Inter-religious Conflict, Translation, and the Usage of the Early Modern Notion of 'Religion' from the Fall of Constantinople to the Westphalian Peace Treaty in 1648

Reeh, Niels

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Inter-religious Conflict, Translation, and the Usage of the Early Modern Notion of ‘Religion’ from the Fall of Constantinople to the Westphalian Peace Treaty in 1648

Abstract:

The article attempts to show that the modern notion of ‘religion’ is a construction that emerged in the context of inter-religious encounters following the fall of Constantinople and especially in the years around the Reformation. Hereby, the article argues that the modern notion of ‘religion’ emerged earlier than found by most previous studies, and that it was used in the legislation of the new Protestant states as well as in the modern (Westphalian) state-system, both of which it has been a part of ever since. The notion of ‘religion’ is, thus, not a scholarly invention (J.Z. Smith) or tied to colonialism (Timothy Fitzgerald) but rather a product of complex historical processes in which religious conflicts and the attempt to overcome these played a key role.

Keywords: the notion of ‘religion’; conceptual history; religious other(s); the Reformation; inter-religious conflict

1. Introduction

In 1982, J.Z. Smith famously argued that there is “no data for religion” and that “religion is a product of the scholar’s imagination.”¹ Since then, there has been a steady stream of scholarship on the history of the emergence of the modern notion of ‘religion,’ understood as a distinct and differentiated part of human culture. A common position in much of this literature is that the modern notion of ‘religion’ is a Western construction that emerged in the seventeenth


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or eighteenth century. Some of these studies have not just been concerned with the history of the concept but have been more directly critical of the usage of the notion of ‘religion.’ David Chidester has, for instance, shown how the notion of ‘religion’ played an important role in the British colonization of South Africa and that native Africans overwhelmingly were perceived as without religion and having superstition instead. Timothy Fitzgerald has continued the

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4 Wouter Hanegraaff, “Reconstructing ‘Religion’ from the Bottom Up,” Numen 63/5-6 (2016);
Chidester, Savage systems; Chidester, Empire of religion.
argument further in this direction and argued that the notion of ‘religion’ emerged simultaneously with the secular and in the context of the Western colonial enterprise.5

Recently much material has been digitized, and the possibility of an analysis assisted by digital methods has emerged.6 Through such an analysis, I have been able to find a range of texts that previously have not been taken into account. While scholars, such as for instance Ernst Feil, seem to have been going through the entire corpus of works by theologians and philosophers, I have had the possibility of using digital assisted searches to find examples of the use of the notion of ‘religion’ and the ‘secular’ that have previously been overlooked. Some of these texts have, therefore, been found in less well-known sources, such as Martin Luther’s preface to the translation of the Quran; others have been in legislation and treaties, which have, of course, been well-known but perhaps not recognized as important because they were outside the great theological and philosophical text corpus. This is not to say that the following analysis is complete but only that I have had some advantages that previous scholars might not have had.

The main argument of this article is that the modern notion of ‘religion’ emerged as a means for talking about the religion of the other and that it served a function of inter-religious translation. More specifically, I argue that the modern notion of ‘religion’ (i.e., a domain that can be isolated and translated) can be found in descriptions of Jews, Muslims, and other Christians from the fall of Constantinople in 1453 and especially in the context of war and the peace negotiations following the Reformation, which ended with the recognition of the principle “eius regio, cuius religio” in the Westphalian Peace Treaty in 1648. The modern notion of ‘religion’ does, thus, seem to emerge in contexts of inter-religious encounters if not

6 Such as, Google Books Ngram View, Deutsches Text Archiv, Medistream.dk, etc.
outright religious war. From this, it follows that the notion of religion is not the result of the
invention of scholars, philosophers, or thinkers as such. Rather, it is the result of a complex
historical process in which war, and specifically the fact that neither side of the religious divide
could defeat the other, necessitated the negotiation of peace treaties in which the parties
recognized each other’s practices in relation to their god as religion and not as heresy, infidelity,
paganism, etc. The result of these historical processes was that religion became, if it wasn’t
already as argued by Giovanni Casadio (see below), a concept and a domain that could be
separated from the larger culture and society and that religion again could be translated across
religious borders. This notion of religion, thus, functioned (and still functions) as a discursive
bridge that simultaneously enabled recognition of other religions while maintaining that one’s
own religion was the true or truest religion. In other words, the notion of ‘religion’ enabled and
still enables recognition of both sameness and difference, as J.Z. Smith might have said. This
article further argues that this recognition of some degree of sameness can be understood as a
weakening of what Jan Assmann has called the “mosaic distinction” (see below). This
recognition of a degree of sameness or this weakening of the mosaic distinction became an
entrenched part of the European legal framework—internally in legal texts and externally in
peace treaties. Religion understood as a domain that could be isolated from other societal

