CONFESSIONALISM AND MODERNITY: THE ORIGINS OF THE SYRIAN PARADOX

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The organisational system of Arab Islamic societies has been accurately described as a 'mosaic' made up of different confessional communities.[107] This structural model, more than likely dating back to the urban organisation that already existed in the period before Islam, has been present since the beginnings of Muslim civilisation, demonstrated by the fact that it has withstood all the changes this society has undergone throughout the centuries. This tendency to organise into semi-autonomous confessional communities also stretches to non-Muslim groups that inhabit in the Levantine Arab countries, and who, in this particular aspect, were decidedly influenced by the contact with Islam.[108]

This Islamic method of organising society aimed to protect and distinguish between different religious groups by establishing, on the one hand, the superiority of Islam as a religion and its political pre-eminence,[109] and on the other, ensuring the existence and autonomy of these communities, provided they did not interfere with the lives of Muslims or the stability and security of the state.[110] The three principles behind this method of

107 Ira M. Lapidus (1973). 'The Early Evolution of Muslim Urban Society', *Comparative Studies in Society and History*, 15, pp. 21–50.

108 When we talk of 'semi-autonomous confessional groups' we are referring to communities that have their own internal legislation and the freedom to manage matters related to the personal status of their members, and which also share urban space alongside other similar groups in terms of autonomy and structure.

109 Abdullah Saeed (1999). 'Rethinking Citizenship Rights of the Non-Muslims in an Islamic State: Rashid al-Ghannushi's Contributions to the Evolving Debate', *Islam and Christian–Muslim Relations,* 10 (3), pp. 308–309.

110 Bruce Masters (2001). *Christians and Jews in the Ottoman Arabic World: The Roots of Sectarianism.* Cam-

organisation, originating from the Koran itself and with a tradition that dates back to the times of Muhammad, are the following: 1) the aforementioned superiority of Islam, 2) religious tolerance and 3) the stringent differentiation between communities.[111] In their famous Koran commentaries, classic authors such as Muhammad al-Qurtubi (d. 1272) mentioned these guidelines and their legal repercussions.[112]

It is interesting to note how in the Arab countries that emerged from the ruins of the old Ottoman Empire—particularly, though not solely, the Syrian Arab Republic—this organisational religious system was preserved partially modified, coexisting with modern and Western legislation. In the legal structure of the Syrian state, this makes possible the combination of at times contradictory concepts, such as the state, nation, religion, secularism, religious community and citizenship. The pages that follow will explain the origin of this duality, which is positioned precisely in the late Ottoman Empire, during the period of reforms better known as the *Tanzimat*.

The organisation of religious communities in the Ottoman era

The Ottoman governors, known for being eminently pragmatic in their principles and actions, always tended to respect the legal customs of groups of people incorporated into the empire, combining them with Islamic law and the absolutist tradition characteristic of their central Asian nomadic tradition.[113] The pragmatism of the Ottoman government is easy to understand from the point of view of the social complexity that stemmed from the vastness and variety of the domains under the authority of the sultan. In any event, the organisation of religious communities, at least in the Arab provinces, followed the guidelines established by the *sharia*, although the conditions and circumstances could vary from one place to the next, depending on local uses or the governors' attitude.[114] This part of the empire continued to organise the religious communities with a *taifa* system, however this system would be greatly modified from the 18th century onwards, and particularly during the 19th century.

The noun *taifa* is used in Arab documents to denominate the religious communities, especially the non-Muslim ones. It is a word with a particularly vague meaning, and is employed to designate any group of people that differ from the rest because of a particular trait—be it profession, language, religion or any other defining aspect linked to identity. The term *taifa* passed, virtually unaltered, into Ottoman Turkish *(taife)*, maintaining the same meaning as in Arabic.

bridge: Cambridge University Press, pp. 64, 84.

111 Antoine Fattal (1995). *Le statut légal des non-musulmans en pays d'Islam*. Beirut: Dar el-Machreq, pp. 160–161. Also see Bernard Lewis (2002). *Los judíos del Islam*. Madrid: Letrúmero, pp. 19–20, 25.

112 Muhammad Abu Abd-Allah al-Qurtubi (2003). *Al-Yami li-Ahkam al-Qur'an* [The Compiler of the Judgements in the Koran], 20 vols. Riyadh: Dar Alim al-Kutub 1423 H/2003, pp. 44, 93.

113 Nicoara Beldiceanu (1989). L'Organisation de l'Empire Ottoman (XIV–XV siècles), in *Robert Mantran (ed.). Histoire de l'Empire Ottoman*. Paris: Arthème Fayard, p. 118.

