

GIANCARLO ANELLO with KHALED QATAM

*Re-Emerging Equality*

*Traditions of Justice in the Cultural Roots of the Egyptian Revolution*

ABSTRACT:

For years, modern Egyptian Islamic thinkers have been attempting to define Islamic ideals of social justice and the way in which they have been ignored in the post-colonial period. This paper will discuss and critique the mid-20th century works of theorists of the Muslim Revolution like Abbas Mahmud 'Aqqad (author of *al-dymuqratyah fy al-islam, Democracy in Islam*) and Sayyid Qutb (author of *al-'adalah al-ijtima'iyya fy al-islam, Social Justice in Islam*) in order to shape the discourse about the relevance of their theories of democracy, justice and equality for today's political movements

KEYWORDS:

Justice, Democracy, Islamic Jurisprudence, Culture, Revolution

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*1. Introduction. The cultural roots of the contemporary discourse of the Arab revolutions – 2. The sense of injustice as the starting point of the tha'urah (revolution) – 3. Words and categories of (in)justice by texts – 4. Traditions of justice between the emergence of culture and the religious and legal architecture – 5. Conclusive remarks.*

*1. Introduction. The cultural roots of the contemporary discourse of the Arab revolutions*

The peak of injustice represented by the suicide of the Tuni-

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\*\* Khaled Qatam has selected and translated all the quotations of the texts of A.M. 'Aqqad, S. Qutb, H. Hanafi, Y. al-Qaradawi. Professor of Arabic Language of the Leitmotiv School of Languages, Parma. Email: khaledino@libero.it.

sian Mohammed Buazizi has shocked the conscience of most Arab people. Very few western scholars would have been able to foresee the international and massive flow of protests which has followed that unjust event. A lesson to be drawn is that while conceptions of a just society are weak and changeable, the feeling of injustice in some circumstances increases and becomes strong and objective. But both of them are deeply intertwined. In an anthropological approach we must be aware of the fact that juridical principles and rules do not interact within a social *vacuum*, but they apply to attitudes, cultures and technical cognitions of the members of society. That is particularly true in Arab and Muslim culture. Borrowing a concept from social psychology, we can affirm that the law is based on a series of powerful “social representations”<sup>1</sup>. The one we are most concerned with – (in)justice – flows under the values of current Arabian societies linked to the Islamic legal tradition. As a consequence, we suggest that it would be impossible to evaluate the Arabian uprising without considering the particular attention of the Muslim world-view towards values like equality and fairness, deeply rooted in the Islamic legal theory. In spite of the fact that the recent upheavals have manifested, and are still occurring – in Syria for example –, without the initiative of the religious parties, the common ground of the Islamic culture is going to emerge day by day from last events as well as from the ensuing elections’ outcomes. On one hand, it is particularly true that religion can be considered as a factor of behaviour of people who share a common Islamic culture, since steady traditions of

<sup>1</sup> For the definition, MOSCOVICI 1984, 17.



We may quote the headline from a Palestinian newspaper edited in London, *al-quds al-arabi* on February 8<sup>th</sup>, 2011. The title says: «What is happening in Tunisia and in Egypt is like watching the first man walking on the surface of the moon!». It would seem that the headline had referred to astonishing and unprecedented events<sup>2</sup> but – we ask – were they indeed? Can we actually consider the massive strain for democracy, freedom, rights and justice arose from the Arab Spring as an absolute novelty for the Arabian world? To our minds, this opinion is far from sound. On the contrary, the main aim of this paper is to argue that the discourse of the revolution relies on steady social representations of justice which have been a sort of permanent argument in the Middle East since the post-colonial era, strongly fixed in the Islamic legal value of equality. To get this point, we suggest the need for studying the Islamic concept of justice properly as a legal category, shared by the common sense of Arab people, and basically grounded in the conceptions of responsibility drawn in Islamic law - as well as an ideology which embodies the idea of equality in the collective and masses' experience. In doing so we will deal with the Egyptian legal culture more in depth: moving from the discourses of Sayyid Qutb and Abbas 'Aqqad, connected to some of the most influential Egyptian scholars – in their original Arabic semantics – we aim to bond the social representation of religious justice with the quest for equality rooted in the tradition, which – we assume – has stirred the upheaval of the Arab Spring and which still represents a purpose to be

<sup>2</sup> See for the peculiarity of Arabic newspapers “just full of emotions”, NYDELL 2006, 30.

realized in the building of new public institutions. Thus, we suggest that the tradition of justice in the Arab culture can carry out a double function. On one side it represents a psychological and collective feeling, notably a factor of political criticism towards an unjust ruler. And on other side, it can be considered as a technical factor of the legal responsibility, framed within a coherent theory of individual accountability. We underscore that the importance of social justice increases in proportion to the fluctuation of the unifying systems of societies – like the religious, political, economical, legal ones – and to all the changes which they undergo. Media can accelerate this tendency; but they don't create it. As a conclusion, we will work out our interpretation of the notion of the social justice in order to contribute, within the framework of the categories of religious and secular law, to ground a legal/inner perspective respectful of the contemporary claims for democracy and human rights.

## 2. *The sense of injustice as the starting point of the tha'urah (revolution)*

Before describing the topics inherent in the Islamic revolution as they are conceptualized by the main authors, we must outline the basic elements of our theory, according to which the cultural features of the legal traditions of equality and justice fit to the events that we are concerned with, under a strict juristic perspective<sup>3</sup>. The massive claims for justice can be represented as a reaction to a deep sense of injus-

<sup>3</sup> See for the complete description ANELLO 2011.

tice, manifested by factors which are apt to influence the social representation of justice. In the Muslim and Arab world they might be: a. the prescribed role of the religious law and its inherent value; b. the collective memory of Muslims; c. the feelings of injustice of the masses.