7 Smith, Imagining, xi; Fitzgerald, Discourse, 4.
8 Giovanni Casadio, “Religio”; Giovanni Casadio, “Historicizing,”
9 Jonathan Z. Smith, “In Comparison a Magic Dwells,” Imagining Religion from Babylon to Jonestown (Chicago:
University of Chicago Press, 1982), 19-35.
10 Jan Assmann, “The Mosaic Distinction: Israel, Egypt, and the Invention of Paganism,” Representations, 56/1
domains and which could be applied to other religions than one’s own is, thus, not a recent conceptual development.11

In regard to the existing work on the history of the concept ‘religion,’ the present article supports and reinforces the recent work of Gustavo Benavides and Casadio who have argued that the concept of ‘religion’ is a result of an encounter with another religion and that it served as a means for translation of the religious other already in antiquity.12 Casadio, thus, made the ground-breaking finding that the Ancient Greek and Egyptian cultures did, in fact, have implicit notions of a religious domain that could be isolated and translated across cultural and religious divides.13 In contrast to the common assumption in much scholarly work on the history of the notion of ‘religion,’ the present article argues that the use of a crucial aspect of the modern notion of ‘religion’ (i.e., its ability to describe the religious other as a group with specific rites, doctrine, etc.) originated significantly earlier than previously realized and not in a colonial context as argued by Fitzgerald.14 This does not preclude that the notion of religion later played a role in colonial projects (it most certainly did), but only that the notion of ‘religion’ originated before colonialism. Instead of the colonial context, ‘religion’ was a concept that was developed and used in inter-religious encounters at least from the fall of Constantinople and especially in connection with the religious wars in the wake of the Reformation.

11 Platvoet, “Contexts, Concepts & Contests,” 464; for a overview of the common opinion of the modern concept of religion as a recent phenomenon, see also Casadio, “Religio,” 302-3


13 Casadio, “Religio”; Casadio, “Historicizing.”

2. The Mosaic Distinction and the Loss of the Translatability of Gods

Before I get to the analysis of a set of hitherto overlooked texts from before and after the Reformation, I will first introduce a different framework for the analysis. In a series of eminent works, the German scholar Jan Assmann followed in the footsteps of Jack Goody and Karl Jaspers and argued that religion underwent a revolution in the first millennium BCE. Before this revolution, Assmann argued that it was generally possible to translate between different gods:

The divine names are translatable because they are conventional and because there is always a referent serving as a tertium comparationis. The cultures, languages, customs may be different: religions always have a common ground. The gods were international because they were cosmic, and while different peoples worshiped different gods, nobody contested the reality of foreign gods and the legitimacy of foreign forms of worship.

With the rise of what Assmann called the “mosaic distinction,” such translation becomes impossible:

The distinction with which this essay is concerned is the one between true and false in religion: a distinction that underlies the more specific ones between Jews and Gentiles, Christians and pagans, Muslims and unbelievers. Once this distinction is drawn, there is no end of reentries or sub distinctions. [...] These cultural or intellectual distinctions construct a universe that is full not only of meaning, identity, and orientation but also of conflict, intolerance, and violence. Therefore, there have


always been attempts to overcome the conflict by reexamining the true-false distinction, albeit at the risk of losing cultural meaning.\textsuperscript{17}

In regard to the situation before the emergence of the mosaic distinction, Assmann further claimed:

\begin{quote}
Ancient polytheisms functioned as such a technique of translation within the “ancient world” as an ecumene of interconnected nations. The polytheistic religions overcame the ethnocentrism of tribal religions by distinguishing several deities by name, shape, and function [...]. The space “severed or cloven” by the Mosaic distinction was not simply the space of religion in general, then, but that of a very specific kind of religion. [...] False gods cannot be translated.\textsuperscript{18}
\end{quote}

Assmann, thus, argued that the translatability between gods ceased or at least was significantly hampered with the advent of the mosaic distinction.\textsuperscript{19} The key point is that the two initial main carriers of the mosaic distinction, namely early Judaism and Christianity, did not accept that their god could be compared to and translated into other gods. In early Judaism and Christianity, there is a crucial (mosaic) distinction between the true God and paganism, idolatry, etc. However, if one confronts the religious situation with the situation today, then it is obvious that it is possible to translate between gods as well as religions through use of the notion of ‘religion’ or through the academic discipline of comparative religion.\textsuperscript{20} The notion of ‘religion’ does, in other words, construct a degree of sameness across a religious divide, which is absent when, for instance, there are alternative formulations like truth versus

\begin{footnotes}
\item[17] Ibid., 48.
\item[18] Assmann, “Mosaic Distinction,” 50.
\end{footnotes}
falsehood, idolatry, etc. Translation and comparison do, thus, hinge on an element of sameness.\textsuperscript{21} In other words, the translatability between gods was lost or hampered with the emergence of what Assmann called the mosaic distinction. The argument in the remainder of the present article is that this translatability was reestablished through the notion of ‘religion’ during the wars of religion from the fall of Constantinople until the Westphalian Peace Treaty in 1648.

