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CONTACTS AND INTERACTION

*Proceedings of the 27th Congress
of the Union Européenne des Arabisants et Islamisants
Helsinki 2014*

edited by

JAAKKO HÄMEEN-ANTTILA, PETTERI KOSKIKALLIO
and ILKKA LINDSTEDT



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WHY NON-MUSLIM SUBJECTS ARE TO PAY THE *JIZYA*

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Oxford

The question here addressed is why the *jizya* tax is levied on non-Muslim subjects. A new rationale seems to have become popular in the 20th century, having to do with exemption from military service. The standard scholarly work on the *jizya*, by Daniel C. Dennett, is concerned mainly with the historical disengagement of *kharāj* and *jizya* (classically taxes on land and persons, respectively) and the different tax régimes of different regions, drawing mainly on chronicles.¹ The standard scholarly work on the law of non-Muslim subjects, by Antoine Fattal, offers this summary:

The Arab authors find the legitimation of this tax in the very etymology of the word *jizya*, which may be a synonym of *jazā'*: retribution, remuneration, compensation. According to them, the *jizya* is the result of a fiscal contract: the contract of *jizya* or *dhimma*. It is the price, the remuneration that the Infidels pay to save their lives, to obtain the right to reside in the territory of Islam, to remain in infidelity, and to benefit from public security and the protection of the state.²

Fattal cites half a dozen Sunni treatments of the law, representing the Shāfi'i, Māliki, and Ḥanbali schools.

He goes on to review at greater length the treatment of a major Ḥanafī jurisprudent, Muḥammad b. Aḥmad al-Sarakhsī (d. 483/1090–1?), who first refutes the objection that one should not permit the practice of polytheism for money. Sarakhsī asserts that the purpose of the *jizya* is not to raise money for the state but to procure for the infidels an occasion of becoming acquainted with Islam as it really is; to live among the Muslims and so see the beauties of the true faith. At the same time, the *jizya* is a punishment for infidelity and an instrument of humiliation. In the third place, it is redemption from the obligation of military service that falls on

¹ D. C. DENNETT, *Conversion and the Poll Tax in Early Islam* (Harvard Historical Monographs 22), Cambridge, Mass., 1950.

² A. FATTAL, *Le statut légal des non-Musulmans en pays d'Islam* (Recherches publiées sous la direction de l'Institut de lettres orientales de Beyrouth 10), Beirut, 1958, p. 266.

all who live in the House of Islam. The poor Muslim fights as a foot-soldier, the one of middling wealth mounted, while the rich not only rides himself but equips others. Hence, non-Muslim subjects pay 12, 24, or 48 dirhams per year according to their fortune, while those who cannot fight (women, children, the infirm, and so on) are excused from paying as are Muslim women, children, and so on from fighting. As for the arguments that the *jizya* is either a rent or ransom, Sarakhsī holds that if it were the former, it would be exacted equally of women and children, while as for the latter, death is a divine punishment for infidelity that the Muslims may not hold back for any payment.³ (Rent and ransom are the two explanations most commonly given – more on this below.)

So the standard scholarly account of the long tradition. Here is a semi-popular account (fortunately anonymous):

Non-Muslims under Islamic rule

When the Muslim army is victorious over the enemy, whoever wishes to remain in the land can do so with safety for himself and his religion and his freedom, and if they wish to leave they can do so with safe conduct. If they choose to stay among the Muslims, they can become members of the Muslim community. If they wish to continue in their faith they have the right to do so and are offered security. The only obligation on them was to pay *jizyah*, an exemption tax which exempts the person from military service and from paying *zakah* which the Muslims have to pay – a tax considerably heavier than the *jizyah*. Neither has the option of refusing to pay, but in return the non-Muslims are given the protection of the state.⁴

This was written for the Council on Christian Approaches to Defence and Disarmament. Interreligious respect seems a worthy object. However, wishful thinking seems unlikely to provide a sound basis for it. Islamic law provides that whoever wishes to remain may do so, yes, but if and only if the Imam has not decided to slaughter the captives; with freedom if and only if the Imam has not decided to enslave them; likewise for whoever wishes to leave, unless the Imam has decided to hold him for ransom.⁵ Ever since I first heard it from some Egyptian Islamists over

³ FATTAL, *Statut*, pp. 266–267, citing AL-SARAKHSĪ, *K. al-Mabsūt*, ed. M. R. AL-ḤANAFĪ, 30 vols in 13, Cairo, 1324–31 AH, X, pp. 77–78.