Let's analyse every key-point individually:

a. In the past, starting from the moral directives and regulations embedded in the Holy writs, some religions (Hinduism, Christianity, Islam, Judaism) have developed complex and breached legal systems, based on the expertise of specialists' classes. Over the centuries they have carried out a process of articulation of scriptures that has invested not only the primary theological and dogmatic issues, but also those profiles concerning the legal relations by the collections of jurisprudence<sup>4</sup>. The Islamic law (*shari'a*) has ruled the daily practices of the community of the faithfuls for centuries until modern times. In our example we may recall that the *shari'a* was not the only applicable law in the post-colonial state, but it has maintained the role of source of the law, even after the 1950 up to today. In the Egyptian Civil Code<sup>5</sup> (*al-qanun al-madany al-misra* n. 131 of 1948), article 1 fixed the legal relevance, in the following order, of the state law (*nass tashri'i*), the appropriate customs (*muqatada' al-arf*), the principles of religious law (*mabadi' as-shari'a al-islamiyyah*), the natural law (*qanun at-tabi'a*) and the rules of equity (*qawa'id al-'adalah*). We may add that, over the years, the influence of the religious law didn't have impact only on the positive profiles of the law but over-

<sup>4</sup> SCHACHT 1982, 23 ff.

<sup>5</sup> D'EMILIA 1955, 1 ff.; PETERS 1988, 237 ff.; BECHOR 2001, 179 ff.

flowed in the practical thinking, imprinting ends, values and moods of life. In an Islamic society like Egypt, the sense of justice rooted in religious categories must be considered a juristic motive of individual and collective accountability as well as an emotional factor of relative deprivation.

b. As human beings, we develop our personal memory as the foundation of our own identity. In order to do so we rely on the memories of those who experienced the same or similar events before us. Studies by the sociologist Maurice Halbwachs<sup>6</sup> distinguish between personal memories that are attributed to a single person and collective memories that are attributed to groups of individuals. Collective memory serves a purpose that goes far beyond the simple reminiscence of the past: it instead revises and reinterprets the past in relation to the present. It has also been established that collective memory is intrinsically connected to well defined social structures such as tradition and rituals that act as tools to reassemble the past. Memory is the gateway to the past but the individual does not use it to merely relive former events, he rather continuously reconstructs souvenirs using the structures (traditions and rituals) at his disposals. By doing so, the past ceases to be a simple and spontaneous reproduction of resemblances and it becomes an artifact mold within the context of current times. That is, the function that memory evolves from simple preservation of knowledge to interpretation and adaptation of the past to the present. A thinker who has conceptualised a connection between the Islamic law, the collective memory and the Egyptian revolution was Hasan Hanafi: through the concept of

<sup>6</sup> HALBWACHS 1992a; HALBWACHS 1992b.

*turath* (a word commonly translated as “heritage”), the works of Hanafi refer to the sum of contributions in the life of Muslims by the sacred texts, along with commentaries and interpretations of those by theologians, jurists, and philosophers since the Revelation:

«Our faith (is) in the heritage and its renewal (*al-turath wa al-tajdid*) and the possibility of solving the crisis of the (present) age [...] and the possibility of reconstructing the heritage to give the (present) age a new push forward. The heritage [...] is a psychological storehouse for the masses and the theoretical foundation or the structure of reality»<sup>7</sup>.

We may assume that the conception of *turath* by Hanafi is an adequate linkage with some theories of collective memory of Halbwachs, so that we can refer to it in exploring the courses (*ad-daurah*) of resurgences (*tajdid*) of Islamic individual conscience, hence justice:

«Hanafi believes that the “heritage” is the basis of contemporary awareness in society and calls it the “psychological storehouse” of the masses. In focusing on the elements of the “heritage” that are in need of “renewal” (*tajdid*) Hanafi is motivated by the needs of the present. For Hanafi, the “heritage” by itself has no inherent value»<sup>8</sup>.

This idea has been widely shared by a group of Egyptian thinkers known as *turathiyun judud* (The partisans of heri-

<sup>7</sup> HANAFI n.d., 5.

<sup>8</sup> AKHAVI 1997, 391.

tage)<sup>9</sup>. They appreciated the political Islam as an expression of determination to become culturally independent from the West. Thus, notwithstanding the ban regarding many of the works we are most concerned with, the continuing recalling of the ideas of Sayyid Qutb (and of his concept of *jahiliyyah*)<sup>10</sup> by the Muslim Brotherhood, has constituted a sort of “social framework of memory”: that is, a framework within which any group situates itself in society. We mean that this collective/cultural use of the writings of Qutb has been continuing, since the condemnation of the Muslim Brotherhood as opponents of the government of Nasser up to the upheaval against the injustice of the government of Mubarak. As stated from the Egyptian thinker Fuad Zakaria according to the habit of quoting without any filter of rational insight the words of former jurists,

«Islamist youths have grown used to servile obedience to the extent that their leaders exercise an immense and indisputable power over them. Thus, their debate, from beginning to end, depends on textual quotations, not just from established texts, but also from the proponents of individual *ijtihad*, such as Ibn Taymiyyah and Sayyid Qutb, whose ideas become more established as they are repeated on every occasion»<sup>11</sup>.

c. Normally most legal scholars believe that it is not possible to have a positive idea of justice. On the contrary, there are

<sup>9</sup> FLORES 1988, 27.

<sup>10</sup> The term *jahiliyyah* is conventionally translated with the “age of ignorance”, but we prefer to refer to the concept of “impiety”, SHEPARD 2003, 521 ff.

