Why? Because it disregards many other Qur’anic texts and Islamic principles that are relevant to this question and that—where the possibility of living together is concerned—to a considerable extent “soften,” though do not relativize the initial impression that the above-mentioned Qur’anic texts make on the listener/reader. Our friend is reducing and simplifying the problem in an unacceptable way.

#### **1. Co-existence as the will of God**

First, the Qur’an explicitly says that the diversity of human convictions is the will and intent of God, and that He is the one that will judge who was right, not in this world, but in the world to come (Al-Hajj, 22: 68-69). Until then, this world is, as someone put it, but “an Olympics of good deeds.”<sup>4</sup> And while disagreements in themselves are neither good nor pleasing to God, He wanted them to exist, and “for this did He create [people].” Had He willed it, all people would have believed. But He did not want any more angels, sinless by nature, nor people who would passively carry out His will. Should we then compel people to believe when God did not want to do it?! God, then, wanted a creature that would choose and bear the consequences of its choice. This is an essential turnaround in thinking about the possibility of living together, compared to what our friend was thinking. Let us listen to the Qur’an:

*“If Allah had so willed, He would have made you a single people, but (His plan is) to test you in what He hath given you: so strive as in a race in all virtues. The goal of you all is to Allah; it is He that will show you the truth of the matters in which ye dispute.”* (Al-Ma’ida/The Table, 5: 48)

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<sup>3</sup> There are Muslim thinkers who in this matter give precedence to the verses Al-Baqara, 2: 62 and Al-Ma’ida, 5: 69, which, taken literally and in isolation, say that those Christians, Jews and Sabaeans who believe in God and Judgment day have nothing to fear.

<sup>4</sup> This is reference to the Qur’anic verse 5: 48 cited below.

*"If thy Lord had so willed, He could have made mankind one people: but they will not cease to dispute. Except those on whom thy Lord hath bestowed His Mercy: and for this did He create them: and the Word of thy Lord shall be fulfilled: "I will fill Hell with jinns and men all together." (Hud, 11: 118-19)*

*"If it had been thy Lord's will, they would all have believed,—all who are on earth! wilt thou then compel mankind, against their will, to believe!" (Yunus, 10: 99)*

The Messenger's duty, like the duty of any other Muslim, is only to warn, to clearly bring the revelation to people and to give them the freedom to choose Islam if they so wish. They are not allowed to force it on them, for *"there is no compulsion in religion"*<sup>5</sup> In other words, to paraphrase President Wilson, Muslims' duty is not to Islamize the world but to make it safe for Islam.

## **2. Universal values of justice and goodness take precedence over religious formalism**

Second, as Islam does not identify but closely connects morality with religion, it seems that every believer from time to time finds himself/herself in a situation where he/she 'chooses' between the universal values of goodness (*ihsan*) and justice (*adl qist*), on the one hand, and the specific values promoted by his/her faith. I believe that this is a false dilemma and that there is no room for 'choice,' because the dilemma does not exist. Following that strand of Islamic ethical and political thought that one of the last giants of classical Islamic thought, Ibn Taymiyya, sets out in the well-known formula "God supports a just non-Muslim ruler, but not an unjust Muslim ruler," I believe that the universal values of justice and goodness are core Islamic values and that, as such, they take precedence over religious formalism. In the past centuries as well as today, unfortunately, a great number of Muslims have thought and acted the opposite way. But God clearly says, and the imams repeat it every Friday from the *minbar*:<sup>6</sup> *"Surely Allah enjoins the doing of justice and the doing of good..."* (Al-Nahl, 16: 90). The great Qur'an commentator and encyclopedist Fakhr al-Din al-Razi writes that the entire Qur'an is but commentary on this principle.<sup>7</sup> When prophet Muhammad was advising his emissary to Yemen, then a country with a non-Muslim majority, he did not fail to warn him that the curse of the *mazlum*, i.e., the victim of injustice, will fall on him to whom it is directed, even if the *mazlum* is a "denier," that is, a non-Muslim, and the one committing injustice a Muslim. One might say that in Islam, there are strong grounds for co-existence with unbelief (*kufi*), but not with injustice (*zulm*).

The Qur'an itself, uncompromising as it is in its stance towards militant and malevolent non-Muslims,<sup>8</sup> says that mere difference in belief is not a reason for Muslims not to be just and good towards others: *"Allah does not forbid you respecting those who have not made war against you on account of (your) religion, and have not driven you forth from your homes, that you show them kindness and deal with them justly; surely Allah loves the doers of justice. Allah only forbids you respecting*

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<sup>5</sup> Al-Ghashiyya, 88: 21-22; Al-Baqara, 2: 256.

<sup>6</sup> The place in the mosque from which the imam speaks to the believers on Fridays (pulpit).

<sup>7</sup> Among the contemporary representatives of this view we find the late Fazlur Rahman and Abu'l-A'la Mawdudi. See e. g. Fazlur Rahman, *Islam*, and Sayyid Abul Ala Mawdudi, *Islamic Movement: Dynamics of power, values and change* (The Islamic Foundation, Leicester, 1984).

<sup>8</sup> See the section on the controversial texts.

those who made war upon you on account of (your) religion, and drove you forth from your homes and backed up (others) in your expulsion, that you make friends with them, and whoever makes friends with them, these are the unjust.” (Al-Mumtahana, 60: 8-9). This is the central Qur’anic statement on the question of the place of the other in Islam. Commenting on the meaning of the word “*dealing kindly*,” the influential Maliki jurist Shihab al-Din al-Qarrafi enumerated the following: “Kindness to the weak among them, and satisfying the needs of the poor among them, and feeding the hungry among them, and clothing the naked among them, kindness in speaking with them—out of consideration and mercy towards them, and not because of fear or meekness—and praying to God that He might guide them, and make them be of those that are happy, and advising them in all matters, religious and worldly, and not gossiping about them, and safeguarding their property, and family and honour, and all their rights and interests, and helping them to right injustices done to them, that they might realize all their rights...”<sup>9</sup>

In this spirit, the messenger Muhammad, even before he received the first revelation, participated in the Chivalrous Alliance (*Hilf al-fudul*), which aimed to protect the oppressed, and years later, he spoke with pride to his friends of this experience and of his readiness to join a similar initiative.

Not only does Islam encourage its followers to do justice and good deeds to non-Muslims; it prepares them mentally to accept the good deeds of others and to generously repay them when they have the opportunity. Keeping in mind the militant anti-unbeliever rhetoric of Islamic radicals, who regularly question the good intentions of non-Muslims who help Muslims, it is particularly important to draw attention to something that, from the classical Islamic perspective, might be called “*the paradigm of the humanist unbeliever*.”

This case leads us to another dilemma over the possibility of an immoral Muslim and a moral non-Muslim. That a ‘Muslim’ can be immoral is entirely clear; such a person is called a *munafiq* and has a significant place in ‘Qur’anic psychology’.

Although the episodes and events mentioned in the following examples are well known to people who are knowledgeable about Islam, and can be found in all the more extensive biographies of the last messenger of God, their implications for co-existence are rarely, if ever considered. In brief, these are the precedents:

It is well known that Muhammad’s (pbuh) uncle, Abu Talib, died as an idol-worshipper, even though he had for some ten years unsparingly protected and defended the Messenger and finally died during the persecution that the idol-worshippers of Mecca organised against the Muslims and their sympathizers among the unbelievers. Until his last breath, the Messenger tried to convince his uncle to accept Islam, but he did not succeed. He was doubly saddened that he died and that he died as an unbeliever. Still, Abu Talib’s idol-worship was not a cause for misunderstanding between the two of them.<sup>10</sup>

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<sup>9</sup> Al-Qarafi, *Al-Furuq*, 3: 15 in Yusuf al-Qaradawi, *Ghayr al-muslimin fi al-mujtama’ al-islami* (Beirut: Muassasat al-Risalah, 1985), 38.