3. Inter-religious Encounters and Use of the Notion of ‘Religion’ Before the Reformation

If we first take a look at how the papacy constructed the boundary vis-à-vis Jews before the Reformation, it is noteworthy that the Roman Church consequently talks of Jews as synonymous with infidels. An example of this is the following quote from the Council of Basel that took place from 1431–1449, where the church officially stated:

The holy general synod of Basel [...] desires to provide measures whereby Jews and other infidels may be converted to the orthodox faith and converts may remain steadfastly in it.\textsuperscript{22}

Here, there is a clear-cut mosaic distinction between Christians and the true faith on one side and Jews and other infidels on the other side.

\textsuperscript{21} Smith, “In Comparison,” 35.

Soon after we can observe an early attempt to overcome or soften the mosaic distinction in the writings of Nicolas Cusanus, who was a German philosopher, theologian, jurist, and astronomer and one of the first proponents of renaissance humanism. After the fall of Constantinople, he wrote the following in the introduction to his *De pace fidei* in 1453:

There was a certain man who, having formerly seen the sites in the regions of Constantinople, was inflamed with zeal for God as a result of those deeds that were reported to have been perpetrated at Constantinople most recently and most cruelly by the King of the Turks. Consequently, with many groanings he beseeched the Creator of all, because of His kindness, to restrain the persecution that was raging more fiercely than usual on account of the difference of rite between the religions. It came to pass that after a number of days—perhaps because of his prolonged, incessant meditation—a vision was shown to this same zealous man. Therefrom he deduced the following: the few wise men who are rich in the experiential knowledge of all such differences as are observed throughout the world in the religions can find a single, readily-available harmony; and through this harmony there can be constituted, by a suitable and true means, perpetual peace within religion. Hence, in order that this vision might one day become known to those who have a say in these especially important matters, he wrote down plainly, in what follows, as much of it as he recalled.23

The fall of Constantinople was clearly a shock in Europe, and Cusanus used the word ‘religio’ as a more encompassing term than rite and to designate the religious other (different religions) as well as a domain (in which there can be perpetual peace). Shortly hereafter, a similar use is seen in a work by another renaissance humanist Johann Reuchlin (1455–1522). As Cusanus had tried to find a “perpetual peace within religion” that encompassed both Christians and Turks, Reuchlin used ‘religion’ in regard to the Jews. Reuchlin had as one of the very first Christian Europeans learned Hebrew in order to improve the interpretation of the Bible and was the teacher of Luther’s friend and co-reformer Philip Melanchthon. Reuchlin did, however, become involved in a dispute (i.e., the Reuchlin affair) with Johannes Pfefferkorn, who was a

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former Jew who had converted to Christianity and subsequently argued that all Jewish books, such as the Talmud, should be burned and that the Jews should be forced to choose between conversion or severe punishments. In contrast to Pfefferkorn, Reuchlin argued:

Heretics, through having received the sacrament of baptism and other sacraments, are subject to the Christian Church in all matters pertaining to religion and have no judges other than the Pope and the clerics of our religion [...]. The Jews, however, in matters concerning their religion, are subject to no judge other than themselves. No Christian should pronounce sentence on them except, in incidents of a secular nature [...]. The reason for this is that they are not limbs of the Christian Church [...]. That is enough said about the Talmud and why it should not be suppressed or burned.24

Reuchlin, thus, established a discursively constructed parallel between the religion of the Jews and that of the Christians and used the notion of religion to accomplish this. In other words, there is religion or sameness on both sides of the equation.25 The crucial point is that both Cusanus and Reuchlin used religion to describe what non-Christians (Turks and Jews) are doing and thinking in relation to their god, and they do this in the context of an encounter with the religious other. In the medieval period, instead of the term ‘religio,’ it was also a discursive possibility to use the Latin terms ‘sectae’ and ‘leges.’26 In the end, the term ‘religio’ and especially its vernacular derivative ‘religion’ became the preferred overarching term, and the important point here is that in these encounters both Cusanus and Reuchlin further recognized the religious other as religion. Both men, thus, deviated from the standard practice of the Roman Church, namely, to label the religious others as infidels, etc. The use of the term

26 Feil, “From the Classical Religio,” 34; Platvoet, “Contexts.”
‘religion,’ thus, becomes a vehicle for bridging religious differences or inter-religious translation.