<sup>11</sup> ZAKARIYYA 2005, 118.

a few who hold that we can shape a perception of injustice quite so accurately and cleanly<sup>12</sup>. It is not difficult to argue how. We realize that in a social context confrontations are unavoidable. On this basis, we can check our social, economic, religious positions and compare with others. By this confrontation we shape and foster a feeling of deprivation<sup>13</sup>. The same is the case for justice. A sense of injustice is activated when people consider, manifestly, a gap of expectations between what they think they deserve and what they actually are allocated. Obviously this type of perception is relative: it does not depend on what they objectively have, but it results by comparison between what they have and what others possess. Moreover, this kind of dissatisfaction is felt “in solidarity”, because it affects a person even if the deprivation is not about himself/herself but about other members of the same group. Ultimately, the problem of the “relative deprivation” arises because of the social and economic privation to which the poorest elements of population are subjected. The perception of injustice, observable and measurable through the common sense of experience, may represent in the process of claiming rights a starting point. Individuals or communities look to it as a negative situation to be removed.

So, a resurgence of mass social movements in the name of religion can be considered as an expression of widespread social anger and frustration incorporating a sense of injustice. We are fully aware of the dynamics of the political Islam, by which the recall of sharaitic values is seen to be the solution for deprivation:

<sup>12</sup> FIKENTSCHER 1992, 108 ff. and 114 ff.; CAHN 1964; LEDEWITZ 1985, 277 ff.; HINDE 2006, 37 ff.; CURTIS and RESNIK 1987, 1758 ff.

<sup>13</sup> RUNCIMAN 1972; BERTI 2002, 127 ff.

«the fact that people live in a state of regression and crisis increases the appeal of this conviction. The more that political, economic, and social crises tighten the noose around their necks, the more the people will come to accept such logic, which asks them: haven't you discovered yet the results of human-made rule? Distancing yourselves from the divine path has caused your tragedies. Why do you not tread this path, if you really desire to save yourselves from the precipice?

«Naturally, if the choice had really been between a divine rule and a human one, then the solution would have been immediately apparent»<sup>14</sup>.

Approaching the works of our authors we can demonstrate that they were dealing with the problems of the countries at their time, in a way very akin to the contemporary situation. For instance, Qutb describes these kind of feelings in the following excerpt:

«there may sometimes occur that type of social oppression which is inconsistent with justice, when the greed and cupidity of the individual prey upon society; or that same oppression may also take the form of society preying upon the nature and ability of individual. Such oppression is a sin, not against one individual alone, but against the whole principle of the community. It is an encroachment upon the activity of the individual whose natural rights are infringed; but its evil effect do not merely deprive that individual of his rights; they go beyond him to touch the welfare of the

<sup>14</sup> ZAKARIYYA 2005, 130.

whole community, because it cannot profit to the full from his abilities. So the regulations lay down the rights of the community over the powers and abilities of the individual; they also establish limiting boundaries to the freedom, the desires, and the wants of the individual, but they must also be ever mindful of the rights of the individual, to give him freedom in his desires and inclinations; and over all there must be the limits that the community must not overstep and that the individual on his side must not transgress»<sup>15</sup>.

Those words introduce us to the core of our dissertation.

### 3. *Words and categories of (in)justice by texts*

Since the 1950's the works of Islamic thinkers have tried to nourish the culture of social justice in the Muslim countries<sup>16</sup>, bringing out the values of equality and responsibility included in the Islamic legal theory. Islamic law, as every religious law, has an inner facet which is pacifically linked to the inwardness of the individual, that is called – in Arabic – *ḍamyr* (conscience). Moving from this starting point we mean to be aware of the technical perspective of the religious law, paying attention to its internal meanings<sup>17</sup>. We may consider the impact of the religious obligation on the individual “through the rule of conscience” as a part of the bond to the legal

<sup>15</sup> All the quotations come from the American edition QUTB 2000, 46. The consulted edition in Arabic language was QUTB 1952.

<sup>16</sup> ABDELKADER 2011; ABDELKADER 2000; AL-QARADAWI 2007; BURKE and LAPIDUS 1988; ROSEN 2000, 171.

<sup>17</sup> MESSICK 2001, 151-178.

obligation. As suggested, our starting assumption is that in the works of some mid-20th century theorists we find the cultural roots of the contemporary revolution. Particularly we are interested in the works of two authors Abbas ‘Aqqad and Sayyid Qutb, because in their books we may find some of the forementioned explanations about the watchwords of the contemporary revolutions. Moreover those texts represent an intellectual space in which the ideas of the political Islam may be examined, without ideological prejudice, in terms of their own contents and reasonings about some categories of the democratic thought. Finally, both represent two figures of intellectuals who have been a major influence on the Islamic social memory, by means of their written ideas as well as by their living example of unimpeachable honesty. First of all, we recall from 1952, the important work of Abbas Mahmud ‘Aqqad (1889-1964) entitled *al-dimuqratiya fy al-islam* (The Democracy in Islam). ‘Aqqad was a journalist, literate and member of the Parliament. In 1930 he opposed the initiative of the King Fuad of cancelling the Constitution’s provision which had guaranteed the sovereignty of the *ummah* (community). As a result, he was sent in prison for 9 months with the charge of offense to the king. ‘Aqqad firmly believed that reason and intellect alone can guide men’s actions. He published many books, and between them the one we have chosen, which can be viewed as an example of the postcolonial process of meditation on the cultural categories of the political Islam. The book he wrote about democracy in Islam is a very complex volume, not yet translated, which can be considered, symbolically, at the center of the postcolonial meditation on the categories of the western thinking, insofar as it faces the main concept of the foreign culture, notably the “democracy” itself. But in doing so, it tries to harmonize the idea of democracy

within the multifaceted framework of the Islamic social organization. It matches the concept of democracy with other social concepts like religions, the legal system, welfare, internal and foreign policies of the State<sup>18</sup>. Most of our interest goes to the concept of democracy itself, as drawn in the first chapter *al-dymuqratyah. Ma hyya?* (The Democracy. What is it?). As far as the definition by the author affirms:

