2   Membership in the religious community

The social and political milieu of pre-Islamic Arabia considerably affected the spread of monotheistic religions, which assumed the social order as a vehicle for their diffusion, but soon endeavoured to replace the traditional forms of membership with the sole bond of common faith.

Before the rise of Islam, Judaism was professed by Jews of the diaspora and by Arab converts, and its main centres were located in the coastal region of Hejaz and in Yemen. These communities are thought to have been established after the destruction of Jerusalem in the 2nd century AD, but these are still clouded chapters of Arab history.

An even greater role was played by Christianity, which penetrated Arabia from the north as a result of the missionary efforts of Syriac dissidents, and from the south thanks to the political involvement of Coptic Abyssinia (Rabbath 1980). Known in its Monophysite and Nestorian variants, Christianity evoked interest among the Arabs, as attested in ancient poetry. According to available sources, Monophysites systematically devoted their efforts to preaching to the Bedouins and appointed a bishop for every large camp, thus allowing nomads to retain their customs. Nestorians, by contrast, established an episcopate in Hira (Mesopotamia), where Christians formed a community of *ᶜIbād* ('servants' of God) that transcended the kin order, abolishing descent-based distinctions; this is the first known case of an ideologically defined Arab group that combined tribal organisation with the functions of a religious community.

2.1   The formation of the Islamic community

With Muhammad's public preaching of the revelation, the process towards the formation of a religious community and the creation of a centralised political power in Arabia was set in motion. At its culmination, the Islamic community embraced all those who shared the same faith in Islam, but in the intermediate stages the connection was less rigid and exclusive, and the new political authority correspondingly extended over an area not strictly delimited by religious affiliation.

The process was gradual, though not incremental. Progression was frequently followed by sudden regression, and remarkable policy or strategy shifts were often recorded. The dynamic confrontation between the new creed and the traditional social order, the attempts to bring about a power independent of personal charisma, and the ups and downs of the relations with the other 'heavenly religions' all provide evidence of this course of action.

In the formative period of the Islamic community, we can distinguish three main phases along with the conventional distinction in a Meccan and a Medinan stage; the first phase and the Meccan stage basically overlap, while a second and a third phase can be identified in the Medinan stage, since the early coexistence of Muslims, Jews and pagans in Medina rapidly faded and dramatically ended with the purge of the last Jewish tribe, leaving the field to a holistic community.

In the first phase (from 610 to 622), the background consisted of Muhammad's preaching and his fellow tribesmen's refusal of the message. The new ideas were proclaimed at first in a climate of general indifference. However, as soon as they turned into open criticism and firm condemnation of the moral and social order of Mecca, they generated opposition among the Quraish (al-Maqrīzī, *Imtāᶜ*: I, 18). The Islamic tradition tends to emphasise the 'persecutions' that neophytes had to endure at the hands of the Meccans; in the beginning Muhammad's opponents only verbally criticised the former's teachings and prophethood, and the sole form of active hostility seems to have been a boycott (Montgomery Watt 1953: 123). The call to submit to God's will – hence the etymological meaning of Islam – met with tepid reception, and thus Muhammad and his proselytes started leading a life secluded from the rest of the Meccans (some followers even took shelter in the Aksumite Empire, in the so-called 'Hegira to Abyssinia') and took up preaching to other kin groups.

In 619, Muhammad's uncle abū Tālib died, leaving him without protection. In the system of kin group relations, enjoying someone's protection was a vital issue, and the Prophet of Islam had to replace abū Tālib with someone else. He therefore applied to abū Lahab, who turned him down on the grounds of Muhammad's belief that their common ancestor ᶜAbd al-muttalib was doomed. Since no Quraish was willing to protect him, Muhammad turned to other kin groups in want of protection; at this point, as has been suggested (Montgomery Watt 1953: 138), the horizons of the prophetic mission – originally limited to Mecca and its inhabitants – expanded to reach a larger audience.

Muhammad expected to find support in Ta'if among the banū Mālik as a consequence of their rivalry with the Quraish-allied Ahlāf, but the plan failed and the Prophet of Islam had to leave the city under a volley

of stones. Because of abū Lahab's refusal, Muhammad could not even return to Mecca and had to obtain a *jiwār*, a 'pact of protection' (ibn Hishām, *Sīrah*: 251, and al-Tabarī, *Mukhtasar*: I, 1203), at first denied by some tribal chiefs and eventually granted by the *sayyid* of the banū Nawfal (Mélamède 1934: 17-58).

Nomadic groups did not provide better treatment, but Yathrib presented more promising conditions. Yathrib – the future *Madīnat al-nabī* (the City of the Prophet), or Medina (the City by antonomasia) – was a divided settlement: on the one hand, the two main kin groups (the ᶜAws and the Khazraj, both stemming from the banū Qaylah) had been at strife ever since the 6th century, and on the other hand there was a sizeable presence of Jewish tribes (the banū Qurayzah, the banū Qaynuqāᶜ, and the banū 'l-Nadīr).

The first contact with a small delegation of six Khazraj in Mecca for the pilgrimage was made in 620. The following year (621), five of the six pilgrims of the previous year returned to Mecca with another seven people, including two ᶜAws. In ᶜAqabah they committed themselves to avoid some vices and follow the new religion: such is the content of the so-called 'Oath of Women' (*bayᶜat al-nisā'*). With the joining of non-Quraish, Islam crossed the traditional kin boundaries, even if the oath entailed nothing but a religious obligation. After the first *bayᶜah* of ᶜAqabah, Muhammad sent to Yathrib Musᶜab ibn ᶜUmayr, who won to Islam many converts from almost all the kin groups of the settlement.

In 622, a larger group of 75 people from Yathrib returned to ᶜAqabah, where they made the stricter commitment to fight for the Prophet of Islam; the new oath is thus remembered as the 'Oath of War' (*bayᶜat al-harb*). One of Muhammad's uncles, al-ᶜAbbās, is believed to have overseen the operation in order to ascertain if the ᶜAws and Khazraj had properly assumed the obligation of protecting Muhammad. The second oath of ᶜAqabah (the Great *bayᶜah*) produced a qualitative leap in the formation of the community; the mere submission to some moral and religious teachings turned into undertaking to fight under the leadership of Muhammad, also against the kin order. In sharp contrast with the conciliatory attitude earlier recommended, the political element was later confirmed and secured by new revelations, which were believed to authorise war or even prescribe it (ibn Hishām, *Sīrah*: II, 51 and 62ff, and al-Tabarī, *Ta'rīkh*: II, 87ff). The wording implies that armed action is justified only in case of attack, but the attitude of the Quraish was taken as an 'attack' (Q. 22:39, and 2:191).

After having received the second oath of ᶜAqabah, Muhammad encouraged his Meccan followers to migrate to Yathrib, and in the summer of 622 some groups started making the Hegira (*hijrah*). According to Muslim sources, Muhammad remained in Mecca until rumours of a murder plot forced him to leave the city with abū Bakr (Q. 9:40).

When they reached Yathrib the Hegira was fully accomplished. Meccans who migrated, known as *muhājirūn*, severed their kin ties, hence renouncing the protection and the other benefits of membership in the kin group. After the Hegira, embracing Muhammad's prophetic message assumed a distinctively political flavour, and even the spirit of Koranic revelations significantly changed – so much so that Islamic tradition distinguishes between Meccan and Medinan parts of the Qur'ān. Hegira itself was perceived as such a turning point in Islamic history that its date of occurrence was soon adopted to mark the beginning of the Islamic era (AH).

The severance of kin ties involved in the Hegira, though, should not be overestimated, but rather understood in the context of a network of group relations whose boundaries are determined by the presence of the group. Firstly, the matter concerned only the Meccans who migrated, since the Medinans kept leading their lives within the kin order; as a consequence, a polarisation between *muhājirūn* (Meccans) and *ansār* (Medinans) came about because of this difference in status. Secondly, the second oath of ᶜAqabah did not provide a suitable organisation for the *muhājirūn*, whose protection and integration therefore had to be achieved through alternative forms of membership other than the traditional ones.

An attempt to engender higher social cohesion was the *mu'ākhā*, a fictitious brotherhood conceived to couple two *muhājirūn*s, or a *muhājirūn* and an *ansār*, with mutual rights of inheritance (Tyan 1954: 131). The *mu'ākhā*'s main aim, though, seems to have been military, since the coupled men had to stand side-by-side in battle and thus refrain from disorderly reactions when facing the enemy (Montgomery Watt 1956: 301). Very little is known about the *mu'ākhā*, which is said to have been abandoned after the Battle of Badr (624), even if the *mu'ākhā* between al-ᶜAbbās and his nephew Nawfal ibn al-Hārith was undoubtedly instituted later. A lingering echo of the fictitious brotherhood can still be heard at the time of Muᶜāwiyah, who was coupled with al-Hutāt ibn Yazīd when Muhammad marched on Mecca in 630 (ibn Hishām, *Sīrah*: III, 374ff).