⁴ H. ABDEL HALEEM et al. (eds.), *The Crescent and the Cross: Muslim and Christian Approaches to War and Peace*, Basingstoke, 1998, pp. 72–73.

⁵ A convenient example: ABŪ ‘UBAYD (d. 224/838–9?) reports that ‘Umar sometimes executed, sometimes sold prisoners. These were Byzantines or Persians, he goes on, not Arabs (who were given the choice of conversion or death). He shortly quotes ‘Amr b. al-‘Āṣ as saying expressly that he had the freedom to execute or enslave Copts. On the following pages, conversion to Islam is mentioned as protection against death and enslavement, protec-

thirty years ago, I have wondered about this interpretation of the *jizya* as paying for exemption from military service. It seems to make no sense before the advent of universal military conscription in modern times. I wonder how the author of this statement for the Christian Council calculated that the *zakāt* is a heavier tax than the *jizya*. It does not appear at first glance that it should be: in theory, *jizya* is levied on all non-Muslims, poor as well as rich, whereas *zakāt* is levied only on Muslims' wealth above a certain level. The twelve dirhams per year that al-Sarakhsī mentions might represent a month's income to a poor man, a considerably larger proportion than the rate of *zakāt*, one-fortieth of whatever exceeds the specified level.⁶ What follows, however, will not be comparisons between *jizya* and *zakāt* but a brief survey of opinions as to why the *jizya* is levied on non-Muslims.

Our earliest legal sources are concerned with the amount of the *jizya*, who should pay it, and other issues, but do not trouble to explain why.⁷ The sources Fattal cites first are al-Māwardī (d. Baghdad, 450/1058) and Abū Ya'lā b. al-Farrā' (d. Baghdad, 458/1065). The former is famous for *al-Aḥkām al-sulṭāniyya*, a review of the rules pertaining to the caliph as framed by the Shāfi'i, Ḥanafī, and Māliki schools. Abū Ya'lā wrote a book by the same title reviewing the same rules as framed by the Ḥanbali school

tion implicitly denied to those who remain Christians and Jews: I. A. Kh. NYAZEE (trans.), *The Book of Revenue*, Reading, 2003, pp. 136–144.

⁶ It is scarcely possible to measure actual premodern tax levels before and outside the Ottoman Empire. Studies of Ottoman taxation suggest that the *jizya* was indeed a significant source of imperial revenue, also that its application varied more or less from the theory (as in being levied on households, not individuals, or at the same rate for everyone, not varied by wealth) as well as from place to place. See (for example) A. COHEN & B. LEWIS, *Population and Revenue in the Towns of Palestine in the Sixteenth Century*, Princeton, 1978, index; O. PERI, The Muslim *waqf* and the Collection of *jizya* in Late Eighteenth-Century Jerusalem, in G. GILBAR (ed.), *Ottoman Palestine, 1800–1914*, Leiden, 1990, pp. 287–297; H. SELÇUK, The Application of *Jizya* Tax into the Sanjak of Kayseri and *Jizya Berati* Dated to the Year 1699, *History Studies: International Journal of History* 2.2 (2010), pp. 85–99.

⁷ E.g. AL-SHĀFI'Ī, *K. al-Umm*, 7 vols in 4, Bulaq, 1321–25 AH, repr. Cairo, 1388/1968, IV, pp. 192–193; AL-MUZANĪ, *al-Mukhtaṣar*, apud AL-SHĀFI'Ī, *Umm* V, p. 197 marg.; AL-KHIRAQĪ, *Mukhtaṣar al-Khiraqī 'alā madhhab Abī 'Abdallāh Aḥmad b. Ḥanbal*, ed. M. Z. AL-SHĀWĪSH, Damascus, 1378, pp. 206–207; AL-ṬAḤĀWĪ, *al-Mukhtaṣar*, ed. A. W. AL-AFGHĀNĪ, n.p., n.d., p. 282; AL-JAṢṢĀṢ AL-RĀZĪ, *Sharḥ Mukhtaṣar al-Ṭaḥāwī*, ed. 'I. A. 'I. A. MUḤAMMAD et al., 8 vols, 2nd printing, Medina, 1431/2010, VII, p. 206; AL-QUDŪRĪ, *al-Tajrīd*, ed. M. A. SARRĀJ & 'A. J. MUḤAMMAD, 12 vols, Cairo, 1425/2004, XII, pp. 6229–68; IBN ABĪ ZAYD AL-QAYRAWĀNĪ, *al-Risāla*, Cairo, 1363/1944, p. 307; AL-QĀDĪ AL-NU'MĀN, *Da'ā'im al-islām*, ed. 'Ā. b. 'A. A. FAYDĪ, 2 vols, Cairo, 1951, repr. 1969, I, p. 338; AL-TŪSĪ SHAYKH AL-ṬĀ'IFA, *K. al-Khilāf*, ed. 'A. AL-KHURĀSĀNĪ et al., 6 vols, Qum, 1416–21 AH, V, pp. 539–550; IBN ḤAZM, *al-Muḥallā*, ed. A. M. SHĀKIR, 11 vols, Cairo, 1347–52 AH, VII, pp. 347–349.