«as we know, “democracy” is a compound noun made of two words that in the Greek language refers to the meaning of the “rule of the people”; as it is possible to argue from the Arabic compound, we may ask whether the expression “hukm as-shaab” or the similar “al-hukuma as-shabyya” refers to that kind of government which is made up from the people or instead it refers to a kind of government which aims to guarantee the people. [...] And if we say that there is a “rule of the people”, then we may suppose that this kind of government satisfies the people and reassures them, thus this definition may be true in some respects but yet incomplete in many ways [...]. If it is not correct to say that democracy is the rule of the people in the sense that people take their own affairs, there must be another feature to distinguish democracy from other type of systems»<sup>19</sup>.

<sup>18</sup> Some contents were the following: *al-dymuqratyah fy al-adyaat al-kitaabiyah* (democracy in the religions of the Book); *al-dymuqratyah al-arabyah* (Arab democracy); *al-dymuqratyah al-insaanyah* (democracy of the people); *al-dymuqratyah al-iqtasadyah* (economic democracy); *al-dymuqratyah al-ijtim'ayah* (social democracy); *al-tashry'a* (the law); *al-qadaa'* (the jurisdiction); *m'a al-ajaanib* (with the foreigners).

<sup>19</sup> 'AQQAD 1952, 4 and 13 f.

We should point out that, in his definition, the author turns the historical meaning of democracy into a scheme adequate for the Islamic rule of the caliphate, in order to stress the difference between the legitimation of democracy as a foreign ideology and the form of government which can adhere to an Islamic and legalistic view. The intention of ‘Aqqad in shaping the democratic organization within the tradition of Islam is more clear insofar as he describes the foundations of his personal notion of democracy as follows:

«an Islamic Democracy is based on four pillars 1) individual responsibility, 2) universal rights and equality between the people, 3) mandatory (*wugub*) consultation for the ruler and 4) the alliance in solidarity between different communities and classes.

«1. The individual responsibility in Islam is clearly fixed (*muqarrarah*) in the repeating revelations: in all respects no man can be held for the guilt of another “no bearer of burdens will bear the burden of another”<sup>20</sup>, nor for those of his ancestors, nor for the mere fact of his birth.

«2. Equality between people is established in the words of God: “We have not sent you but as a (Messenger) to all mankind”<sup>21</sup>.

«3. The Government through the shura is explicitly ruled by the Quran in the verses “and (we) ordered them a consultation”<sup>22</sup> “and consult them in affairs (of moment). Then, when you have taken a decision put the trust in

<sup>20</sup> Qur 39,7.

<sup>21</sup> Qur 34,28.

<sup>22</sup> Qur 42,38.

Allah”<sup>23</sup> [...] (we have many) proverbs and callings driving to the consultation: Omar Ibn Khattab ordered the nomination to all the timid companions and he said: “I will choose those that at time of the death of the Messenger of God he was pleased with them”. They were Ali bin Abi Talib, Uthman bin ‘Affan, and Talha bin Abdillah, Zubair Ibn al-‘Awam, Saad bin Abi Waqas and Abdul-Rahman bin ‘Awf, but Talha was absent. So, Omar said to five others: I looked at the commandants of the people who did not find in them discord and hypocrisy. When it will happen after me do not create discord and hypocrisy between you. Stay in consultation for three days, Talha be with you for that, but do not let them until the third day insofar as they choose one of you.

«4. The solidarity between the totally different ethnic groups and classes of the people is the source of human democracy. It is general and it establishes freedom as a human right for those who had not enjoyed it or never had the power to hold on to it and gives them all, their community or classes, and this makes them bound together»<sup>24</sup>.

Many of the intuitions of ‘Aqqad were fully developed by his disciple<sup>25</sup> Sayyid Qutb (1906-66) in his volume *al-‘adalah al-ijtima‘iyya*.

Qutb is important and interesting for more than one reason. Educator, he joined the Muslim Brothers. In his last years he penned several widely read works calling in effect for an Islamic revolution and was executed on the grounds

<sup>23</sup> Qur 3,159.

<sup>24</sup> ‘AQQAD 1952, 43 f.

<sup>25</sup> TOTH 2013, 18; RAHMAN et al. 2011, 1-5.

that he was plotting to overthrow the Egyptian government, becoming thereby a martyr<sup>26</sup>.

The book we comment needs to be viewed as a product of its own age. The first edition is in the 1949. It compares the Islamic social project with the other options of the time, the western materialism and the communist system. Both of the last models are criticized in order of their *jahiliyyah* (impiety, literally “age of the ignorance”). It should be said, of course, that the book reflects the controversial ideas, widespread in the age and society in which it was written. The constant controversy along which it is built is addressed to enhance political Islam as the only alternative to the social conception of Western materialism and Eastern communism. Obviously, considering Islamic social justice as the third way in respect to materialism or communism can be assumed as a post-colonial posture, which could be easily dismissed as reductionism. Nevertheless, the same opinion, which we consider to be the weakest in the argument, has shared the success of the volume in a fundamentalist perspective, being the latter that kind of ideology which excludes the merits of competing ideas. But beyond these remarks concerning the groundless charges against the Western and the Eastern political models, Qutb’s thinking reveals an inner conception of Islamic jurisprudence of which the author was an attentive and sensitive scholar<sup>27</sup>. By contrast, other parts of the volume have many merits. For an example, Qutb argued, like ‘Aqqad