With the Hegira the community entered a new phase of its formation, during which the political dimension started shaping up while retaining – in the first Medinan period – a composite makeup. Shortly after the Hegira, Muhammad organised Yathrib's population along legal and political lines in what is known as the *Sahīfah*, or 'Charter of Medina'. Besides controversies over the authenticity of the document,[1] the organisation portrayed is consistent with evidence from other sources; the kin bond was somehow marginalised, but the idea of the bond of the common faith in Islam as the sole basis for the new community had

yet to come. The 'community' mirrored in the Charter – transmitted by ibn Ishāq and included by ibn Hishām in his narrative of Muhammad's life, the *Sīrat rasūl allāh*[2] – included: (1) Muslims who migrated from Mecca (the *muhājirūn*s) and converts from Yathrib (the *ansār*s), (2) Jews who guarded their religion but had to contribute to the expenses of Muslims in case of war, and (3) pagans who were no longer allowed to apply to non-Muslim Meccans the traditional means of protection for people and goods (*jiwār* or *hilf*). The political and military chief was Muhammad, recognised as the Prophet (*nabī*) and Messenger (*rasūl*) of God; the Charter is said to be derived from Muhammad (art. 1), and any matter of dispute had to be referred to God or to him (art. 23).[3] Such unilaterality is backed by the fact that Muhammad is thought to have been received in Yathrib as an arbiter for tribal disputes and to ensure internal peace (Caetani 1911-1914: III, 27-36).

The organisation provided for in the Charter turned out to be quite unstable, and paralleled the fate of relations with Judaism. The Jews had been initially considered potential allies and converts, but their rejection of Muhammad's preaching exacerbated feelings of hostility. The Arab character of the message was consequently stressed, and Jews were declared falsifiers, corrupters of their own Scriptures and forgers of the pure monotheism that the common father Abraham had introduced in Arabia and that Muhammad was re-establishing and bringing to completion. Changing the direction of prayer (*qiblah*) from Jerusalem to Mecca in 624 was the first hint of the new attitude, shortly followed by the expulsion of the banū Qaynuqāᶜ after the Battle of Badr. In 625 the Muslims' defeat in the Battle of Uhud was followed by the siege of the banū 'l-Nadīr, who were eventually forced to leave Medina. The last Jewish tribe in town, the banū Qurayzah, suffered the worst fate; after the Battle of the Trench in 627 all the men were killed, the property was divided and the women and children were taken captive.

The purge of the Jews paved the way for a religiously homogeneous society, and in the third phase (from 627 on) the community (*ummah*)[4] acquired its distinctive and ultimate characters.

In the Qur'ān the word '*ummah*' had been used throughout the second phase to indicate a 'group of people'; Jews and Christians were 'communities' (Q. 23:52), and even Arabs were considered an *ummah* (Q. 13:30) like all those who are righteous (Q. 7:168), or the groups of Jews 'who guide and do justice in the light of truth' and of Christians 'who enjoin what is right and forbid what is wrong' (Q. 7:159 and 3:113-114). When friction with the Jewish tribes of Yathrib unveiled the hindrances preventing the inclusion of non-Muslims in one religious community, the Qur'ān prohibited alliances with Jews and Christians (Q. 5:51) and started referring to a distinct, superior community including

only Muslims (Q. 3:104 and 110, and 2:143), while all other communities had to be fought against until they paid the tax, 'being brought low' (Q. 9:29). This marks the beginning of the idea that non-Muslims – even if excluded from the Islamic community and organised in separate groups – can be connected to the *ummah* by a bond of submission.[5]

In the Medinan period closer ties among Muslims were forged and the basis was laid for the organisation of the Islamic community and its legal provisions. In the meantime, a turning point in the ongoing conflict with Mecca was Muhammad's decision in 628 to march with a group of Muslims to his birthplace to perform the *ʿumrah* (the 'minor pilgrimage' that can be undertaken at any time of the year). The Quraish were determined not to allow the Muslims to perform the pilgrimage and intercepted them outside the city's holy territory, in Hudaybīyah, where the parties signed an agreement providing for the Muslims' immediate retreat and the Meccans' consent to allow the Muslims to come on pilgrimage the following year.

According to the Islamic tradition, the Treaty of Hudaybīyah included clauses calling for a ten-year truce between parties, the returning of any Quraish who had left Mecca without his guardian's permission (with no reciprocity of Muslim deserters) and the freedom to establish alliances with other tribes. Such clauses seem to contrast with the growing success of Muhammad, and he had to face widespread discontent among his followers. The truce was initially respected, and in 629 some Medinans performed the *hajj* to Mecca, but the pact was soon denounced on the basis of an attack on a tribe allied with Muhammad. Ready to wage war, Muslims headed for Mecca, but the city surrendered peacefully. Muhammad then circled the Kaʿbah seven times and solemnly proclaimed that 'every claim of privilege, whether of blood or property', was abolished (Montgomery Watt 1956: 261-302), while all the idols in the sanctuary were broken and the stone gods destroyed.

The spread of Islam strategically accelerated in the second Medinan phase, especially after the successful political and military achievements against Mecca. Many tribes that had maintained a neutral stance up to that point deemed it necessary to side with the stronger, and – according to Arab custom – sent delegations (*wufūd*) to Muhammad in order to settle their adherence to Islam and to pay the ensuing tributary duties. The clear political reason behind such conversions to Islam surfaced at Muhammad's death, when some tribes across the Peninsula refused to keep paying their tributes, thus forsaking Islam. Abū Bakr, the first caliph or political successor of Muhammad, had to tackle the issue of dissident tribes, arms in hand, in what became known as the '*Riddah* (apostasy or rebellion) Wars'.

To sum up, after the preaching in Mecca, where the first proselytes (all Quraish) certainly found in the revelation a common and distinctive element that did not, however, disconnect them from their kin relations (610-622), the Hegira led to a short-lived experience in Yathrib of coexistence among Muslims (both Quraish and non-Quraish), Jews and pagans (622-625). The increasing conversions of pagans and the elimination of the Jewish tribes resulted in the formation of a religiously homogeneous community. The Islamic community has maintained such a holistic character ever since, notwithstanding its broad diffusion; nonetheless, it has had to deal with the deep-rooted mentality and rivalry among kin groups (from 625 on).

2.2 Forms of membership in the Islamic community

The full political and religious unity of the Islamic community (*al-ummah al-islāmīyah*) was but an ephemeral event in history. Even so, it has kept the hearts of Muslims beating for centuries (Gardet 1967: 274). At Muhammad's death, the ancient tribal particularism that only Muhammad's personal charisma managed to temporarily subdue vehemently re-emerged, and even the great impetus of the conquests was soon followed by centrifugal forces that gradually tore apart the caliphal empire. Muslims' consciousness of belonging to the same community, however, passed the test of time despite the several internal schisms and the countless political and dynastic upheavals.

Classical Islamic law finally fixed the forms of membership in the Islamic community as well as the status of non-Muslims living under Islamic authority, and the position of those professing heretical doctrines or committing apostasy (individually or collectively).

2.2.1 Muslims

A Muslim is a Muslim by birth or by conversion. Islam presents itself as the natural religion of mankind,[6] and some Koranic verses support such a view (Q. 30:30-32),[7] underpinned by traditions (*hadīth*) relating Muhammad's words, 'No child is born but upon the "natural religion (*fitrah*)". It is his parents who make him a Jew or a Christian or a polytheist'.[8] Such a natural inclination to worship the one God is an inherent disposition that leads men to a pure monotheism (*hanīfīyah*) epitomised by Islam.

Every child of a Muslim man is a Muslim according to Islamic law; here a well-established rule is borrowed from Jewish law, which, however, applies it to the woman with its typical Biblical insight. The com-

bination of the Jewish and the Islamic rule may give rise to a positive
conflict of laws; in the case of the offspring of a Muslim man and a
Jewish woman, indeed, the child is a Muslim under Islamic law and a
Jew under Jewish law. A Muslim woman is obliged to marry a Muslim
man and therefore can only give birth to a Muslim child. Thus a Mus-
lim can only generate a Muslim; the man by virtue of a general rule,
and the woman by virtue of an impediment to marriage.

   At the child's birth, the Muslim father whispers into the newborn's
right ear the call to prayer (*adhān*): 'God is great (four times), there is
no god but God (twice), Muhammad is the messenger of God (twice),
come to prayer (twice)'. On the seventh day, the child is given a name
(*tasmiyah*), a sacrifice is offered (*ʿaqīqah,* consisting of two pieces of
small livestock for a boy and one for a girl), and alms are distributed.[9]
Such birth rites, as well as later rituals like circumcision (*khitān*),
though, do not affect the child's religion; he/she is a Muslim because a
Muslim begot him/her.

A non-Muslim can convert to Islam by pronouncing the *shahādah* in
Arabic (*lā ilāh illā allāh wa-Muhammad rasūl allāh*) – there is no god
but God, and Muhammad is the messenger of God – in front of two
male adult Muslim witnesses. The *shahādah* represents the basic tenets
of Islamic creed, and Islamic theology (*kalām*) is considered a deriva-
tion of the *shahādah* itself. The *shahādah* is the Muslim declaration of
belief in the oneness of God (*lā ilāh illā allāh* – there is no god but
God) and in Muhammad's prophethood (*wa-Muhammad rasūl allāh* –
and Muhammad is the messenger of God). Shia Muslims add a third
item on ʿAlī's status (*wa-ʿAlī walī allāh* – and ʿAlī is the friend of God),
but such an addition is generally regarded as a mere recommendation
(*mustahabb*, and not *wājib*, obligatory) and is commonly omitted in the
calls to prayer (*adhān* and *iqāmah*).