4. Martin Luther’s Use of the Word ‘Religio’

As mentioned in the introduction, a dominant theme in studies of the history of the concept of ‘religion’ has been that the classical Roman concept of ‘religio’ signified a careful and fearful fulfilment of one’s obligation to the gods, whereas the modern concept of ‘religion’ was an isolatable domain consisting of doctrine and rituals and which could be applied to the religious other.²⁷ Luther did, however, use the notion of ‘religio’ much more frequently than has been recognized by Feil and others.²⁸ In many of these instances, it is “Christian religion” as in the classic Roman religio (i.e., what one owes God). However, a crucial part of Luther’s argument against the Roman Church was that, through the years, it had corrupted Christ’s gospel. In parts of this polemic, a more modern use of the term ‘religio’ occurs as can, for instance, be seen from his writing against Jerome Emser from 1519, in which he wrote that there are so many “religions” that fight each other everywhere as can be witnessed in the holy word.²⁹ Significantly, Luther used ‘religio’ as a designation for what appear to be what we today call

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²⁷ Feil, “From the Classical Religio,” 32.
²⁹ Martin Luther, D. Martin Luthers Werke: kritische Gesamtausgabe: Schriften 1518/19, 2. Band (Weimar: Böhlau, 2003), 668. The original Latin text reads: “praesertim cum tot ubique religiones etiam sibi pugnarent testibus sacris literis [...].”
religious groups (i.e., groups that have established a boundary towards other religions). This interpretation can be further supported by Luther’s two prefaces to translations of the Quran into Latin from 1530:

Grace and peace in Christ. I gladly accepted this little book on the religion and customs of the Turks when it was offered to me. Now I have decided to publish it, not without good reason as it seems to me. Although I have eagerly desired for some time to learn about the religion and customs of the Muhammadans, nothing has been available to me except a certain Refutation of the Alcoran and the Critique of the Alcoran by Nicholas of Cusa.30

In this text, Luther only used ‘religio’ in connection with customs (i.e., ‘mores’ in Latin). In another instance, Luther did, however, use only ‘religio’:

From this book, accordingly, we see that the religion of the Turks or Muhammad is far more splendid in ceremonies—and, I might almost say, in customs—than ours, even including that of the religious or all the clerics.31

I will argue that these passages are crucial in at least four respects. First, Luther was perhaps the most consequential writer of his time, as his writings splintered the Holy Roman Empire. Second, Luther used the Latin ‘religio’ to designate the religious other and not just the Christian


religion (i.e., this is clearly not the classic ‘religio’ or that which ‘man owes to God’). Third, Luther isolated religion as a separate domain and used this specific domain to designate the Turk’s as a group (i.e., “religionen et mores Mahometistarum”). Luther’s application of the term, thus, appears quite close to our modern-day usage of ‘religion.’ Fourth, the text is also important in that it directly shows the importance of the invention or media revolution of the printing press. Without the printing press, Luther might not have been able to get ahold of the Quran and much less been able to write a preface to the translation into Latin. This last aspect points to the possibility of regarding the emergence of the notion of ‘religion’ as accelerated by the advent of print. At this point we can say, therefore, that the notion of ‘religion’ emerged both as a discursive vehicle for talking about the religious other and that the perceived need for this most likely has been augmented by the advent of print. In all the cases hitherto examined (i.e., the fall of Constantinople, the Reuchlin-Pfefferkorn dispute, and the conflict between Luther and the Roman Church), the encounter with the religious other became known and discussed throughout Europe, which would have been impossible to the same extent without print, which, therefore, must be seen as accelerating inter-religious encounters and, thus, also the need to talk about the religious other.

5. Religion as an Attempt to Bridge the Protestant and Catholic Divide

Although, Luther was a writer with a tremendous impact, the use of ‘religio’ in the Augsburg Confession was perhaps even more important because it was and still is recognized as an

32 This particular case thus seems to be yet another consequence of the advent of print so eminently outlined in Elizabeth Eisenstein, The printing press as an agent of change: communications and cultural transformations in early-modern Europe (Cambridge: Cambridge University Press, 1979).
official confession or creed of the Lutheran churches.\textsuperscript{33} The context was, of course, the Protestant Reformation, which at this point in history was well underway. In 1530, the Holy Roman Emperor Charles V had summoned a diet in Augsburg where the Lutheran princes were to present their position with the official pretext of reaching some kind of consensus. The Lutheran princes of the Holy Roman Empire had commissioned Philip Melanchthon with this task, and it should be borne in mind that the Augsburg Confession is a political document from an extremely charged situation:

As your Imperial Majesty has summoned a Diet of the Empire here at Augsburg to deliberate concerning measures against the Turk, that most atrocious, hereditary, and ancient enemy of the Christian name and religion, in what way, namely, effectually to withstand his furor and assaults by strong and lasting military provision; and then also concerning dissensions in the matter of our holy religion and Christian faith, that in this matter of religion the opinions and judgments of the parties might be heard in each other’s presence; and considered and weighed among ourselves in mutual charity, leniency, and kindness, in order that, after the removal and correction of such things as have been treated and understood in a different manner in the writings on either side, these matters may be settled and brought back to one simple truth and Christian concord, that for the future one pure and true religion may be embraced and maintained by us, that as we all are under one Christ and do battle under Him, so we may be able also to live in unity and concord in the one Christian Church.\textsuperscript{34}

As is clear from the passage, the Holy Roman Empire was threatened externally by the Ottoman Empire and internally by Protestants. In regard to the Ottoman Empire, it is only stated that the Turks are enemies of the Christian name, and it is thus not possible to determine whether or not Islam was also conceived as a religion through a reading of this text in isolation. Luther’s use of ‘religion’ in the above-mentioned preface to the translation of the Quran does, however, make this interpretation plausible. However, in the perspective following from the mosaic


