

Some Remarks on the Supposed Muslim Tolerance Towards *dhimmīs*

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*Sed si haeretici non tolerantur,
sed morti traduntur (...)*

When we discuss questions about the nature of Muslim attitude towards *dhimmīs*, we feel that most ideas about the *dhimma* exposed in scholarly writings are not attentively elaborated — at least from the theoretical point of view. Many authors use in that context the concept of tolerance, but in a very negligent way. Although some of them do acknowledge the existence of a sort of many-faced Muslim intolerance, they still speak of islamic magnanimity, believing it *bi-lā kaifa*. It is probably due to the conviction that things which are “self-evident” do not need theoretical explanation. The historian leaves his statement unproved either since he thinks that it is not worth of proving or because he simply cannot find any proof.

It is a tired cliché that the “occasional” molestation of non-Muslim subjects have not to be placed on the same level with the “surely” more brutal treatment imposed on non-Christians in the West. Such an idea can give us perfect evidence of a remorse that weighs heavily on the conscience of many western intellectuals, who feel in a way responsible for the excesses of Western obscurantism in the past. *Dhimmīs* were “protected”, “free” in performing their rites and their property was “guaranteed”, for there existed the “contract” founded upon prescriptions of the *sharīʿa*. So the harassment ought to be understood as undisguised *transgression* against the Law. So many orientalists made use of these misconceptions that the “negligent way of thinking” has taken deep root. If, for instance one finds in the sources that there were many *dhimmīs* holding important ranks in administration, or being engaged in profitable (and honourable) business, or having large privileges, or treated fairly at the court etc. one draws immediately conclusion that it was natural result of islamic tolerance. On the contrary, if the sources present a more “sad” picture of their everyday life, including oppression with conversion as a “natural” result, then one cannot interpret it otherwise but as a consequence of violation of the *dhimma*. It seems (though wrongly) that violent actions of the mob

could be interpreted in this way, but what about large-scale measures undertaken by the state, aiming openly at discrimination of *dhimmīs* and destruction of their integrity as a religious community? These measures have always had more severe consequences than incidents on the street, and they never lacked ideological backing in decisions of authorized experts of the Law. Certainly the problem cannot be settled simply by declaring that the ruler outraged some dispositions of the *dhimma*. Indeed we must agree that if the Law be conceived as divine one, and some people entrusted with its executing, then the absolute arbitrariness — an eminently divine privilege — must be reserved for the entitled interpreters. Therefore it is difficult to speak about “transgressions”. It is also clear that even most vulgar chicanery could easily find excuse, since the “evil-doing” Muslim has always had a decisive advantage of the “damaged” unbeliever.

These very important facts were perceived and disclosed up to some degree by Karl Binswanger¹). His critique of inconsistent ideas about the *dhimma* is provided with rich evidence from the sources. But he went even more questionable path than the “negligent” historians did. He concluded that if the *dhimma* had no binding character at all, and if it was so much used not in order to preserve, but to destroy Christian or Jewish “unbelief”, then there were no other possible definition of it but that it was a legal medium for conversion to Islam, created by the jurists and used by the secular power just for that purpose. If eventually islamization failed, it was due to “retardierende Faktoren”, i. e. insignificant number of Muslims and/or short duration of islamic occupation. What counts for town-dwellers, must also be valid for peasants, although with certain shift of phases. One cannot embrace Islām but under compulsion, either open or disguised, etc.

We feel that there must be something wrong in such inferences, but what? The main questions are:

1. Is it possible that the notion of tolerance be applied in connection with mediaeval or early modern state policy towards minorities?

2. Were *dhimmīs* condemned to convert (sooner or later) by their very being, provided there was enough time for application of the “restrictive *dhimma*”?

Question one. Tolerance is a modern concept, says Binswanger’s theory. On the contrary, we maintain that tolerance is a very old notion, originating back in the antiquity. All good Latin dictionaries explain the word tolerance as denoting possibility of bearing²): *quorum (dolorum) alia toleratio est*

¹) K. Binswanger, Untersuchungen zum Status der Nichtmuslime im Osmanischen Reich des 16. Jahrhunderts (mit einer Neudefinition des Begriffes “*dhimma*”). München 1977.