   Just like any freed slave, a non-Arab convert to Islam needed an Arab
patron. Here analogy with pre-Islamic practices of clientage is striking.
In the Age of the Conquest, this rule created two classes of Muslims:
Arabs and non-Arabs. Since the former had a well-established tribal
system, only conversion was needed to embrace Islam, while for the
latter clientage was a requirement to become Muslims and be attached
to an Arab kin group. The inferiority engendered by the non-Arab Mus-
lim's status of client (*mawlà*) led to anti-Arab political and literary
movements, like the *Shuʿūbīyah*.

   Under Islamic law, the father's conversion results in the conversion
of his minor and his mentally weak children. The majority of scholars
believe that the mother's conversion produces the same effect, but not
Maliki jurists. Children who have not attained puberty can neither va-
lidly convert to Islam nor abandon it (al-Zuhaylī 1997: vi, 184). Some

Hanafi and Hanbali scholars, however, on account of both the minor's and the public interest (*maslahah*), admit that the discerning minor (*mumayyiz*) can convert to Islam but cannot abandon it.

2.2.2   Non-Muslims

In Muhammad's early days, a fairly liberal attitude towards religion dominated among the Hejazi kin groups, each having its own idol in the sanctuary of the Ka‛bah. Besides polytheists there were two communities for which the religious bond somehow exceeded the kin bond: a larger Jewish and a smaller Christian community. With the rise of Islam a new community took shape (Q. 3:103-104) and was soon declared 'the best of peoples, evolved for mankind, enjoining what is right, forbidding what is wrong and believing in God'(Q. 3:110).

The emergence of the Islamic community overturned previous peaceful relations among religions, imposing a system of ranked religious groups. A tradition (*hadīth*) relates that Muhammad instructed on his deathbed not to leave two religions in Arabia (ibn Sa‛d, *Tabaqāt*: II, 44), but an earlier account ascribes this instruction to ‛Umar ibn al-Khattāb, the second caliph (Caetani 1911-1914: IV, 351). Despite disputes on the authenticity of the narrative, Jews and Christians in the Arabian peninsula were soon almost entirely uprooted. A case in point is the deportation of the entire Christian population of Najrān in a new settlement in Iraq (al-Najrānīyah; Shahid 1971).

Islam establishes a hierarchy among other religions. At the top of the ladder are the People of the Book (*ahl al-kitāb*): those who received scriptures revealed by God before the time of Muhammad. Among these 'true believers' worthy of tolerance are the followers of monotheistic Abrahamic religions: Jews, Christians and Sabians (Q. 2:62, and 5:69). A later verse mentions also Zoroastrians and lists them ahead of polytheists (Q. 22:17). An initial tolerant attitude towards the *ahl al-kitāb* (Q. 2:136-137, and 22:17) was later replaced by a more adversarial relationship (Q. 9:29), which prevails over the former verses as a result of the application of the theory of abrogation (*naskh*). Nevertheless, the latter verse allowed the extension of the provisions regarding the *ahl al-kitāb* to non-Arab polytheists, thus avoiding the alternative of conversion to Islam or the sword.

Like membership in the Islamic community, membership in non-Islamic communities is determined in accordance with the Islamic view by birth or by conversion, but conversion from Islam to another religion is unacceptable. For Judaism, the child of a Jewish mother is a member of the People of the Covenant (*bᵉrīth*), while conversion is a far more intricate matter. Conversely, there is no membership in the Christian community by birth. The child of a Christian parent is not a

Christian until the christening (the practice of infant baptism started spreading by the end of the 2nd century; Aland 1961: 22ff). Islamic law, however, applies the same Judeo-Islamic perspective of membership by descent to the Christian communities of the Near East, and does not employ the theory of *fitrah* (Islam as the natural religion of man). If it did, anyone receiving baptism after puberty would be considered an apostate.

2.3 Partition from the Islamic community

Drawing a line between orthodoxy and heterodoxy in Islam is no easy task. It is also highly doubtful whether 'orthodoxy' and 'heterodoxy' are categories that can fruitfully be applied to Islam, since there is no overseeing religious authority in the largest denomination of Islam in the Arab world, Sunni Islam. Sunni Muslims are the 'People of the Sunnah and the Community' (*ahl al-sunnah wa-l-jamāᶜah*), implying that religious authority is not concentrated in clergy but rather diffused in the Qur'ān and the Sunnah and their communitarian interpretation developed by generations of scholars (ᶜ*ulamā'*) and lawyers (*fuqahā'*).

Scholarly views on the slender divide between acceptable dissenting opinions and heretical doctrines differ considerably. Openly abandoning Islam to embrace another religion is a much easier controversy to unravel. Rules on collective or individual apostasy apply, and such rules are the only way of severing the bond of membership in the Islamic community.

2.3.1 Muslim sects

'And my community will split into 73 sects'.[10] On the basis of this well-known *hadīth* attributed to Muhammad, Muslim scholars made great efforts to identify all the sects, since 72 of them were doomed to burn in the fire and only one was destined to be saved (*al-firqah al-nājiyah*). Regardless of the authenticity of the tradition and the pious scholarly efforts, schisms with profound and long-lasting effects occurred shortly after the death of Muhammad. Four decades had not elapsed when the first split (*al-fitnah al-kubrà*) marked the end of the early unity of the Islamic community. What began as a political confrontation over the right to the caliphate turned into the principal religious rift in Islamic history: on the one side were the supporters of Muᶜāwiyah, the governor of Syria and future founder of the Umayyad caliphate (Sunni Muslims), and on the other were the partisans of ᶜAlī asserting the right to the caliphate of Muhammad's household, the *ahl al-bayt* (Shia Muslims). Some of ᶜAlī's partisans, however, did not agree on subjecting

ᶜAlī's legitimate authority to arbitration and mutinied (Kharijite Muslims).

One of the most influential Muslim theologians, the Ashʻarite polymath al-Ghazzālī (d. 1111), dealt with the question of orthodoxy and heresy at the end of his *al-Iqtisād fī 'l-iᶜtināq* (The Median in Belief). Al-Ghazzālī's starting point was the proper use of the term *kāfir* (infidel, unbeliever) – broadly the person who denies Muhammad's prophethood or declares Muhammad a liar.[11] He then defined different degrees of *kufr* (infidelity, unbelief). Included among *kuffār* (plural of *kāfir*) were certainly the Jews and the Christians, and in a lower position were also polytheists and followers of other religions that denied prophethood, like Brahmans or atheists. Even Muslim philosophers whose theories clashed with the Qur'ān or only formally admitted Muhammad's prophethood had to be considered infidels. Not so for other Islamic sects or theological schools that truly accepted the tenet of Muhammad's prophethood (like Muslim anthropomorphists or Muʻtazilis); in such cases suspension of judgement was recommended. A Muslim claiming an Islamic religious precept to be nonbinding is not a *kāfir* only if the precept is a minor precept, as in the case of the Muslim who rejects dogma not grounded in the Qur'ān or the Sunnah but simply inferred and non-controversial (by *ijmāᶜ*, consensus). Al-Ghazzālī acknowledged an exception to this rule in the case of a Muslim maintaining that God could send other prophets, even if this dogma is grounded on a Koranic verse (Q. 33:40) and a tradition.[12] The Ashʻarite theologian deemed that the two passages can be interpreted metaphorically.

The Ashʻarite-Ghazzalian doctrine, still prevalent in Arab Islam, was contested by the 'dogmatic integralism' of ibn Taymīyah (d. 1328), whose legacy was later recovered by Wahhabism in the 18th century. According to ibn Taymīyah, dangerous errors and aberrations undermining the true faith permeated the Islamic community and had to be uprooted by resorting to the Hanbali middle path: uncompromising on the principles of divine revelation but tolerant of minor differences. 'As the Prophet said – wrote ibn Taymīyah –: "The Muslim is brother of the Muslim".[13] How then can it be permitted to the community of Muhammad to divide itself into such diverse opinions that a man can join one group and hate another one simply on the basis of presumptions or personal caprices, without any proof coming from God? [..] Unity is a sign of divine clemency; discord is a punishment of God'.[14] On the other hand, however, members of deviant Islamic sects should be treated as collective apostates. In a *fatwà* on ᶜAlawis (or *al-nusayrīyah*), for example, ibn Taymīyah affirmed, 'They are greater disbelievers than Jews and Christians. Nay, they are greater disbelievers than most of the *mushrikīn* (polytheists), and their harm to the *ummah* of Muhammad

(PBUH) is greater than the harm of the disbelievers who are at war with Muslims'. Ibn Taymīyah had a similar opinion on the Druzes (*durūz*), and stated that both groups were so far beyond the confines of Islam that even the food they prepared was forbidden to Muslims and it was unlawful to have intercourse with their women or to accept their repentance. In other words, the only way to treat them was physical an-nihilation, which is something that the Mamluks, through ibn Tay-mīyah's prodding, tried to do during his lifetime.

2.3.2   Collective apostasy

The narrow line of demarcation between Muslim sects and apostate groups has hardly ever been drawn out of sheer dogmatic considera-tions. Political reasons have often motivated the decision to declare that a Muslim sect had forsaken Islam and thus to apply the rules of collec-tive apostasy. At an early stage, collective deviations were dealt with in a practical way, while a definite theory on collective apostasy was devel-oped by later scholars. Nevertheless, collective apostasy has always been declared on a case-by-case basis.