\textsuperscript{34} Philipp Melanchthon, \textit{The Augsburg Confession} (Kessinger Publishing, 2011), 1. Emphasis added.
distinction, it is crucial that Melanchthon does not call the position of the Catholics false, heretical, or something along those lines as, for instance, Luther had done in his much more polemical texts. This would presumably also have been counterproductive, as Melanchthon and the Lutheran princes probably feared that the emperor would attack them with his army and seek to depose them as princes of the Holy Roman Empire. The significance of this important historical document is that it seeks to establish the notion of ‘religion’ as a discursive field with room for both Catholics and Protestants as Cusanus had previously done in regard to the Ottomans. One could also say that the preamble of the Augsburg Confession opts for some level of tolerance or co-existence between Protestants and Catholics, although the Confession itself also contains a series of condemnations of other religious positions. The preamble to the Augsburg Confession (but not the Confession itself), thus, to some degree follows in the footsteps of parity (parietät), which had been established after the first confessional wars in the Old Swiss Confederation in what became known as the first “Kappeler Landfrieden” (1529). Here, the notion of ‘religion’ had not yet come into use, but it is significant that the Swiss cantons established the principle of parity as a mutual recognition between Protestants and Catholics. This approach is followed in the above-quoted preamble to the Augsburg Confession, in which the notion of ‘religion’ can be regarded as an attempt to establish a discursive bridge between Protestants and Catholics. As in the quote from Cusanus above, religion is here a domain that can be isolated from the rest of the culture and in which there can be different opinions, which had to be addressed, if not only because either side was unable to defeat the other by either arguments or military means. This concept of ‘religion’ as a domain or a special isolated field in which things could be debated was a success, although the attempt to broker a peace at the diet in Augsburg in 1530 failed.
6. Religion Beyond the Augsburg Confession

In the Protestant Church ordinances that followed the Reformation, one can observe that the reformers initiated a more intense use of the notion of ‘religion.’ The first of these seems to be the Prussian Church ordinance from 1525 that reads:

On July 6, 1525, Duke Albrecht of Prussia has for the praise and glory of the Lord and all his chosen holy, for the sake of common Christian faith, issued a decree in which the preachers shall proclaim the gospel loud and pure, faithful and Christian [...] swearing and cursing, fornication and improper conversations about religion were prohibited [...].35

‘Religion’ is here used as a term that is broader and more wide-ranging than terms like ‘gospel,’ ‘faith,’ etc. The same can be seen in the church ordinance for the Kingdom of Denmark-Norway that was written by Luther’s co-reformer Johan Bugenhagen:

Since there has been great disagreements in the Kingdom and since there has been great misuse [...] then we have together and in accord with our beloved Council of the Kingdom [...] considered the best of the Kingdom and its inhabitants, so that there should be peace and calm in regard to religion [...] and we have established a Christian ordinance concerning the religion that here follows.36


Bugenhagen wrote most of the new Lutheran Church ordinances in Northern Germany and Scandinavia. In these church ordinances that were legislative and obligating texts, religion became part of the legal framework of the new Protestant states. Here we thus clearly have a notion of ‘religion’ that can be isolated, delimited, and described in church ordinances. At the same time, this notion of ‘religion’ was definitely broader than ‘faith’ and ‘confession,’ since it also included religious practice. This broadening of the notion of ‘religion’ corresponded to the increased religious ambitions of the new Protestant states. In the preamble, the Danish-Norwegian king stated that “we have established a Christian ordinance concerning the religion that here follows.” In this church ordinance, what one owes to God was now quite expansive and was formulated over almost one hundred pages. And what one owes to God (i.e., what the ordinance comprises) in its entirety was called ‘religion.’ One may therefore say that the increase in religious ambitions of the new Protestant states helped expand the Latin ‘religio’ (i.e., what one owes God) to include doctrine, rite, belief, and practice. As we have seen from examples from Cusanus and Reuchlin, it had been a discursive possibility before. But, in the church ordinances that followed in the wake of the Reformation in the Protestant domains, the new expanded (i.e., the modern) notion of ‘religion’ became enshrined in state legislation of which it has been a part ever since. As such, the modern notion of ‘religion’ may not have an exclusive Protestant origin, but it certainly quickly became a crucial concept in the new Protestant states.