114 Bruce Masters (2001). *Christians and Jews in the Ottoman Arabic World: The Roots of Sectarianism. Op. Cit.*, p. 17.

It is interesting to note discernible similarities between the professional classes and religious communities. In the Ottoman documents originating from Syria, both groups are called '*taifas*' and share common traits, right down to the last detail: a) they are local; b) they have their own statutes for self-government, based on their uses, customs and traditional regulations; c) they possess their own autonomy with which to choose their own leaders and representatives; and d) they require the official sanction of the authorities of the state—after which the head or leader of the organisation becomes administrator, collector, governor and representative of the *taifa*, and may even make use of its civil power to do so.[115] As already indicated, the Ottoman Empire maintained the traditional system of religious organisation that came from previous epochs. It even employed the same Arabic term to designate religious communities—remarkable for an administration as sophisticated as the Ottoman one, with such precise institutional vocabulary and certain very well defined functional institutions.[116] This would suggest that it did not create an institution or specific policy in this respect.

Many Western studies uphold the theory that, following the conquest of Constantinople (1453), Sultan Mehmed II Fatih introduced a system called '*millet*', a word that came from the Arabic *milla* (and in Ottoman Turkish meant 'nation or group of people with the same religion or language'),[117] which would become an essential and characteristic part of the organisation of the empire from the outset. According to this idea, each religious community acknowledged by the Sublime Porte would receive the title of *millet* and be centrally governed by the respective supreme religious authority from Istanbul, named by the sultan to that end. Thus, from the beginning, the Ottoman Empire distinguished between the governing *millet* (namely, that pertaining to Sunni Muslims or *millet-i hâkime/ millet-i islamiye)* and the governed *millet (milel-i mahkûme)*, that is, the rest of the religious groups.

In current research, this theory of the *millet* tends to be considered erroneous, since the reasoning is based on an untimely interpretation of the use of this term in documents—as adequately demonstrated by Halil Inalcık and Benjamin Braude. The first of these authors suggested that the modern meaning of *millet* could have influenced the interpretation of the term in documents prior to the reforms of the 19th century,[118] while Braude deemed the

115 Abdul-Karim Rafeq (1991). 'Craft Organization, Work Ethics and the Strains of Change in Ottoman Syria', *Journal of the American Oriental Society*, 111 (3), pp. 499–502 and 506–507; Alejandra Álvarez (2013). *Comunidades no musulmanas en un entorno musulmán. La pervivencia del modelo otomano en la actual Siria*. Madrid: Cantarabia, pp. 80–82.

116 In documents prior to the 19th century, other terms from Arabic are also occasionally found to designate religious groups. This is the case with *mahalle* (district) and *cemaat* (congregation, religious community). See Bahadır Alkım, Nazime Antel and others (1997). *Redhouse Türkçe-Osmanlıca İngilizce Sözlük* [Redhouse Turkish-Ottoman English Dictionary]. Istanbul: SEV Matbaacılık ve Yayıncılık A. S, pp. 220, 720.

117 *Ibidem*, p. 777.

118 Halil Inalcık (1964). 'R. H. Davison, Reform in the Ottoman Empire 1856–1876', *Belleten, Turk Tarih Kurumu*, 28, pp. 791–793.

system a 'myth', putting forward guidelines for the correct analysis of the sources in which the term *millet* is mentioned.[119]

All of this points to the *millets*—centralised as they were around Istanbul authorities, with the aim of grouping all citizens according to a religious criteria—being a progressive creation, which culminated in the 19th century. The formation of this new organisational system began in the 18th century with the so-called 'Millet Wars', in which there was a predominance of concerns over the growing interference by the West in non-Muslim religious groups at the heart of the Ottoman Empire, and the ambition of religious leaders in close proximity to the Sublime Porte, who took advantage of the circumstances to extend their power to the co-religionists within the empire. The conflict ended with the approval of *Rum milleti* and *Ermeni milleti* (the Byzantine and Armenian *millets*, respectively), but what had initially been limited to these two specific groups ended up spreading around all the communities, with the understanding that making use of their own religious identity could mean obtaining the title of *millet* and securing political advantage—given that such acknowledgement would open the door to the power game of the court.[120]

Towards the politicisation of religion

It was during the *Tanzimat*, the series of reforms that began in the second third of the 19th century, that this *millet* policy reached its peak. Paradoxically, this epoch, which marked the beginning of the legal modernisation of the Ottoman Empire and the birth of secularism at its heart, was also when a system was established that granted new political power to religious communities. The *Tanzimat* were promoted with the aim of overcoming the crisis and decadence of the empire, through an essentially centralist policy and reforms that responded not to social demand but rather to an initiative of the governing elites. These reforms began with the Gülhane Decree in 1839, which gave rise to a set of measures: including the renewal of the legislation, the *aggiornamento* of bureaucracy and the army, and the end of the traditional vision, according to which Islam must have political and social pre-eminence. After Gulhane, Ottoman citizens benefited from the same rights and shared the same obligations, without distinctions of religion. The decree tacitly declared universal equality, thus going against the *sharia* and popular opinion.[121] The refusal of the highest Sunni religious authority in the empire, the Seyhülislam, to endorse the decree (it

