

## SHARĪ'AH AND MUSLIM SOCIAL CONTRACT IN EUROPE

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By  
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### I

I would like to express my deep gratitude to Katrin Visse for the invitation to speak tonight at den Katolischen Akademie in Berlin on *Shari'ah and Muslim Social Contract in Europe*.

I did not hesitate to accept the invitation to come here, but, I have to admit, I had some concerns about how to deliver my message so that it may remove our fears from each other as well as that it may raise our hopes for each other in the context of a prosperous European life.

Thus, I am here not to apologize for the Shari'ah as it is a Weltanschauung for each and every Muslim, but also I am here not to preach for the Shari'ah because it is not the Weltanschauung for all, since, as we are told in the Holy Qur'an: - ... *For each and every one of you God did provide a specific code (shir'atan) and a particular model (minhājan), because if God had wanted He would have made you (all) a single nation, but God wanted to try you in what He has gifted you for. Therefore, you shall compete with one another in good deeds ... (al-Mai'dah, 48).*

This kind of Qur'anic pluralism of religious and legal thought has not been explored in a way that would remove many misconceptions about the compatibility of the Shari'ah to the idea of the nation state which is constituted on the ground of the state constitution as the supreme and undisputable principle of the social order of the European societies.

I must say that I risk to please none by my presentation, but perhaps to disappoint all. First, those who have frozen their stereotypes in their minds about the Shari'ah

as an old and outdated worldview will be disappointed if I tell them that the Shari'ah might be a new and updated concept that might be shared by all Abrahamic faith traditions.

Secondly, those who have frozen their narrow minds and live in deep caves will be disappointed if I tell them that the Shari'ah is not meant to be the Constitution of any particular State, even that which some call the Islamic State. Of course, the Shari'ah is the fundamental moral and ethical code meant to be a guideline for a society that should promote good and condemn evil.

The Shari'ah – said the prominent Muslim scholar Ibn al-Qayyim – is made and built on the notion of wisdom that serves the human needs for success in this world and salvation in the world to come. The Shari'ah is based on the principle of full justice, compassion, benefit and wisdom. Therefore, each and every Shari'ah deliberation must bring justice and remove injustice, it must spread compassion and prevent hatred, it must provide most good and compel the least evil, it must show the sense of wisdom and stay away from a foolish judgment. Anyone who is interpreting Shari'ah in a way that is not in the spirit of these positive principles of the Shari'ah is not a genuine interpreter of it.<sup>1</sup>

You can imagine that I have intentionally called Ibn al-Qayyim as a witness so that I may claim to be a genuine interpreter of the Shari'ah because I accept the above mentioned principles of the Shari'ah which are, you may all agree, compatible with the Constitutional Law as the supreme authority of the social order and political life of Europe in general and in Germany in particular.

But not only for that, I need Ibn al-Qayyim for something else. I need him because I am not an expert in the Shari'ah in the sense of a *faqih*, a Muslim law scholar. My field is more of a fundamental knowledge, *'ulmu-l-kelem* or Islamic speculative thought which is supposed to guide those who apply it in the reality of human life.

Unfortunately, the connection between those who are of the fundamental guidance and those who are in the area of the application of Shari'ah has been lost for a long time. This disconnection between the fundamental and applied knowledge of Islam has been noticed by the great Muslim mind of Abu Hamid al-Ghazali (d. 1111), who had warned the Muslim scholars at the time, particularly, the *fuqahā'* – the lawyers, that they missed the real purpose of the Shari'ah by personal greed and collective corruption.

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<sup>1</sup> Ibn al-Qayyim, *I'lām Muwaqqi'n*, Cairo, Maktabah al-Kulliyat al-Azhariyyah, 1968, 3:3.

I have turned to the great sage of Islam Abu Hamid al-Ghazali because we in the West, particularly in Europe, have not been blessed by any of the messengers of God or by any Book of Heaven so that we may claim prophetic inheritance and heavily wisdom. As some of you might know the famous al-Ghazali at the end of his life had preferred Sufism over all other fields not because of his disregard towards *kalām* (rational theology), *fiqh* (applied law), *falsafah* (philosophy), but because of his disappointment in the people who had been using their knowledge in these fields to manipulate the truth for their personal prestige. Therefore, the Shari'ah must be free from any personal or collective abuse so that people may find in it an inspiration for a moral society which promotes five essential human rights: the right to life (*nafs*), the right to religion (*dīn*), the right to freedom (*'aql*), the right to property (*māl*), and the right to dignity (*'ird*).

