

Socio-Historical Contexts in Legal Reasoning: Ibn Qayyim al-Jawziyya and `Abd al-Ghanī al-Nābulusī on *dhimmi* (protected non-Muslims)¹

Nazirudin Mohd Nasir, Doctoral Candidate, Theology, Oxford

Varying conceptions of the status of *dhimmi* can be found within the Islamic legal tradition. This variety in juristic interpretation in structuring relations within multi-religious contexts ought to be given particular attention, as it not only reflects the plurality within Islamic law as an outcome of unique scholarly backgrounds and leanings of individual jurists, but also the role socio-historical contexts play in juristic reasoning. As a case in point, the views of two Damascene scholars, the fourteenth century Ḥanbalī scholar Ibn Qayyim al-Jawziyya (d. 1350), and the seventeenth century Ḥanafī Sufī-Jurist `Abd al-Ghanī al-Nābulusī (d. 1731), are contrasted here. Ibn Qayyim's views are drawn from his work, *Ahkām ahl al-dhimmah* (Rulings on the People under the Covenant of Protection), and those of al-Nābulusī derived mainly from his short treatise *Kitāb al-qawl al-sadīd fī jawāz khulf al-wa'ad wa-al-radd 'alā al-Rūmi al-jāhil al-'anīd*.²

Ibn Qayyim was under the heavy influence of his teacher, Ibn Taymiyya, both favouring a stricter interpretation of rules relating to *dhimmi*s. Ibn Qayyim's work above was a commentary on the 'Pact of `Umar'. In his lengthy discussion on the Qur'anic verse on *jizya* (poll-tax on protected non-Muslims), as found in Sūra 9 (al-Tawba): 29, he classified it as a form of punishment (*'uqūbāt*) meant to subdue and humble the non-believers. However, he also opposed physical acts of humiliation and abuse perpetrated upon *dhimmi*s during payment, and was against imposing taxes that were unaffordable.

Nonetheless, Islam's superiority over such communities must be maintained. Thus, no new places of worship for the *dhimmi*s should be allowed in cities conquered by Muslims, except to honour agreements concluded before the conquests. He also took after the Caliph `Umar's prohibition imposed upon the *dhimmi*s from wearing the type of footwear (*al-ni'āl*) of the Prophet and his Companions.

Contrast the above with al-Nābulusī's more generous attitude towards People of the Book. In his commentary of Ibn `Arabi's *al-Futūḥāt al-Makkiyyah* (Conquests of Mecca), al-Nābulusī shared his master's opinion that Jews and Christians gain happiness (*sa'āda*) by paying the prescribed *jizya*. This became a point of scathing criticism by a Turkish writer, who criticized both Ibn `Arabi and al-Nābulusī, arguing that their view contradicted the concept of *wa'ad* (i.e. God's threat to punish infidels in Hell) and charging them with heresy. Al-Nābulusī's discussion towards *dhimmi*s is contained in his rebuttal:

[T]hey (i.e. the Jews and Christians) are legally (*syar'an*) assured of happiness by agreeing to pay the *jizya* and then giving it to the Muslims, because by

this, they save their lives and protect their property and honor. With this, they become like Muslims: It is forbidden to fight against them, to interfere with their property and children, to slander, curse or defame them, or generally to harm them. A Muslim who kills a *dhimmi* is to be put to death, and it is reported that the Prophet executed a Muslim for unjustly killing a *dhimmi*.³

Al-Nābulusī went further to maintain that a *dhimmi*'s refusal to pay the *jizya* does not render the *dhimma* contract void, and he claimed such a view to be authoritative Ḥanafī doctrine. According to al-Nābulusī, the *jizya* has two implications for *dhimmi*s. First it makes them akin to Muslims and hence, endows them with equal rights and duties. Consequently, they should not be discriminated against in any manner. Second, they enter paradise alongside Muslims in the hereafter, because they become Muslims according to the laws of the hereafter (and thus gain happiness). According to al-Nābulusī, *dhimmi*s who pay the *jizya* were able to do so as they were granted the "inner faith (*al-īmān bāṭinan*)" by God.⁴ Al-Nābulusī added that "[f]aith (*īmān*) is believing in the heart only, according to the Ash'aris and the Ḥanafis, whose schools are the true ones" and some *dhimmi*s fall within this category.⁵