119 Benjamin Braude (1982). Foundation Myths of the Millet System, in *Benjamin Braude and Bernard Lewis (eds.). Christians and Jews in the Ottoman Empire. The Functioning of a Plural Society*, 2 vols. New York, London: Holmes & Meier Publishers, vol. 1, pp. 69–88.

120 Bruce Masters (2001). *Christians and Jews in the Ottoman Arabic World: The Roots of Sectarianism. Op. Cit.*, pp. 61–65, 98–100, 134; Carter Vaughn Findley (2008). The Tanzimat, in *Suraiya N. Faroqhi, Kate Fleet and Resat Kasaba (eds.). The Cambridge History of Turkey*, 4 vols. Cambridge: Cambridge University Press, vol. 4, p. 28.

121 Kemal H. Karpat (1982). Millet and Nationality: The Root of the Incongruity of Nation and State in the Post-Ottoman Era, in *Benjamin Braude and Bernard Lewis (eds.). Christians and Jews in the Ottoman Empire. The Functioning of a Plural Society*, 2 vols. *Op. Cit.*, vol. 1, p. 162.

was standard practice to approve laws that were related to Islamic law) showed the unease with which these measures were welcomed. This epoch would see the start of tensions between politics and religion.[122]

It was, in fact, the Imperial Decree of 1856, known as *Islahat Hattı Hümayun* or the Imperial Decree of Reforms, which brought about insurmountable discordance, as it proposed bold measures of modernisation whilst establishing the continuation of religious separation. It appealed to common citizens and equality between Ottomans, without distinguishing between sex or religion, whilst at the same time sanctioning the *millet* as the organisational system of religious communities, thus confirming their rights and privileges and establishing that it was the communities themselves, via their religious representatives, who must manage individual personal status law regarding matters such as marriage, family, inheritance and filiation.[123] Unfortunately, this initiative to modernise while maintaining the traditional status quo gave rise to three disagreeable circumstances regarding the survival of the empire:

1. On the one hand, the process was traumatic for the people, since the traditional social structure was suddenly dismantled. Many believed Westerners were ultimately responsible, as the reformist ideas went against the order inspired by the *sharia*.[124] In some places this discontent exploded in the form of religious violence, as was the case with the 1860 massacre in Syria.[125]

2. On the other hand, the authority of the sultan became seriously compromised, since many Muslims started to consider him an undignified representative of religion.[126] In Arab territories, this situation triggered a type of religious-based Arab nationalism that supported the creation of a purely Arab caliphate in contrast to the corrupt *Padisah*.[127]

3. The *millet* system enabled religious power to be centralised in Istanbul, thus putting an end to the autonomous and local nature of the *taifas*. This accentuated the national consciousness of citizens from the provinces, who, having been under a distant authority, reacted by politicising religion, language and ethnicity—elements that had never represented a problem for the common consciousness up until that moment. Therefore,

122 Dora Glidewell Nadolski (1977). 'Ottoman and Secular Civil Law', *International Journal of Middle East Studies*, 8, pp. 521–522.

123 Alejandra Álvarez (2013). *Comunidades no musulmanas en un entorno musulmán. La pervivencia del modelo otomano en la actual Siria. Op. Cit.*, pp. 103–109.

124 Roderic H. Davison (1963). *Reform in the Ottoman Empire 1856–1876*. Princeton: Princeton University Press, p. 57.

125 Bruce Masters (2001). *Christians and Jews in the Ottoman Arabic World: The Roots of Sectarianism. Op. Cit.*, pp. 3–6.

126 Philip Mansel (1995). *Constantinopla, la ciudad deseada por el mundo, 1453–1924*. Granada: Almed, p. 302.

127 Kemal H. Karpat (1972). 'The Transformation of the Ottoman State, 1789–1908', *International Journal of Middle East Studies*, 3 (3), p. 273; Hasan Kayali (1997). *Arabs and Young Turks: Ottomanism, Arabism and Islamism in the Ottoman Empire, 1908–1918*. California: University of California Press, Ebooks Collection, p. 28.

one consequence of the *Tanzimat* was the emergence of different types of nationalism within the empire, including the incipient Arab and Turkish nationalism.[128]