<sup>10</sup> This is not the place to elaborate on this, except to mention that one saying of the Messenger says that, for his deeds, Abu Talib will be spared the worst torments of the Fire, though as an unbeliever he will nevertheless be in it and that even this minimal torment (being in fire up to his ankles) will make his brains boil. The case of Abu Talib, however, confirms the observation that in Islam, theological pluralism is not a precondition for social and political/public pluralism. I am grateful to my colleague Christian Moe for drawing my attention to this formulation. See further: Kate

When the Messenger (pbuh) was met and driven out of Al-Ta'if with stones, two idol-worshippers from that town, 'Utba ibn Rabi'a and Shayba ibn Rabi'a, were humane enough to send him their servant 'Addas with bunches of grapes while he was taking a shelter from the stones outside Al-Ta'if.<sup>11</sup>

Equally important are the following two cases from the late Meccan years of the Messenger's mission. It is known that the idol-worshippers of Mecca, having exhausted all means of cooptation and coercion, had decided to boycott the Muslims and their helpers among the non-Muslims, in order to force them to give up their religion. For a long time (historians differ over how long), it was forbidden to trade, marry, and cooperate in general with Muslims. To make it all more serious and lend it a sacral note, the Meccan leaders put this mutual agreement in written form and displayed it prominently inside the Kaba, the Meccan main shrine. As a result of this proclamation, the Muslims were driven out onto the naked hills above Mecca and underwent harsh suffering. Many, especially children and the weak, did not survive, among them the Messenger's beloved wife Khadija and his uncle Abu Talib. When they saw what was happening, a group of idol-worshippers (history has preserved four of their names: Hisham ibn 'Amr ibn Rabi'a, Zuhayr ibn Abi Umayya, Al-Mut'im ibn 'Adiyy and Abu al-Bukhtari ibn Hisham) launched a campaign to end what they called the shameful boycott. Their endeavors led to a radical shift in Meccan public opinion, and the boycott was soon lifted.<sup>12</sup>

One of the four, Al-Mut'im ibn 'Adiyy, is the hero of yet another bright episode from the early history of Muslim/non-Muslim mutual aid. Namely, when the Messenger tried to enter his own town after the failed mission to al-Ta'if, he faced a surprise: The town leaders had decided they would not guarantee his safety, that is, they did not want to see him in the town. According to an old Arab custom, in such a case any citizen of Mecca could vouch for the "entry visum." Muslims, though, were not considered citizens, and none of them could offer shelter to the Messenger. At this point Al-Mut'im turned up again and took Muhammad under his protection at his own risk.<sup>13</sup> Prophet Muhammad never forgot that. Some years later, after the unexpected great victory at Badr, when he captured seventy Meccan idol-worshippers, and was wondering what to do with them—kill them, as 'Umar suggested, or set them free without ransom, as Abu Bakr suggested—at one point he exclaimed: "Had Al-Mut'im ibn 'Adiyy been alive and interceded for them, I would have given them all to him as a gift!"<sup>14</sup>

When the idol-worshippers were defeated at Badr, the Messenger (pbuh) ordered that Abu al-Bukhtari ibn Hisham was not to be killed, because he had protected him during

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McCarthy, "Reckoning with Religious Differences: Models of Interreligious Moral Dialogue", in: Sumner B. Twiss and Bruce Grelle, ed., *Explorations in Global Ethics: Comparative Religious Ethics and Interreligious Dialogue* (Westview Press, 1998), pp. 73–117.

<sup>11</sup> Abu al-Hasan 'Ali al-Hasani al-Nadawi, *Sira Khatam al-nabiyyin* (Beirut: Muassasat al-Risalah, 1988), 97.

<sup>12</sup> Al-Nadawi, *Sira Khatam al-nabiyyin*, 90-91. For Ibn Hisham, see 'Izz al-Din Abu al-Hasan 'Ali Ibn al-Athir, *Al-Kamil fi Ttarikh* (Beirut: Dar al-kitab al-'arabi, 1997), 2: 22.

<sup>13</sup> Muhammed Hamidullah, *Muhammed a.s.: život i djelo* (Sarajevo: Starješinstvo IZ u BiH, Hrvatskoj i Sloveniji, 1983), I: 145. Hamidullah cites Ibn Hisham i Al-Baladhuri.

<sup>14</sup> Akram Diya' al-'Umari, *Madinan Society at the Time of the Prophet* (Herndon: International Institute of Islamic Thought, 1995), vol. 2, 43, citing: Ibn Hajar, *Fath al-Bari*, vol. 7, 321.

his time in Mecca, and because he had been among those exhorting the Meccans to end the boycott of Muslims.<sup>15</sup>

### **3. Recognition of the other and of his legitimacy does not depend on belief in the rightness of his views**

Third, it is especially important to emphasize that Islam does not make the legitimacy of the other contingent on one's belief in the rightness of his views and convictions. Furthermore, Islam recognizes the other even when it categorically asserts that he is not right—in Islam, theological pluralism is not a precondition for social pluralism.<sup>16</sup> There are several reasons for this stance. The decisive reason, perhaps, is the Islamic recognition that human reasoning is limited and that it is impossible for people in this world to arrive in this world at a final judgment on the matters in which they dispute, as the above quotation from the Qur'an says. Islam teaches that the Qur'anic teaching in itself is clear enough, but the environment and an inadequate knowledge of the divine message may pose an objective obstacle to learning the Truth even with the purest of intentions. Add to this that the Qur'an's teaching that both Jewish and Christian holy books contain a part of the original divine message addressed to these peoples. It cannot be excluded that the holy books of other religions also contain a part of the revealed truth (given that the Islamic tradition speaks of 124,000 prophets sent to humanity). Here it becomes clear why the Qur'an recognizes the other, especially the "People of the Book," that is, Jews and Christians, according to a general understanding, who it calls to gather around common word, and instructs Muslims to dispute with them in the best of ways.

The Qur'an teaches that the last Messenger of God is only the last in a series of people who have brought the mercy of God to humanity. The Messenger himself once said that the likeness of him and the other prophets and messengers is as the likeness of a beautiful building, lacking for its perfection but a single brick. The Messenger said that he himself is that brick. In the same vein, there are numerous examples from Islamic law and theology that, for all the novelty of Islam, also emphasize the continuity of Muhammad's mission with those of earlier messengers. According to the Qur'an, the Messenger and the Muslims believe in all the messengers without distinction.<sup>17</sup> Islamic jurists often emphasize that the laws God sent to earlier communities are also the laws of the community formed by Muhammad (pbuh), unless it is explicitly stated otherwise. The Messenger himself instructed his Companions that in certain situations, they could rely on the traditions of the 'People of the Book' (*isra'iliyya*), and so they did, even excessively, according to the judgment of

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<sup>15</sup> Ibn al-Athir, *Al-Kamil fi al-tarikh*, 2: 22.