38 Lausten, Kirkeordinansen 1537/39, 150-245.
39 Ibid., 150-245.
40 Ibid., 150-245.
41 Ibid., 157.
7. The Use of the Notion of ‘Religion’ in the Peace Treaties of Augsburg and Westphalia

The use of the notion of ‘religio’ in the Protestant states was not only internal, as these states did not exist in a vacuum but were at war with Rome and the emperor. In 1555 in the Religious Peace Treaty of Augsburg, we find that the term ‘religio’ is used in the fundamental principle of “eius regio, cuius religio.” This principle stated that he whose land it is, determines the religion (i.e., the princes were to decide the religion of their realm). The peace of Augsburg did not hold, and the result was the devastating Thirty Years War. The result of the war was that a third of the population of the German-speaking Holy Roman Empire was killed. As in the case of the first and second Kappeler Landfrieden, we again have a situation in which neither of the warring parties could defeat the other. Finally, in 1648, the Thirty Years War ended, and two treaties were signed. This agreement was crucial in several ways. First, the two treaties were not signed by the pope but only the European states, and the modern state system was hereby established, including the principle of national sovereignty (which included sovereignty in the state’s internal religious affairs). Second, a crucial point was that the two treaties were a mutual recognition of the participating states. Third, the mutual recognition by the states was as in the Augsburg Peace Treaty formulated with the principle “eius regio, cuius religio.” The notion of religion is used eighty times in the two treaties:

42 Charlotte Ku, “Catholicism, the peace of Westphalia, and the origins of modern international law.” The European Legacy 1/2 (1996), 734-739.
Again, we clearly have here a modern notion of ‘religion,’ since it is not just what man owes to the gods as in the Latin ‘religio.’ As in the Protestant Church ordinances, we may here say that ‘religion’ is a broader concept than ‘confession’ and, thus, includes both religious practice and the dogmatic confession. In the Protestant world, the concept of ‘religion,’ thus, had both an internal legislative use in the church ordinances as well as an external use in the brokering of peace with the Catholic Holy Roman Emperor.

8. The Notion of ‘Religion’ as a Result of Unwinnable Religious Wars?

As mentioned, Assmann claimed that:

The space “severed or cloven” by the Mosaic distinction was not simply the space of religion in general, then, but that of a very specific kind of religion. [... B]ecause it not only constructed but rejected and repudiated everything that went before and everything outside itself as “paganism.” It no longer functioned as a means of intercultural translation; on the contrary, it functioned as a means of intercultural estrangement. Whereas polytheism or rather, “cosmotheism,” rendered different cultures mutually transparent and compatible, the new counterreligion blocked intercultural translatability. False gods cannot be translated.44


While Assmann was certainly correct in arguing that the advent of the mosaic distinction or universalist religion (Goody) changed the religious landscape, this is, however, not the same as to say that this inter-religious translatability was lost forever. In contrast, the introduction of the notion of ‘religion’ reestablished inter-religious translatability, and it arose out of the religious wars from the fall of Constantinople to the Westphalian Peace Treaty in 1648.

Wars and peace treaties are not just military events. Instead they also have huge ramifications in the culture and religious affairs of a society to which I will turn to in the following. In his momentous work *On War*, the Prussian general and perhaps the most important military thinker Carl von Clausewitz analyzed war as a social phenomenon.\(^{45}\) In his analysis, von Clausewitz was able to explain why wars tend to drag out and eventually come to a pause, a stalemate, or an armistice. Following von Clausewitz’ analysis, Thomas Højrup and Lars Bo Kaspersen have argued that the pause or stalemate is crucial, since its consequence is a de facto mutual recognition between the involved parties.\(^{46}\) This is exactly what happened during the wars that followed the Reformation in which neither the Protestant nor the Catholic camp could defeat the other. The principle result of the wars following the Reformation was a series of peace treaties from the first Kappeler Landfrieden in 1529 to the final Westphalian Peace Treaty in 1648, in all of which the negotiations resulted in a principle of parity as it was called in the first Kappeler Landfrieden or “*eius regio, cuius religio*” from the peace treaty of

\(^{45}\) Regarding the argument that von Clausewitz was a centrally important military thinker, see Christopher Bassford, *Clausewitz in English: the reception of Clausewitz in Britain and America, 1815-1945* (New York & Oxford: Oxford University Press, 1994). On war as a social phenomenon, see Lars Bo Kaspersen, “Survival Units as the Point of Departure for a Relational Sociology,” Francois Depelteau and Christopher Powell (eds.) *Applying Relational Sociology* (New York: Palgrave Macmillan, 2013).

Augsburg and onwards. This principle entailed recognition of the religion of the other as religion. It did not emerge out of understanding and respect for the position of the other but in negotiations that took place in situations where it was impossible for neither side to win the war.

A peace treaty is, however, a complicated social logic with far-ranging consequences. For one thing, it is a mutual recognition in a Hegelian sense out of which a state can be formed. In a more mundane formulation, it is a compact in which the parties recognize each other and agree to respect each other thereafter. Furthermore, if a peace treaty is to be successful, it must be perceived as legitimate—not only by the negotiators—but also by the people that comprise the state:

> By signing a peace agreement, leaders put themselves at risk from adversaries who may take advantage of a settlement, from disgruntled followers who see peace as a betrayal of key values, and from excluded parties who seek either to alter the process or to destroy it.