The organisation into *millets* lasted until the end of World War I and the dissolution of the Ottoman Empire—made final after it suffered defeat to the Allied powers. Nevertheless, there is a great deal of data (relating to, for instance, ethnically and religiously motivated massacres between 1894 and 1897) that verifies how already in the epoch of Abdülhamid II (1876–1909) the state was unable to manage the heterogeneous nature of the different *millets* under one common Ottoman nationality *(osmanlılık)*. Gradually, the notion that Islam was the only idea capable of uniting a society was forged (bearing in mind that the areas with a Christian majority were progressively becoming independent throughout the 19th century. This was the case with Armenia, which remained under Russian control from 1828 and 1829, and Greece, which became independent in 1830. It was the same for Serbia, Romania and Bulgaria in 1878, the same year the Austro-Hungarians annexed Bosnia and Herzegovina, and the Russians Eastern Anatolia. By the end of the century, the Ottoman Empire was overwhelmingly Muslim), as was the notion that the *millet* system must disappear by means of an almost forceful process of assimilation.[129] In the final decade of the empire, the only aspect people could hold onto was Turkish identity.

In the Turkey that came into being after the empire's defeat, with a state wishing to forget its past, the *millet* system did disappear. However, in the eastern Arab territories of the Ottoman Empire that remained under the Mandates, and especially under the French Mandate (as in Syria's case), the Ottoman organisation of religious groups was preserved and partially modified. Hence the paradox that remains in Syria of a state with modern structures coexisting with a traditional religious organisation.

The confessional strategy during the French Mandate for Syria

The shortly lived kingdom of Faisal bin Hussein in Syria (1919–1920) did not represent any significant change in the confessional organisation of the Syria–Lebanon territory. This interim was followed by the French Mandate for Lebanon and Syria, which, although justified by the League of Nations (in 1922), would mean the inhabitants of this territory would never see the legitimacy the sultans had possessed.[130] As shown in the results of the King–Crane Commission, an official and neutral investigation endorsed in 1919 by the North American government (at that time Woodrow Wilson was in office and his post-war policy regarding the old Ottoman territories was based on the right of the people's self-determination), the majority of the inland population, namely Syria—in contrast

128 Albert Hourani (2003). *La historia de los árabes*. Barcelona: Vergara, p. 379; Maxime Rodinson (2005). *Los árabes*. Madrid: Siglo XXI, p. 87.

129 Kemal H. Karpat (1972). 'The Transformation of the Ottoman State, 1789–1908', *Op. Cit.*, p. 280.

130 Philip S. Khoury (1987). *Syria and the French Mandate. The Politics of the Arab Nationalism 1920–1945*. Princeton: Princeton University Press, pp. 4–5.

to the Christian majority in Lebanon—were radically opposed to any French or Zionist intervention in their country. They saw their hopes of building a nation in the so-called 'historical Syria' (that is, inland Syria, Mount Lebanon, Palestine and Jordan—territories that have always embodied linguistic, cultural and social unity) reduced. In fact, only the Maronites and the rest of the Catholics preferred the French.[131]

Yet neither the British nor the French took on board the recommendations of this investigation, though the French did make use of the data generated to design their government strategy. In fact, during the period spanning the Mandate in Syria (from 1920—although the official date is 1922—until 1946), the French designed and developed a policy based primarily on the operation of the different religious communities.

What is striking is that under such circumstances, an openly secular country like France made use of religion as a political tool.[132] That said, the possible reasons for this course of action are twofold: firstly, because maintaining the religious system could have served as an instrument for dealing with the dominant Arab nationalism in inland Syria; and secondly, because French policy during this period applied the use of colonial theories that supported the so-called 'association principle' ahead of the 'assimilation principle', considered obsolete at the time.

This desire to weaken the dominant Arab nationalism frequently identified with the Sunnis in inland Syria was the main reason the French maintained the religious system. The new governors brought with them their experiences of North Africa, which influenced them against Sunni Islam and determined the parameters of their policies.[133] Consequently, the French could justify their presence in the area, given that their main mission was to defend the interests of minorities before the Sunnis (it is worth recalling that the minorities matter was one of the burning issues in the League of Nations after the war of 1914–1918, and the concession policy of the Mandates was conditioned by this issue).[134] Some authors have also pointed to France's naïve view of the situation, which would have been guided from the outset by optimistic information regarding the welcome they would receive from inhabitants of the territory. Such information, comparing the willing disposition of the Syrians with that of the inhabitants of Lebanon regarding France's presence in the area, originated from the missionaries, the resident advisers in Damascus and the *Rum Uniates* of Hawran, and clashed with the harsh reality that followed the arrival of the heads of state.[135]

131 Original text in (1922). 'King–Crane Report on the Near East', *New York: Editor and Publisher Co.*, vol. 55, no. 27, 2nd section (2 December 1922), XVIII + map, 1 The Geography of the Claims, III, paragraph 3.