<sup>16</sup> The legitimacy of the other within the Muslim community is based, inter alia, on the theory of *ijtihad* (the endeavor to learn the intent of God through the exertion of one's own efforts), according to which God rewards the effort and intentions, not the correctness of the conclusions, and which legitimates wrong opinions as a means to reach the right one. In other words, pluralism and ecumenism within the Muslim community does not necessarily depend on agnosticism or relativism. On the legitimacy of the other in Islam see further Ahmet Alibašić, "The Right of Political Opposition in Islamic History and Legal Theory: An Exploration of an Ambivalent Heritage," *Al-Shajarah: Journal of the International Institute of Islamic Thought and Civilization (ISTAC)* 4 (1999), no. 1, pp. 231-95.

<sup>17</sup> Al-Baqara, 2: 285.

modern critics.<sup>18</sup> The Qur'an further says that the 'People of the Book' are not all the same. Some of them are good, and their deeds shall not be rejected.<sup>19</sup> Furthermore, Islamic theologians speak of ignorance as an excuse for unbelief under certain conditions.<sup>20</sup>

The Qur'an also teaches that God has exalted man above all other creatures; that He has honored him and given him dignity. "And surely We have honored the children of Adam...", says the Qur'an (Al-Isra', 17: 70). Although there exist interpretations to the effect that the non-Muslims have forfeited this dignity by rejecting the message of God that Muhammad brought, many Muslim authorities understand this verse in the general sense, i. e. that it applies to all human beings regardless of their religion, as the expression "children of Adam" suggests.

It would take too long to list all the concepts and principles that enable us to separate the legitimacy and recognition of the right of the other to exist from the correctness and truthfulness of his convictions. In the final analysis, in the light of the above, recognizing the other's right to exist does not mean approving of him, nor denying one's own convictions, nor abandoning all endeavors to win over the other for those convictions. Banning all forms of missionary activities in the name of the need for tolerance is inappropriate, for only where there are missionary activities does tolerance, in the sense of recognizing rather than enduring the other, receive its full meaning.

Historically speaking, the document drawn up between the Messenger and the non-Muslims of Medina, known as the *Medina Charter*, is one of the earliest social contracts that embody the principle of tolerance. In brief, this document, which some consider the earliest constitution, guaranteed to non-Muslims the freedom of conscience and confession, and that they would be judged according to the laws of their own religion,<sup>21</sup> or to put it in contemporary terms: cultural, religious, and legal independence or autonomy under the protection of the Islamic state.

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<sup>18</sup> The well-known saying of the Messenger in this regard reads: "Transmit from the Sons of Israel. There is no sin in that..." According to Hamidullah, in *Sahih al-Bukhari* there is a hadith to the effect that the Messenger looked to the practice of the People of the Book when he had not received a decisive revelation in some matter. To be sure, Islam does not always follow the practices of others, and has sometimes abolished them: incest among the Zoroastrians, the burning of the wife after the husband's death among the Hindus, and the throwing of girls into the Nile among the Egyptians, to cite but a few examples. See: Muhammad Hamidullah, "Tolerance in the Prophet's Deeds at Medina" in *Islam, Philosophy and Science: Four Public Lectures Organized by UNESCO, June 1980*. Paris: The UNESCO Press, 1981.

<sup>19</sup> Al 'Imran, 3: 113-15.

<sup>20</sup> See: 'Abdu al-Mun'im Mustafa Halima, *Al-'Udhr bi al-jahl wa qiyam al-hujja* (Amman: 1993). Islamic theologians have much of significance to say in this regard, also about those who for one reason or another have not been reached by the divine message in a clear form (*ahl al-fatra*), and about the fate in the hereafter of the children of non-Muslims and of the mentally incompetent. According to the rules of Islamic law, a person is not responsible for what he does under coercion (except for killing and rape) or when unconscious. Nor is a person responsible for most of the acts that he does out of ignorance. According to the Ash'ari school of theology, one is accountable for belief and unbelief only after having come into contact with the call of God. Being unintentionally uninformed, or unfree, are accordingly what one might call mitigating circumstances.

<sup>21</sup> Al-Ma'ida, 5: 47.

Without intending to glorify the Islamic past, we may say that the Ottoman way of managing the relations between different religious communities, popularly known as the *millet* system, was another instance of the application of this principle, and an instance that is closer to us in time and space. It is impossible to summarise what the millet system was in a couple of sentences, including all its advantages and flaws as compared to the modern management of multi-religious societies. It should only be mentioned that historians such as Bernard Lewis and the late Elie Kedouri consider the transition from the Ottoman millet system, which formally discriminated against non-Muslims, to the system of nation-states, in which all citizens are formally equal before the law, to have been a step backwards for the rights of non-Muslims.<sup>22</sup>

It is interesting to note the observation of professor Muhammad Hamidullah that twenty years after the death of the Messenger, Muslims were killing each other, but in the general chaos that arose, there was not a single recorded revolt by non-Muslims seeking to exploit the hostilities to free themselves from the recently established Muslim rule. Moreover, when the Byzantine emperor Constantine the Second wrote to the Christians in the Muslim state that they should seize the opportunity and rise in revolt against the enemies of their religion, and that he would aid them in their struggle, they answered him: "These enemies of our religion are dearer to us than you are!"<sup>23</sup>

It would seem that the reasons for isolated violations of the rights of non-Muslims in the present-day Muslim world are not religious, but political, cultural and psychological in nature. Namely, in order to relate to non-Muslims as Muslims have related to them for most of their history one needs to have a feeling of self-confidence, and perhaps of superiority. Today, Muslims have neither one nor the other, and therefore, they prove their '*islamiyya*' (Islamic-ness and Muslim-ness) by threatening the rights of non-Muslims.

### III. THE OTHER IN ISLAMIC LAW

The above principles are not merely moral recommendations; they have consistently been turned into norms of Islamic law, i. e. into rights (and obligations) of non-Muslims, as well as of Muslims with regard to non-Muslims. It is important to know that Islam, like all other religions, emphasises obligations more than rights and that it always connects the two. Before we enter into the details of the legal status of non-Muslims under the Shari'a, it is important to stress that the Shari'a, like all positive constitutions and laws, expects loyalty to its moral and legal foundations from the citizens of a society where it forms the constitutional and legal framework or the moral system. Such loyalty is expected of Muslims in all details, and of non-Muslims in all regards that do not conflict with their religious convictions.

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<sup>22</sup> See e.g. B. Lewis, *Islam and the West* (New York: Oxford University Press, 1993); Benjamin Braude and Bernard Lewis, eds., *Christians and Jews in the Ottoman Empire*, 2 vols., New York: Holmes and Meier, 1982, Elie Kedouri, "Minorities," in *The Catham House Version and Other Middle-Eastern Studies* (Hanover, N.H.: University Press of New England, 1984). On the position of the Serbian Orthodox Church under Ottoman rule, see Mirko Mirkovic, *Pravni položaj i karakter Srpske crkve pod turskom vlašću (1459-1766)* (Beograd: Zavod za izdavanje udžbenika SR Srbije, 1965) and Boris Nilevic, *Srpska pravoslavna crkva u BiH do obnove Pečke patrijaršije* (Sarajevo: Veselin Malseša, 1990). In Mirkovic we find the opinion that the Serbian Orthodox Church in the Ottoman state in a sense was a "state within the state."

<sup>23</sup> Hamidullah, "Tolerance in the Prophet's Deeds at Medina," pp. 26-27.

In the following pages, we will discuss the precepts that regulate the status of non-Muslims. Now and again some such precept will offend the sensibilities of the modern reader. It should be kept in mind that these precepts were mostly formulated twelve centuries ago, when the rest of the world gave no thought at all to recognition of the other and his rights. Some of these precepts could also be formulated differently, but we have sought to remain true to the terminology of classical Islamic law.