And this is what I want you to understand that it is our understanding of the Shari'ah that it is the covenant with God and the contract among men; that it is the synthesis of transcendental of God with immanence of man; that it is the connection of human soul with the sustainable knowledge of human mind; that it is the principle that must have the workable model for a decent human life with dignity and respect. It is on these premises that we believe that it is possible to work out the Muslim Social Contract in Europe that should have two basic frameworks: the framework of the full respect of the constitutional law of the country the Muslims live in and the framework of the full Muslim participation in promoting human rights and democracy in the country of residence and beyond, including the countries with Muslim majority.

## II

Islam is more than religion<sup>2</sup>; it is law and morals. By law we intend to mean the blueprint of a social order which denies to its members the use of private force for attaining redress of wrong, and by morals we mean man's knowledge and will to accept principles of right and wrong in behavior. Furthermore, the law of Islam is more than religious law; it is a covenant the terms of which are neither negotiable nor terminable, and it is a contract the terms of which are both negotiable and terminable.

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<sup>2</sup> See Tocqueville's observation: „Islam is the religion which has most completely confounded and intermixed the two powers ... so that all the acts of civil and political life are regulated more or less by religious law“, quoted from Ernest Gellner, *Muslim Society*, Cambridge University Press, Cambridge, 1981, p. 1. Wilfred Cantwell Smith, *Islam in Modern History*, Princeton University Press, Princeton, 1957, p. 9.

Thus, it is political theology based on Islamic legal and moral foundations that concerns us here. Obviously, there is a difference between the political theology of Islam<sup>3</sup> and political Islam<sup>4</sup>. The former is a concept of political prudence while the latter is thought to be politically radical.

It is not because of political Islam becoming an obsession both in the East and the West that we have chosen not to focus on it, but because we believe that the political theology of Islam is the challenge of our times. The political theology of Islam which we are talking about is close to political philosophy but far from an imagination which has no relevance to anything political here; it is close to political pragmatism but far from admitting of a political application too easily. The point here is that although Muslims are the most united religious commonwealth in terms of their doctrinal and practical faith<sup>5</sup>, but, nevertheless, they are the most disengaged political group in terms of their theoretical and global politics.

Europe is in contrast politically united in spite of diverse religious beliefs and practices.

Hence, when it comes to Islam the real issue, not only here in Europe, is not about the purity of Muslim belief<sup>6</sup> (*'aqīdah*), but about the prudence of political thought and the nature of political power. There is no reasonable Muslim who does not understand the idea of One God (*tawhīd*) as well as the argument for Muhammad being the last Messenger of God. But there is also no responsible Muslim who can

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<sup>3</sup> By the political theology of Islam is not meant a political theocracy in a sense of the rule of clerics. The political theology of Islam means the rule of law and morals not in the sense of positivism which does not give proper space to morality, nor in the sense of naturalism which does not properly recognize the function of legal tradition. By the idea of the political theology of Islam I mean the political and moral tradition of the Muslim Community. In its substance it is moral and in its form it is legal in the sense that legal reasoning is not just a historical description, nor an abstract moral reflection on what rules or principles would be appropriate to a just world, but it assumes both.

<sup>4</sup> Suffice it to cite a few references: Oliver Roy, *The Failure of Political Islam*, translated by Caral Volk, Harvard University Press, 1994; *Political Islam* (Essays from Middle East Report), ed. Joel Beinin and Joe Stork, University of California Press, 1997; Peter Mandaville, *Global Political Islam*, Routledge, London, 2007.

<sup>5</sup> It is the fact of Muslim religious life that the Qur'an is the one and only Holy Book for all Muslims, that the Prophet Muhammad, a.s., is universally acknowledged as the last Messenger of God, that the Ka'aba is the universally accepted direction for Muslim prayer, and that the Muslim regular prayer is in Arabic, etc.