Returning to the factors that shape these juristic interpretations, two main social conditions seem to have had an impact on Ibn Qayyim. First, Ibn Qayyim, like his master Ibn Taymiyya, viewed with the utmost disdain the stifled religious thinking that came with the practice of *taqlīd* (strict adherence to the religious rulings of previous jurists). Second, inter-religious relations, particularly those between Muslims and Christians, were at a low ebb. This state of relations is highlighted in the response of two prominent Damascene scholars, Ibn Taymiyya and Ibn Abī Ṭālib al-Dimashqī, to a letter from the Christians in Cyprus, received in the years 1316 and 1321 respectively. Ibn Taymiyya responded with his work *al-Jawāb al-Ṣaḥīḥ li man baddala dīn al-Masīḥ* (The Proper Answer to Those Who Alter the Religion of the Messiah), and his arguments were also reflected in al-Dimashqī's reply to the Christians. Contextual evidence thus suggests that Ibn Qayyim's preference for stricter regulations on *dhimmi*s can be partly attributed to the state of inter-religious relations at his time. His persistent emphasis on the superiority of Islam reveals his concern as to what effect lax regulations on *dhimmi*s might have on Muslims. Furthermore, the volatile political situation in his era, coupled with reports of atrocities committed by the Crusaders towards Muslims in the Holy Land, have a role to play in his cautious attitude in dealing with the subject.

Al-Nābulusī's generous attitude towards non-

Muslims can be attributed to several factors. Doctrinally, his attitude could have been borne out of the mystical vision of God that his master, Ibn `Arabi, had espoused, as well as his own conception of religious truth. For example, in his defence of the poet Shustari's usage of Christian symbols and images, al-Nābulusī suggested that Shustari "invokes the 'Muhammadan Jesus fountain' in its terms and phrases".⁶ In his *al-Faṭḥ al-Rabbāni wa-al-Fayḍ al-Raḥmāni* (The Lordly Disclosure and the Merciful Effusion), al-Nābulusī's explanations of *al-ḥaqīqa* (ultimate reality or truth) reveal partly his concept of sin—that those who lived outside Muslim rule and have not migrated to *dār al-Islam* could not be regarded as sinful. Furthermore, he maintained an image of a merciful and forgiving God, whose doors of forgiveness are open to Jews and Christians 'up to the hour of their death'.⁷ Furthermore, it was customary for al-Nābulusī to gather with Christian groups in his travels to cities like Nazareth and Bethlehem. He had also engaged the Patriarch of Antioch, Athanasios Dabbas, in a theological discussion on the nature of God in 1712, describing the Patriarch as one of the 'brothers in the spiritual journey, whose noble selves and soft nature are like moons in the theological sky'.⁸

At the social level, relations between the legal schools of thought were cordial and harmonious, with no tense juristic disputes or displays of extreme sectarianism. Similarly, inter-religious relations were generally positive. The different communities intermingled and joined in certain religious celebrations. It seems that mysticism, which was such a key feature of Damascene society then, helped build cohesion and understanding between different religious communities. This context sheds light on al-Nābulusī's relative tolerance towards the *dhimmi*s.

References

1. The *dhimma* was an agreement guaranteeing protection to certain non-Muslims, notably Jews and Christians, living under Muslim rule, in return for certain requirements or limitations placed on them.
2. Translated as "The pertinent discourse concerning the possibility that God will not carry out his threats (to punish the infidels with Hell fire) against the ignorant and stubborn Turk." See M. Winter, 'A polemical treatise by `Abd al-Ghani al-Nābulusī against a Turkish scholar on the religious status of the *dhimmi*s.' *Arabica* 35 (1988): 92–103.
3. al-Nābulusī, fols. 12b-13b, cited in Winter (1988), 98.
4. Winter, op. cit., 99.
5. Ibid.
6. Omaira Abou-Bakr, 'The Religious Other: Christian Images in Sufi Poetry' in *Images of the Other: Europe and the Muslim World Before 1700*, ed. David R. Blanks, (Cairo: American University in Cairo Press, 1997), 96–108.
7. E. Sirriyeh, *Sufi Visionary of Ottoman Damascus: `Abd al-Ghani al-Nābulusī, 1641-1731* (New York: RoutledgeCurzon, 2005) 33.
8. See Bakri Aladdin (1987-88) 'Deux fatwās du Ṣayḥ `Abd al-Ghanī al-Nābulusī (1143/1731) : présentation et édition critique.' *Bulletin Detudes Orientales* 39-40: 9-37.