### **The general rule: Muslims and non-Muslims have the same rights and obligations**

It is a general rule of Islamic law that non-Muslims and Muslims have the same rules and obligations, except in situations where different rules and obligations are justified. The reason for different obligations and rights is most often respect for non-Muslims' freedom of religion. The following sayings and rules go to support these two claims. The fourth caliph, 'Ali, may God be pleased with him, once stated: "They (the non-Muslims) pay jizya that their possessions might be (protected) just as ours are, and that their blood might be (protected) just as ours is."<sup>24</sup>

### **Protection from external aggression and internal injustice**

The first norm deriving from that rule is that the life of a non-Muslim enjoys the same protection as the life of a Muslim. Attacking a non-Muslim is forbidden and a major sin, says prophet of Islam: "He who kills a non-Muslim under an agreement (who is not in a military conflict with Muslims) will not feel the fragrance of Paradise, and its fragrance can be felt from the distance of forty years [of walking]." <sup>25</sup> Although many Islamic jurists have thought otherwise,<sup>26</sup> the murderer of a non-Muslim should be executed, according to Abu Hanifa, Al-Sha'bi, Al-Naha'i, Ibn Abi Layla, 'Umar ibn 'Abd al-'Aziz, and others.<sup>27</sup>

Islamic jurists explicitly state that Muslims are obliged to protect non-Muslims from external aggression as well. Thus, for instance, in a work belonging to the Hanbali *madhhab* (the school that is considered the most conservative) we read: "It is incumbent on the imam to protect non-Muslims under an agreement of protection (*dhimmis*), and to hinder those who disturb them, and to free them from slavery, and to disable anyone who wishes them ill, if they are on our territory, even if the place under attack is entirely non-Muslim." The reason for this is, as the book says, "that the precepts of Islam apply to them and that their agreement of protection is lasting, so that the Islamic authorities have the same obligations in this regard as they have towards Muslims."<sup>28</sup> The Maliki jurist al-Qarafi in his renowned work *Al-Furuq* records that Ibn Hazm said: "If a non-Muslim has an agreement of protection (*dhimma*) and an enemy from the *dar al-harb* (enemy territory) tries to attack him, it is our duty to go into armed battle against the latter and die on that path, thus protecting the one who is under the protection of Allah and the Messenger (pbuh), for surrendering them is a violation of the agreement of protection."<sup>29</sup> El-Qarafi further asserts that there is consensus on this among the Muslim scholars.

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<sup>24</sup> Ibn Qudama, *Al-Mughni*, 8: 445, *Al-Badai'*, 7: 111 from A. Zaydan, *Ahkam al-dhimmiyin wa al-musta'minin*, 89. Vidi Al-Qaradawi, *Ghayr al-muslimin*, 11.

<sup>25</sup> *Sahih al-Bukhari*, *Musnad Ahmad*, *Sunan al-Nasa'i*, *Sunan Ibn Maja*. See: Al-Qaradawi, *Ghayr al-muslimin*, 12.

<sup>26</sup> See our note on the conditions under which Islamic law developed.

<sup>27</sup> Al-Qaradawi, *Ghayr al-muslimin*, 12–13.

<sup>28</sup> *Matalib uli al-nuha*, 2: 602–603 (a Hanbali work).

<sup>29</sup> *El-Furuq*, 3: 14–15; 119. See Al-Qaradawi, *Ghayr al-muslimin*, 9–10.

The next case from Muslim history is of particular importance, because one of the participants was one of the greatest Islamic authorities, who is very often accused of being a forerunner of modern Islamic extremism. The person in question is Ibn Taymiyya. When the Mongols occupied Syria, and took many Muslims and non-Muslims captive, Ibn Taymiyya went with a delegation to Kutlu Shah to negotiate the freeing of the prisoners. After long talks, the Mongol commander agreed only to free the Muslim prisoners. Ibn Taymiyya did not assent to this outcome, but insisted on the freeing of all the prisoners, including Jews and Christians, for they, he said, had made an agreement of protection with the Muslims. When he saw Ibn Taymiyya's determination, Kutlu Shah agreed to free all the prisoners.<sup>30</sup> The Umayyad caliph 'Umar ibn 'Abd al-'Aziz acted in a similar way at the end of the first century of Islam,<sup>31</sup> and a fatwa to the same effect was issued by the early Egyptian jurist Al-Layth ibn Sa'd.<sup>32</sup>

On the same grounds, Muslims are obliged to prevent the doing of injustice or the violation of the rights of non-Muslims from within. There are numerous verses of the Qur'an and hadiths that speak of the general prohibition of injustice. Beside these general texts, which apply both to Muslims and non-Muslims, there are also hadiths that specifically prohibit injustice against non-Muslims under an agreement of protection: "If someone does injustice to a non-Muslim under an agreement (*mu'ahid*), or denies him his right or burdens him beyond his capacity, or takes something from him against his will, I will be his accuser on Judgment Day."<sup>33</sup> Or: "If anyone bothers a non-Muslim under an agreement of protection (*dhimmiyyan*), I will be his opponent, and I will prevail over him whose opponent I am on Judgment Day."<sup>34</sup> Or: "Whoever bothers a *dhimmi* has bothered me. And whoever bothers me has bothered God."<sup>35</sup> Some Muslim legal scholars, such as the Hanafi jurist Ibn 'Abidin, even go so far as to say that *zulm* (oppressive injustice) against a non-Muslim is a worse sin than *zulm* against a Muslim, for the former are the weaker party in a Muslim society, and *zulm* against the weak is a greater sin.<sup>36</sup>

Therefore, pious Muslim rulers were particularly concerned with respecting the rights of their non-Muslim subjects. Abu Yusuf in his work *Al-Kharaj* (15–16) records that 'Ali (d. 661) wrote to one of his deputies: "When you come to them (the non-Muslims), do not sell their clothes either in the winter or in the summer, nor their food, nor the animals they use (to pay their dues to the state). And do not ever beat them for a dirham, and do not abuse them for a dirham and do not sell off any of their goods for the payment of kharaj, for it is prescribed for us to take from their surplus. If you do not respect my instructions, Allah will punish you even if I do not, and if I hear that you do not do so, I will dismiss you." The deputy replied: "Then I would return to you the same as I left you." To this, 'Ali replied by confirming his instructions: "Even if you return the same as you left." 'Umar told his deputy Abu 'Ubayda ibn al-Jarrah: "Prevent the Muslims from doing *zulm* and harm to them, and from illegally consuming their property." Furthermore, the great 'Umar on his dying bed (where he was dying from the wound inflicted on him by a non-Muslim, the Persian Abu

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<sup>30</sup> Al-Qaradawi, *Ghayr al-muslimin...*, 10; Fahmi Huwaydi, *Muwatinun h dhimmiyyun* (Cairo: Dar al-Shuruq, 1990), 114.

<sup>31</sup> Hamidullah, "Tolerance in the Prophet's Deeds at Medina", 23.

<sup>32</sup> Huwaydi, *Muwatinun*, 114.

<sup>33</sup> *Sunan Abi Dawud* and Al-Bayhaqi, *Al-Sunan al-kubra*, 5: 205.

<sup>34</sup> Al-Khatib with a good *isnad*.

<sup>35</sup> Al-Tabarani in *Al-Awsat* with a good *isnad*.

<sup>36</sup> Al-Qaradawi, *Ghayr al-muslimin*, 11.