The first splinter groups appeared on the Islamic scene at an early date. Shortly after Muhammad's death, some factions refused to recog-nise Muhammad's political successors, claiming that they had sub-mitted only to Muhammad and that with his death their allegiance had duly ended (Caetani 1911-1914: III, 346ff). These factions withheld their financial contribution (the Islamic alms tax or *zakāh*), but they did not otherwise challenge Islam, even if some leaders asserted their prophethood. Abū Bakr, the first caliph, contended that they had not merely submitted to Muhammad but had joined the Islamic religious community, and defying the caliphate meant breaking from the com-munity, thus committing apostasy (*riddah*). He declared war on the re-bels. The Islamic tradition labelled these campaigns the 'Wars of Apos-tasy' (*hurūb al-riddah*), and later scholars depicted them as the first *ji-hād* against the infidelity of Arabs (Sachedina 1988: 53-90).

The three major hotbeds of the rebellion were al-Yamāmah, northern Hejaz and the city of al-Sanᶜāʾ in Yemen, and the main dissidents were Musaylimah of the banū Hanīfah in al-Yamāmah, Sajāh of the banū Tamīm in northern Hejaz, and al-Aswad al-ᶜAnasī in Yemen. Musayli-mah proclaimed himself prophet, and therefore Muslim authors re-member him as the 'Liar' (*al-kadhdhāb*). His memory was yet alive in 1862 when William Palgrave visited Nejd. The English scholar reported that Musaylimah was still remembered as a prophet and some of his 'burlesque imitations' of the Qurʾān were still recited (Palgrave 1865: I, 382). After two unsuccessful expeditions, he was defeated by Khālid

ibn al-Walīd in the conclusive combat of the 'Garden of Death' (*hadīqat al-mawt*) in 633.

Islamic law later developed a set of rules pertaining to the treatment of factions that were considered to have collectively abandoned Islam. The territories inhabited by collective renegades were to be declared *dār riddah* (home of apostasy) and thus subjected to even harsher regulations than the ones prescribed for the *dār al-harb* (home of war, i.e. non-Muslim governed territories). According to the 8th-century Hanafi jurist al-Shaybānī and the 11th-century Shafi'i jurist al-Māwardī, no truce can be concluded with them, nor can money be accepted from their hands for allowing them to live in their land, and they cannot even be taken captives. On this last point, however, al-Māwardī mentions al-Shāfiʿī's stricter position and abū Hanīfah's soothing exemption for the women who took refuge in the *dār al-harb*.

Under the Abbasids (750-1258) some converts who were reckoned still to be followers of Manichaeism were accused of being *zindīq*, *zandaqah* being the condition of those who formally embraced Islam but covertly guarded their previous beliefs, thus representing a serious threat to Islam. *Zandaqah* was included in the category of apostasy, and the third Abbasid caliph, al-Mahdī (ruled 775-785) ordered the death of all the suspect crypto-Manichaeans. In time, blunt accusations of apostasy were addressed to many Sufis. One of them, the Persian mystic Mansūr-e Hallāj (d. 922), was first called a *zindīq* for his Manichaean-related theory on the mystic union, and later executed for denying the obligation to perform the pilgrimage to Mecca (*hajj*) for those who meet God in their hearts. A century later, however, many Copts forced to convert under the Fatimid caliph al-Hākim (d. 1021) were later allowed to revert to Christianity without being punished for apostasy.

Intolerance of and discrimination against deviant factions is not merely a set of historical rules and past practices. Two present-day cases in point are the Ahmadis and the Bābī-Bahā'īs, which are both movements that arose in the 19th century in non-Arab Muslim lands. On the other hand, however, some groups managed to maintain their inner atypical beliefs while being outwardly mainstream Muslims. An interesting case is that of the Donmeh (from the Turkish word for convert, *dönme*), or Sabbatean crypto-Jews. The Donmeh follow the path of the self-proclaimed Jewish messiah Shabbatai Zevi (d. 1676), a Jew who converted to Islam in the 17th century but covertly continued practicing Jewish rituals. Notwithstanding the closely knit social network sustained by the rigorous practice of intermarriage, the Donmeh fully integrated into Turkish society and are thought to have made a considerable contribution to the rise of the Young Turks.

Ahmadis are the followers of Mīrzà Ghulām Ahmad (d. 1908), a religious figure from Qadian, Punjab. Mīrzà Ghulām Ahmad's claims of being the *mujaddid* (the reformer) and later also the Messiah and the Mahdī (the guided one) sparked great controversy among Muslims, and he and his followers were branded as heretics. Nevertheless, Ahmadis consider themselves Muslims, and Mīrzà Ghulām Ahmad named his movement the Ahmadi Muslim Community (*Jamāᶜat-i Ahmadīyah Muslimah*). The community split into two branches soon after the death of Mīrzà Ghulām Ahmad. The *Jamāᶜat-i Ahmadīyah Muslimah* and the *Ahmadiyah Anjuman Ishāᶜat-i Islām* vary in their interpretations of Ahmad's teachings and claims (especially on the return of Jesus, the status of Mīrzà Ghulām Ahmad, the finality of Muhammad's prophethood, the caliphate and the *jihād*), but members of both branches are labelled as collective apostates. In 1922 in British India, the Madras High Court ruled that anyone who accepted the prophethood of Muhammad and the supreme authority of the Qur'ān would be treated as a Muslim in the eyes of the law.[15] Hence, a Muslim becoming an Ahmadi was not an apostate. The situation changed after the establishment of the Islamic Republic of Pakistan. In 1974 the Pakistani Parliament introduced in the Constitution the definition of the term 'Muslim' and a list of groups that are, legally speaking, non-Muslim. The amendment thus explicitly deprived Ahmadis of their identity as Muslims.[16] A decade later, Ordinance XX of 1984 was issued to further restrict the activities of Ahmadis. In particular, the Ordinance added two sections to the Pakistani Penal Code of 1860, punishing the Ahmadis for misusing Islamic epithets, descriptions or titles (PPC 298 (b)), or for calling themselves Muslims, preaching or propagating their faith, outraging the religious feelings of Muslims or posing as Muslims (PPC 298(c)). Act III of 1986 (also known as the 'Blasphemy Law') raised the penalty for remarks disrespectful of Muhammad from fine or imprisonment to death (PPC 295(c)); Ahmadis' beliefs in the prophethood of Mīrzà Ghulām Ahmad are *per se* considered defilements of Muhammad's name. The Muslim World League had already classified Ahmadis as a sect of apostates in 1974[17] and recommended severe measures against them.[18]

Similarly, the Muslim World League condemned the Bahā'īs in 1988. Bahā'īs, however, do not consider themselves Muslims, but rather believe in different 'manifestations of God' and in the idea of progressive revelation. The Bahā'ī faith developed in 19th-century Persia, growing out of Shaykhī doctrines rooted in Shia Islam. In 1844 a 25-year-old Shirazi, Sayyid ᶜAlī Muhammad, declared that he was the forerunner of the Mahdī, or his 'door' or Bāb. The Bāb and his followers were persecuted by the Muslim hierarchy and the Bāb was eventually executed because his teachings contradicted the finality of Mu-

hammad's prophethood, a central point of Islamic faith. In 1852 one of the Bāb's persecuted followers, Mīrzà Husayn ʿAlī Nūrī, claimed to be the fulfilment of the Bāb's eschatological prophecy and assumed the name of Bahāʾuʾllāh, the Glory of God. The Bahāʾī doctrine is highly syncretistic, and its core tenets are the 'three onenesses': the oneness of God, the oneness of religion and the oneness of humankind. Bahāʾīs propagated out of Persia and are currently one of the world's most widespread religions. Since the Islamic revolution in Iran, Bahāʾīs have been virulently persecuted, allegedly on grounds of belonging to an 'organisation-enemy' of the Islamic Republic. The Bahāʾīs' relations with Israel, where their World Centre is located, are often cited as evidence of their disloyalty. In the Arab world and in a Sunni context, Bahāʾīs are not treated in a more conciliatory manner. In 2003 the Islamic Research Academy of al-Azhar confirmed its previous orientation, declaring the Bahāʾī faith 'a form of intellectual epidemic' (*min nawʿīyāt al-awbiʾah al-fikrīyah*). In Egypt, Bahāʾī places of worship are still banned (Law 263 of 1960),[19] and the opportunity of seeing their own religious affiliation (*al-bahāʾīyah*) indicated on official documents sparked great excitement in the Bahāʾī community, but the Supreme Administrative Court in December 2006 overruled the decision of a lower court.[20]

2.3.3 Individual apostasy

Joining Islam is fairly easy, but abandoning it has severe consequences. The Qurʾān asserts that God despises apostates (*murtadd*), and a harsh punishment for apostasy (*riddah* or *irtidād*) is envisioned for the afterlife (Q. 2:217-218). The idea is reasserted in other passages (Q. 3:85-91 and 137, 4:115, and 16:106), but by no means does the text prescribe worldly punishment for turning from Islam.

