

## *Abstract*

The aim of this work is to analyze the paradigm of the “Modern State” and to compare it with the model of the Islamic State, in order to observe their peculiar features and to find similarities and differences. The focal point of the paper is to discover the possibility to conciliate these two different realities so as to conceive an entity in Islam compatible and respectful of the principles of constitutionalism and the respect of human rights. These aspects are the hard core and the basic structure of the Western conception of the State, based on rule of law, liberalism doctrine and values of “freedom from and to” and human dignity. The work is divided into three parts: the first is about the modern state, the second focuses the attention on the Islamic paradigm and the last one is dedicated to the solutions and proposals, realized by the main past and present Islamic political scientists and jurists.

The first chapter is dedicated to the historical development of the state: it appeared in Europe around XV century and soon it developed and shown its characteristic quirks, such as permanent army, centralized fiscal system, bureaucracy, free and open trade, diplomacy and territorial jurisdiction. But if some aspects of European State are variable and temporary, there are some particular and essential features that W. B. Hallaq calls “form-properties”: with this expression, this author refers to a range of qualities that the European State possesses, that are unchangeable and different from any other form of foreign state-organization. There are five “form-properties” owned by the Modern State and without which it cannot exist. These are: the historical dimension of the state, as a specific and local experience; the sovereignty that implies that the state has the only legitimate power on population, use of violence and territory; the monopoly of law and legitimated violence; the bureaucracy, as an instrument of rationalization and standardization of social and political behaviors and finally the ability to penetrate the cultural dimension of the civic society that make the State able to perpetuate its existence thanks to the contribute of a cultural elite. These features connote the specific structure of the European modern state as a unique phenomenon that could be possible only in Europe.

The second part of the work focuses the attention on the paradigm of Islamic State, also called “Islamic governance” by Hallaq. He argues the impossibility to talk about a hypothetic foundation of an Islamic State because the terms “Islamic” and State” are contradictory and they could not stay in the same sentence: the expression “Islamic State” refers to a utopic and inexistent reality, because the state is just an European product, not an Islamic one. He claims that the essential elements of Islamic governance are completely different from the asset of an American or European State.

There is a deep gap of traditions, historical experiences, and philosophical foundations between these two realities that makes them distant and parallel.

The Muslim society is a Sharia-based society: Sharia is the fundamental law for Muslim, considered the representation of God's moral will. It is a colossal project of building a connection between human race and God: its moral-legal system pervades the whole existence of each Muslim, from social to political and legal dimension. Sharia rules every secular institution, including the fundamental powers of the state, legislative, executive and judiciary. In Islam, God enjoys the exclusive prerogative to make laws and there is not any other authority legitimated to legislate. Even if the executive power could be delegate by Sharia to legislate in restricted areas, it is just an exception and this right remains marginal, derivate and subsidiary. Another evident difference between Islamic and Modern state is in the application of the theory of "separation of power": while in Europe there is not a clear partition in the exercise of functions, because the executive could emanate legislative acts, in Islam this possibility doesn't exist. The theory of "separation of power" is perfectly applied, so the famous and prestigious jurist Kelsen defines the Islam governance as a perfect example of a first order democracy, better than European or American ones. Moreover, the concept of Islamic citizenship is totally different from the European notion: it is necessary to highlight that the subjectivity, generated by a particular state system, embodies the main features of the same state where it lives in. So, in Muslim societies, the individual identity is fashioned by Sharia and Qur'an and influenced by the lacking separation between moral and politic or fact and values. In fact in Islam the religion is the archetype of reality, while the politic is just a tool used in order to enforce the meaning and the presence of religious and spiritual dimension in every-day life of Islamic believers. The Islamic religion is omnipresent and it defines the identity of believers, thanks to the authority execrated by the "five pillars" that define the meaning and sense of being Muslim. They are the foundation of Muslim life and they are: the declaration there is no God except Allah, the ritual prayer made five times a day, charity, fasting and pilgrimage. The subjectivity fashioned by Islam religion is called *Homo Moral* because of the central role played by Qu'ranic laws in influencing human life now and in thereafter: he is first a believer and then a citizen of a state, while the citizen living in Modern state is called *Homo Modernus* and his identity is ascribable to political dimension, that invades and shapes human life.