<sup>26</sup> See, the details of his condemnation in QUTB 1990, 55

<sup>27</sup> Henceforth, we can agree with the opinion of Qaradawi who asserts that Qutb’s approach is wholesale and excessive in considering all societies as *jahiliyyah* (BROWERS 2009, 56). See also SHEPARD 1992, 201 and MOUSSALLI 2001, 63.

had claimed before, that while ultimate sovereignty is reserved to God, its human application is a popular right. State authority is not based on any divine text, but must be popularly sought. Qutb's view of jurisprudence as a practical discipline severs it from its golden past on a pedestal of theory and links it to contemporary needs. In his rejection of the present, his view suggests a new start-up basically grounded on the capability of the people's freedom in restructure their systems and their lives.

Going further into the description of this system of ideas, we wish to focus on the fashion in which Qutb has used some of the watchwords of the recent Arab uprisings. As we mentioned, one of the starting hypothesis is that in the works of some of the postcolonialist thinkers, among which Qutb is the most famous, quoted and disputed, we can find the cultural roots of the Arab revolutions. For instance, the term *thā'urah* (revolution) is present in his discourses and it is significant that Qutb refers it to an example of legitimation of the revolutionary attitude in Islam, taking it directly from the tradition of the *khalifa* (caliph) Uthman:

«finally the revolt against Uthman came to a head; it contained elements of right and wrong, of good and evil. Yet to one who views matters through the eyes of Islam and who seeks to interpret events by the spirit of that faith it must be apparent that the revolt was more akin to the spirit and purposes of Islam than was the position of Uthman; or rather, than was the position of Marwan. And behind Marwan stood the Ummahyads»<sup>28</sup>.

<sup>28</sup> QUTB 2000, 224.

Another key word in the construction of the social representation of justice in the contemporary Muslim world is *hurriyah* (freedom), a concept which Qutb believes to be present in the legal tradition, but also clearly intertwined with the notion of mutual responsibility.

«Islam grants individual freedom in the most perfect form and human equality in the most exact sense, but it does not leave these two things uncontrolled; society has its interests, human nature has its claims, and a value also attaches to the lofty aims of religion. So Islam sets the principle of individual responsibility over against that of individual freedom; and beside them both it sets the principle of social responsibility, which makes demands alike on the individual and on society. This is what we call mutual responsibility in society»<sup>29</sup>.

We strongly stress the importance of this kind of relation between the internal dimension of freedom and the external dimension of responsibility, also from a strictly legal perspective. In the religious traditions the coexistence of internal and external polarities is the crucial point of passage from human experience to divine experience and we may consider this coexistence fundamental in every religious law. Obviously we face a feature of the legal system which can appear relative and unsound as such from a secular perspective of law, but – we assume – it is considered objective and steady in a strictly Islamic perspective, grounded in the individual relationship between God and the faithful. The explanation of Qutb is clear in this respect:

<sup>29</sup> QUTB 2000, 80.

«we have the responsibilities which a man has to himself. [...] Every man has his own works, every man is responsible for what he does to his soul, good or evil, benefit or harm; and in his place no other can ever stand, either in this world or in the next, [...] man is ever a watcher over his own soul, to guide it if it goes astray, and to ensure for it its legitimate rights, to call it to account if it sins, and to bear responsibility for neglecting it. In all this Islam postulates two personalities in each individual, keeping watch on another and observing one another, responsible, the one to the other, for the good or the evil which they share. This fact lies over against the other fact that Islam gives complete freedom of conscience to this individual and complete equality with others; but freedom and responsibility are mutually compatible and mutually necessary»<sup>30</sup>.

We may grasp that the root of social justice is situated in the inner self of the individual through a very distinctive process described by the Arabic expression *takaful bayna al-fard wa nafsuhu* (inter-dependence between the individual and his own soul): every soul is bound to consider its actions with respect to the positive and negative consequences they may have against others. Consequently, Islam makes of each individual two inner entities: one controls and watches over the other. As far as this dual conception of the soul goes, we observe the use in the Arabic text of the dual mode verb “tatakafalan”<sup>31</sup>. Setting the principle of individual

<sup>30</sup> QUTB 2000, 81.

<sup>31</sup> See also AL-BANNA 1996, 16. A constant concern in Islam is the cure of the soul/*dāmyr*: «It is said that justice does not reside in the text of the law, but in the soul of a law court. If we give a complete

responsibility, rooted in Quranic text<sup>32</sup>, within the wider context of social relationships is the main contribution of Sayyid Qutb in the construction of a legal system and, at the same time, of a social representation of Islamic justice and equality<sup>33</sup>. Qutb says Islam sets the principle of individual responsibility over against that of individual freedom; and besides them both, it sets the principle of social responsibility, which makes demands alike on the individual and on society. According to this basic scheme he orders the responsibilities which exist «between a man and his soul, between a man and his immediate family, between the individual and society, between one community and other communities, and between one nation and the various other nations»<sup>34</sup>.

For those reasons it is not surprising that he describes individual freedom as linked to the inward theme of the conscience:

and fair law to a judge who is animated by passion and by interest, he will apply it unfairly, without any equity. On the contrary if we give an incomplete and unfair law to an upright and just, he will apply it in the correct manner, just, full of goodness, merciful and fair. It is the reason for the human soul is the subject of so much attention in the Book of God».