How dangerous it can be to enter a treatise that is perceived as illegitimate can be seen from the German reaction to the peace treaty that followed WWI. This enabled the so-called Dolchstoßlegende, and the politicians who entered the treatise were called November Criminals and were later overthrown by Adolf Hitler. In the long run, you cannot have a legitimate treatise with an illegitimate opponent. A treatise thus puts the parties in a social bind. If you delegitimize the opponent, you also delegitimize the treatise and vice versa.

In the context of the negotiations following the reformation wars, the European states recognized the sovereignty of each other and agreed not to interfere in the internal religious affairs of other states. Hereby, Protestants and Catholics recognized each other as legitimate.

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others (i.e., not as heretics, infidels, worshippers of the Devil, etc.) and as other religions with some degree of sameness. Difference could, however, still be maintained by claiming to adhere to the true religion, whereas the religion of the others was not true to the same extent. The difference between the different confessions or religions was, in other words, not as absolute as the difference between truth and falsehood, infidelity, paganism, etc. As such, the notion of religion enabled a recognition of the others and a gradual alignment of different religions, while still enabling the claim to superiority vis-à-vis the others. Initially, the term ‘religion’ was reserved for Christianity, Judaism, and Islam as can be seen in the works of Cusanus, Reuchlin, and Luther but was expanded afterwards. The fact that a discourse on religion that recognized the religion of the other as religion had emerged does not, of course, preclude a simultaneous discourse that does not.

9. The Roman Catholic Church as a ‘Free Player’ and Its Use of the Notion of ‘Religion’

As already mentioned, there was, however, one significant historical player that eventually was excluded from the Westphalian peace treaty, namely the Catholic Church, which was, therefore, not bound by the treatise and could play the role of a free player—free to keep delegitimizing the other as something of a different order than itself.

The Jews were, in many ways, the internal intimate religious others of Europe, and the Turks were the external religious other in the medieval period. The Roman Catholic Church defined the relationship with these two religious others in a number of official documents. A fundamental feature of this relationship was that the Jews and Turks were not a religion or a
group of the same order as Christians, and, furthermore, the Church decreed that the Jews were not integrated into European society and were to be kept separate from Christians:

Furthermore, renewing the sacred canons, we command both diocesan bishops and secular powers to prohibit in every way Jews and other infidels from having Christians, male or female, in their households and service, or as nurses of their children; and Christians from joining with them in festivities, marriages, banquets or baths, or in much conversation, and from taking them as doctors or agents of marriages or officially appointed mediators of other contracts. They should not be given other public offices, or admitted to any academic degrees, or allowed to have on lease lands or other ecclesiastical rents. They are to be forbidden to buy ecclesiastical books, chalices, crosses and other ornaments of churches under pain of the loss of the object, or to accept them in pledge under pain of the loss of the money that they lent. They are to be compelled, under severe penalties, to wear some garment whereby they can be clearly distinguished from Christians.49

The mosaic distinction may thus be said to be existing in a rather marked or strong version at this point in the history of the Roman Catholic Church. The same may be said at the time of the fifth Lateran Council in 1517:

As we ponder how heavy is the burden and how damaging the loss to the vicars of Christ on earth that counterfeit elections would be, and how great the hurt they could bring to the christian religion, especially in these very difficult times when the whole christian religion is being disturbed in a variety of ways [...]. In this way, further losses would not be inflicted on Christians from the hands of the savage ruler of the Turks or from other infidels, but there would be a rallying of forces to crush the terrible fury and the boastful endeavours of those peoples.50

Turks and Jews were, in other words, categorized as infidels by the Roman Catholic Church. The same also applied to the Protestants who were condemned as “detestable and odious


heretics and infidels.” Pope Leo X’s papal bull *Exsurge Domine* that condemned Luther is a particularly good example, as Luther and other Protestants were likened to “wild beasts,” “spewing out a serpent’s venom,” “introducing ruinous sects,” with “tongues of fire,” and a “restless evil, full of deadly poison.” The pope also used the term ‘religion’ in this document:

> In virtue of our pastoral office committed to us by the divine favor we can under no circumstances tolerate or overlook any longer the pernicious poison of the above errors without disgrace to the Christian religion and injury to orthodox faith.

Here, then, Luther and fellow Protestants were subjected to the wrath of the pope and a very sharp mosaic distinction. The term ‘religion’ was reserved for the Catholic Church itself, and the pope was not intent on recognizing any other religion as anything other than falsehood, heresy, idolatry, works of the devil, etc.

If we now turn to the Spanish conquest, Pope Alexander VI had, in 1493, dealt with the Native Americans in the bull *Inter Caetera*:

> Alexander, bishop, servant of the servants of God, to the illustrious sovereigns, our very dear son in Christ, Ferdinand, king, and our very dear daughter in Christ, Isabella, queen of Castile, Leon, Aragon, Sicily, and Granada, health and apostolic benediction. Among other works well pleasing to the Divine Majesty and cherished of our heart, this assuredly ranks highest, that in our times especially the Catholic faith and the *Christian religion* be exalted and be everywhere increased and spread, that the health of souls be cared for and that *barbarous nations* be overthrown and brought to the faith itself.