– similar enough that one must have been written on the basis of the other.⁸ They say almost exactly the same thing of the *jizya*:

it is levied on heads. Its name is derived from *jazā'*, either compensation (*jazā'*) for their unbelief on account of its being taken from them in humiliation (*ṣighāran*) or as compensation for our giving them safety on account of its being taken from them gently (*rifqan*).⁹

The word for 'humiliation' alludes to Q 9:29, which calls for *jizya* to be paid in this manner. Al-Māwardī mentions sparing their blood and allowing them to stay in the House of Islam despite their unbelief in his great Shāfi'i handbook, *al-Ḥāwī al-kabīr*.¹⁰

Imām al-Ḥaramayn (d. Bushtaniqan, 478/1085) was a younger contemporary to Māwardī and Abū Ya'lā. His extended account of Shāfi'i law examines the two reasons for the *jizya* laid out by al-Māwardī and finds neither sufficient, since rent (for living in the House of Islam) should be levied equally on women and children, while sparing their blood need not extend to protecting their families and property. He tentatively proposes the alternative that it is "compensation for our ceasing to fight them in the House of Islam for a year or more".¹¹ Al-Rāfi'i (d. Qazvin, 623/1226) continues to be as unconcerned as al-Māwardī: "The *jizya* is taken as compensation for giving them residence in our House or for the inviolability of their blood, offspring, and wealth."¹²

As for Ḥanbali opinion, Ibn Qayyim al-Jawziyya (d. Damascus, 751/1350) wrote a comprehensive survey of rules pertaining to non-

⁸ For an argument that Abū Ya'lā's version is the earlier, see Ch. MELCHERT, Māwardī, Abū Ya'lā, and the Sunni Revival, in K. KOŚCIELNIAK (ed.), *Prosperity and Stagnation: Some Cultural and Social Aspects of the Abbasid Period (750–1258)* (Orientalia Christiana Cracoviensia, Monographiae 1), Cracow, 2010, pp. 37–61. For other comparisons between the two, see N. HURVITZ, *Competing Texts: The Relationship between al-Mawardi's and Abu Ya'la's al-Ahkam al-sultaniyya*, *Legal Studies Program, Harvard Law School, Occasional Publications* 8 (2007), and D. P. LITTLE, A New Look at *al-Ahkām al-sultāniyya*, *Muslim World* 64 (1974), pp. 1–15.

⁹ AL-MĀWARDĪ, *al-Ahkām al-sultāniyya*, ed. 'I. F. AL-ḤARASTĀNĪ & M. I. AL-ZUGHLĪ, Beirut, 1416/1996, p. 225; ABŪ YA'LĀ B. AL-FARRĀ', *al-Ahkām al-sultāniyya*, ed. M. Ḥ. AL-FIQĪ, Cairo, 1356/1938; repr. with continuous pagination 1386/1966; repr. Beirut, 1403/1983, p. 153.

¹⁰ AL-MĀWARDĪ, *al-Ḥāwī al-kabīr*, ed. M. MATRAJĪ et al., 24 vols, Beirut, 1414/1994, XVIII, p. 348 = ed. 'A. M. MU'AWWAD & 'Ā. A. 'ABD AL-MAWJŪD, 20 vols, Beirut, 1414/1994, XIV, p. 301.

¹¹ IMĀM AL-ḤARAMAYN, *Nihāyat al-maṭlab fī dirāyat al-madhhab*, ed. 'A. 'A. M. AL-DĪB, 21 vols, Jeddah, 1430/2009, 2nd printing, XVIII, p. 7.