<sup>32</sup> Quran contents are addressed to the conscience of individual, in order to make it the watcher of the self: see Qur 16,90: «Allah commands justice, the doing of good, and given to kith and kin, and He forbids all indecent deeds, and evil and rebellion: He instructs you, that you may receive admonition». Qur 17,14: «[It will be said to him:] “Read thine [own] record: Sufficient is the soul this day to make out an account against you”». Qur 17,36: «And pursue not that of which you hast no knowledge; for surely the hearing, the sight, the heart, all of those shall be questioned of [on the Day of Reckoning]».

<sup>33</sup> AKHAVI 1997, 383.

<sup>34</sup> MUSALLAM 2005, 91 ff., footnote 42.

«thus, Islam approaches the question of freedom from every angle and from all points of view; it undertakes a complete emancipation of the conscience. It does not deal only with spiritual values or only with economic values, but with both together. It recognizes the practical reality of life and equally the capacities of the soul; it attempts to awaken in a human nature the highest desires and to evoke the loftiest abilities, thus bringing that nature to complete freedom of conscience»<sup>35</sup>.

and:

«life becomes possible and profitable only as we observe the lowest limit of the legal responsibilities of this faith; but even then it still lacks the perfection at which Islam aims, so long as it is not inspired by the prompting of conscience towards self-control, loftiness, and nobility. So in Islam this prompting of the conscience is complementary to all legal duties, making their performance a pleasure, and thus imparting to human life a value and a nobility which are above the range of compulsion»<sup>36</sup>.

Freedom as such is not a condition of the external activity but an internal posture of the soul. In that kind of logic, the *damyr* is the basic element of a social system of justice, which at the same time satisfies internal/cultural and external/legalistic needs.

<sup>35</sup> QUTB 2000, 67.

<sup>36</sup> QUTB 2000, 93.

«The following are the foundations on which Islam establishes justice:

«1. Absolute freedom of conscience (*al-taharrur al-wi-jdany al-mutlaq*).

«2. The complete equality of all men (*al-musawat al-in-saniyya al-kamilah*).

«3. The firm mutual responsibility of society (*al-takaful al-igtima 'yy al-wathyq*)»<sup>37</sup>.

This double loyalty to the *ḍamyr* and to the people is demanded of the ruler also, as Qutb states clearly in the following excerpts:

«“if anyone sees a tyrannical power which is contrary to the will of Allah, which violates the compact of Allah, and which produces evil or enmity among the servants then it is Allah who must supply the initiative”. This tradition indicates the necessity of getting rid of a ruler who abandons the law by deed or by word, but with the minimum use of force. This is another necessary step beyond the mere withholding of obedience, which is in itself a purely negative measure.

«We must make a distinction between the fact that a ruler derives his authority from his implementation of religious law and the theory that a ruler draws his authority from religion. Nor ruler has any religious authority directly from Heaven, as had some rulers in ancient times; he occupies his position only by the completely and absolutely free choice of all Muslims; and they are not bound to elect him by any compact with his predecessor, nor likewise is there any necessity for the position to be hereditary in the family.

<sup>37</sup> QUTB 2000, 52.

Further, in addition to this, he must derive his authority from his continual enforcement of the law. When the Muslim community is not longer satisfied with him his office must lapse; and even if they are satisfied with him, any dereliction of the law on his part means that he no longer has the right to obedience»<sup>38</sup>.

and:

«the ruler and his subjects together must bow to the authority of Allah in all things; reverence for Allah is the final guarantee of the establishment of justice. We have already discovered that Islam lays upon the reformed human conscience great responsibilities in the matter of politics and economics. But when reverence for Allah is not in this conscience (*hadha ad-ḍamyr*), than there is no safeguard; for the law can always be deceived or evaded, and the ruler, the judge, or the people be cheated»<sup>39</sup>.

Some recognized in the theorizing of Qutb a preparatory system to the revolution. Thus, to the extent that the ruler is demanded to observe a “double-face” loyalty to his *ḍamyr* and to the people, Qutb adds another argument useful to justify the revolution, once it is possible to realize the violation by the ruler of his responsibility toward God and toward the people. That is true but it is not all, because his intention is to organize a new Islamic society grounded on a moral order. Qutb, similar to Gramsci<sup>40</sup>, has thought that any revolutionary movement to

<sup>38</sup> QUTB 2000, 121 f.

<sup>39</sup> QUTB 2000, 126.

<sup>40</sup> BUTKO 2004, 44 f. For the legacy of Gramsci in the Arab culture,

be successful must be able to promote an alternative conception of the world. On one hand the individual – his beliefs and his actions – must constitute the essential foundation of any new approach. On the other hand the success of the revolution derives from the establishment of a social system of justice which garners extensive support throughout society. All the factors of construction of a new common sense/social representation of equality are present in the conception of social justice. Qutb gave much importance to the conscience of the individuals in order to acquire the consent of the masses in the Islamic conceptualization of both society and state. As an educator, he did not conceive an individual's human nature as fixed and unchanging, but as malleable and open to the influence by the dominant forces of society, and as an educator, also he tried to affect the conscience of his fellow men, in order to build up a civil society. More exactly, on one side Qutb has been considering the influence which Arabs were subjected about the pressure of the political categories of the western thinking, on the other side he tried to find a solution for this cultural subalternity by forging an autonomous form of ideology. Qutb had probably recognized that in Arab countries the State was not created by the national bourgeoisie but by the foreign colonial authority which over-inflated the size of the bureaucratic machine, especially its military wing. In such a condition, the lack of 'spontaneous' consent may oblige the State to resort to force. As a consequence, he rebuked the present shape of the State either as a product of the foreign cultural colonial hegemony or as an unfitting form of