<sup>6</sup> „Christians are puzzled when told that jurisprudence, not theology, is the principle religious science in Islam and that the *'ālim*, the learned religious scholar. Is primarily a jurist who tells people what to do rather than what to believe. But for the muslim there is no problem in knowing what to believe; his concern is what to do under all circumstances in order to conform to the Word of God and to walk without stumbling on the road which leads to Paradise“. See, Gai Eaton, *Islam and the Destiny of Man*, The Islamic Texts Society, Cambridge, 1997, p. 180.

comprehend the bloody political disputes that Muslims have been involved in. Although the argument that Muslim political disarray is due in part to Western unfairness has some merit, Muslims must likewise understand that it is their responsibility to secure their own rights by protecting the rights of others.

Consoling themselves on the idea of being victims might satisfy some Muslims trying to justify certain conditions of their society, but it fails to provide us with an honest answer as to the real cause of Muslim malaise, of what Muslims are and what they ought to do in order to change the world for the better.

Since all authentic Muslim thought must begin from the Qur'an, one sees that the Muslim Community is not a biologically selected entity, but a morally uplifted humanity with a precise historical task to promote what is recognized to be right and to prevent what is condemned to be wrong. The qur'anic statement: "You have been the best of communities known to mankind because of your promotion of what is recognized (*ma'rūf*) to be good and your prevention of what is condemned (*munkar*) to be wrong..." - is a clear criterion on the basis of which "every deed has consequences of one kind in this world, and consequences of another kind in the world to come...". Thus, for Muslims, writes Wilfred Smith:

History has meaning, ultimate meaning; but its meaning is not exhausted within itself. Rather there are norms and standards, standing above the historical process, according to which that process may and must be and indeed is being judged...<sup>8</sup>.

Thus, the core of Islam is its resistance to subdue itself to an exhausted history which cannot reach out beyond its own exhaustion. Consequently, Islam is itself the biggest challenge to the Muslims themselves who have lost touch with the transcendental meaning of history because of their exhaustion in their own exhausted history. At the center of the Islamic worldview is the connection of the transcendental (*ghāib* or *bātin*) with the immanent (*shāhid* or *zāhir*). The *ghāib* is just absent; it is not nonexistent. And the *bātin* is just hidden; it is not dead. The *shāhid* is just present; it is not eternal. And the *zāhir* is just apparent; it is not essential. This world, *al-dunya*, is here and now present and apparent, but it is not eternal and it is not essential. The other world, *al-ākhirah*, is absent and hidden, but it is eternal and essential.

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<sup>7</sup> Qur'an, 3:110.

<sup>8</sup> See, Wilfred Cantwell Smith, *Islam in Modern History*, Princeton University Press, Princeton, 1957, p. 25.

Hence, the mission of the last Messenger of God was not to invent a new faith but to affirm the old truth and to integrate the transcendental with the immanent, to assure man that he has purpose which goes beyond himself. The Messenger was also to raise the Community that could play the role both of affirmative history and an integrative force.

It has always been Islam's ability to balance between seemingly excluding elements that makes it an attractive and inclusive force. This is true not only with regard to the theological or metaphysical worldview but also with regard to historical or political action. The integration of *al-dunya* with *al-ākhirah* is derived from the divine source, but the theological concept of it is a human act. Therefore, the act of integrating and balancing is not an accidental thought but a substantial divine concept on the basis of which human models can be made.

In other words, the principle of the integration of the *dunya* with the *ākhirah* is a paradigm that calls for the integration of all extremes which break up the balance of the whole. Thus, since Islam is an integrative force between strongly related values, the Muslim is then the integrative agent between apparently interdependent realities. This makes us understand clearly why the Muslim Community has been given the role of the integrative position in history, as it is stated in the Qur'an:

It is God who has made you to be the Integrative Community (أُمَّةً وَسَطًا) so that you may be witnesses for men and that the Messenger may be a witness for you...<sup>9</sup>

I have translated the qur'anic word *wasatan* (وَسَطًا) as "integrative" rather than "justly balanced", as it is Yusuf Ali's translation of it, or "middle way", as others would say, to give to the Muslim Community the meaning of the active rather than the passive witness.