All Islamic legal schools, however, agree on the point that apostasy needs to be punished, even if they hold different views on how it should be punished. Maliki, Hanbali and Jaʿfari jurists list apostasy as a *hadd* crime, i.e. a capital offence punishable by a pre-established punishment found in the Qurʾān. Hanafi and Shafiʿi jurists do not regard apostasy as a *hadd* crime, but nevertheless share the common view that it should be punished by death.[21] Capital punishment is based upon two *hadīth*s. According to the first, Muhammad said, 'Whoever changes his religion, kill him',[22] and according to the second, the blood of a Muslim can be shed only in three cases: '(1) in retaliation for murder, (2) for having committed adultery (3) or for having reverted from Islam and left the community'.[23]

According to Islamic law, apostasy is not limited to the abandonment of Islam for the sake of joining another religious community, but can

also be perpetrated by committing a sacrilegious act or professing a non-mainstream belief. Scholars listed examples of sayings or acts that are regarded as implications of unbelief, but general rules providing established criteria have not been constructed (Peters-De Vries 1976: 3).[24] Different examples can be grouped into categories of offences against monotheism (e.g. asserting that there are other gods besides God, or worshipping an idol), Muhammad's prophethood (e.g. rejecting Muhammad's claim to be a prophet, or proclaiming him/herself a prophet) or other beliefs (e.g. denying the obligatory status of ritual prayer, or contemptuously disposing of a copy of the Qur'ān). The acts entailing apostasy must be proved by the testimony of two witnesses (a generic accusation is not sufficient) or by confession.

In order to perform a legal act of apostasy, the Muslim must be adult (*bāligh*), in full possession of mental faculties (*ʿāqil*) and acting out of free will (*mukhtār*). If the Muslim was not born a Muslim, Maliki jurists require an unambiguous and explicit conversion (*husn al-islām* clause, viz. under no constraint, when sober, with witnesses and the parents' assent if the person is not of age). As far as age is concerned, the consensus (*ijmāʿ*) is that minors can apostatise only after having reached the age of discernment. According to Shafi'i doctors, minors cannot apostatise until they come of age, while jurists of other schools hold that discerning minors (*mumayyiz*) can commit apostasy, even if their coming of age must be awaited in order to invite them to repent and, in case of persistence in their apostasy, to execute them. Apostasy must be deliberate. The individual is not held responsible in the case of constraint, delirium, mental illness or misinterpretation of sacred law (namely, believing that something prohibited is permissible).

When apostasy has been legally established, the apostate is exhorted to re-embrace Islam (*istitābah*) before sentencing; exhorting the apostate is obligatory (*wājib*) for all schools, except for Hanafis who deem it merely recommended (*mandūb*). The apostates are given three days to reflect. The possibility of revocation and repentance (*tawbah*) is acknowledged by Sunni scholars, whereas Shia Ja'faris accept repentance only of an apostate born an unbeliever (*murtadd millī*) and not if born a Muslim (*murtadd fitrī*). Magicians (*sāhir*), heretics (*zindīq*) and recidivists are excluded from *istitābah*; their apostasy is legally irrevocable, since there can be no reasonable certainty that they earnestly returned to Islam.

Apostasy entails the death penalty. A closer consideration of the different treatments afforded to male and female apostates, together with a cross comparison of Islamic and Jewish prescriptions on the punishment (and to whom it should apply), helps cast light on the proportion of capital punishment for apostasy in Islamic law, notwithstanding the absence of a clear Koranic basis for it.

Hanafi and Ja'fari scholars rule out the killing of the female apostate. She should be imprisoned until she returns to Islam, and during imprisonment she should be beaten at prayer time every day (Ja'faris) or every three days (Hanafis). The milder treatment is explained with reference to the woman's weakness, which renders her unable to pose a serious threat to the Islamic state (al-Jazīrī 1988: IV, 426). A *hadīth* is often quoted to prove Muhammad's disapproving of the killing of a woman: 'She was not fighting those who are fighting'.[25]

The apostate must be executed by the sword. Scholars reached such a conclusion without any explicit indication in the sources. Earlier, a tradition reports that ibn ʿAbbās rebuked ʿAlī for having burnt a group of apostates,[26] reminding him of Muhammad's words, 'Do not punish anybody with God's punishment'.[27] ʿAlī's act would have been regarded by Jews as fully compliant with the prescriptions of Deu. 13:13-19 (NJB) on collective apostasy, but apparently it hurt Muslim sensibility. Another *hadīth*, narrated by ʿĀ'ishah, relates that Muhammad prescribed that the Muslim 'who comes up and fights against God and His messenger must be killed, crucified or expelled from the territory'.[28] This *hadīth* is a variant of the aforementioned tradition concerning the three cases in which the shedding of a Muslim's blood is permitted. Here, however, other options are given, such as crucifying or exiling the man, and it is clearer that the sanctioned conduct is revolting and fighting against God and His messenger, not just abandoning Islam.

The execution by the sword, in the absence of any textual evidence in the Islamic tradition, gains special meaning if compared with parallel Jewish rules. The Torah does not impose a punishment for apostasy, but the Deuteronomic code provides for the killing of those who entice a Jew to forsake Judaism and serve foreign gods. It is incumbent upon close relatives to denounce the enticers and stone them to death (Deu. 13:7-12, NJB).[29] What is condemned is the enticement to deviate 'from the way' or 'from God', expressed by the causative form (*hiph'îl*) of the root *n.d.h* (deviate).[30] In the case of a whole city having decided to serve foreign gods, its men and cattle must be smitten with the edge of the sword (*lᵉ-phî hārebh*), their city laid under the curse of destruction (*hahᵃrēm*) and its loot burnt with fire (Deu. 13:13-19, NJB). Some analogy can be drawn here with ʿAlī's action and ibn ʿAbbās's reproach, since the Biblical 'herem' of the city was the consecration to the Deity of persons and things to be utterly destroyed. Further on, the Deuteronomic code prescribes the stoning to death of the man or the woman 'who does what is wrong in the eyes of Yahweh your God by violating his covenant, who goes and serves other gods and worships them' (Deu. 17:2-3, NJB).[31] Disobeying the priest (*hak-kōhēn*) or the judge (*hash-shōphēt*) is equally punishable with death (Deu. 17:12, NJB), as is

rebelling against the orders of the political authority, according to the oath of the Reubenites, the Gadites and the half tribe of Manasseh on behalf of the people about to enter the Promised Land (Jos. 1:16-18, NJB). According to the Talmud, the death sentence can be imposed only by a Biblical authority (*Sanhedrîn* 82b),[32] but the ruler can put a rebel to the sword (*Sanhedrîn* 49a).

On the one hand, the Islamic rules on the execution of the apostate by the sword match the Jewish rules on the punishment of the rebel by the political authority, while on the other hand the notions of apostasy sensibly vary in the two traditions. Judaism punished the enticement of deviant conduct and the service to foreign gods, whereas Islam initially punished every individual forsaking it and posing a threat to the Islamic state. Later on, Muslim scholars agreed that apostatising included even just professing heretical doctrines, which *per se* menaced the Islamic state and therefore needed to be sanctioned by death.

Besides its penal features, apostasy has relevant civil consequences, too. The rights of apostates to dispose of their patrimony are held in abeyance pending their repentance. If they do not repent, all their acts are null and void. The apostate lacks the capacity to inherit, and the marriage contract is immediately nullified (*faskh*). Unlike the father's conversion, the father's apostasy does not have any effect on his minor children, who remain Muslims. The legal status of the apostate has been sagaciously described as a situation of 'civil and social death' (Gibb-Kramers 1974).

2.4   Characters of the confessional system

2.4.1   Personality of Islamic law

Islam shaped a confessional legal system based on personality, i.e. Islamic law applies to Muslims (exclusively), wherever they are. This general rule is coupled with the pre-eminence of Islamic law over all other sacred or positive laws. Territoriality thus reclaims some terrain, since *sharīʿah* rules apply even if only one of the parties is a Muslim. Moreover, jurisdiction and applicable law overlap: only an Islamic judge can apply Islamic law, while controversies between members of the same religious community are left to the authority of confessional courts, which apply their religious law (also called *sharīʿah*). Even non-Muslims temporarily residing within Muslim territories (known as *mustaʾmin*s) bring suits regarding their personal status to the courts of the religious community to which they are associated, and the court applies its confessional law even if the non-Muslim does not abide by such a law at home. The Islamic judge, however, tends to extend his jurisdiction well over the paramount principle of personality of confes-

sional laws. For instance, he will adjudicate among non-Muslims if they do not all belong to the same denomination (*tā'ifah* or *millah*), and will apply Islamic law with some noteworthy exceptions (e.g. he will not dissolve the marriage if one party is Catholic). One can therefore envisage what might be called a 'general jurisdiction' of the Islamic judge that stops just short of the internal matters of other non-Muslim communities.[33]

2.4.2   Jurisdiction of the Islamic judge

Confessional jurisdictions concerned with personal status matters of members of the same religious community is a rule supported by solid textual evidence in Q. 5:42-48. According to Muslim commentators of the Qur'ān, the situation that occasioned the revelation of these verses was a case of adultery between two Jews of Khaybar that Muhammad was called upon to solve. He ordered their stoning to death in compliance with the Biblical prescription (Deu. 22:22-29, NJB). The Koranic passage requires Jews to be judged by the Torah (Q. 5:43-45), Christians by the Gospel (Q. 5:46-47), and Muslims by the Qur'ān (Q. 5:48), and ends with the admonition: 'To each among you have we prescribed a law and an open way. 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' (Q. 5:48).

