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Respect as a tool for dialogue between cultures and religions[*]

Il rispetto come strumento di dialogo tra culture e religioni

Maria d'Arienzo

Riassunto

Il contributo si propone di esaminare il concetto giuridico di "rispetto" a partire dalla sua ontologica dimensione relazionale, in grado di dispiegare notevoli potenzialità nelle attuali società multiculturali e multireligiose.

Parole chiave

Rispetto, cultura del rispetto, principio di tolleranza

Abstract

The contribution aims to examine the legal concept of "respect" starting from its ontological relational dimension, capable of unfolding considerable potential in current multicultural and multireligious societies

Key words

Respect, culture of respect, principles of tolerance

1. Culture of respect which in the language of rights

The concept of "respect" is capable of being declined from several viewpoints, from the pedagogical to the political and the juridical one. In this contribution it's outlined a possible configurability in juristic terms of the concept of respect, and later, conversely, it's examined the role law might play to facilitate and promote the development of a "culture of respect" within a

[*] The text reproduces, with the addition of bibliographic references, the report given at the webinar "*Insieme per una cultura del rispetto*", organised by the Associations "Lettera 150", "Artemisia onlus", "Zonta Palermo", "Io non ho paura", on 27 November 2020.

multi-cultural and multi-religious society.

If we wished to determine the specific contents of the concept of respect, we might first of all highlight its relational nature. It is a term that presupposes otherness, and in that sense, it might be considered an inter-subjective relationship mode instrumental to social cohesiveness and peaceful cohabitation. An inter-subjective relationship mode founded on recognition of the equal right possessed by the other, as limit to the sphere of individual freedom that may not expand to the point of invading other spheres of freedom guaranteed by subjective rights, lest it be sanctioned by the legal system. In this regard, it takes on a meta-juridical connotation, as a determining principle in the definition of goals and functions specific to the law, inasmuch as it represents the criterion of opposition to any form of intolerance and intransigence in interpersonal relationships.

Respect for the other understood as method to defuse the logic of conflict, of contraposition, and thus as antidote to the violence that might be triggered off by the extreme defence of one's identity sphere vis-à-vis anything that is perceived as limit to self-expansion, other times as threat, or in any event as an aggressive closure in the face of diversity and otherness.

This aspect undoubtedly represents the "static" dimension of the principle in the legal sphere. The principle of respect, however, acquires a more pregnant function when viewed in its "dynamic" dimension.

Put it differently, respect does not only consist in the mere recognition of other people's rights, as it in fact represents the essential nucleus, harbinger of other principles, which in the language of rights are declined together with the terms of tolerance and intercultural dialogue.

2. Tolerance as respect for difference

The debate that at philosophical and political law level has evolved in recent years allows us to highlight the positive functions tolerance acquires in the sense of and desire for dialogue and integration.

The issue of tolerance resurfaces in fact as political necessity and legal principle, as proven by the *Declaration of principles on tolerance* adopted and proclaimed by Unesco in 1995[1] and the Portuguese Law on Religious Freedom of 2001[2].

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[1] You can peruse the text of the *Declaration on the principles of tolerance* proclaimed by the General Conference of the UN for education, science and culture, convened in Paris from 25 October to 16 November 1995 in its twenty-eight session, at: *http://unesdoc.unesco.org/images/0010/001013/101344* e pdf.

[2] Law No. 16/2001 of 22 June "*Lei de Liberdade Religiosa"* (*Law on Religious Freedom*), in

After stating in the Preamble that the promotion of societal tolerance by member states «*is a necessary condition for peace and for the economic and social progress of all peoples*», Article 1 of the *Declaration on the principles of tolerance*, specifically concerning the meaning of the concept, states under point 2: «*tolerance is neither a concession nor a condescension or an indulgence. Tolerance is first of all an active attitude enlivened by recognition of the universal rights of the human person and the fundamental freedoms of others*». Tolerance represents therefore the translation into concrete criteria of conduct – not only at an inter-individual or inter-communal level, but at an institutional level as well – of the recognition of rights formally enshrined in the supra-national and Constitutional Charters that concern human rights. Indeed, point 3 of Article 1 specifies: «*tolerance (…) implies the rejection of dogmatism and absolutism and supports the rules spelled out in the international instruments relating to human rights*». Article 2 furthermore specifies the role of institutions in the promotion of tolerance, which is safeguarding guarantee of equality of both treatment and opportunity in respect of the different groups and individuals making up society.