And this is what the *Ummah* (أُمَّةً) is meant to be: a Universal Community in the middle of the world affairs who has the active task of connecting, attracting and integrating the immeasurable greatness of the Divine with the immeasurable diversity of the human. Furthermore, the *Ummah* has the task of connecting, attracting and integrating the similar elements of the divine message of Adam, Noah, Abraham, Moses, Jesus and Muhammad, a. s., into the concept of a common human destiny based on a covenant that is morally binding and a contract that is legally workable. Indeed, the Muslim *Ummah* today has a historic opportunity to make a kind of reunion of the Abrahamic traditions that share the common word and a common destiny. Hence, the recent Muslim initiative: *A Common Word between You*

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<sup>9</sup> Qur'an, 2:143.

*and Us*<sup>10</sup> should be taken seriously and should be further developed to become the common sense of humanity.

Indeed, the Muslims must act as an integrative force in the world and as an active witness in history. This is both their doctrinal obligation and their historical right. Their obligation is based on the doctrine of the position of the *wasat*, which requires a balanced approach to all aspects of human life leading to the integration of all good in the world. And their right is based on the historical fact of the integration of human thought which in Baghdad in the 8<sup>th</sup> century saw them translating Greek philosophy. This was followed by Cordoba, Spain, where the Muslims continued to play the role of the integration of rational philosophy through the work of Ibn Rushd (Averroes) in 12<sup>th</sup> century, the result of which was a catalyst for European humanism and renaissance. The West-Islamic cultural integration has been the most productive during the last two or three centuries. The initiative came from the West whereby major western universities open the departments for oriental studies<sup>11</sup>, i.e., the study of Arabic language and Islamic culture in the broadest sense of the word. It is due to these oriental studies in the West that we have today valuable references on Islamic culture which are relevant not only for the West, but also for Islam. Works such as the Islamic Encyclopedia, the Index of Hadith and the production and translation of

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<sup>10</sup> Here are some facts concerning the Muslim initiative: *A Common Word between You and Us*. On September 13<sup>th</sup> 2006 – H.H. Pope Benedict XVI's Regensburg University Lecture; October 13<sup>th</sup> 2006 – 38 international interdenominational leading Muslim Scholars release an irenic joint *Open Letter to the Pope* in response to the Regensburg Lecture. October 13<sup>th</sup> 2007 – On the One-Year Anniversary of the joint *Open letter to the Pope*, the 38 scholars are joined by another 100 scholars (138 in total) and together issue the document *A Common Word between Us and You* to the Pope and all the leaders of the major Christian churches, worldwide. *A Common Word between You and Us* proposes Love of God and Love of Neighbor as the common ground between Christianity and Islam. *A Common Word* was written by Prince Ghazi of Jordan, and corrected by a number of Senior Muslim scholars including Grand Mufti Ali Jum'a, Sheikh Abdullah bin Bayyah, Sheikh Mohammad Sa'id Ramadan Al-Buti, Habib Ali Jiffri and Prof. Abd Al-Hakim Murad; it was released by all 138 scholars together. October 14<sup>th</sup> 2007-March 14<sup>th</sup> 2008 – The leadership of the Christian world issue around 50 different responses and reactions to *A Common Word*, these include Pope Benedict XVI; the Archbishop of Canterbury Rowan Williams; Lutheran Presiding Bishop Hanson; World Baptist Alliance President Coffey; World Council of Churches General Secretary Kobia; Cardinal Scola; Cardinal Pell; Leaders of the Mennonite and Quaker Churches; Unitarian Congregation President Sinkford; British Prime Minister Gordon Brown and Former Prime Minister Tony Blair, and a number of Orthodox Christian leaders. The document is also welcomed by a few Jewish leaders, including the Chief Rabbis of Israel.

<sup>11</sup> I am aware of Edward Said's profound critique of western orientalism and one tends generally to agree with him, but one should be fair and acknowledge the fact that today many Muslim students are coming to the West to enjoy academic freedom and seek fundamental knowledge about Islam thanks to the Islamic oriental studies at many western universities.

fundamental Islamic theological and philosophical works which are available to the academic community in the West are the undisputable proof of the western contribution to the development of the West-Islamic cultural integration.