ABDEL MALEK 1974, 7 ff.; AYUBI 1995, 21 ff. More in general BATES 1975, 351-366; NUN 1986, 197 ff.

government<sup>41</sup>. On the contrary, recalling the religious tradition of a just and balanced society Qutb aimed to draw a new common ideology which could be easily internalized by the broad masses of Arabs, becoming the ground of a system of government culturally fitting. His aim was to carry the Arab State beyond the mere coercive level, feeding it into the moral and intellectual sphere needed to a national community. In so doing, first he involved the individual, submitting to him his plan of a more intertwined and balanced society: if a change in individual consciousness represents the first stage in the personal liberation from the former common sense due to a hegemonic presence of the European colonizers, for this new world conception to be effective, various individuals must necessarily unite in the formation of a larger group, concordant in their ultimate aims and sharing in this new perception or world-view. This second step is necessary to organize an Islamic community, as described in the Quranic *ummah wasata* rule of Quran 2,143:

«and thus we have made you a just community that you will be witnesses over the people and the Messenger will be a witness over you. And We did not make the qiblah which you used to face except that We might make evident who would follow the Messenger from who would turn back on his heels. And indeed, it is difficult except for those whom Allah has guided. And never would Allah have caused you to lose your faith. Indeed Allah is, to the people, Kind and Merciful».

<sup>41</sup> QUTB 2000, 261 ff.

In this case, in the notion of the *ummah wasata*, individual situates one's own self both as a member of a huge community and as an intermediate between existing positions. In this system, every stance is responsible for the others in a strict juridical perspective<sup>42</sup>. Moving from the individual to the community is the dynamic linkage which establishes a just society as well as a strong community.

But the condemnation of Qutb's and of his ideas has brought the failure of his revolutionary/educational project and maybe the continuous lacking of a cultural "hegemony" grounded on justice, equality and freedom has been a factor of the weakness of the Arab state, as it was ascertained in the subsequent years.

#### 4. *Traditions of justice between the emergence of culture and the religious and legal architecture*

Our opening doubts about the novelty of the democratic and humanitarian feelings of the Arab spring seem to be confirmed from a reading, with no prejudice, of the texts of authors like 'Aqqad and Qutb. The emerging impression is that the ideas cried out in Tahrir Square have had a sort of precedent in the revolutionary culture of the postcolonial age. Even the typical western political model of 'democracy' had been analyzed by the means of the categories of the Islamic jurisprudence. The postcolonial theories were deeply intertwined with the values of equality, freedom and justice nurtured in the Islamic culture, and were utilized to

<sup>42</sup> AL-QARADAWI as quoted in BROWERS 2009, 49.

draw a sort of indigenous democracy, coherent with the premises of social justice of the age. For those reasons, we cannot be surprised to read, 50 years after, in the words of one of the most influential Islamic activist, Yussuf al-Qaradawi, very similar contents:

«it is a mistake to think that the Islamic State I am calling for is a religious state. It is a civil state that is built on choices, elections, political participation and the accountability of the ruler to the ruled. This state provides each of its members with the right to advise the ruler, to enjoin him from harm and to command him toward public welfare. A ruler in Islam is bound by God's law (*hakimiyat-Allah*). A ruler is not the deputy of God, he is the deputy of the Muslim state, i.e. he is chosen by the members of the state, and the members watch over him, hold him accountable, and impeach him if they so deem»<sup>43</sup>.

But we need to remark more than the simple likeness between words and feelings. Those kind of ideas were present then as well as they are today, and we need to explain the reasons of this cultural and legal re-emergence. We think we are today in front of a deep process of cultural transaction from the categories of Islamic values to the categories of human rights. This process is necessary to draw a theory of political thinking as well as to build a legal system which is able to furnish practical means to the modern state, like the way to impeach successfully the government<sup>44</sup>.

<sup>43</sup> AL-QARADAWI 2001, 58 f.

<sup>44</sup> On the matter of the Mubarak's trial, see 'ARAFA 2011 and 'ARAFA 2012; more in general, ELDAKAK 2012, 262 ff.

We aim to focus on the characteristics of the last argument in respect to the cultural categories of the religious law. As mentioned, in the religious legal traditions the coexistence of internal and external polarities is the crucial point of the passage from the human to the divine dimension<sup>45</sup>. This feature cannot be set aside from the very structure of the religious law because it is inherent in its own dynamics. The religious law puts down, in a general way, a *certain* fixed and sacred justice which brings with itself all the factors of a potential and relative idea of order. It is not an *ordo iustitia* in an integral sense, but it is always an *ordo secundum aliquam iustitiam*<sup>46</sup>. This Latin saying describes precisely the matter of order in religious justice when it collides with the reality of social life, working in the mechanisms of the concrete system, not in an abstract way, not by immutable shapes, but adaptable and pliable. This dynamic should require individuals to nourish a sentiment of inner justice inherent in the structure of man and of mankind.

Up to here the described structure is in common to some religious laws and, under some respects, to some theories of human rights grounded on natural law theories. We wish to make ourselves clear: in all the legal systems designed from an ideal perspective of reality, we can distinguish the ‘real’ order from the ‘argumentative’ ground of a supposed ideal order. Obviously this is also the case of the Islamic legal system, in which the *shari‘a* represents the sacred law to be realized in society. Notably, this particular dynamics of realization of justice in social norms and relationships is

<sup>45</sup> WOLFSON 1935, 69 ff.