²) Cf. K. A. Georges, Ausführliches Lateinisch-deutsches Handwörterbuch I—II. Hannover-Leipzig 1913, under *toleratio*. See also *intolerantia* (... das maßlose, leidenschaftliche Benehmen).

verior, Cic. de fin. 2, 94³). Muslim or Christian States disliked, but tolerated their infidel subjects, just like we tolerate pains, a toothache for instance. The most authoritative Western sources use the word just in the sense mentioned above. Let us quote St. Thomas of Aquinas:

“*Utrum infidelium ritus sint tolerandi*”⁴). The rites of the Jews yes, he maintains, because it is profitable that “*testimonium fidei nostrae habemus a hostibus*”, but not the rites of other unbelievers, for those are neither truthful nor profitable “*nisi forte ad aliquod malum vitandum; scilicet ad vitandum scandalum vel dissidium quod ex hoc posset provenire, vel impedimentum salutis eorum qui paulatim sic tolerati (!) convertuntur ad fidem*”⁵). This passage is not intricate at all. In a less solemn language it says: “Try to convert them, but avoid — if possible! — sheer brutality, riots might ensue. Just use the ‘mild way’ and they will give up. Tolerance will do.”

One must not attempt to convert the unbelievers forcibly, but “*sunt tamen compellendi a fidelibus (...), ut fidem non impediant, vel blasphemias, vel malis persuasionibus (...)*”⁶). Naturally, it is up to the Christians to decide whether a non-Christian has uttered blasphemies or not. In practice, preventing unbelievers of hindering the faith ment application of various kind of debasement and repression⁷). The secular prince can legislate in perfect harmony with ecclesiastical understanding of tolerance. Let St. Thomas speak again: “*Sed si haeretici non tolerantur, sed morti traduntur (...)*”⁸). So tolerance denotes absolutely everything except two extremely opposite notions, i. e. freedom and killing.

³) S. Thomae Aquinatis Summa Theologica, pars 2^a 2^{ae}, tomus tertius. Taurini (Italia) MCMXXXII, Q 10, Art. 11.

⁴) Ibidem.

⁵) Ibidem.

⁶) Ibidem, Q 10, Art. 8.

⁷) It is enough to pay some attention to the 2nd tome of the “Encyclopaedia Judaica” (Berlin 1928), where most articles beginning with “Juden-”, e. g. -gesetze, -eid, -hut, -verfolgungen etc. can give us a clear picture of *Christian dhimma* born out of necessity, though not fixed in form of *shurūt*. According to Dr Binswanger’s theory, the Christian attitude appears willynilly more tolerant: the european Jews did survive, but large masses of Near East Christian completely disappeared. Moreover, there was no Muslim majority in Europe to be gradually disintegrated and converted after the *dhimma* pattern. Now we must not forget that the great decline of Eastern Christianity started *after* a series of crises and all-embracing disasters began from the eleventh century onwards, which facilitated the restrictive use of legal prescriptions. As for the majority question, let us remember the “implantation of Christian nuclei” and “Moscheenschwund” which took place in the former Volga khanates as the czar’s officials (“eine eingewanderte Minderheit”) started to carry out their duties — there was no need of formal prohibition of non-Christian religious practice.

⁸) S. Thomae Aquinatis Summa Theologica, pars 2^a 2^{ae}, o 11, Art. 3.

Thus tolerance is an archaic concept and has nothing to do either with Christian concepts of love and charity or with modern concepts of human and civil rights. Of course, one can hardly find such explanations in the current standard manuals⁹⁾, simply because most of them do not look back into history, but try to elucidate present-day phenomena. In fact, the word has remained the same throughout history, but the concept substantially changed in the days of Renaissance.

Furthermore, since we have seen that tolerance includes dislike and even maltreatment, we must realize that both tolerance and intolerance are, in the deeper historical sense, nothing but two complementary aspects of the same attitude of a mediaeval ruling élite towards its “unbelieving” subjects.

Now it will not be difficult to demonstrate the untenableness of apparently well-founded thesis that tolerance and intolerance are excluding each other. The “negligent” theory compares both the Christian and islamic intolerance, concluding that “Islam has shown more toleration”¹⁰⁾. In accordance with our previous statements, it is true that Christianity and Islam were tolerant, regardless of the intolerant aspect. But who has shown “more” toleration? We cannot establish any reliable complete historical balance of (in)tolerance, in order to attribute more of it either to Christianity or to Islam. It is impossible to say whether greater percentage of “unbelievers” left their ancestral faith by being forced to attend conversionist sermons in Rome or by manoeuvres of certain zealots in Istanbul. The “overscientific” theory, promoted by K. Binswanger, makes fun of the “negligent” one, commenting it as follows: if both were intolerant, but one of them less than the other — and therefore necessarily more tolerant — then it ought to be accepted that the other be tolerant too, or, indeed, that both are tolerant, which is in contradiction with the starting point (mutual intolerance), and we do not get any consistent theory but a logical impasse. This fine “Tractatus logico-antiislamicus” is the real hard core of Binswanger’s theory, and the critics seem to have overseen it¹¹⁾.