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51 Ibid.


53 Ibid.

Here, the Native Americans were not condemned, but they were understood as part of barbarous nations that should be brought to the true faith or the Christian religion. In regard to the Spanish conquest, the salient point was, thus, definitely not that the European conquistadors were ‘secular’ and that the Native Americans were ‘religious’ as one might assume on the basis of Fitzgerald’s work.\(^{55}\) Instead, the salient point was that Columbus and others such as Juan Ginés de Sepúlveda argued on the basis of Pedro de Toledo’s Spanish translation of Maimónides’ *Guide for the Perplexed*, as did Aristotle himself. The core of this argument was that the Native Americans were a lower category of humans, which Aristotle had called natural slaves.\(^{56}\) The Roman Catholic Church was, thus, not bound by a treatise with other religions. They kept up the mosaic distinction vis-à-vis other religions presumably until the Second Vatican Council, and *Nostra Aetate* in particular finally recalibrated their relation to other religions.\(^{57}\)

### 10. Discussion and Concluding Remarks

Feil found that the classical Latin-Roman notion of ‘*religio*’ through the Middle Ages, was used to signify what one owed to God. Feil found that this was still the case up until Jean Bodin’s publication of *Colloquium Heptaplomeres*. In contrast to Feil, I have found that the Latin term ‘*religio*’ and ‘religion’ in the vernacular emerged considerably earlier, understood

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\(^{55}\) Fitzgerald, *Discourse*, 6ff.


as a term that can be used to describe the religion of the other as a group and in regard to their religious belief and practice. This is evident in the quoted text passages from Cusanus, Reuchlin, Luther, and Melanchthon in which religion was not reserved for one’s own religion but used in regard to Jews, Muslims, and Christians on the other side of the religious or confessional divide. Fitzgerald’s argument that religion originally emerged in conjunction with its modern opposite, namely the secular, does not hold up. Conceptually, the reason for this is that, in the period I have been looking at here, the opposite of Christianity was not the secular but rather heathens, heretics, and eventually non-Christian religions (this does however not preclude that the secular later became the opposite of religion). The same may be said with respect to Fitzgerald’s claim that, from the outset, religion has been part of the Western colonial enterprise, since religion emerged significantly earlier than found by, for instance, Fitzgerald and Feil. Instead, the historical process seems to have been that the emergence of other religions in Europe, whether Christian or non-Christian, necessitated a word for what these people were doing, believing, etc. in relation to their God. The papacy continued to reserve religion solely for the Roman Catholic Church and continued a sharp discursive mosaic distinction. In the Protestant camp, however, several authors seem to have been motivated to read, discuss, and also to refute and condemn opinions in regard to what became known as religion. Luther seems to have read the Latin translation of the Quran with the purpose to refute it, but he nonetheless used the term ‘religio’ to describe “religionen et mores Mahometistarum.” In addition to describing the religion of the others, the term ‘religion’ was also used internally in the Protestant camp to order the new Protestant states through laws such as the church ordinances. Through legislation, the Protestant states established a religious domain that could be isolated from the rest of society. Thereby, the new Protestant states enshrined the notion of ‘religion’ in legislation of which it has been part of ever since. Through the peace negotiations and especially the Westphalian peace treaty of 1648 that finally proved successful, the European
states further promised to respect the sovereignty, including the religion, of each other. Religion was, thus, gradually used to establish a framework that could overcome the mosaic distinction and increase sameness—cross-cultural or cross-religious understanding and translation. The modern notion of ‘religion,’ thus, originated as a product of relations of meaning and power in Europe that most likely have been exported to the rest of the world through the expansion and globalization of the Westphalian state system. The notion of ‘religion’ is a historical construction to be sure, but it is also a real social phenomenon in that it is entrenched in state legislation and international treaties. It, therefore, appears that even though some scholars would like to discard the term altogether, the term ‘religion’ is not owned by the academy. Rather, it now appears that religion had already become an entrenched part of the legal framework, not only in Europe but throughout most, if not all, of the world. As Peter Beyer has cogently argued, the notion of ‘religion’ is of European origin but is now an entrenched part of what he calls the global religious system. It therefore follows that even if each and every scholar in the academy agreed to discard the notion, the notion would still be used in laws throughout most of the world and any attempt to have it replaced with something else seems to be a rather uphill battle. The facts that religion seems to be deeply entrenched in the framework of the post-Westphalian state system and that it has become a technique for inter-religious translation suggest that we most likely will not get rid of the concept until the Westphalian state system comes crashing down. The notion of ‘religion’ thus appears to be indispensable, first, for talking about the constructed but socially real domains that states


through legislation have defined as religion and, second, for talking about the religious others with a variable degree of sameness and difference, having served as a historically constructed vehicle for overcoming the mosaic distinction.

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