<sup>46</sup> See in a comparative legal perspective of canonical law the classical study of SACERDOTI 2002, 114 and 133.

clearly located in the double method of ruling by the *zakat*, as well recalled by Qutb:

«Islam is concerned to persuade the conscience in the case of every duty which it prescribes. It imposes no more duties than are demanded by the welfare of society and no more than can be accepted by the ability of the general mass of mankind. Beyond that stage it appeals to the conscience, persuading it of its responsibility and seeking to raise it above its normal scope; thus it attempts to elevate human life and to draw it ever onward and upward. It leaves a wide space between the lower level of duty, which is so desirable and towards which individuals and nations have to strive in every age and century»<sup>47</sup>.

The priority of the internal fore toward the external one is general in the Islamic law, and it supervises the contract law also, by virtue of the *hadith* according to which *al-'amāliyāt bi-l-niyyāh* (deeds are valued by their intentions)<sup>48</sup>.

This subdivision of levels – we might say natural and merely legal whose the former has a narrative nature – is acquired by Qutb as far as he gives the individual conscience the main importance: that is the alleged starting point of a system of social justice, since in his opinion justice prevails on law, fairness prevails on contracts<sup>49</sup>. As the recent history has demonstrated, the theories of Qutb are deeply intertwined with the values of equality and justice nurtured from Islamic consciences. Since the permanent

<sup>47</sup> QUTB 2000, 109.

<sup>48</sup> DONINI 2012, 28 ff.; WOLFSON 1935.

<sup>49</sup> BECHOR 2001, 179 ff.

self-evaluation is expected to be the first legal index of (in)justice, its common perception by the masses (*igma'a*), insofar as it joins together the collective feelings of deprivation, appears to be as a natural reason for seeking and claiming political reforms for the nation. In other words, when the injustice/deprivation is commonly shared and felt by the masses, the representation of injustice affects the entire legal system and its relative sustainability. It should be noted that, despite appearances, the social impact of such a conception of justice is indirect and delayed, because it refers to a non-predictable formation of a feeling of relative deprivation sufficiently structured and strong.

Obviously for secularist scholars, the main challenge is summed up in the difficulty of penetrating the interior to discover the inner mechanism and the vitality of the representations of equity and justice. As we noticed, in Qutb's legal conception the natural source of the *shari'a* is located in the inner self, by an immediate relation between the individual and God. Hence, on this ground Qutb puts the foundation of society on personal accountability to build it around a web of mutual obligations in order to regulate the whole community. In the secularist conception this basic platform is offered from the collective and roughly shared consensus of the human rights. But we suggest that any difference between them is almost apparent. Indeed, both represent an ideal ground for legal systems, both explanations need narrative strategies of determination, both of the narratives develop an argumentative ground to define the mutual relationships between individuals: while in the secularist conception the ground of justice is represented by a catalog of human rights, in Qutb's theory it is represented by the single valuation of the individual. The rights are not

only defined by the written formulas of the international and constitutional charts but they live in their semantics lying in the collective *consensus* of the values they embody; they are the result of a continuing, collective and cultural negotiation of values in their pragmatical forms, by the practices of democracy. Seemingly different in the religious law, the individual *ḍamyir* is a matter of personal interpretation. But narrated in depth, the rule of the conscience represents only the first stage in the personal liberation because only the mutual relationships, even by the rulers, may contribute to establish the freedom of the people in order to reform the state and to organize the whole society. That is why only a peak of injustice is suitable for joining together the consciences of the masses and it becomes a cultural reason of the revolution.

##### 5. *Conclusive remarks*

At the beginning we have wondered whether the recent revolutions were deeply different from the former post-colonial movements of the 1950s or we could argue that both have been cultivating their disaffection versus the institutional power over the common ground of the religious condemnation of social injustice. We have also introduced the main argument of the “social representation” of Islamic social justice insofar as our aim was to confirm the relevance of those theories as a narrative ground for the contemporary and secular claims for democracy. As just noticed, we may underline the argumentative facet of that theorization, which it is time to explain now, by a final remark. It has much to do with the theme of social causality and attribution of injustice. Given that causality does not exist on its own, but

only within a representation that vindicates it, we argue that the social representations of post-colonialism influenced the theorization of Islamic social justice, in a direct way. For instance, we know that:

«dominating and dominated classes do not have a similar representation of the world they share but see it with different eyes, judge it according to specific criteria and each does so according to their own categories. For the former, it is the individual who is responsible for all that befalls him and especially his failures. For the latter, failures are always due to the circumstances which society creates for the individual»<sup>50</sup>.

If we assume that it is reasonable, while confirming the need of a narrative foundation for secular and religious culture of social justice, it is possible to suggest a new path of their development for the future of Arab countries. In order to do so we must stress another kind of difference between the post-colonial and the present context: the post-colonial controversy against the West (with the Communism) was one of the main streams of the Islamic thinking for discussing the concept of ‘democracy’, its shape and legitimation. The controversial and argumentative spirit of the Islamists of the 1950s stressed some profiles of the legal framework in order to point out the irrelevance of that “formula” supposed to be an expression of the former dominating ideology. We tried to demonstrate that striking controversy analysing the definition of democracy of ‘Aqqad. Now, we may

<sup>50</sup> MOSCOVICI 1984, 51.

ask whether it is the case for today's political movements: even at glance we do not think so<sup>51</sup>. On the contrary, the present post-revolutionary context can be viewed as a frame to realize an indigenous model of a just society, idea which is still present and vivid in the claims of social equality, grounded on religious premises as secular as well. It renders the reasons of a strong opposition between some categories of the democratic processes and the identity of Islamic culture as anachronistic and faded. Thus, fostering the political debate over the re-shaping equality, without the need to radicalise the ideological struggle against western formulas of democracy, could be a way to contribute to the process of reform of the Arab world.

<sup>51</sup> DABASHI 2012, 155 ff.

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