In fact, the weak point of the “overscientific” theory is that it cannot liberate itself of the modern concept of tolerance. It asserts that for a successful comparison there must be “eine dritte Vergleichsgröße”, a sort of tertium comparationis which could enable us to quantify the amount of intolerance in the Christian and islamic world, but there is no such thing. On the contrary, all modern notions of liberty, human rights, justice etc. can serve excellently

⁹⁾ There are still some notable exceptions. Cf. *Toleranz*. Lexikon für Kirche und Theologie. Freiburg im Breisgau 1966, tome 10.

¹⁰⁾ A statement made by Claude Cahen (EI, *dhimma*).

¹¹⁾ See Binswanger, *Untersuchungen*, p. 380—385. The book was reviewed by five scholars. Two reviews remain in limits of descriptive presentation (B. Atsız, V. Kopčan), while the other two are very negative (B. Fleming, H.-J. Kornrumpf), but do not go beyond factual errors. Unfortunately I had no chance to consult the review of M. A. Epstein.

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well for that purpose. Let us take F for freedom and non-F for pre-modern minority policies, and we will have a pretty example of so-called contradictorily co-ordinated concepts, as represented by figures in good old schoolbooks of logic. (F in the minor, non-F in the major circle.) If we take K for killing and non-K for islamic tolerance, the result would be the same. Freedom and killing are beyond the realm of (in)tolerance.

Question two. It can be true in some cases that the *dhimma* was the main legal instrument of islamization in towns, especially in the most important cities. It is quite normal that the use of the *dhimma* in conversionist schemes increases the more the importance of a town augments. But what about the countryside? The “overscientific” reasoning fails here first of all. We could quote a very long list of concrete examples, but it must be set apart for a detailed discussion. So we shall bring forth only one example, but of fundamental nature. If a very long period of islamic rule was needed, how to explain mass conversions of Vlachs after less than a century of Ottoman reign in Bosnia? Since they have been rather movable semi-pastoralists, it was not easy for islamic authorities to harass them by seizing their churches, imputing them blasphemy etc. After all, they had considerable privileges. So they obviously wanted to preserve their almost *’askerī* status by becoming Muslims. As for the state, it wanted to abolish the special status of auxiliary troops out of strategic reasons — certainly its goal was not to make more Muslims. Therefore it is out of question that the *dhimma* (in fact the fear of not becoming ordinary *dhimmīs*!), played the secondary role. It is the presence or absence of such social factors that enables juridical prescriptions to work.

Furthermore, if we agree that the *dhimma* had no binding character at all, we must admit it for the whole of Muslim attitude towards *dhimmīs*. It means not only that Muslim authorities were not bound by the *shurūt* to “tolerate” the existence of unbelief, but that they were equally not bound to “intolerant” behaviour. Otherwise we should accept that occasional “tolerant” acting was contrary to the *dhimma*, illegal and antiislamic — a plain nonsense. The decision of the mulla of Sarajevo in a case which occurred in 1613, however strange it may seem, can illustrate our statement excellently well. Some Christians made fun of the *mū’ezzin*’s call to prayer (and they really did it, because the reporter was a Bosnian catholic bishop who would not accept as granted a mere “invania”!), were put in chains and brought to the nearest *qādī*. He set almost all of them free, but sent the man who uttered the sacrilegious words (“O come bene raglia questo asino”) to the mulla. But the mulla ordered him to be released and gave him some money as compensation for the maltreatment he had. Now many eminent Muslims bitterly protested:

“Onde da questo inaspettato accidente leuatosi rumore tra principali Turchi, che iui si trovano, con biasmo di sentenza stimata ingiustissima il Mula fatti tacer tutti ad alta voce disse: Se l’huomo che ho assolto fusse Turco, l’hauerei impallato, ò fatto scorticare viuuo, come sacrilego contra la sua e nostra religione, ma mentre lui persiste d’essere christiano con hauer lui quella me-

dema mala opinione della nostra fede, che noi tenimo della loro, per giustizia son stato necessitato d'assoluerlo e pagarli le spese per danni patiti; attesoche quando a modo nostro lui fosse stato punibile, per l'istessa ragione, tutti li Turchi sarebbero egualmente punibili e degni del medemo castigo, per le detractioni che continuamente fanno contra la lege christiana. Con qual modo li suditti commessi alla cura sua in breue s'annichilarebbono a pregiudicio della ragione e del principe che l'hauea destinato a quella carica per conseruare non distrugere li popoli. Da quali acquietata l'audienza ogn'uno si ritrouo non senza lode del giudice"¹²).