What accordingly resurfaces is the dialectical and antithetical nature of the principle of tolerance vis-à-vis intolerance, but it is the different contemporary political and social context that changes its goals and functions compared to its historical roots[3]. The new forms of intolerance – no longer religious, but especially racial, sexual, or targeting the various minorities – always stem from the mechanism of "exclusion" and refusal of diversity, contrasted as such by tolerance as respect for difference[4].

If at an historical level, therefore, the affirmation of tolerance, as an instrument of government (*instrumentum regni*), leads to the construction of legal systems in which the principle of equality from a public-law viewpoint acquires pre-eminent value compared to the principle of freedom, currently, instead, the new socio-political and juridical problems underline the fact that it is the principle of the "right to difference" that is claimed with increasingly greater force. From this perspective, a significant importance comes to be ve-

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Diário da República –I Série – A, n. 143-22 de Junho de 2001.

[3] On the history of the concept of religious tolerance, see Joseph Lecler, *Storia della tolleranza nel secolo della Riforma*, 2 volumes, Morcelliana, Brescia, 2004 [original ed., *Histoire de la tolérance au siècle de la Réforme*, 2 volumes, Paris, 1955]; Henry Kamen, *Nascita della tolleranza*, Il Saggiatore, Milano, 1967 [original ed., *The Rise of toleration*, London, 1967]; and Guy Saupin, *Naissance de la tolérance en Europe aux Temps modernes*, Presses Universitaires de Rennes, Rennes, 1998.

[4] On this point, please allow me to refer to Maria d'Arienzo, *Attualità della tolleranza*, in *Il diritto ecclesiastico*, 2004, 2, pp. 498-509; and Ead. *La libertà di coscienza nel pensiero di Sébastien Castellion*, Giappichelli, Torino, 2008, specifically pp. IX-XIII.

sted in the *Law on Religious Freedom* issued in Portugal in 2001, since Article 7 thereof expressly enshrines the principle of tolerance as criterion for settling possible conflicts between freedom of conscience, religion and cult and the same freedoms possessed by others[5]. It is furthermore important to stress that the same principle of cooperation between State and churches or religious communities is founded on the purpose of promoting the value of tolerance (Article 5), which soars among other things to the status of principle underpinning inter-confessional relations within the State (Articles 25 no. 2 and 56 no. 1, letter a). In other words, tolerance is expressly indicated as a legal and not just ethical criterion of respect and dialogue with the others, one necessary to ensure the exercise of religious freedom.

3. Respect and intercultural dialogue

After all, the active meaning of the concept of respect lies in reciprocal acquaintance and interaction, where it is precisely law that performs a function of transformative mediation of differences, as expressly indicated in the various supra-national Documents on intercultural dialogue, such as the *White paper on intercultural dialogue* of 2008[6], or the *Resolution* of the European Parliament *on the role of intercultural dialogue, cultural diversity and education* of 2016[7].

In these documents, interculturality represents a strong objective of integration and social cohesion policies, as it is not a mere instrument of inclusive democratic participation, but above all, and consequently so, it represents an antidote to, or if you prefer, a tool for combating forms of radicalisation and extremism, of a violent nature as well, which marginalisation, inequality and the discrimination of cultural and religious diversities might lead to.

The effective pursuit of such an objective, however, cannot be accomplished purely through the identification of institutional or social places of dialo-

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[5] Law No. 16/2001- *Lei da Liberdade religiosa* (*Law on Religious Freedom*), op. cit., article 7 (*Princíple of tolerance*): «Os conflitos entre a liberdade de consciência, de religião e de culto de uma pessoa e a de outra ou outras revolver-se-ão com tolerância, de modo a respeitar quanto possível a liberdade de cada uma».

[6] Council of Europe, *White paper on intercultural dialogue. «Living together in equal dignity»*, Strasbourg, 7 May 2008, which you can peruse at: *https://www.coe.int/t/dg4/intercultural/Source/Pub_White_Paper/WhitePaper_ID_ItalianVersion.pdf*.