No matter where Muslims are, they must be judged according to Islamic law by an Islamic judge (Cardahi 1937: 603). Eluding this constitutes apostasy.[34] The absence of territorial limits to the application of Islamic law is considered a consequence of Islam's universalism (Khadduri 1966: 6), but its implementation is hindered by the fact that Muslims do not hold the power throughout the world. For this reason, Muslim scholars developed the theory of the world division in two main blocks: the *dār al-islām* (home of Islam) and the *dār al-harb* (home of war). In the former the ruler is a Muslim (even if the majority of the population is non-Muslim), while non-Muslims rule the latter. Relations between the two blocs are regulated under the law of *jihād* or war (*qānūn al-jihād aw al-harb*) or the broader Islamic *jus gentium* (*al-qānūn al-islāmī li-l-umam*), temporarily devised to govern international relations with non-Muslim political entities on more than war terms alone (Rechid 1937: 371ff; Armanazi 1929 and 1930).[35]

2.4.3   Status of non-Muslims in the dār al-islām

Non-Muslims can live on Islamic territories (*dār al-islām*) according to
two different legal statuses: the *dhimmah* or the *amān*. These are only
made available to non-Muslims who belong to the People of the Book
(*ahl al-kitāb*, a denomination originally including mainly just Jews and
Christians but later extended to other categories like Zoroastrians,
Mandeans and Sikhs). Polytheists and renegades, however, are still ex-
cluded (ibn Qayyim al-Jawzīyah, *Ahkām ahl al-dhimmah*).

   *Dhimmī*s are free non-Muslim subjects permanently living in a Mus-
lim-ruled land on the basis of a covenant (*ᶜahd*) or a perpetual safe-con-
duct (*amān mu'abbad*), under the protection of God and His messenger
(*bi-dhimmat*ⁱ *ăllāh*ⁱ *wa-rasūlih*). By virtue of such a protection, the *dhim-
mah*, Muslims say that non-Muslims have the same rights and duties
of Muslims.[36] The protection of *dhimmī*s from Muslims, foreigners
(*harbī*s) and other *dhimmī*s rests with the caliph or imam. ᶜAlī is re-
membered to have said, 'They paid the tax (*jizyah*) for their blood to be
like our blood, and for their belongings to be like our belongings'
(*shams al-dīn* ibn Qudāmah, *al-Sharh al-kabīr* ᶜ*alà matn al-Muqniᶜ*).
There are four ways a non-Muslim belonging to the *ahl al-kitāb* can be-
come a *dhimmī*. The first is by entering a protection covenant (*ᶜahd
al-dhimmah*).[37] The covenant should be established between the caliph
(or his deputy) and the leaders of non-Muslim communities, in consid-
eration of the general interest (*al-maslahah al-ᶜāmmah*) of Muslims,
with provisions for the payment of the *jizyah*, and is non-expiring. The
second way is by acquiring land that is *kharājīyah*, i.e. land on which
kharāj is levied, *kharāj* being the land tax imposed on lots belonging to
non-Muslims of the *dār al-islām*. In the third, a non-Muslim foreign
woman (either *harbīyah* or *musta'minah*) can become a *dhimmīyah* by
marrying a Muslim or a *dhimmī*. And lastly, the minor children and
the women related to the *dhimmī* become *dhimmī*s themselves on the
basis of the family ties.

   *Musta'min*s, on the other hand, are non-Muslim foreigners (*harbī*s)
who only temporarily reside in the *dār al-islām* thanks to a short-term
safe-conduct (*amān mu'aqqat*). The short-term safe-conduct can be per-
sonal or general. The personal *amān* (*khāss*) can be granted by any
adult, mentally sound Muslim to one or a group of *harbī*s (non-Muslim
foreigners), while the general *amān* (*ᶜāmm*) can be granted only by the
caliph or his deputy to an unspecified number of *harbī*s. The *amān* al-
lows the *musta'min* to reside in the *dār al-islām* up to one year, together
with his minor children and all the women related to him. During this
period, the *musta'min* is afforded the protected status of *dhimmī*s with-
out having to pay the *jizyah*, which will be imposed if he exceeds the
time limit of one year without returning to the *dār al-harb*.

From a legal standpoint, *dhimmī*s – unlike *musta'min*s – are considered subjects of the *dār al-islām*, even if they enjoy fewer legal and social rights than Muslims and have to endure many restrictions imposed by Islamic law.[38] The breach of any of these laws will result in the loss of the status of *dhimmī* and of the ensuing residence rights. When a non-Muslim foreign woman (*harbīyah*) marries a Muslim or a *dhimmī*, she becomes a member of the 'people of the home of Islam' (*ahl dār al-islām*), being a *dhimmīyah*. Likewise, if a *musta'min* converts to Islam, his minor children become Muslims and his wife a *dhimmīyah*, with no possibility for the latter to go back to the *dār al-harb*, since her husband's conversion does not have any effect on the marriage, which is still valid and falls under the new provisions of Islamic law. The basic underlying principle is that the woman follows her husband's status upwards, and the minor children their father's. However, since Islam sits at the top of the hierarchy, and prevails over all other confessions (*al-islām ya'lū wa-lā yu'là 'alayh*), if it is the woman who decides to convert to Islam, her minor children will become Muslims and the marriage will be dissolved. If both parents apostatise, their minor children will remain Muslims.

2.5 Islam and the kin group

Islam proudly claims to have obliterated every trace of the ancestral system of the previous era, depicted as the 'Age of Ignorance' (*'asr al-Jāhilīyah*). Even so, several features of the pre-Islamic mentality and kin organisation linger, overtly or covertly, even under Islamic disguise.[39] At the origins of different institutions or in the multifaceted political processes, the observer can detect the deep-rooted and long-lasting trends – briefly, the 'legal and political Arab milieu' – that dominated the scene before the rise of Islam but afterwards had to face competing forces.[40]

'The believers are but a single brotherhood' (Q. 49:10). The evocative power of the brotherhood that Islam wants to establish among Muslims cannot be ignored,[41] as well as the assertion of the superiority of the bond of faith over the bond of blood (Q. 9:23). However, the pre-Islamic kin order adamantly persisted. Its weight can be measured to some extent in the structure of the settlements founded during the expansion outside the Peninsula (§5.1.) as well as in the regulations pertaining to the early conversion of non-Arabs (§5.2.), in the rule of wedding adequacy in classic Islamic law (§5.3.) and in the restriction of the caliphate to Quraish kinsmen (§5.4.).

2.5.1   Planning newly founded cities

In the planning of cities founded along the routes of the conquest that followed Muhammad's death, the permanence of kin distinctions is patent. Cities like al-Kūfah (Mesopotamia), al-Basrah (Shatt al-ᶜArab), al-Fustāt (Egypt) or al-Qayrawān (northern Africa) were all founded as military camps that soon became stable settlements. The settlement was partitioned and allotted to different kin groups by the *tamsīr* or *takhtīt*; at the centre of the plan were the main mosque (*al-jāmiᶜ*) and the palace (*dār al-imārah*), while in the surroundings were arranged minor units (*dār*s or houses) grouped in *ᶜashīrah*s, each having its own mosque, and an outer open area for the group's meetings and burials (*jabbānah*). Settlements were thus divided into military and administrative units (e.g. five *akhmās* in al-Basrah, seven *asbāᶜ* in al-Kūfah) under the command of a person (the *ra's al-khums* in al-Basrah, for instance) who was responsible for the unit at war as well as for keeping order in peacetime. The *ra's* usually belonged to the larger kin group, but smaller groups nonetheless had representatives among the peers (*al-ashrāf*).

A large kin group like the Kindah had a dozen mosques in al-Kūfah as well as in al-Fustāt, Damascus or Hims. In highly urbanised regions like Syria, however, the partition plan was much laxer, whereas in new locations like al-Fustāt broad open areas were left between kin lots. Founded on the site of the ancient Diridotis (Teredon), the city of al-Basrah was divided into only five kin constituencies and soon hosted a large number of non-Arab local *mawlà*s (Caetani 1911-1914: III, 292-309 and 769-784, and Massignon 1954: 154-174), while al-Kūfah had a much more heterogeneous configuration, being divided into fifteen streets or *minhāj*s along which were arranged the lots of eminent nomadic tribes (the Tamīms, and the Asads), Hejazi kin groups (the Thaqīfs, the Sulayms, the Juhaynahs, and the Muzaynahs) and a sizeable Yemeni community (Massignon 1934-1937: III, 337-360). Still much later, when the Abbasid caliph al-Mansūr (ruled 754-775) built the new capital city of Baghdad on the model of Persian cities, he set up units and unit leaders like those in the primitive Muslim settlements. In the cosmopolitan Baghdad, however, units were ethnically or geographically homogeneous rather than grouped on the mere basis of kin,[42] since outside the peninsula the ethnic bond began replacing the kin bond in the age of the Marwanids during the second Umayyad period (64-132 AH/684-750 AD).

2.5.2   Status of non-Arab neo-converts (mawlàs)

Well-known to the customary law of pre-Islamic Arabia, clientage (*walā'*) gained special relevance with the rise of Islam when it became

the only gate to Islam for non-Arabs and showed the enduring strength of kin bonds in the Arab social order. Both before and after the advent of Islam, any non-Arab on Arab territory – whose boundaries dramatically expanded after the conquests of the first century AH (632-750 AD) – had somehow to be brought into the Arab kin system, and one way to do it was by having recourse to the *walā'* to form a fictitious blood relation.