The third and last part concerns the proposals of state-models, realized by the main relevant trains of thought in Islam. The first section examines the Sharia-based State, inspired to the model realized by the Prophet in Medina in 622: the supporters of this kind of state wish for an integral and complete application of Sharia in public and private sphere. They consider this law as the fundamental law of the state, neglecting the serious problems that this code of law generates about

the status of non-Muslim and women and the respect of the values and principles of constitutionalism, first of all legal equality before the law. This paradigm seems to be obsolete and insufficient to administrate the actual social and political overview. The main difficult of this state-paradigm concerns the strong conviction that Sharia is a divine work and people who break law are considered mortal sinners: this misrepresented idea allows the raise of discrimination and violation of basic human rights: for example, in Sudan apostasy is punished with capital death. The most evident error is the imposition of Islamic religion in public and private spheres, against freedom of religion and expression: the result is a theocracy based on the imposition of a state religion that every citizen has to follow without possibility of choice.

Another option proposed by the Islamic laical trend is the creation of a secular state in Islam, inspired to the Western bureaucratic and centralized model. The evident problem of this project is that it presumes the separation between religion and politics, but this divorce does not exist in Islam. Both dimensions are the two sides of the same coin: the division of these areas means to violate the cultural dimension and the peculiar identity of Muslim social background. The Islamic laical trend believes that the Prophet was just a religious authority and it is quite impossible that his spiritual power could be handed down from him to successor caliphs: so when he died, governors were just political actors with an exclusive political power. In virtue of this line of reasoning, they affirm that Islam state has been a laical state since its origin. But it is very hard to believe that Muslim community may accept this theory because it implies the resulting denial of Islamic history and tradition. This kind of solution seems to be just an external, top down system that expects to build an Islamic state with Western tools and conceptual categories, ignoring the importance and worth of Muslim religion and spiritual dimension, inseparable from political and social ones.

The last solution regards the reformist group, raised in Islam in the last period. One of the most relevant voices of this trend is An-na'im, a committed reformer that endorses the necessity of an imminent innovation of state organization and government in Islam. His solution is based on the respect and regard of Islamic legal tradition and his main goal is to realize a revolution in the interpretation and application of Sharia and Qur'an. He wants to demonstrate that Sharia is not eternal and immutable laws made by God as the promoter of Sharia-based state believe. On the contrary, An-na'im claims that Sharia is a positive and human law, interpreted and applied by jurists of the first period of Islamic history. So, if the divine aspect of Sharia disappears, it is reasonable to promote a change in its interpretation compatible with the necessities of modernity. An-na'im, inspired to *Ustadh* Taha, talks about the "evolutionary approach" of Sharia application, making it able to satisfy the requirements of a possible contact and dialogue with Western world.

This author underline the deep difference between the prophetic message during the first phase and the second one: at first, it was a tolerant and pacific message, based and the respect of human dignity, without any kind of discrimination, but it was refused from the Community of La Mecca; so when Mohammed decided to move to Medina, he radically changed the content of his revelation that became violent, rude and centred on the duty to convert infidels to Islamic religion, also with war. An-na'im wants to restore the ancient, but real message of Islam with an inverted use of *naskh*. It is a legal tool usually used to solve the controversies that come to light in Qur'anic text: thanks to it, the first message was eclipsed by the second one. Now the solution advanced by An-na'im is to realized a reform of Islam, inspired by the values and principles of the first phase of Qu'ranic message that seems to lie close to the Western state- asset and at the same time it allow a process of reform of public and constitutional Islamic law, based on its own sources of law, Qu'ran and Sunna, and the respect of a millenary tradition.

Finally this last one solution seems to be the perfect solution because it leaves the fundamentalism and the oppressive vision promoted by supporters of Sharia-based state model that are conquering a lot of followers with the weapon of terror, Isis is a clear example; also Islamic laicism is insufficient to solve actual political and cultural problem of Islam. So, even if the purpose of An-na'im appears radical and it is considered a drastic cut with past and millenary legal tradition of *taqlid*, it could be the start of something new, of a liberal Islam respectful of human right and constitutionalism, but at the same time of its own religion, spirituality and tradition.