Thus, we have the pattern of Muslims being both an integrative force and a historical witness to human intellectual progress in Baghdad and Cordoba when they had been obviously active, but also we have the example of Muslims being integrated into the cultural developments made by the West when they became noticeably passive. Today, I believe, Muslims are experiencing both the phenomenon of being integrative<sup>12</sup> and integrated. The integrative are those who seek knowledge even if in China and the integrated are those who are doing little or nothing but complaining about everything and everyone who is doing anything that is out of their personal benefit. Muslims in Europe have a unique opportunity to avoid being the integrated and to be the integrative. They have freedom by their moral obligations as well as their legal commitments to be an integrative force in Europe by the covenant of high moral standards and the contract of concrete legal norms. There cannot be real peace without morality and morality can only be maintained through covenant. Likewise, there cannot be security without law and law can be established and maintained only through a contract that is founded on covenant which is related to constitutionalism. All these values which have to do with human social life are interdependent in such a way as to indicate the necessity of integrating them into the whole of human understanding. Thus, the integration (*wasat*) or combination (*tawfiq*) of kinship and consent, community and society (*gemeinschaft* and *gesellschaft*), individual and society, rights and duties, claims and responses, and right and good is essential for us to understand that law cannot be just "human will" (Hobbes), cannot be just "human reason" (Locke), cannot be just "will and reason" (Rousseau), cannot be just "freedom" (Kant)<sup>13</sup>. In addition to that there must be law which is above and beyond human "will", human "reason" and human "freedom"; there must be a Kierkegaardian "leap of faith"; there must be Ibn Khaldunian "group feeling" (*asabiyah*). As Charles Cooley put it: "One lives in the feeling of the whole and finds the chief aims of his will in that feeling." Thus, the bond of kinship is a matter of "feeling" among relatives tied by blood relationships while the bond of consent is a matter of "faith" among rational people tied by moral obligation: *Do not that to another, which you would not have done to yourself* – is a universal moral imperative shared by Judeo-Christian-Islamic tradition with a slight difference as to the emphasis of the negative or positive imperative: *Do that to another, which you would*

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<sup>12</sup> More on the integrative role of Muslims in history see, Tim Wallace-Murphy, *What Islam Did for Us – Understanding Islam's Contribution to Western Civilization*, Watkins Publishing, London, 1988.

<sup>13</sup> See Lloyd L. Weinreb, *Natural Law and Justice*, Harvard University Press, 1987.

*have done to yourself*. Although moral promises are not always sufficient without some kind of interest, this self-interest must be within a moral framework. These two premises (kinship and consent) are integrative (*wasat*) motifs for obtaining a social contract in the sense of mutual affiliation to the fact of blood relationships and the reason for common moral commitments for the better of all. In times of assaults on their faith, Muslims in Europe tend to apply the strong consent based on the bond of their common faith, but when it comes to financial and other worldly affairs the bond of kinship is more prevalent. This is because as Ferdinand Tönnies has put it:

There are degrees of rationality of natural will and of the communities and groups which it forms. Thus, in order of the importance of rationality there are the *Gemeinschaft* groups based on friendship, on neighborliness, and on blood relationships. Groups in which natural will predominates may range from those held together by intellectual ties to those bound by the instinctive liking or sympathy of biologically related individuals. Thus, the businessman, scientist, person of authority, and upper classes are relatively more conditioned by rational will than the peasant, the artist, and the common people, who are more conditioned by natural will. In general, women and young people are conditioned predominantly by natural will, and men and older people by rational will<sup>14</sup>.

Therefore, the real challenge for the Muslims of Europe is their ability to integrate their community (*Gemeinschaft*) founded “on the norms that are sanctioned by religion through its beliefs, faith, and creeds” with the society (*Gesellschaft*) which is based “on the norms of morality that are sanctioned by public opinion which arises from common interests”<sup>15</sup>.