¹² AL-RĀFI'I, *al-'Azīz: Sharḥ al-Wajīz*, ed. 'A. M. MU'AWWAD & 'Ā. A. 'ABD AL-MAWJŪD, 14 vols, Beirut, 1417/1997, XI, p. 491.

Muslim subjects. He usually stresses the opinion of Aḥmad b. Ḥanbal, but on this question his starting point is Abū Yaʿlā's characterization of the *jizya* as either a punishment for their unbelief or a free payment to the Muslims for protecting them. He is mainly concerned to argue that the former opinion must be correct, against the Shāfi'iyya:

It has become clear that the *jizya* is levied to humiliate and belittle, not as a rent for dwelling in the House (of Islam). We have mentioned that if it were rent, it would be incumbent on women, children, the infirm, and the blind. If it were rent, it would not have been set aside for the Christians of Banī Taghlib and others, who had to pay twice the *zakāt* taken from the Muslims. If it were rent, its amount would be for a specified time, like other rents. If it were rent, it would not be characterized by humiliation and belittling. If it were rent, it would be apportioned according to the benefit, for dwelling in the House may be worth many times the apportioned *jizya*. If it were rent, then the non-Muslim subject (*dhimmī*) would not have to pay rent on a house or land he occupied that belongs to the treasury. If it were rent, it would have to be agreed on by the tenant and landlord.¹³

As for the larger school, however, al-Mardāwī (d. Damascus, 885/1480) suggests that Ibn al-Qayyim's vigorous polemic did little to shift Ḥanbali opinion:

The *muṣannif* and the *shāriḥ* say that the *jizya* is a set charge (*wazīfā*) taken from the unbeliever annually for him to live in the House of Islam. Al-Zarkashī says that *jizya* is apparently rent for one's abode, derived from *jazāh*, meaning "he fulfilled it (*qaḍāh*)". He said in *al-Aḥkām al-sulṭāniyya* that it is derived from *jazā'*, either compensation (*jazā'*) for their unbelief on account of its being taken from them in humiliation or as compensation for our giving them safety on account of its being taken from them gently. The Shaykh Taqī al-Dīn said that this is sounder. Al-Zarkashī says that it goes back to being either a punishment or rent.¹⁴

"The *muṣannif*" indicates the Damascene Ibn Qudāma al-Maqdisī (d. 620/1223), since he wrote the book (*al-Kāfī*) on which al-Mardāwī's book is nominally a commentary. "The *shāriḥ*" indicates the Damascene Ibn Abī 'Umar (d. 682/1283), author of *al-Sharḥ al-kabīr*. Al-Zarkashī is probably the Egyptian Muḥammad b. 'Abdallāh b. Muḥammad (d. 772/1370?).¹⁵ The Shaykh Taqī al-Dīn is the famous Damascene Ibn Taymiyya

¹³ IBN QAYYIM AL-JAWZIYYA, *Aḥkām ahl al-dhimma*, ed. Ṣ. AL-ṢĀLIḤ, 2 vols, n.p., 1381/1961, repr. Beirut, 1401/1981, I, p. 25.

¹⁴ AL-MARDĀWĪ, *al-Muṣāf fī ma'rifa al-rājiḥ*, ed. M. Ḥ. AL-FIQĪ, 12 vols, Cairo, 1955-58, repr. Beirut, 1419/1998, IV, p. 160.

¹⁵ IBN AL-ʿIMĀD, *Shadharāt al-dhahab*, 8 vols, Cairo, 1350-51 AH, VI, pp. 224-225; U. R. KAḤḤĀLA, *Mu'jam al-mu'allifin*, 15 vols, Damascus, 1376-81/1957-61, X, pp. 239-240.

(d. 728/1328). There seems to have been no narrowing of opinions in the Ḥanbali school, rather the deliberate maintenance of a profusion of possibilities. The main emphasis is still on the two reasons mentioned by Abū Yaʿlā and no proposed reason has anything to do with exemption from military service.