Lu'lu' al-Majusi) left the following testament for his still-unknown successor: "I charge my successor with the trust of looking after the non-Muslims, respecting the agreement we have with them, defending them from enemies and laying no burden on them beyond their capacity."<sup>37</sup> Imam Al-Tabari records in his *History* (4: 218) that when delegations came to 'Umar from the various parts of his realm, he would inquire particularly about the situation of his non-Muslim subjects.

We will illustrate this with a couple of examples. By far the best known and most cited in Islamic writings is the case of an Egyptian Copt and son of 'Umar's deputy in Egypt, 'Amr ibn al-'Ass. According to this tradition, 'Amr's son competed in a race against a Copt and lost the race. Angered by his defeat, he struck the man with his whip saying that he, 'Amr's son, was "descended from people of note" (in other words, how dared the man defeat him?). The Copt then complained to Caliph 'Umar. 'Umar required the presence of 'Amr and his son, and allowed the Copt to return the blow, even asking the Copt to strike his deputy as well, since the latter's rule had made possible his son's conduct. The Copt declined, saying that the score had been settled. And then 'Umar addressed his well-known words to 'Amr: "Who gave you the right to make slaves of people when their mothers bore them in freedom?"<sup>38</sup>

In accordance with the prohibition of any injustice towards non-Muslims the Islamic jurists concluded, for instance, that gossip about non-Muslims is just as forbidden as gossip about Muslims.<sup>39</sup>

### **Social justice and security**

Non-Muslims also enjoy equal rights with regard to social security. Thus, at the time of the first caliph, Abu Bakr, the military commander Khalid ibn al-Walid, representing the Muslims in the treaty with the non-Muslims of Hira (Iraq), took on obligations to exempt social cases among the non-Muslims from jizya and giving them aid from the state treasury.<sup>40</sup> This happened in the time of Abu Bakr and with his knowledge, as well as in the presence and with the knowledge of a large number of Companions, none of whom expressed disagreement. In Islamic law, this is considered silent consensus.

In another case, Caliph 'Umar went over to a Jew who was begging, and asked him why. When he learned that the man was no longer able to provide for himself and his family due to age and illness, he took him to the treasurer of the state treasury (*bayt al-mal al-muslimin*) and ordered him to pay to this Jew and to others like him what they needed to enable them to live in dignity, saying: "We are not being just to him if we take jizya from him

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<sup>37</sup> Al-Bukhari in *Sahih*, Yahya ibn Adam in *Al-Kharaj*, p. 74 and Al-Bayhaqi in *Al-Sunan* 9: 206. Although this and most of the other reports we mention here are found in some of the earliest and most reliable Islamic sources, these sayings of the Messenger, his Companions and Muslim rulers are of value even if not authentic, for they are recorded in the books that Muslims consider the most important next to the Qur'an and because generations of Muslims have been raised on them. It is only thanks to such texts that Muslim history has not seen genocides, systematic massacres, persecutions of non-Muslims (with the possible exception of the Armenians in the First World War). In this sense it is correct to claim that only Islam saved the non-Muslims from the Muslims. This applies also to the Catholics and Orthodox Christians in the Balkans.

<sup>38</sup> Al-Qaradawi, *Ghayr al-muslimin*, 27.

<sup>39</sup> *Hashiya Ibn 'Abidin 'ala al-Durr al-mukhtar* (Istanbul), 3: 344-246. See: Al-Qaradawi, *Ghayr al-muslimin*, 16.

<sup>40</sup> Abu Yusuf, *Al-Kharaj*, 144; See: Al-Qaradawi, *Ghayr al-muslimin*, 16.

in his youth and let him be humiliated when he grows old.”<sup>41</sup> When, on another occasion, he received a tax official from Damascus, he passed by a group of Christian lepers, to whom he immediately assigned a share of the collected alms (*sadaqa*), and ordered that they should be assigned a permanent and sufficient income from the state treasury to meet their needs. Based on the above and on the practice of the Messenger himself, Islamic jurists also allow spending the *zakah*, the Muslim religious tax, on poor non-Muslims.<sup>42</sup>

In his encyclopedic work *Al-Minhaj*, the Shafi'i jurist Al-Nawawi says that the collective duties of Muslims (*furud kifaya*) include relieving the misfortunes of Muslims, including clothing the naked, feeding the hungry, freeing slaves and so on, if *zakah* and the state treasury cannot fulfill these needs. A commentator on this work, Shams al-Din al-Ramli al-Shafi'i in his *Nihaya al-muhtaj ila sharh al-minhaj* says that dhimmis and Muslims are equal in this regard.<sup>43</sup>

### **Protection of property**

Beside their lives, the property of non-Muslims, too, is protected, including possessions that are not allowed to Muslims, such as alcohol and pork. Alcohol and pork, according to Islamic jurists, cannot be objects of sale or purchase by Muslims, for they have no use value, and therefore are not treated as property. Classical Islamic jurists therefore hold that if someone were to spill the alcohol of a Muslim, there would be no obligation to pay compensation for the “damage.” Indeed, he would be rewarded for the deed. Hanafi jurists, however, hold that a Muslim must pay compensation for similar damage done to a non-Muslim, for their religion allows the consumption of such products, and Islam allows them to trade in them, on the condition that they do not sell to Muslims, and that they do not sell them publicly in a Muslim environment.

In accordance with the equal rights of Muslims and non-Muslims, the Shari'a penalty for theft is the same, whether the stolen property belongs to a Muslim or to a non-Muslim.

### **Freedom of religion**

Beside the right to life and property, non-Muslims under Islamic law enjoy the freedom of belief and the freedom to confess their belief, as we have already seen in part. The key Qur'anic statement in this regard is the divine commandment: “*There is no compulsion in religion!*” In addition, one may not insult non-Muslims and say rude things about their convictions and sacred things: “*And do not abuse those whom they call upon besides Allah, lest exceeding the limits they should abuse Allah out of ignorance. Thus have We made fair seeming to every people their deeds...*” (Al-An'am, 6: 108). Non-Muslims are expected to show the same sensitivity to Muslim feelings.

Islamic jurists also clearly find that Jews may not be ordered to work on the Sabbath, nor Christians on Sundays, if they believe that this is forbidden, based on the saying of the prophet Muhammad: “Only you Jews are not allowed to work on the Sabbath.”<sup>44</sup>

### **Protection of shrines**

Islam further protects the shrines of non-Muslims. Many agreements made in the first centuries of Islam between Muslim conquerors and the local Christian inhabitants have a

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<sup>41</sup> Abu Yusuf, *Al-Kharaj*, 144. See: Al-Qaradawi, *Ghayr al-muslimin*, 16.

<sup>42</sup> Abu 'Ubayd, *Al-Amwal*. Al-Qaradawi, *Ghayr al-muslimin*, 47.

<sup>43</sup> Al-Qaradawi, *Ghayr al-muslimin*, 17.