[7] You can check the *Resolution* of the European Parliament of 19 January 2016 *on the role of intercultural dialogue, cultural diversity and education with a view to promoting EU fundamental values* at: *https://www.europarl.europa.eu/doceo/document/TA-8-2016-0005_IT.html*.

gue between different cultures, but also involving the training field addressed at the very operators in the human and social sciences sectors, chief among which are the legal professions[8]. The growing social multi-culturalism, in fact, poses to the jurist new challenges he is bound to face.

The problems stemming from the encounter with legal traditions and institutions differing from Western ones impose a reflection on the law as culture, hence on its function as tool of «transformative mediation» of political law concepts that characterise multi-religious societies.

Essentially, the need for an «intercultural law» is felt ever more acutely, i.e. a normative interpretation by the jurist that would make it possible to transcend the function traditionally entrusted to the positive law of acting as buttress against the entry of divergent legal categories, pursuant to the preservation of the identity-defining heritage that denotes the specific reality of the legal system, by turning it into a mediation function, and thus one of actual dialogue with different legal cultures[9].

Openness to the intercultural methodology would represent an essential contribution to the expansion of knowledge about other legal cultures, enabling the newly trained «intercultural jurist» – and this is the challenge that invests the academic world as well – to promote, by means of practical solutions, the relationship between different cultures and identities[10].

Practical solutions in which the conceptual translation of legal categories is the product not only of an interpretation, but essentially of a contamination, and therefore of a transformation of the original legal culture as well.

It might help to provide some concrete examples.

The intercultural perspective already appears to manifest in some jurisprudential pronouncements about the institution of *Kafalah* regarding the right of minors and family reunions. In Islamic law, the institution of adoption is

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[8] *Le nuove ambizioni del sapere del giurista: antropologia giuridica e traduttologia*, ed. Accademia Nazionale dei Lincei, Roma, 2010; Accademia del Notariato, *Il giurista interculturale*, Ed. Insieme, Roma, 2016.

[9] In the ecclesiasticistic doctrine, among the various studies by Mario Ricca dedicated to intercultural law, the following titles are worth noting: Mario Ricca, *Sul diritto interculturale. Costruire l'esperienza giuridica oltre le identità,* in *Daimon. Annuario di diritto comparato delle religioni*, Il Mulino, Bologna, VIII, 2008; Id., *Oltre Babele. Codici per una democrazia interculturale*, Dedalo, Bari, 2008; Id., *Pantheon. Agenda per una laicità interculturale*, Torri del Vento, Palermo, 2012, p. 16 ff. See also, Pierluigi Consorti, *Conflitti, mediazione e diritto interculturale*, Pisa University Press, Pisa, 2013; Antonio Fuccillo (edited by), *Esercizi di laicità interculturale e pluralismo religioso*, Giappichelli, Torino, 2014; Maria d'Arienzo, *Pluralismo religioso e dialogo interculturale. L'inclusione giuridica delle diversità*, Pellegrini editore, Cosenza, 2018.

[10] Maria d'Arienzo, *Pluralismo religioso e dialogo interculturale. L'inclusione giuridica delle diversità*, cit., p. 107 ff.

lacking, since the only form of filiation recognised as legitimate, by Koranic prescription, is the natural or biological one. However, in some Islamic countries we find the institution of *Kafalah* that envisages a form of commitment concluded by notarial deed or before a judge, whereby the *kafil* – who might be a single person, and not necessarily a couple – ensures until majority age is reached the maintenance of the minor and the economic support necessary to his studies[11].

Initially, Italian judges denied the family reunion of a non-EU minor with the *Kafil*, holding that the *Kafalah* could not be equated to the instances of reunion circumscribed to the relationships of filiation, adoption, custody and guardianship by Article 29 of Legislative Decree No. 286/1998 (*Consolidated text containing provisions regulating immigration and on foreigner status*). The latest jurisprudential trends, however, through a constitutionally oriented interpretation of the Consolidated Text rules on immigration, as amended and supplemented, have acknowledged the relationship arising from the *Kafalah* as a valid premise for reunion purposes, giving effect to the principle of the minor's preeminent interest over any conflicting constitutional values. Case law has affirmed, through an interpretative process we might define as «intercultural translation», the compatibility of *Kafalah* with the internal legal system, holding that, in terms of the effects, the extent of protection accorded to the minor in need thereof stipulated in the Islamic legal systems could be equated to the minor protection institutions mentioned in the Consolidated Text on immigration – especially to custody, rather than to adoption – and conformed to the principles of Italian public order. Tracing the matter back to a common rationale and the search for the analogies rather than the differences between the minor protection institutions envisaged by the systems founded on an Islamic legal culture and those of the Italian system allow the recognition of *Kafalah* as an instrument capable of concretely ensuring the minor's greater interest[12].