The earliest Ḥanafī discussion I have discovered of why non-Muslims are to pay the *jizya* is actually that of al-Sarakhsī. It is fairly summarized by Fattal. Of special interest here is al-Sarakhsī's third reason for levying the *jizya*:

The Muslims take from him the *jizya* as compensation (*khalafan*) for giving aid, which has failed on account of his being set in unbelief. All of the people of the House of Islam are obliged to undertake aid to the House. Their bodies do not serve this aid because they incline toward the people of the opposing house. They will incite or lead the people of war against us, so money is taken from them to pay for fighters (*ghuzāt*) who will undertake aid to the House. For this reason it differs ...¹⁶

and so on as related by Fattal. So yes, it is “an exemption tax”, in a sense, but more precisely I would say a substitute form of military service accommodating their unsuitability to fighting bodily for the House.

Subsequent Ḥanafī discussions seem to stay with the justifications briefly set out in *al-Aḥkām al-sultāniyya*. Badr al-Dīn al-ʿAynī (d. 855/1451) says that what makes the *jizya* obligatory is ultimately “their choice to remain in unbelief after being defeated”. Then he recalls the objection al-Sarakhsī mentions:

How is it permissible to affirm the unbeliever in his unbelief, which is the greatest of all offences, by taking money? If that were permissible, then it would be permissible to affirm the adulterer in his adultery by the taking of money.

Al-ʿAynī's answer is that taking money is not an affirmation of unbelief; rather, “it is only a recompense for not killing him”. It is clear that it is permissible, like letting fall capital punishment by payment of the wergild (*qiṣās*). Alternatively, says al-ʿAynī, the *jizya* is a punishment (not a payment for permission) and permissible for that reason.¹⁷ Ibn al-Humām (d. Cairo, 861/1457) prefers the one explanation that it is compensation for not killing the unbeliever.

¹⁶ See fn. 3.

¹⁷ BADR AL-DĪN AL-ʿAYNĪ (d. [Cairo] 855/1451), *al-Bināya sharḥ al-Hidāya*, ed. M. b. ʿU. N. I. AL-RĀMAFŪRĪ, 4 vols in 6, Lucknow, 1293/1876, repr. 10 vols, Beirut, 1400–01/1980–81, VII, p. 238.

For this reason, it is not incumbent on anyone whom it is not permitted to kill on account of unbelief, such as children and women. This comprehends rich and poor because both of them are liable to be killed.¹⁸

The earliest Māliki explanation for the *jizya* that I have found is from Abū al-Walīd al-Bājī (d. Almeria, 474/1081). He says, “The reason for the poll tax (*sabab jizyat al-jamājim*) is residence in the land of the Muslims and sparing their blood.”¹⁹ Thus he endorses both the alternatives named by al-Māwardī and Abū Ya‘lā. Two centuries later, there is a review of the rules from the well-known Quran commentator al-Qurṭubī (d. Upper Egypt, 671/1273?). He also, like al-Sarakhsī, reviews the objection that money should not be taken to excuse unbelief. His answer is the usual one that it is a punishment, not an excuse, although surprisingly on the basis of an argument quoted from the Ḥanbali Ibn ‘Aqīl (d. Baghdad, 513/1119).²⁰ A little later, he brings up a supposed disagreement between the Māliki and Shāfi‘i schools:

The scholars disagree as to why the *jizya* is obligatory. Māliki scholars say it is obligatory as a substitute for killing them on account of unbelief. Al-Shāfi‘ī said it is obligatory as a substitution for blood and living in this House. An implication is that if we say it is a substitute for killing them, then if someone converts to Islam, the *jizya* is no longer incumbent on him, even if he converts before the end of the period by a day or after it, according to Mālik. According to Shāfi‘ī, it is a settled debt for protection, so that it does not fall by conversion to Islam, like renting a house. Some of the Ḥanafiyya advocate our position. Some of them say it is a substitute for aid and the holy war (*naṣr, jihād*) ... Mālik’s position is sounder.²¹

As we have seen, however, the earlier Māliki al-Bājī embraced precisely what al-Qurṭubī identifies as the Shāfi‘i position. Al-Qurṭubī’s connection with *jihād* according to some of the Ḥanafiyya seems to show knowledge of al-Sarakhsī.

Al-Qurṭubī’s contemporary al-Qarāfi (d. Dayr al-Ṭīn, near Old Cairo, 684/1285) similarly makes out that the Māliki position is that the *jizya* is compensation for not killing them, the Shāfi‘i position that it is rent (*ujra*) for living in the House. If this were the case, he says, it would fall on

¹⁸ IBN AL-HUMĀM (d. Cairo, 861/1457), *Sharḥ Faṭḥ al-qadīr li-l-‘ājiz al-faqīr*, 9 vols, Bulaq, 1316/1898, repr. 10 vols, Beirut, 1415/1995, VI, p. 43.