<sup>44</sup> *Sunan al-Nasa'i* and *Sunan al-Tirmidhi*. Al-Qaradawi, *Ghayr al-muslimin*, 43.

clause on the protection of churches. The historian Al-Tabari notes that the charter granted to the inhabitants of Jerusalem by 'Umar when he was given the keys to the city *inter alia* says that 'Umar "guarantees for their lives, property, churches, crosses... that no one shall live in their churches, and that they will not demolish nor desecrate them, nor take anything from them, nor take away the crosses, nor anything that belongs to them..."<sup>45</sup>

Some events from the earliest history of Islam are hard to grasp in the light of the recent experience with the destruction of houses of worship in Bosnia. For instance, Muslim historians record, and Islamic jurists cite an event that took place after Caliph 'Umar entered Jerusalem in 636 and the Patriarch gave him the keys to the city. When he was invited to pray in the Church of the Resurrection, 'Umar declined, not because of any ban on prayer in a church, but as he said, out of fear that later Muslims might use the fact that he had done so as an excuse to turn the church into a mosque. In the same vein, Al-Qaradawi has recently issued a fatwa that Muslims are allowed to celebrate 'Id in a church or synagogue given to them for that purpose by Christians or Jews, on the condition that they do not intend to turn the building into a mosque.<sup>46</sup> Khalid ibn al-Walid granted the inhabitants of 'Anat a charter entitling them to "...ring the bells at any time they like, by day or by night, except at Muslim prayer-time, and that they have the right to carry crosses in their holiday processions."<sup>47</sup> This may be less than what human rights advocates want but it far exceeds what both Muslim and non-Muslim minorities have today in the majority of plural societies.

Regarding the building of new churches in cities that Muslims have taken by force (*'anwatan*), the majority of jurists hold that non-Muslims do not have the right to build churches. A minority (the Zaydis and Ibn al-Qasim among the Malikis) holds that they may do so with permission from the authorities (as is the practice with regard to mosques today). Although this was a minority opinion, it appears to have been applied through history. Thus Al-Maqrizi in his work *Al-Khutat* mentions a large number of churches among the buildings of Cairo and says there is no doubt that they were built after Islam came to Egypt.<sup>48</sup> In any case, the division of lands into those taken by force and others is irrelevant today.

It would of course be senseless and ridiculous to say that there was no oppression. Oppression existed, both towards Muslims<sup>49</sup> and against non-Muslims. Still, that oppression was most often not religiously sanctioned, and therefore, it was often righted sooner or later. Thus, the historian Al-Baladhuri records that the Umayyad caliphs tried various ways to gain the goodwill of the Christians that they might allow them to demolish the Cathedral of St. John to expand the Umayyad Mosque. The Christians rejected all the offers, whereupon Al-Walid ibn 'Abd al-Malik tore it down by force, though the Christians had told him that he would come to an evil end if he did so. When 'Umar ibn 'Abd al-'Aziz came to power, the Christians turned to him asking for the church to be restored. 'Umar ordered his administrator to do so if they could not be satisfied any other way. Still, he managed to reach an agreement so that the mosque was not destroyed.<sup>50</sup> Ann Elizabeth Mayer, summing up

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<sup>45</sup> Al-Qaradawi, *Ghayr al-muslimin*, 19.

<sup>46</sup> It is suggestive that this distinguished Islamic authority, like the leaders of the Muslim Brotherhood movement, very often use the term "brothers" for non-Muslim citizens. See Al-Qaradawi, *Min Hady 'l-islam*, 2: 668, 670.

<sup>47</sup> Al-Qaradawi, *Ghayr al-muslimin*, 19.

<sup>48</sup> Al-Qaradawi, *Ghayr al-muslimin*, 20.

<sup>49</sup> There were times when Muslims prayed to God for "their" rulers to treat them as they treated non-Muslims. See Al-Qaradawi, *Ghayr al-muslimin*, 65.

<sup>50</sup> *Futuh al-buldan*, 171-72. (Al-Qaradawi, *Ghayr al-muslimin*, 29)

the Orientalist historiography in this regard, notes: "Despite incidents of mistreatment of non-Muslims, it is fair to say that the Muslim world, when judged by the standards of the day and the European record, generally showed far greater tolerance and humanity in its treatment of religious minorities."<sup>51</sup>

The Messenger himself allowed Christians to perform their prayers in his mosque in Medina, which is the second holiest place in Islam, though other Muslims went to stop them.<sup>52</sup> On these grounds, even the most conservative Islamic jurists, such as Ibn Qayyim, allow the People of the Book to enter mosques and to perform their prayers there, on the condition that this does not become a custom.<sup>53</sup>

### **Freedom of movement and residence and the right to work**

Non-Muslims are also guaranteed the right of movement, work, and residence. The exception to their freedom of movement is the Hijaz region of Saudi Arabia, which in Islam is considered a holy area, and their freedom to work does not include charging interest and selling alcohol to Muslims in their neighbourhoods. In any case, both Muslims and non-Muslims deserve better treatment than what some nationalities experience in the free world of visas, which violates human rights and humiliates people in the crudest way.

### **Non-Muslims in public office**

Non-Muslims may take part in government, and according to the classics of Islam, the only posts they cannot fill in an Islamic state are those that combine the worldly and the spiritual, such as the caliphate or state presidency. According to these authors, a non-Muslim could reach the position of a minister (*wazir al-tanfīdh*), the third highest post in the Islamic state after the caliph and the premier (*wazir al-tafwīd*). In this regard, Islamic law does not differ from e. g. English law, which requires the king or queen to also be the head of the Anglican Church. The same logic applies to the post of supreme military commander, for he is considered to be the first *mujahid*. Historically, Baghdad, Cairo, and other Muslim capitals had a large number of non-Muslims in their governments, sometimes more than in many modern democratic countries where Muslims have a significant presence.

### **Legal autonomy**

It is widely acknowledged that multi-religious societies are very difficult to manage without endangering the freedom of religion of the members of various religious groups. Modern societies have solved this equation by expelling religion from the public sphere, that is, by secularization, legal monism, and law-making on rational grounds without regard to the wishes of groups of citizens or religious communities. From the viewpoint of Islamic law and experience, this is not the best solution, as has also recently been recognized by theorists of political liberalism who attempt to theoretically justify so-called multicultural citizenship, which takes into account so-called collective rights as well as individual ones.<sup>54</sup> In modern

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<sup>51</sup> Ann Elizabeth Mayer, *Islam and Human Rights: Tradition and Politics* (Boulder: Westview Press, 1999), 136. In accordance with the best Islamic tradition regarding the building of houses of worship, the Islamic Community in Bosnia-Herzegovina has decided to demolish a mosque in Bradina, built on Serb land during last war 1992-1995.

<sup>52</sup> Ibn Ishaq in the *Sira*. Al-Qaradawi, *Ghayr al-muslimin*, 47.

<sup>53</sup> Ibn Qayyim, *Al-Hady al-nabawi*. Al-Qaradawi, *Ghayr al-muslimin*, 47.

<sup>54</sup> See Will Kymlicka, *Multicultural Citizenship* (Vil Kimlika, *Multikulturalno gradanstvo: liberalna teorija manjinskih prava*, Novi Sad: Centar za multikulturalnost, 2001).

political terms, the Islamic model for the management of multi-religious societies might be called a federation of religious communities (rather than territorial or administrative-territorial federalism).<sup>55</sup> Let us answer with Kymlicka the objection that something like that is hard to achieve: Saying it is hard does not mean that it is impossible. As for the objection that legal pluralism is expensive, we can only note that printing an official gazette in three languages that everybody understands (as in Bosnia) is also expensive, that the Icelandic language is expensive ... and nevertheless noone considers doing away with these things.