132 Ignacio Gutiérrez de Terán Gómez-Benita (2003). *Estado y confesión en Oriente Medio: el caso de Siria y Líbano. Religión, taifa y representatividad.* Madrid: Cantarabia, Universidad Autónoma de Madrid, p. 94.

133 Daniel Pipes (1992). *Greater Syria: The History of an Ambition.* Oxford: Oxford University Press, p. 153.

134 Helmer Rosting (1923). 'Protection of the Minorities by the League of Nations', *The American Journal of International Law*, 17 (4), pp. 647–648; Benjamin Thomas White (2007). 'The Nation State Form and the Emergence of 'Minorities' in Syria', *Studies in Ethnicity and Nationalism*, 7 (1), pp. 64–70.

135 David Kenneth Fieldhouse (2006). *Western Imperialism in the Middle East 1914–1958.* Oxford: Oxford

The other reason for maintaining a religious system, the aforementioned 'association principle' (designed by Marshal Lyautey for Morocco), advanced how, when faced with the Eurocentric idea of making the native people more French, it was more advisable, useful and efficient to keep local institutions—ultimately controlling them by means of representatives from the mother country and exclusively French civil servants.[136] Such respect for (Ottoman) institutions in the area was useful for justifying the backing of Article 6 of the Mandate of the League of Nations for Syria (1922), which guaranteed respect of the people's religion under French authority. This religious policy materialised primarily in two forms: the creation of religious states and the maintenance and development of the *taifa* system.

With regard to the creation of religious states, the French made use of the provincial organisation forged by the sultan in 1864 in Syria and Lebanon[137] to create their own religious-inspired territorial division. A mere six weeks after they entered Damascus (1920), the state of Greater Lebanon was established and conceived as a 'confessional community' to welcome local Catholics,[138] adding territories belonging to Syria. Shortly afterwards, the autonomous Alawi territory was created and, in 1922, named a state, with the justification that the group needed protection from the Sunnis.[139] Subsequently, the autonomous *sancak* of Iskenderun was formed and, in 1939, handed over to the Turks, in exchange for neutrality in the global conflict that was looming.[140] The Druzes also signed an agreement for the creation of their own state in Jabal ad Duruz in 1922, meanwhile the predominantly Sunni and Arab nationalist populations remained located in the inland states of Damascus and Aleppo, which were unified in 1924.[141]

The second measure, maintaining and developing the *taifa* system, is precisely the one we are concerned with in our argument—given the fact that the French maintained and respected the Ottoman legislation regarding the *millets*, appropriating it for the new political and regional set-up. As Benjamin Thomas White points out,

University Press, pp. 253–254.

136 Raymond F. Betts (2005). *Assimilation and Association in French Colonial Theory 1890–1914*. Lincoln: University of Nebraska Press, pp. 10–32; David Kenneth Fieldhouse (2006). *Western Imperialism in the Middle East 1914–1958*. *Op. Cit.*, pp. 257–259.

137 George Young (ed.) (1905). *Corps de Droit Ottoman: Recueil des Codes, Lois, Règlements, Ordonnances et Actes les plus importants du Droit Intèrieur, et d'Études sur le Droit Coutumier de l'Empire Ottoman*, 7 vols. Oxford: Clarendon Press, I, pp. 36–45; Abdul Latif Tibawi (1969). A *Modern History of Syria*. London: McMillan, St. Martin's Press, pp. 179–181; Zeyne N. Zeyne (1960). *The Struggle for Arab Independence. Western Diplomacy & the Rise and Fall of Faisal's Kingdom in Syria*. Beirut: Khayats, pp. 33–35.

138 David D. Grafton (2003). *The Christians of Lebanon. Political Rights in Islamic Law*. London, New York: Tauris Academic Studies, p. 94.

139 Jean-David Mizrahi (2002). La France et sa politique de Mandat en Syrie et au Liban (1920–1939), in *Nadine Meouchi (ed.). France, Syrie et Liban 1918–1946 : Les ambigüités et les dinamiques de la relation mandataire*. Damascus: Institut Français d'Études Arabes, p. 41.