¹⁹ AL-BĀJĪ, *al-Muntaqā*, ed. M. b. ‘A. b. SHAQRŪN, 7 vols in 4, Cairo, 1331–32 AH; repr. n.p., n.d., III, p. 224.

²⁰ AL-QURṬUBĪ, *al-Jāmi‘ li-ahkām al-Qur’ān*, ad Q 9:29; ed. ‘A. R. AL-MAHDĪ, 20 vols in 10, Beirut, 1418/1997, VIII, p. 101.

²¹ AL-QURṬUBĪ, *al-Jāmi‘*, ad Q 9:29; ed. MAHDĪ, VIII, p. 105.

women as well as men; however, best is to say that it pays for everything regularly intended by the compact with the unbelievers. More interesting, perhaps, is his version of al-Sarakhsī's first justification:

Question: revelation (*al-shar'*) usually repels the greatest source of corruption by imposing something lesser ... Unbelief is the great source of corruption ..., so why does revelation establish them in unbelief for this trifling sum ...?

Answer: this is laying down a source of corruption in the world in the interest of the Hereafter. The unbeliever, if he is killed, the door is closed to his believing and entering the abode of happiness. God (be he exalted) revealed (*shara'a*) the *jizya* in the hope that he should convert to Islam in the future, especially on his observing the good points of Islam. If he should die an unbeliever, that is hoped of his offspring and their offspring to the Day of the Resurrection. An hour of faith is equal to an age of unbelief. For this reason, God (be he exalted) created Adam according to his wisdom, most of his descendants being unbelievers.²²

Encouragement of conversion is here the reason.

Two centuries later, the Māliki al-Ḥaṭṭāb (d. Tripoli in Libya, 954/1547) has so little sense of inter-school disagreement that he quotes the explanation of Ibn Ḥajar the Shāfi'i *ḥadīth* commentator (d. Cairo, 852/1449):

The wisdom of imposing the *jizya* is that the humiliation attached to it will bring them to convert, along with mixing with the Muslims and seeing the good features of Islam.²³

This is to endorse the first and second of al-Sarakhsī's explanations. It seems evident that disagreement over the reason for exacting the *jizya* did not fall sharply along school lines, probably because it had few implications for practice.

In the Zaydi Shi'i tradition, Ibn al-Murtaḍā (d. Dhofar, 840/1437) mentions only the ransom aspect: "The *jizya* is taken only from those who may be killed if they fight, for it is substitute (*badal*) for blood."²⁴ I have not so far discovered a justification for it in any Twelver handbook, although there is usually a section on the amount of the *jizya*, who should pay it, and so on.²⁵ Neither have I noticed any justification for it in our

²² AL-QARĀFĪ, *al-Dhakhīra*, ed. M. ḤAJJĪ, et al., 14 vols, Beirut, 1994, III, pp. 453–454.

²³ AL-ḤAṬṬĀB, *K. Mawāhib al-jalīl li-sharḥ Mukhtaṣar al-Khalīl*, ed. Z. 'UMAYRĀT, 8 vols, Beirut, 1416/1995, IV, p. 563.

²⁴ IBN AL-MURTAḌĀ, *al-Baḥr al-zakhkhār*, ed. M. M. TĀMIR, 6 vols, Beirut, 1422/2001, VI, p. 682.

²⁵ E.g. AL-MUḤAQIQ AL-ḤILLĪ, *Sharā'i' al-islām*, 2 vols, Najaf, 1389/1969, I, pp. 327–328; AL-SHAHĪD AL-TĤĀNĪ, *al-Rawḍa al-bahiyya fī sharḥ al-Lum'a al-Dimashqiyya*, ed. M. KALĀNTAR, 10 vols, Najaf, 1386–/1966–, II, 389–390.

one early Isma'ili handbook, from al-Qāḍī al-Nu'mān (d. Cairo, 363/974). However, he does quote the sixth Imam Ja'far al-Šādiq as prescribing, "Whoever of *ahl al-dhimma* is asked for help in fighting the unbelievers, the *jizya* is cast aside from him."²⁶ To conclude, handbooks of the different schools begin to provide a rationale for the *jizya* from about the same time, the mid-11th century. They overlap a good deal, most often returning to the two interpretations that it is a sort of ransom for their lives or rent for their places of residence, sometimes departing from these, especially to mention pressure to convert, but not along clear school lines.