Concluding observations. *Dhimma* was not assigned for protection, coexistence, symbiosis or similar “fine” purposes, but also not for a long-term extirpation of unbelief. Its essential goal was to help the stabilization of Muslim predominance in every aspect of public life, by pushing back as far as possible all distinctive marks of *dhimmī* religions (crosses, icons, bell ringing, liturgic chanting etc.); it also prevented (with more or less success) outer manifestations of *dhimmī* prosperity. One important consequence of that attitude was the narrowing of space for appearance and consolidation of a strong and influential non-Muslim *élite*. A large part of the potential *dhimmī* *élite* flow steadily over to the community of the faithful, strenghtening it considerably. The restrictive measures were applied far more strictly in towns, nothing to say about the capital. Surely the disappearance of many *dhimmī* communities in the islamized towns was mainly due to the severe *dhimma* policy (demolishing of churches etc.). But how could one imagine a conqueror — feeling his religious superiority — to secure his control over a vast empire, if not by holding firmly the vital centres? The only way of procur-ing loyal footholds was the integration of the best human potential into Muslim community, and it was the *dhimma* which provided the legal medium for it. As for the Ottomans, this was the way it was often used politically and it was the inevitable effect of its use too. But other conversions (including even some new Muslims in towns), far surpassing in number those in large cities, would never occur if “essentially social factors” (the term used by C. Cahen and criticized by K. Binswanger) were not in play. To achieve total islamization a modern fundamentalist state is needed, not the tolerant-intolerant *dhimma*.

The conditions of the *dhimma* were supposed to express the will of God. But since God's will cannot be expressed in a vocabulary of a lay jurist performing his duty in ancient Rome, in the early 19th century Paris or in present-day Ankara, it was necessarily proclaimed in form of basically ethical, non-juridical maxims: “Help the poor”, “do not tell lies”, “let the infidels not abuse their status”, and so on. Thus it was impossible to apply the conditions of the *dhimma* mechanically because of the vagueness of their wording, and it was up to the entitled expert, from the *şeyhülislâm* in the capital down to the

¹²) *Glasnik Zemaljskog muzeja u Sarajevu* 21 (Sarajevo 1909), p. 370—371.

the badly paid *kadi* in a remote frontier *kasaba*, to decide if e. g. a church had to be restored or demolished. So the final outcome was essentially bound to the floating of social, political and economic circumstances, as well as to the honest or dishonest personality of the official interpreter of God's will, and not to the *shurūt*; not to his being Muslim and especially not to his Turkish, Bosnian or Albanian origin. No *dhimmī* community was "destroyed" or "saved" in consequence of its legal status, but because of conditions we have mentioned above.

In this respect the Ottomans behaved not very unlike other premodern Muslim states. The same or similar social conditions are coupled by the same or similar policy, whether its executors happen to be Turks, Arabs, Germans or Russians. The Ottoman regime did not "cherish" the *dhimmīs*, but it also did not want to annihilate them. It has strongly supported the transformation of the vital centres into Muslim cities, just as every centralized state and great power would do. Furthermore, the imperial *Machtpolitik* required a large corps of blindly devout slaves, collected through the *devşirme* system among the *dhimmīs* (with some exceptions, e. g. the Bosnian Muslims). It is clear that the motivation behind the whole affair has been purely political, and had nothing to do with religion (in the early times when the system was introduced the central power needed a sort of counterbalance against the potentially dangerous Turcoman aristocracy), and certainly not with the Turkish national character, as some would-be historians maintain. All other conversions occurred voluntarily (for reasons of social promotion, adherence to the propaganda of the dervishes etc.), or, far more frequently did not occur at all — and some sections of the *dhimmī* population even flourished materially and artistically). Finally, some cases of individual conversions under direct pressure of ill-disposed zealots did never substantially alter the general course of the historical process.

All that had very little connection with the legal theory. Let us beware of importing emotions into social sciences. History does not deserve to be looked at the way the football fans do.