140 Abdul Latif Tibawi (1969). A *Modern History of Syria*. *Op. Cit.*, pp. 352–353.

141 Youssef S. Takla (2001). Corpus Juris du Mandat Français, in *Nadine Meouchi and Peter Sluglett (eds.). The British and French Mandates in Comparative Perspectives*. Leiden: Brill, pp. 80–85.

it is quite possible that the French ceded to the demands of the religious heads, who wished to preserve their traditional power in facing the danger from Western-based secularisation.[142]

At any rate, during the period of the French Mandate, the Ottoman system developed under the *Tanzimat* was adapted—in this case recovering the term *taifa* to refer to what were previously called *millets*. Therefore, the noun *taifa* in the French Mandate's legislation must not be understood in a traditional sense (in other words, as a local organisation), instead it should be likened to what the Ottomans called *millet*. The coincidences are multiple: a) both involved legal entities with national scope, recognised by a central authority via an official document; b) in both, the highest religious leader acquired the power of attorney of their community before the state; c) as in the epoch of the *Tanzimat*, the religious *taifas* were obliged to subject their statutes to the examination of the authorities, who determined the benefit of the hierarchical structure of the community, the dogmas and religious laws, the personal status laws and the administration method; and lastly d) in the case of both the Ottoman *millets* and the mandatary *taifa*, the approval of the religious community meant the recognition of their traditional privileges, while their personal status was turned into civil law and placed under state protection and the control of the public powers. Further proof that the organisation of the Ottoman Empire was accepted by the French is demonstrated by the fact that until 1936 no actual regulations were promulgated for the religious communities, given that (in mandatary logic) the triumphant Arab nationalism represented by the National Bloc *(al-kutla al-wataniyya)* could only be counteracted by once again employing confessional logic.[143]

Nonetheless, this *arrêté* did not go down well with either the religious leaders, who wished to maintain greater power within their communities and free themselves from the uneasy supervision of civil power,[144] or with the Sunni Ulamas, offended by a decree that overlooked the *sharia* and treated Muslims as just another simple confessional community, tacitly allowing the marriage between a Muslim woman and a non-Muslim man, considering the possibility of freely changing to 'any' religion, or even—pursuant to the modifications upheld in 1938[145]—permitting individuals without a recognised confessional group or Muslims who have changed religion to raise their offspring in this

142 Benjamin Thomas White (2007). 'The Nation State Form and the Emergence of 'Minorities' in Syria', *Op. Cit.*, p. 71.

143 *Journal Officiel de la République Syrienne*, X/13-3-1936, Arrêté n.º 61/L. R. 65; Benjamin Thomas White (2007). 'The Nation State Form and the Emergence of 'Minorities' in Syria', Op. Cit., p. 78.

144 The Ottomans had already tried with the promulgation of the *Kararname* in 1917, which was never put into practice because of the war. This decree saw all religious law related to marriage and family fall under the civil laws of the state. *Düstur, tertip* 2 [legal code, 2nd edition] (1911–1928). Istanbul, Ankara: Dersaadet Matbaa-i Osmanie, 11 vols., vol. 9, pp. 762–781; Ilber Ortayli (1994). *Studies on Ottoman transformation*. Istanbul: Issis Press, pp. 322, 332; Sükrü Hanioglu (2008). The Second Constitutional Period, 1908–1918, in *Benjamin Braude and Bernard Lewis (eds.). Christian and Jews in the Ottoman Empire*. *Op. Cit.*, vol. 4, p. 102.

145 *Journal Officiel de la République Syrienne*, XLVII/29-12-1938, Arrêté n.º 146/L. R. 291–292.

belief. The reactions in opposition, manifested in the form of popular protests, reached such a magnitude that the high commissioner agreed to call a halt to its application.[146]

Yet the French initiative did not fall by the wayside. Interestingly, the new independent Syrian state created in 1946 would incorporate the decrees mentioned above, thus sanctioning the *taifal* organisation that had been adapted by the mandatary power using the Ottoman model and so establishing continuity between the Ottoman period and modernity—the focal point of the premise this paper is based on.

The Syrian dilemma

The Syrian Arab Republic that emerged after World War II based its political ideology on conciliatory secularism, which left religious differences aside for the sake of national construction and was rooted more in Arab nationalism—and the Ottoman reforms of the 19th century, previously referred to—than the secular tradition of France.[147]

In fact, the Syrian constitutions that materialised after independence (there were six—not counting the French constitution from 1928, which, with modifications, was used as a magna carta by the new state up until 1949, or that of Abd al-Naser, promulgated in 1958) carefully avoided any talk of Islam as the country's official religion or determining the *sharia* as a source of legislation, which differentiates them from other magna cartas promulgated in the Arab Islamic world. The Faisal Constitution of 1920 talks of Islamic law *(fiqh al-islami)* as the main source of legislation—a more neutral form of expression, with less religious responsibility than the term *sharia*, used in other Arab constitutions.[148] On balance, every Syrian constitution has been inspired by this approach, and by the nationalism that surfaced within the context of Ottoman decadence.[149]

The arrival of Ba'athism in 1963, with its markedly secular ideology and the subsequent 'rectification movement' *(at-tashihiyya)* introduced by General Hafez al-Assad in 1970,

146 Benjamin Thomas White (2010). 'Addressing the State: The Syrian Ulama Protest Personal Status Law Reform, 1939', *International Journal of Middle East Studies*, 42, p. 11; Philip S. Khoury (1987). *Syria and the French Mandate: The Politics of the Arab Nationalism 1920–1945. Op. Cit.*, pp. 576–577.