In pre-Islamic times, non-Arab kin groups enjoyed a peculiar status. They maintained their kin relations while being placed under the protection of Arab kin groups. No effective membership was involved. Some Jewish tribes were strong enough to avoid this arrangement, but many paid tributes to Arab tribes and became their clients.[43] As a result, the kin relations of minor groups grew weaker, but even so they were not completely disbanded. Similarly, freed slaves became clients of their former masters but did not become members of their kin group, in view of the fact that tainting the kin with non-Arabs was a highly despicable act for the Arabs. Non-Arabs were not even accepted as confederates; the *hilf* – a merging alliance – applied only to other Arabs or to non-Arabs who had a full kin status (Goldziher 1889: I, 105f).

As a result of the Arab-Islamic conquest, Arabs had to cope with huge masses of non-Arabs in their midst. If non-Muslims could be treated on the same terms as other clients (maintaining their internal organisation under Islamic hegemony and paying a tribute), converts on the other hand needed to be absorbed into the Arab-Islamic society. 'Having lost their genealogies (*ansāb*), suffered a defeat, or even having been enslaved' (al-Balādhurī, *Futūh al-buldān*), non-Arab converts were not suitable confederates (*halīf*). In order to overcome the deadlock, the notion of an Islamic *walā'* was developed. Every non-Arab wishing to become a member of the Arab-Islamic society had to find a patron (a superior *mawlà*). Freed slaves had a readily available patron in the person of the former master, unless he refused to undertake the task, leaving them in need of another patron.

Muslim scholars drew heavily on the pre-Islamic tradition to elaborate the doctrine of Islamic clientage, which consisted of different forms (*walā' al-muwālāh, al-tabāᶜah*, or *al-khidmah*) including a novel 'clientage by conversion' (*walā' al-islām*), but it is precisely this original form of clientage that illustrates the attitude of Islamic law towards the previous social order and kin or ethnic distinctions. An oft-quoted *hadīth* states: 'Whoever converts at somebody's hands, the latter is the patron of the former',[44] thus providing some textual evidence for the theory. Under *walā'*, an outsider related to a social order conceived in terms of kin relations. The patron's main duty was to afford protection to the client (the inferior *mawlà*) and pay or receive blood money (*ᶜaql*

or *diyah*), but in return he had some rights to the *mawlà*'s belongings. The client, on the other hand, did not have to pay or receive the patron's *diyah* and did not inherit from him. Broadly speaking, the Arab patron provided an access to the new privileged society of the conquerors, while the non-Arab Muslim convert rendered him services, offered his help and swelled the civilian and military ranks of the patron.

Under the Umayyads, non-Arab converts or *mawlà*s technically enjoyed the same status of Arab Muslims,[45] even if depending upon their patrons. However, *mawlà*s were victims of cultural bias and were considered on the same footing as slaves. Hypotheses on the reasons for this have been advanced by scholars based on literary works from that period. Ibn Thābit (d. 674) and Dhū 'l-Rummah (d. 735) believed that they were discriminated against for being mainly peasants and not warriors, while according to al-Nābighah al-Jaʿdī (d. 670) it was for having been brutally defeated or for being largely freed after having been enslaved during the conquest. Muslim and non-Muslim sources seem to confirm the latter hypothesis, given the huge number of prisoners captured in the campaigns (ibn Khayyāt, Sebeos, Bar Penkaye and Michael the Syrian). Prisoners were generally enslaved and other slaves had to be supplied one-off or yearly under the terms of surrender (al-Tabarī, *Taʾrīkh*). War slaves and their offspring came thus to outnumber freeborn clients by far, and the term 'slave' was improperly used to address any *mawlà*. According to the sources, discrimination was not merely episodic; rather, severe ill-treatment of *mawlà*s was the rule. Above all, a *mawlà* was barred from any task involving authority, viz. he could not act as imam, judge or governor (Goldziher 1889: I, 109 and 116), and his career was therefore in his patron's retinue. However, the *mawlà*s' numbers, higher education and aptitudes soon earned them influential positions in the new polity. With the exception of government, non-Arab Muslims rapidly dominated the intellectual scene and played a major role in the formation of Islam (al-Hasan al-Basrī), Islamic law (abū Hanīfah, al-Awzāʿī and Tāwūs), Koranic studies (abū ʿUbaydah), Muhammad's biography (ibn Ishāq) and even in the collection of pre-Islamic Arab poetry (Hammād al-Rāwiyah). Arabs realised the *mawlà*s' cultural refinement, and by the late Umayyad period *mawlà*s were charged with the education of the caliph's descendants and with judiciary functions.

Yet *mawlà*s enjoyed a privileged status, especially when compared with non-Muslims of the countryside. Many of the latter would venture to abandon their lands, attracted by the lure of joining the ranks of the Arab conquerors by converting to Islam and enlisting. The conversion thus consisted in migrating (performing the *hijrah*) to the garrison towns. ʿUmar II took in these converts, but other Umayyad caliphs

sent them back to their villages or allowed them to stay provided that they kept up their fiscal duties as non-Muslims.

With the Abbasid revolution (750 AD), Arabs were finally deprived of the social and political privileges that they still retained. After the decline of 'Arab privileges', an Arab patron was no longer required for the non-Arab who wished to embrace Islam. Freed slaves would remain clients of their former masters, but freeborn non-Arab converts and the offspring of freed slaves were not bound to clientage. On the other hand, however, Arab superiority and the new political hue of the *walā'* maintained a key position under the Abbasids.

Muslim scholars of the classical age framed a comprehensive theory of clientage under Islam. All schools agree that clientage can stem from an act of emancipation (hence named *walā' al-ʿitq*), whereas only Hanafis, Jaʿfaris and Zaidis allow that it can be established by contract (*walā' al-muwālāh* or *tadammun bi-l-jarīrah*). For Hanafis and Jaʿfaris the clientage contract is independent of the act of conversion, while Zaidis hold that clientage is a consequence of conversion and cannot be established separately by contract. There is widespread consensus among jurists that *walā'* has to be regarded as instituting fictitious kin[46] and therefore cannot be transferred by sale, donation or inheritance, while such transfers were acceptable under pre-classical law. The transfer of rights and duties attached to clientage follows special provisions similar to kin transmission (Brunschvig 1976). But even though Sunni schools assert that *walā'* creates kin relations (*taʿsīb*), only the patron inherits from the *mawlà* (in case of *walā'* of emancipation, not *walā'* by contract), and the *mawlà* is a mere 'passive' member of the patron's kin group. In legal terms, *walā'* is a relation of dependence chiefly prompted by the individual's detachment from his own group, even if it does not lead to the acquisition of the full status of member of the patron's group (Crone 1980, 1987 and 1991).

Classical Islamic law generally does not attach any importance to the servile or non-Arab origins of the individual, but there is a relevant exception: non-Arabs and freed slaves cannot marry Arab women according to Hanafis, Shafiʿis, the majority of Hanbalis and some Zaidis. Malikis, while claiming that such unions are legal, let the Arab woman divorce a freed slave if he was believed to be an Arab. Only Ibadis, Twelvers and Ismailis clearly do not discriminate between Arabs and non-Arabs, freeborns and emancipated, for marital law purposes. This leads to some further considerations on the principle of wedding adequacy in Islamic law.

2.5.3   The principle of wedding adequacy (kafāʾah)

The absence of ethnic and social distinctions among Muslims is an ambitious goal hindered by the inveterate practices of the Arabs and of the other peoples who embraced Islam.[47] Jurists rearranged these traditional concepts in the discipline of family law, the cornerstone of social order. In pre-Islamic Arabia, both spouses were required to be on a par in terms of lineage and social status, while Islam waived the requirement for the man, who can marry a woman inferior to him. None of the Sunni schools ignored the issue of wedding adequacy (*kafāʾah*), but all addressed it in different ways according to the various theoretical and legal premises assumed by each legal school (*madhhab*). On the one hand, Hanafis presented a wide-ranging list of *kafāʾah* cases, whereas, on the other hand, Malikis downplayed its significance. Some scholars argue that differences need to be traced back to the different Hanafi and Maliki socio-geographic milieus; the former was characterised by sharp social divides between Arabs and non-Arabs in the cosmopolitan al-Kūfah, while the latter flourished in a much more homogeneous Hejazi society (Lynant de Bellefonds 1965: II, 171-181). However, the similarity of the operational rules of all Sunni schools suggests caution in assessing the dissimilarities of the scholars' ornate theories (Aluffi Beck-Peccoz 1990: 145).

With regard to kin relations, almost all schools require the man's adequacy to the woman's lineage (*kafāʾat al-nasab*), thus reinforcing the practice of endogamy so deep-rooted in Arab customs. Being of Quraish, Arab and non-Arab descent are the three main levels of lineage requirements for *kafāʾah*, with further intermediate kin distinctions. Stricter doctrines can be found among Druzes, Zaidis and Zahiris, or in contexts where the presence of noble lineages is highly felt (like in Somalia, Cerulli 1919).