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[11] Agostino Cilardo (edited by), *La tutela dei minori di cultura islamica nell'area mediterranea. Aspetti sociali, giuridici e medici*, Edizioni Scientifiche Italiane, Napoli, 2011. On the recognition in Italy of a *Kafalah* order issued by a foreign judge, may I please refer to Maria d'Arienzo, *Matrimonio e famiglia nell'Islam e in Italia. Problemi giuridici*, in Antonio Fuccillo (edited by), *Unioni di fatto, convivenze e fattore religioso*, Giappichelli, Torino, 2007, p. 126 ff.

[12] Corte di cassazione, Sez. I civile, sent. no. 1843 of 2 February 2015, in *La nuova giurisprudenza civile commentata*, a. 31, nn. 7-8, 2015, 1st edition, p. 713 ff. with note by Maurizio Di Masi, *La Cassazione apre alla Kafalah negoziale per garantire in concreto il best interest of the child*, pp. 717-724. On this point, cf. Paolo Morozzo Della Rocca (edited by), *Immigrazione, asilo e cittadinanza. Discipline e orientamenti giurisprudenziali*, Maggioli editore, Santarcangelo di Romagna (RN), 2019, p. 121 ff.

In 2019, even the Court of Justice of the European Union[13] has stated that the minor under *Kafalah*, even though incapable of being considered a "direct descendant" of the *Kafil*, could be subsumed under the category of "other family member" of a Union citizen, envisaged by the European directive for free circulation[14], laying down the obligation on national authorities to "facilitate" his entry and stay in accordance with Article 3, paragraph 2, letter a) of the directive itself, read against the backdrop of Article 7 and Article 24 of the Charter of Fundamental Rights of the European Union.

Another laboratory to concretely embody the effort of legal inclusion of diversities is the topic of migrants and their inclusion at an economic and financial level as well for the sake of their active participation in the economy of the country of residence.

The reflection on the causes of financial exclusion of immigrants induces a deeper consideration of the incidence of the religious factor in the tendency to prefer non-formal and institutionalised channels of access to credit and allocation of savings that are structured on the basis of sharing principles of solidarity economy and communal belonging. Moving precisely from the respect for contractual forms and financial instruments differing from traditional ones, it was then possible to launch the process of integration of Islamic contractual types within Western legal systems, although in Italy we notice only in the last decade some timid openings to the entry of Islamic financial instruments[15].

What in the lexicon of legal philosophers could be defined as post-positivism of legal interpretation becomes all the more relevant at present through a greater attention lavished, during the training phase, precisely on those profiles, psychological, sociological or anthropological as well, that make of the jurist someone not only endowed with a technical knowledge, but also culturally equipped to confront the challenges foisted by societal transformation[16].

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[13] Court Of Justice of the European Union, *Great Division*, judgment of 26 March 2019, C-129/18, *SM c. Entry Clearance Officer, UK Visa Section*, which you can peruse at: *https://op.europa.eu/it/publication-detail/-/publication/a41b41e3-860c-11e9-9f05-01aa75ed71a1*.

[14] *Directive 2004/38/EC of the European Parliament and of the Council*, dated 29 April 2004, relating to the right of Union citizens and their family members to freely circulate and reside in the territory of member states, which amends Regulation (EEC) no. 1612/68 and abrogates directives 64/221/EEC, 68/360/EEC, 72/194/EEC, 73/148/EEC, 75/34/EEC, 75/35/EEC, 90/364/EEC, 90/365/EEC and 93/96/EEC (Official Gazette 2004, L 158, p. 77, and correction in *Official Gazette* 2004, L 229, p. 35).

[15] Maria d'Arienzo, *Pluralismo religioso e dialogo interculturale. L'inclusione giuridica delle diversità*, cit., p. 118 ff.

[16] *Ivi*, p. 117.