My last example is from Muḥammad Rashīd Riḍā (d. 1935 CE), *Tafsīr al-manār*:

The Muslim must be one of two: either a paid fighter, who enters the camp and undertakes fighting for himself, or a volunteer, who does not take his share of the holy war but, when there befalls a calamity (*tāmma*) and the alarm is raised, may not withdraw from fighting and avoid it, rather is obliged to enter into what the Muslims enter into whether voluntarily or by force. If it is considered sound (*musallam*) and established that the paid fighter and the volunteer are equal in overall rights that (obscure word) the camp, then it is clearly true that all the Muslims are to be excused from the *jizya* tax. As for the people of the covenant (*ahl al-dhimma*), it is clearly not the right of Islam to force them to participate directly in fighting in any case. If they are willing to fight with their hands to defend themselves and their property, then they are excused from the *jizya*. If they refuse, then the least they can do is to willingly (*yusāmihū*) pay some wealth, which is the *jizya*.

Perhaps you will ask of me to produce some assembled examples in explanation; that is, establishing that the *jizya* was not taken from the *dhimmi*s except for undertaking their defence and that the *dhimmi*s, if they entered the army and accepted the burden of defence, were excused from the *jizya*. If my thought is correct, then heed the narratives that will give you delight (*thalj*) in this matter and decide the substance of the debate.²⁷

There follow several examples from chronicles of demands from Muslim generals during the caliphate of 'Umar that the conquered peoples either turn around and fight with the Muslims or pay tribute. Such stories have been remarked by professional historians as well,²⁸ although the more common case appears to be the governor who finds that subjects have

²⁶ AL-QĀDĪ AL-NU'MĀN, *Da'ā'im*, I, p. 338.

²⁷ M. R. RIḌĀ, *Tafsīr al-Qur'ān al-ḥakīm*, 12 vols, Cairo, n.d.–1353/1935, X, pp. 393–394, *ad Q* 9:29.

²⁸ Examples from the time of 'Umar enumerated by I. HASSON, *Les mawālī dans l'armée musulmane sous les premiers Umayyades*, *Jerusalem Studies in Arabic and Islam* 14 (1991), pp. 176–213, at p. 191. Hasson reports that the privileges reportedly granted to such non-Muslim combatants diminished in time of peace (p. 193).

flocked to garrison towns to embrace Islam but that tribute is down, his solution being to force the fugitives back onto the land paying due tribute.²⁹ Law books regularly discuss the question of dividing booty with unbelievers. They normally reject it, holding that booty is for Muslims only.³⁰ The presence of the question shows that early on it was a normal practice, although our authors' rejecting it shows that it did not last into the literary period, the 9th century onwards, or at least was not openly acknowledged.³¹

Muḥammad Rashīd Riḍā's explanation can claim some continuity with al-Sarakhsī's (although with few others). There are also significant differences. Riḍā says nothing of the humiliation and punishment that al-Sarakhsī does, nor of the *jizya* as an inducement to convert. Implicit in Riḍā's treatment is the assumption that the *jihād* is about defensive war, an assumption absent from al-Sarakhsī's. Unlike al-Sarakhsī and other medieval jurists here surveyed, Riḍā shows no interest in the earlier juridical discussion, rather supports his interpretation by citing what the chronicles say that some of the early conquerors actually did. Riḍā's treatment does seem to be, in colourful language, what underlies the modern apologetic justification of the *jizya* as payment for exemption from military service. It would be stronger, of course, if there were evidence of such a mechanism at any time after the first great conquests. As a prescription for Muslim-majority states today, it presumably carries weight in proportion as the early conquests are taken to exemplify proper Islamic statesmanship. It is not the traditional justification for making non-Muslim subjects pay the *jizya*.

²⁹ E.g. P. CRONE, *Slaves on Horses*, Cambridge, 1980, p. 52.

³⁰ AL-ṬABARĪ, *Das konstantinopler Fragment des Kitāb Iḥtilāf al-fuqahā'*, ed. J. SCHACHT (Veröffentlichungen der "De Goeje-Stiftung" 10), Leiden, 1933, p. 21.

³¹ E.g. CRONE, *Slaves*, p. 74, on the 'Abbāsids' armies of the later 8th century.