Classical Islamic law provides for particular norms for non-Muslims only in situations where their equal treatment with Muslims would hurt their religious feelings. For instance, they are not expected to pay zakah, which is a form of religious tax, but they are expected to pay other taxes and duties. Nor are they expected to serve in a Muslim army which considers service in the country's defense to be a religious duty, *jihad*. In return, non-Muslims that are fit for the military are expected to pay *jizya* as a compensation for their exemption from military service. However, if a non-Muslim wishes to serve in the army of a Muslim country, he is exempt from paying such taxes. Further, a non-Muslim cannot administer justice, i. e. be a judge in those areas of law that Muslims consider to be in the domain of the Shari'a in the narrow sense of the word (e. g. marriage and inheritance law). Conversely, Islam does not seek to impose on non-Muslims laws they do not identify with, especially in the field of family law and the law of endowments. Historical Muslim states, including the Ottoman state, were run on this model of legal pluralism.

### **Collective punishment**

Islamic law also does not allow the collective punishment of non-Muslims, even though such practices even today are habitual among "civilized" peoples. Crimes and misdemeanors by individual non-Muslims do not affect the contractual relations between Muslims and non-Muslims, which according to Islamic jurists are agreed indefinitely or, as they say, once and for all. Hanafi jurists record that the Messenger instructed his envoys to Najran (where Christians lived) "not to punish one of them for the crime of another."<sup>56</sup> In practice, there certainly were attempts to the contrary, vigorously opposed by the 'ulama'. Thus we read in Muslim annals of history how the Syrian jurist Al-Awza'i reacted to acts of the Abbasid governor in Lebanon, Salih Ibn 'Ali ibn 'Abd Allah ibn 'Abbas, who chased away all the inhabitants of a Lebanese mountain region because of the revolt of a group of Christians against his tax-collector. Al-Awza'i wrote him a long letter, in which he asked the governor: "How can they all be punished for the sins of individuals, and how can you drive them from their homes and their properties, when Allah has laid down that 'No bearer of burdens shall bear the burden of another!' (53:38) and when the Messenger (pbuh) has said: 'If anyone does injustice to a non-Muslim under an agreement or burdens him beyond his capacity, I will accuse him on Judgment Day?'" The letter concluded: "They are not slaves for you to move from place to place at will. To the contrary, they are free men with whom we have an agreement."<sup>57</sup>

A couple of centuries later, Muslim historiography recorded a similar conflict between the *shaykh al-islam*, Ali Efendi Zenbili, and the Ottoman sultan Selim I, who wanted

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<sup>55</sup> Will Kymlicka, "Zapadna politicka teorija i etnicke relacije u istocnoj Evropi", *Odjek* 60 (Summer/Fall 2002), no. 3-4, p. 77.

<sup>56</sup> Abu Yusuf, *Kharaj*, 72-73.

<sup>57</sup> El-Baladhuri, *Futuh al-buldan*, 222; Abu 'Ubayd, *Al-Amwal*, 170-71; Al-Qaradawi, *Chayr al-muslimin*, 28.

to force the Christians of his empire into Islam as revenge for the expulsion of Muslims from Spain. The *shaykh al-islam* threatened to issue a fatwa relieving him of office if he did so. It is hardly necessary to point out what consequences the sultan's plan would have had for the present-day demographic map of the Balkans if it had been carried out.

### **The private relations of Muslims with non-Muslims**

Islamic texts allow for the possibility that a Muslim might have private, everyday relations with non-Muslims. A Muslim might have a non-Muslim parent, uncle, grandfather, grandmother, wife, business partner,<sup>58</sup> teacher, etc. He is obliged to respect, care for, and listen to his non-Muslim parents, except if they turn him away from the path of Allah. Once, in Medina, Asma was visited by her non-Muslim mother. Unsure how to react, she asked the Messenger what to do. The Messenger told her to take care of her mother. When some Muslims started to doubt the rightness of providing for their relatives and neighbors who persisted in not accepting Islam, God revealed the Qur'anic verse: "(As for) those who spend their property by night and by day, secretly and openly, they shall have their reward from their Lord and they shall have no fear, nor shall they grieve." (Al-Baqara, 2: 274).

A Muslim husband must give his non-Muslim wife the opportunity to go to church and to confess her religion without hindrance. A Muslim is expected to visit his non-Muslim neighbor when he is ill, for so did the Messenger. He is also to give a part of the *qurban* sacrifice to his non-Muslim neighbor. The pious and learned Ibn 'Umar ordered his servant to carry part of the *qurban* meat to his Jewish neighbor and was asked why he insisted so strongly on this. Ibn 'Umar explained his behavior by the general statement of the Messenger: "Jibril (Gabriel) spoke so much to me about neighbors that I thought there would come a command that neighbors should inherit each other."<sup>59</sup> When Umm al-Harith ibn Abi Rabi'ah, a Christian woman, died, she was buried by the Companions of the Messenger of God.<sup>60</sup> Some learned people of the second Muslim generation (*tabi'un*) gave alms (*sadaqat al-fitt*) to Christian monks and some ('Ikrima, Ibn Sirin, Al-Zuhri) thought that they could even be given *zakah*.

Still, there are certain reservations. The Qur'an explicitly prohibits a Muslim woman from marrying a non-Muslim. The Qur'an also calls for caution in relations with non-Muslims. It warns the believers not to take non-Muslims who have shown themselves to be their enemies as their intimate friends, for then they would be acting to their own detriment, which is unacceptable. This is the light in which one should interpret Qur'anic verses that forbid making friends with non-Muslims (e.g., Al 'Imran, 3: 118). These verses certainly are not general in scope, for then it would be unthinkable for a Muslim to marry a non-Muslim woman. (Further about these reservations see the section on *Controversial texts*.)

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<sup>58</sup> Al-Bukhari records in his *Sahih* that when the Messenger died, he pawned his armor with a Medinan Jew as a security for the food and clothes he had bought for his family on credit. The Messenger's biographers think he could have borrowed from some of his companions, who would have done anything for him. However, but that the Messenger borrowed from a Jew in order to teach his followers that they could do so without religious obstacles.

<sup>59</sup> Al-Qaradawi, *Ghayr al-muslimin*, 37.

<sup>60</sup> Al-Qaradawi, *Ghayr al-muslimin* 47.

### **The obligations of non-Muslims**

Besides rights and liberties, non-Muslims have obligations towards society and towards Muslims. This includes above all reciprocal respect for the religious feelings of Muslims and respect for the constitutional order, which is also a Muslim obligation.

## **VI. CONTROVERSIAL TEXTS AND QUESTIONS**

The most controversial group of texts is those that prescribe jihad and those that prohibit “fraternizing” with non-Muslims.

The first group are clearly the Islamic law of war, and should be understood as such, bearing in mind that jihad is just war and not holy war, that is, it is war that is waged for 1) self-defense, 2) to help people under tyranny whatever their religion might be (humanitarian intervention), and 3) to defend religious freedom (promoting human rights and democracy).<sup>61</sup> The nature of war in Islam, its aim and motives, are most precisely described by the view of the majority of Islamic jurists (Hanafis, Malikis, most Shafi'is and Hanbalis including Ibn Taymiyya and Ibn Qayyim) that the reason (*mana*) for warfare or jihad is aggression or attack by the other side, not unbelief.<sup>62</sup> A person is not killed for unbelief but for aggression against Muslims or non-Muslims. As proof, they cite the rules of jihad that lay down that civilians may not be killed by order of prophet Muhammad, and the numerous examples of co-existence between the first Muslims (as a minority or a majority) with non-Muslims that have not attacked them or driven them from their homes.