This dichotomy of *Gemeinschaft* and *Gesellschaft* type is also the central idea of Ibn Khaldun in his famous *Muqaddimah, Prolegomena to Philosophy of History*. In fact, “his analysis of both types is one of the most penetrating, detailed, and enlightening<sup>16</sup>”. We believe that the integrative force (the *wasat*) between these two types of association is the Rule of Law based on the covenant as “the background, the ground, and the foreground of any contract<sup>17</sup>”.

Thus, God is there not as a partner with man; the partner with man in the covenantal rights and obligations is God’s self-inscribed Mercy, as it is stated in the Qur’an:

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<sup>14</sup> Ferdinand Tönnies, *Community and Society*, Dover Publications, New York, 2002, p. 5.

<sup>15</sup> See *Ibid*, p. 9.

<sup>16</sup> See, „Introduction“ by Charles P. Loopis and John C. McKinny, *Ibid*, p. vii.

<sup>17</sup> See, David Novak, *The Jewish Social Contract*, Princeton University Press, 2005, p. 31.

“Your Lord has inscribed for Himself (the rule of Mercy)”<sup>18</sup>. Hence, the Muslim Social Contract is grounded on God’s rule of Mercy - the covenant, and the rule of law - the contract by way of which the Muslim Community has minimal claim to be free from interference in its religious and cultural life and its maximal claim to be recognized as well as supported of its religious and cultural autonomy because of its useful contribution to the common good to society. And here is the meeting point between the Muslim Community and the European Civil Society - the principle of covenant which has never lost its original meaning and significance either in European moral or political life, as Daniel Elazar has said:

The cleavage between the modern and premodern epochs is generally acknowledged. We may argue over the extent of the cleavage and the degree of continuity across the premodern-modern divide, but the fact that the cleavage was and is a reality for most people who have undergone modernization has been well-documented. Nevertheless, covenant is one of those concepts and its tradition one of the cultures that did manage to cross the divide and survive; transformed, indeed, but in the process having an enormous influence on the shaping of the modern epoch, especially in its political dimension, and continuing to compel certain populations or at the very least to serve as the rock of refuge to which they return for reinvigoration in times of need. It is no less important to recall that the political transformations of modernity were initiated by and achieved their greatest success in those countries where the covenantal tradition had been strongest, particularly Switzerland, the Netherlands, Scotland and England, and the United States<sup>19</sup>.

Obviously, the scope of this lecture is limited and thus cannot focus on all the relevant arguments for the need of a Muslim Social Contract in Europe, but for the time being and the space available we can safely say that the Muslims of Europe may not only find their rights in the civil society of Europe, but may also accept their duties for it to be the society of the fulfilled covenant with God and the workable contract with men. Thus, the Muslim Social Contract is made up of a covenant with certain individual and communal prior rights and a contract with certain social rights and duties.

Here is a list of the prior rights for the Muslim Social Contract:

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<sup>18</sup> Qur'an, 6:54.

<sup>19</sup> Daniel J. Elazar, *Covenant and Civil Society - The Constitutional Matrix of Modern Democracy*, Transaction Publishers, London, 1989, p. 7.

1. Right to life as the gift of God (*nafs*).
2. Right to religion as the need of heart (*din*).
3. Right to freedom as the essence of human being (*'aql*).
4. Right to property as the need of life (*milk*).
5. Right to dignity as the essence of human identity (*'ird*).
6. Right to biological reproduction as the need for human continuity (*nasl*).

And here is a list of social rights and duties:

1. That man is God's creature and should not do harm to God's creation - nature.
2. That every man work and live in peace with others.
3. That men defend freedom of belief and expression and work for freedom from fear and poverty.
4. That every one promote tolerance in society as a sign of human strength.
5. That people practice religious and cultural dialogue with religious and cultural solidarity.
6. That every man recognize another man to be free and his equal.
7. That every man keep his promise, fulfill his covenant and work out his contract to the full.
8. That no one seek revenge because of past evil, but look for a better future.
9. That no one spread hatred.
10. That every one respects the rights of others at every time and at every place.
11. That no member of the society use private force for attaining redress of wrong, but submit his right to the just rule of law.
12. That Europe is the House of Peace, the Union of Social Contract and the Abode of all peoples who take it as their home.