147 Raymond Hinnebusch (2001). *Syria, Revolution from Above*. London: Routledge, p. 19.

148 *Dustur al-Yumhuriyya al-Arabiyya as-Suriyya as-sadir bil-marsum raqm 208 tarij 1973/03/13* [The Constitution of the Syrian Arab Republic, promulgated in Decree 208, of 13 March 1973], Damascus: Dar as-safadi 2007, n.º 7; Robert C. Blitt and Tad Stahke (2005). *The Religion–State Relationship and the Right to Freedom of Religion or Belief: a Comparative Textual Analysis of the Constitutions of Predominantly Muslim Countries*. Washington D.C.: U.S. Commission on International Religious Freedom, pp. 9–11; Issa Ali (2011). 'Constitution et religion dans les Etats arabes: la place de la religion dans le système constitutionnel moderne du monde arabe', *VIIIe Congrès National de l'Association Française de Droit Constitutionnel, Nancy 16–18 Juin 2011*. Available at: http://www.afdc-nancy.eu [Consulted 25 November 2013].

149 The Syrian constitutional texts are restricted to highlighting that Islam must be the religion of the president of the republic, as with the text from the Faisal constitution, which indicated that this must be the religion of the king of Syria. See Alejandra Álvarez Suárez (2013). La religión en la trayectoria constitucional de la República Árabe de Siria, in *Paloma Gómez del Miño (ed.). La Primavera Árabe, ¿una revolución regional?* Madrid: Universidad Complutense, pp. 535–545.

served to further deepen the secular path of the state.[150] The criticism of the policies of the Assad government, led by Islamists and particularly the Muslim Brotherhood, were nothing but reruns of the discontent that groups had shown against the secularisation of the state since the 1940s—though on this occasion advantage was taken of the circumstance that saw an Alawi elite, deemed atheist and non-religious, accused of joining other minorities to weaken the large Sunni majority.[151] This was to be the origin of the so-called 'Syrian community issue',[152] a non-critical premise occasionally accepted by analysts and researchers. In fact, the 1973 constitution consciously avoided making any reference whatsoever to the religious *taifas* or personal status laws, even avoiding any mention of religious courts—essential to the correct application of the 'private sphere' laws, in Arab legal terminology—when dealing with the matter of judicial power.[153]

Thus, the existence in Syria of patent religiously inspired laws for the private sphere—in matters such as marriage, divorce, filiation or inheritance (collated in legal codes known in Arabic as laws of 'personal status', *al-ahwal al-shajsiyya)*—alongside civil legislation for the public sphere, preserved a model originally created by the Ottoman Empire in the 19th century. As a result, the Syrian system perpetuated this legal and institutional ambiguity, caused by the coexistence of archetypal structures of a modern and secular state organised into confessional *taifas*.

On this issue, it is worth highlighting that the Syrian state has always acknowledged the validity of laws on religious *taifas* decreed by the French in 1936 and 1938 (referred to earlier), which were but the Ottoman *millet* duly adapted to the circumstances of the Mandate. This recognition not only prompted the assimilation of Ottoman principles, it also meant the acceptance, to the letter, of the list of *taifas* from throughout history, which the French had inherited from the previous governors.[154] The state's acceptance of these decrees, which created numerous problems for the mandatary power, was tacitly developed in the years following independence, until in 1957 certain minor details were changed by means of a decree-law promulgated by President Shukri al-Quwatli.

The fact that the 1973 constitution avoided making any reference to the religious courts must be understood as a purely rhetorical measure. In actual fact, the religious court system *(mahakim diniyya)*, responsible for ensuring the fulfilment of personal status laws

150 *Raymond Hinnebusch (2001). Syria, Revolution from Above. Op. Cit.*, pp. 58–62.

151 Liad Porat (2010). 'The Syrian Muslim Brotherhood and the Assad Regime', *Middle East Brief*, 47, pp. 2–3.

152 Ignacio Gutiérrez de Terán Gómez-Benita (2003). *Estado y confesión en Oriente Medio: el caso de Siria y Líbano. Religión, taifa y representatividad. Op. Cit.*, pp. 127–128.

153 *Dustur al-Yumhuriyya al-Arabiyya as-Suriyya. Op. Cit.*, n.º 33; Gregory S. Mahler (1996). *Constitutionalism and Palestinian Constitutional Development.* Jerusalem: Passia, p. 93.