According to the Hanafi doctrine, the adult woman can contract a valid marriage without the assistance of her tutor (*walī*), but the contract is revocable (*ghayr lāzim*). Both the woman and her *walī* can ask the judge to annul the marriage (*faskh*) for the husband's lack of *kafāʾah* until the first signs of pregnancy appear. In the case of the Asādah of Hadramawt, a group that claims descent from ʿAlī, any member can contest a marriage on account of *mésalliance* (Anderson 1954: 23 and Ziadeh 1957: 515f). In Maliki law, the involvement of the woman's *walī* in the marriage is compulsory, and the woman cannot contract it by herself; consequently, the *kafāʾah* doctrine applies only if the husband concealed his inferior condition to the woman's tutor. The *walī*'s control over the man's *kafāʾah* – prescribed by Malikis but not necessary for Hanafis and Shafiʿis – is compensated by the possibility of annulling the contract. Even if they frame the problem differently, Muslim scho-

lars share the same concerns for the protection of *nasab* and the law sanctions it, regardless of the clear Koranic condemnation.

2.5.4   Restriction of the caliphate to Quraish kinsmen

Nasab is also the seventh and last condition required for attaining the caliphate. The caliph must be a member of the Quraish, like Muhammad. Shafi'i jurist al-Māwardī (d. 1058) stated that the point was backed by an explicit textual ruling (*nass*) and by general consensus (*ijmā'*). Conversely, he openly criticised the theory of the Mu'tazili doctor Dirār ibn ʿAmr (d. 815), who maintained that anybody could be caliph, and that if one had to choose between a Quraish and a black man, the latter should be preferred, since it would be much easier to remove a black from office if he contravened divine law.

   'You should listen to and obey your ruler even if he was an Ethiopian slave whose head looks like a raisin'.[48] This *hadīth* is given different interpretations. Mu'tazilis and Kharijites argue that it prevents the insertion of any restrictive clause based on kin, while mainstream Muslim scholars contend that the tradition refers to the caliph's appointees and not to the caliph himself, since there is little sense in the caliph being a slave (ibn ʿĀbidīn, *Radd al-mukhtār ʿalà 'l-Durr al-mukhtār* and ibn Nujaym, *al-Ashbāh wa-l-nazā'ir*).

   Al-Māwardī quoted another tradition to further substantiate his theory: 'This matter will remain with the Quraish'.[49] Soon after Muhammad's death, Abū Bakr is reported to have cited this *hadīth* at the Saqīfah meeting when the *ansār*s were about to elect a Medinan caliph. According to al-Māwardī, the *ansār*s recognised the authenticity of the tradition and abandoned the idea of having two caliphs, one for the Medinans and one for the Meccans. Abū Bakr was then elected first caliph by acclamation, and proclaimed: 'We are the commanders and you are the ministers'.[50]

2.6   Islam and Arabness

In a broader perspective than the kin group – but with a very similar approach – the relations of Islam with its dominant ethnic group are also quite complex. Islam and Arabness are so closely knit that it is almost impossible to disentangle the respective contributions and influences, both in the past and at present. To explain the complexity of the relationship, scholars have resorted to different paradigms. The sole ambition of this section is to draw some attention to the meaning of membership in an ethno-religious community like the Arab-Islamic *ummah*.

2.6.1   *Koranic prescriptions and early Islam*

The Qur'ān adopts a clear stance on kin relations. 'Of no profit to you will be your relatives and your children on the Day of Judgment: He will judge between you: for Allah sees well all that ye do'[51] (Q. 60:3) was already revealed after the truce of Hudaybīyah in 628. But after the *ʿumrah* of 629 it was spelled out that the only possible distinction to be made among men was on the basis of piety (*taqwà*), in stark opposition to the attitude of the Quraish and the other polytheist Arabs: 'O mankind! We created you from a single (pair) of a male and a female, and made you into nations and tribes, that ye may know each other (not that ye may despise [each other]). Verily the most honoured of you in the sight of Allah is (he who is) the most righteous of you. And Allah has full knowledge and is well acquainted (with all things)' (Q. 49:13).[52]

Most commentators, however, do not infer from the superiority based on piety or righteousness that belonging to a certain tribe or nation is of no consequence. In the fairly unequivocal Koranic passage, the majority of Arab Muslim scholars conversely find a divine sanction of the original differentiation between Arabs divided into tribes (*qabā'il*), and non-Arabs divided into nations (*shuʿūb*).

As mentioned above, in early Islam the dominance of the Arab tribal mentality led to imposing the obligation upon non-Arab converts to seek the protection of members of Arab kin groups, in open contrast with the brotherhood and equality among Muslims stated in the Qur'ān. Certain mosques were reserved for *mawlà*s in order not to have them mix with Arabs, and it is narrated that the cruel al-Hajjāj used to wound the hands of the Nabateans to tell them apart from Arabs, and that he banned non-Arabs from entering al-Kūfah. Similarly, it was possible to have non-Arab Muslim slaves, but enslaving an Arab Muslim was not approved of (al-Shāfiʿī, *Kitāb al-Umm*).

2.6.2   *The first* Shuʿūbīyah

Opposition to the discrimination against non-Arabs soon emerged, and non-Arabs demanded the enforcement of the principle of equality among Muslims regardless of their belonging to *shuʿūb* or *qabā'il*. The movement assumed the name of *Shuʿūbīyah*, and since its inception it was endorsed by schismatic Muslims like the Kharijites (who refuse the restriction of the caliphate to Quraish kinsmen, asserting that even a black or a woman could be caliph if fit).

Later on, in the 2nd century Hijri (8th century AD), the term *Shuʿūbīyah* came to be used for a movement that not only rejected Arab privileges (whence the epithet of People of Equality, or *ahl al-taswiyah*, in

al-Jāhiz's *Kitāb al-bayān wa-l-tabyīn*), but also advocated non-Arabs' superiority. Shu'ubites were chiefly Muslims of Persian origin, but there are indications of Shu'ubite literature by Arameans, Copts and Berbers as well.[53] Direct Shu'ubite sources were lost in time, but some of their allegations can be recovered from their adversaries' works (mainly al-Jāhiz and ibn Qutaybah). Different historiographical interpretations are given to the *Shuᶜūbīyah* (Gibb 1962, Goitein 1966), but the core issue was probably the status of Persian officials in the new Empire. The latter ones were bound by *walā'* to Arab conquerors, and their liberty and social mobility were therefore severely hindered. A vivid account of the society of the time is given by al-Jāhiz in the epistles *Dhamm akhlāq al-kuttāb* (Censure of the Conduct of Secretaries) and *Fī madh al-tujjār wa-dhamm ᶜamal al-sultān* (In Praise of Merchants and Dispraise of Officials). The author heats up against the *Shuᶜūbīyah*, which he considered a real menace to Islam (al-Jāhiz, *al-Hayawān* and *Fakhr al-sūdān ᶜalà 'l-baydān*).

The decline of the movement at the end of the 3rd century Hijri (9th century AD) was due – according to Gibb – to three main factors: (1) the merging of the pre-Islamic, Arab and Islamic traditions into a new, common 'culture' (*adab*), (2) the rise of the *muᶜtazilah* with its rigid monotheism and (3) the foundation of the *Bayt al-hikmah*, centre for the translation and diffusion of the works of Greek philosophy, deemed effective tools against dualist doctrines (Gibb 1962: 69-72). In this context, ibn Qutaybah (d. 889) played a key role in accommodating the Persian tradition and the Arab-Islamic ideas through his various works.

2.6.2 Other opposition movements to Arab dominance

If animosity between Arabs and non-Arabs died down in the Muslim East at the end of the 3rd century Hijri, it built up in the Muslim West two centuries later. In the al-Andalus of the 5th century Hijri (11th century AD), however, Arab dominance was challenged by Berbers and Slavs. In the case of the Andalusian *Shuᶜūbīyah*, the manifesto – ibn Gharsīyah's epistle – is still extant (Goldziher 1899 and Monroe 1970).

Hanna and Gardner see in the first and second *Shuᶜūbīyah*s the same roots of later movements such as Ottomanism and Westernisation (19th century), or Internationalism, Regionalism and Socialism (20th century). All of these endeavoured to defy Arab dominance, instead triggering stronger affirmations of Arab particularism (Hanna & Gardner 1966). Some serious objections can be raised against this speculation, although it is enough to consider the theoretical distance between modern opposition movements and Early Islam *Shuᶜūbīyah*s, or the significant differences of their respective actors and goals. None-

theless, a map of the movements challenging Arab dominance could be traced down to present-day Kurdish and Berber claims, and the experience of the first *Shuʿūbīyah* has proven highly influential through the centuries. Many Arab-Muslim authors have vigorously condemned such movements, preaching a return to the unifying force of Islam (al-Sammāk 1990).

Among the many anecdotes there is one about Saladin that is worth mentioning. In 1169, Salāh al-dīn al-Ayyūbī had the caliph's first black eunuch beheaded for complicity with crusaders. He then replaced the black eunuch with a white eunuch, and dismissed all the other black eunuchs. The black troops in Cairo rose up against the execution of the man – whom they considered a spokesman and a champion of their rights – driven by 'racial solidarity'. The term ibn al-Athīr employed for 'racial solidarity' is the neologism *jinsīyah*,[54] based on *jins* (kind, genus, race). Centuries later and with no apparent relation to this early anecdote, *jinsīyah* was used to convey a 'new' idea of membership, membership in the nation-state.