The other group of texts is also numerous (eg. Al 'Imran 3: 28, Al-Nisa' 4: 144 and 4: 138–39, Al-Ma'ida 5: 51–52, Al-Tawba 9: 23, Al-Mujadila 58: 21, Al-Mumtahana 60: 1 and 5, etc.). From these lines one might understand—as many have done, and continue to do so — that Islam calls on its followers to have cool relations or no relations at all with non-Muslims, and to hate them just because they are non-Muslims. The truth is essentially different. When these and similar texts are considered in the context of other Qur'anic verses, acts and sayings of the Messenger, and the occasions of their revelation, it becomes clear that:

1. Islam prohibits giving priority to non-Muslims over Muslims (*min duni al-mu'minin*), which in no way means that a Muslim cannot be a good neighbor, colleague, or friend with a non-Muslim. Considering that, from the Islamic viewpoint, the bond of religion is stronger than any other bond (blood, nationality, class, region, etc.), such a demand is understandable, and it is also common among other religions, ideologies and worldviews.
2. The verses make it clear that friendship is prohibited only with those non-Muslims who not only are not Muslims, but are at the same time the active enemies of Islam. Verses eight and nine of the chapter Al-Mumtahana, namely, make a distinction that is crucially important for understanding the Qur'anic texts about non-Muslims, i.e. the difference between peace-loving and hostile non-Muslims. If we read the verses that call for isolation or enmity against non-Muslims more carefully, we will find as a rule that the stated cause for such precepts is the hatred and *active* enmity of the non-Muslims towards

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<sup>61</sup> Wahba Al-Zuhayli, *Al-'Alaqat al-dawliyya fi al-islam: muqarana bi al-qanun al-dawli al-hadith* (Beirut: Muassasa al-risala, 1981), 29-36.

<sup>62</sup> Al-Zuhayli, *Al-'Alaqat*, 25.

Muslims, and not their unbelief. To speak in terms of the methodology of Islamic law, this means that the legal ground (*'illa*) for these precepts is the enmity of the non-Muslims, and the rule is that the precepts apply where their grounds are present. Accordingly, where there is no such ground (enmity of non-Muslims), these precepts cannot be applied because they do not concern the situation at hand. The verses, then, explicitly cite reasons for banning friendly relations. Someone who would fraternize with a person, who actively works against him, persecutes him and seeks to destroy him, is doing injustice to himself, and Islam is against all forms of injustice.

3. The above claim is also supported by the fact that Islam has permitted marriage to Christian and Jewish women, and marriage, according to the Qur'an, requires love (Al-Rum, 30: 21). Therefore, love for a non-Muslim who is a friend to Muslims is not what these texts deal with, for a person naturally loves his wife, grandchildren, grandparents, and so on.

The controversial issues also include the matter of *jizya* and the notion of *ahl al-dhimma* or *dhimmīs*. As far as *jizya* is concerned, its abolition represents no problem at all for Islamic legal thought. As far back as the time of Caliph 'Umar, the Muslims replaced the *jizya* with other taxes (so that non-Muslims, too would pay some taxes just as the Muslims pay *zakah*), or they simply abolished it on the condition that non-Muslims, too, join the army.

As for the notion of the *dhimmi*, it is not Qur'anic at all, it is historical, though some Islamic thinkers hold that it is mentioned in hadith in a descriptive and not prescriptive sense. That is to say, it is an institution that Islam inherited in some form from the earlier states and civilizations of the Middle East. There is no objection whatever to abolishing that notion and status and replacing it with the notion of the citizen, for the Medina Charter speaks of Jews and Muslims as "one community" or "one nation."<sup>63</sup>

As for the restrictions on the rights of non-Muslims to be elected to office, given the decentralization of power and authority in modern parliamentary political systems, many Muslim writers feel that no restrictions of any kind are needed anymore.

## V. CONCLUSION

This Islamic acceptance of the other is not a reluctant concession to the reality of a plural and interdependent world. To the contrary, Islam recognizes and accepts the other not out of interests or for tactical reasons, but out of principle. In the above, we have elaborated on some principles and precedents from early Islamic history that make up the "liberal ethos of Islam," such as the primacy of justice over religious formalism, and the messenger Muhammad's (pbuh) acceptance and magnanimous reciprocation of the kindness of non-Muslims. This paper concludes with the assertion that the Islamic sources leave no room for religious indifference, agnosticism, or moral relativism in its extreme forms, but that Islam has that dose of relativism that is necessary for the normal functioning of multi-religious societies. Therefore, claims that Islam is an exclusivist religion are entirely unfounded, since we have seen that Islam allows a Muslim quite legitimately to have non-Muslim parents, wives, business partners, neighbors, teachers, rulers, and so on; and that it requires him to behave justly towards all of them, and recommends benefaction. What perplexes many

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<sup>63</sup> Huwaydi, *Muwatinun*, 124.

people and leads them to pass harsh judgment on Islam is the Qur'anic self-assurance of possessing the truth, which usually leads to the conclusion that nothing but political absolutism could come of this theological absolutism. As we have seen, this is not the case. The fact that European pluralism is largely based on epistemological as well as moral relativism and agnosticism, and that the Islamic form is not, has confused many people.

The Islamic norms developed by different schools of Islamic law often differ among themselves to a greater or lesser degree. Most of them only reflect the principles that we discussed in this paper, in using the terminology of their time, of course. Some of those norms nevertheless clash head on with modern, primarily Western, conceptions of human rights, but also with the principles we have examined above. As far as the clash with the liberal conception of human rights is concerned, it should be observed that this conception is itself evolving and that it is not necessarily universal in all its particulars. Insisting that Islam must give its blessing to all and sundry principles and norms from liberal legal systems and theories before one stops speaking ill of it is the peak of intolerance, narrowmindedness and ideological exclusivism.

Still, in some cases the norms of Islamic law need not be taken as given once and for all. According to many Islamic jurists, Islamic law too is evolving in many of its areas, except in that central part which is most directly based on the Qur'an and Sunna and that is usually known as the Shari'a. The influence of social and political circumstances on legal thought in that process is not negligible. Keeping in mind that Muslim and the Christian worlds have spent most of the past centuries at war, the norms on non-Muslims that the classical Islamic jurists defined during that period should sometimes be compared with the emergency laws occasionally introduced by democratic societies in the case of war. In a world of entirely different internal and international circumstances, we witness the turning away from wartime law towards peacetime Islamic law.

An example of the turning away from what we may call wartime Islamic law to peacetime Islamic law is the view of a growing number of modern Islamic jurists and thinkers that non-Muslims in an Islamic political system, if they take on the same obligations in their country's defense as Muslims do, are not required to pay the special tax—*jizya*—that has raised so much controversy, and that they do not necessarily have to be *ahl al-dhimma*, protected people, but can be full-fledged citizens of such a state. To show that we are not talking of marginal thinkers and jurists, let us note that this view is shared by Yusuf al-Qaradawi, Tawfiq Shawi, Muhammad Salim 'Awwa, Fahmi Huwaydi, and others. The first two, at least, are widely read and popular adherents to the largest 'fundamentalist' movement in today's Muslim world, the 'Muslim Brotherhood.' Al-Qaradawi a few decades ago wrote that the *dhimma* is a *permanent* agreement between Muslims and non-Muslims, in which God, His Messenger and the Muslims guarantee the security of the other side. In return, they are expected to respect the Islamic order in non-religious matters and to pay taxes to the state. Today, he says, this is *citizenship*.

The above-mentioned principles and norms form only part of the "liberal ethos of Islam," as professor Muna Abu al-Fadl puts it. It is true that we do not believe that Islamic sources leave space for religious indifference, agnosticism, and moral relativism in its

extreme forms. Nonetheless, Islam possesses that dose of relativism that is necessary for the normal functioning of a multi-religious society.<sup>64</sup>

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