154 The Arabic text on the *arrêtés*, adopted by the Syrian state, follows the French original and can be read in *Qawanin al-ahwal as-shajsiyya lit-tawa'if al-urthuduksiyya wal-kathulikiyya wal-inyiliyya wal-arman was-suriyan wal-musawiyyin* [Personal Status Laws for Orthodox, Catholic, Evangelical, Armenian, Syrian and Jewish *taifas*]. Damascus: Qassab Hasan (no date), pp. 7–18.

corresponding to the religious confessions, was officially ratified in 1965. This ratification, signed by Amin al-Hafiz, signified the official acceptance of a dual judicial system comprising both secular and religious courts, which had been created by the Ottomans and would make it to the Syrian Arab Republic via the French.[155]

The *taifal* system described here, and the judicial system in which the religious courts have a sphere of activity with civil consequences, still exist in present-day Syria. For a secularly conceived state this gives rise to structural incoherence, which in turn results in a series of immediate consequences: a) the religious communities recognised by the Ottoman system immediately become indispensable state collaborators in terms of the 'private' civil sphere (this term is interpreted according to Ottoman jurisprudence); b) in accordance with the above, every religious community has its own provincial courts and appeal procedures, which boast significant autonomy (The *taifas* are responsible for selecting judges, which do not necessarily have to be Syrian, and only the state receives notification of each appointment); c) citizens are civilly obliged to have an assigned religion, since everything related to marriage, inheritance, filiation and divorce is managed by religious communities and their courts and is legally binding; d) given that every community is awarded its own laws and has its own legal codes, there is legal inequality among citizens, according to whether the person belongs to one religion or another; and e) the abundance of legal codes in the form of personal status laws and courts gives rise to frequent jurisdiction problems,[156] particularly in the case of mixed marriages. In certain specific cases there are even contradictions between civil law and religious law: for instance, regarding the conversion by Muslims to other religions—permitted by the French law of 1936, which (as mentioned) was corroborated in 1957 and is still in force today, but strictly prohibited by the *sharia*.[157]

AUTHOR BIOGRAPHY

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155 Rania Maktabi (2009). *Family Law and Gendered Citizenship in the Middle East: Paths of the Reform and Resilience in Egypt, Morocco, Syria and Lebanon. Draft Paper presented at the World Bank/Yale Workshop: Societal Transformation and the Challenges of Governance in Africa and the Middle East.* Yale University, Department of Political Science [typescript], pp. 16–17.

156 The Ottoman *kararname* of 1917 remained in force until 1953, the year that a new text giving supremacy to Islamic law was approved. The new code was obligatorily applied to all citizens, regardless of their religion. Nevertheless, it was expected that non-Muslims could follow their personal status laws regarding marriage and divorce. See Arab text (2008). *Qanun al-ahwal ash-shajsiyya.* Damascus: Mu'assasat an-Nuri. There is a Spanish translation in Caridad Ruíz-Almodovar (1996). 'El Código Sirio de Estatuto Personal', *Miscelánea de Estudios Árabes y Hebreos, Sección Árabe e Islam*, 45, pp. 230–280. In practice, this also enabled autonomy in such matters as inheritance, adoption and filiation. In Syrian legislation, eight different personal status laws coexist.

157 Nevertheless, there are still some cases in the Syrian civil registry. Maurits Berger (1997). 'The Legal System of Family Law in Syria', *Bulletin d'Études Orientales*, 49, pp. 115–127.

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ABSTRACT

This article shows how the current system of religious organisation in Syria relates to a model that depends directly on the legislation established for this purpose during the Ottoman Empire. The coexistence of this traditional system with a modern legislation of Western and secular inspiration is a characteristic feature of the contemporary Syrian state. This peculiarity can only be properly understood after an analysis of the political, legal and social institutions that preceded and accompanied the establishment of the current Syrian state.

KEYWORDS

Syria, confessionalism, legislation.

الملخص

يظهر المقال التالي كيفية إستجابة التنظيم الطائفي الحالي في سوريا لنموذج يرتبط بشكل مباشر بالنظام الذي أرسته الإمبراطورية العثمانية لهذا الغرض. فتعايش هذا النظام التقليدي مع تشريع عصري ذا بعد علماني و غربي يعتبر سمة مميزة للدولة السورية المعاصرة؛ و لا يمكن فهم هذه الخاصية فهما صحيحا إلا من خلال دراسة المؤسسات السياسية و القانونية و الإجتماعية التي سبقت و رافقت تأسيس الدولة الحالية.

الكلمات المفتاحية

سوريا، الطائفية، التشريع.