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The Bey, the mufti and the scattered pearls : Shari'a and political leadership in Tunisia's Age of Reform -1800-1864

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Appendix C.

Fatwa of *Shaykh al-Islām* Muḥammad Bayram the Fourth in relation to the Voyage of Aḥmad Bey to France (1846)

I. *The Food of the People of the Book.*¹

God be praised. When the Prince Aḥmad Pācha I wanted to travel to Paris, he gave his secretary *shaykh*, Aḥmad Ibn Abī al-Ḍyāf, instruction to ask *shaykh* Muḥammad Bayram the Fourth the following: ‘Our master, *shaykh al-Islām*, support and refuge for the learned Imams, I look forward to [learn] your clear response to [the question] concerning the food [prepared by] the People of the Book which is permitted to us by the explicit rule of the Book. Does ‘the food’ include their slaughtered animals or not? And, is it stipulated that they are to be slaughtered, in accordance with our regulations of slaughter, or not? And, is it stipulated for allowing the consumption of their food that one should ascertain that it is safe and free of impurity, or not?’

Ibn al-‘Arabī², one of the Imams of our school of law, has issued the following fatwa: ‘My answer in this matter is that a Christian twists the neck of a chicken and subsequently cooks it. It can be eaten [by us] because it is his food and that of his priests.’³ End of quotation, in accordance with the general meaning of the verse [of the Qur’ān].

The purpose [of my writing to you] is that you [will provide me] with the views of your Imams concerning this case. Are there among them who endorse the words of Ibn al-‘Arabī? I would think that in all probability, some of your forefathers might have written on the case. If that is true, please send it [to me]. Do not leave it aside in your answer. Greetings from him who respects you deeply, as you know well.’

The *shaykh* mentioned [above] gave his answer in the following manner:

Praise be to God. May my answer to you remove the weight off your mind in this case. I investigated the matter. I postponed to give a definite answer to the proposed problem, since the matter concerns the solution of three cases. Here we [... (text unintelligible)] discussing the issue in accordance with what our learned Imams have written on the matter. We thus issue the following views:

As for your question whether ‘the food’ [i.e. the food (*al-ta‘ām*) as mentioned in the verse of the Qur’ān] includes their slaughtered animals, the answer to it is: ‘Yes, those are included’. In *Al-Burhān*, the Commentary on *Mawāhib al-Raḥman*⁴ [it is stated]: ‘‘And its stipulation (that is to say, [concerning] the ritual slaughter) that the slaughterer should adhere to one of the

¹ *Al-Majallat al-Ṣaytūniyya*. January 1938 II, 4.

² Abū Bakr Ibn al-‘Arabī. Mālikī jurist and judge from Seville. He wrote books on a variety of subjects, including ḥadīth, fiqh, Qur’ānic studies, grammar and history. (1076-1148). In EI₂ III, 707.

³ In the text of ‘Al-Qāḍī’ Abū Bakr Ibn al-‘Arabī: ‘aḥbārīhi wa ruḥbānihi. In: M.R. Ridā, *Tarīkh al-Ustād al-Imām al-Shaykh Muḥammad ‘Abdūh*. Cairo 1350,1344,1324. Vol. I, 683.

⁴ *Al-Burhān sharḥ Mawāhib ar-raḥman* of Ibr. b. Mūsā al-Ṭarābulusī al-Ḥanafī Burhānnadīn (d. 922/1516). Brockelmann S II, 94.

monotheistic religious communities (*alā al-millat al-tauḥīd*), either out of conviction or simply because he claims doing so. The animal slaughtered by a Muslim is permitted because he adheres out of conviction to the monotheistic community of faith. So is the [slaughtered animal] of the Jew or Christian permitted because he claims a monotheistic faith, regardless of the fact whether he is a *dhimmi* or someone living in the Abode of War (*ḥarbī*). The basis [of this statement] lies in the words of [God] Most High: ‘...The food of those who were given the Book is permitted to you.’⁵ End of quotation.

So you see how the noble verse made a basis for the permissibility of their slaughtered animals. And this only because the word ‘the food’ includes the slaughtered animals. Fakhr al-Zailaī⁶ even proposes that what is meant with ‘the food’ referred to in the verse, is specifically: the animals slaughtered. It is, thus, as if [the Qur’ān] says: “The animals slaughtered by the People of the Book are allowed to you”, because all other food, which is not related to slaughtering, is permitted [anyway, also] from others than the People of the Book. Thus he reasoned through this excellent system [of thought]. He said: “The meaning of it (i.e. the food of the People of the Book) is, their slaughtered animals. Because all other food from whatever Infidel is permitted without being stipulated that it should be from the People of the Book.” The author of *Al-Durar*⁷ followed him in relating [the concept of] ‘the food’ to that [viz. to the slaughtered meat].

This also holds true for Al-Ḥamawī⁸, in his Commentary on *Al-Kanz* where he said after having argued about this verse: ‘What is intended here are their slaughtered animals, because He mentioned the People of the Book specifically, whereas the food that is not slaughtered is the same whether it comes from a *kitābī* or a heathen.’ (2)

This demonstrates very clearly the veracity of the statement we brought forward in the beginning of this response.

As for your [second] question whether it is stipulated that their way of slaughtering is in accordance with our way of slaughtering, the answer to it is also ‘yes’. Their regulations for the slaughtering comply with our regulations for slaughtering as is witnessed by their codification of the rules of slaughtering animals, where no distinction is made between a Muslim or a *kitābī* butcher. In [the book] *Al-Ijnās*, based on a quotation of al-Ḥamawī, four points are taken into consideration in matters of slaughtering.

The first of these concerns the actor; he should adhere to a revealed Book acknowledged as such in a religion. The second point concerns a property of the action, viz. the invocation of God Most High. The third point concerns a property of the instrument: it should be sharp. The fourth point concerns the nature of the actual event, in that where the jugular veins are cut. So, this statement [consisting of the four points mentioned above] points into the

⁵ *Sūra* 5, 5(7).

⁶ Fakhr al-Dīn al-Bārī al-Zailaī, Ḥanafī jurist from Zaila in Abessinia (d. 743/1342). Brockelmann, ...

⁷ *Durar al-Ḥukkām fī Sharḥ Ghurar al-Ahkām*, of Molla Khusrev, Ottoman Shaykh al-Islām (d. 885/1480), see text of *Risāla* in Chapter I, 32, n. 98.

⁸ ‘Abdannāfi’ b. ‘O. al-Ḥamawī (d. 1016/1607). After an initial clerical function in the judiciary, in Hamāt, he became a muftī. He died in Idlib as-sughra. Brockelmann G II, 305(393).

direction of a lack of distinction in this matter [between the Muslim ways of slaughtering and those of the People of the Book].

In *Al-Hindīyya*⁹ [it is mentioned]: ‘Therefore, the animal slaughtered by someone of the People of the Book will only be eaten, when the act of slaughtering was not witnessed and nothing of it had been overheard, or, when it was witnessed and when [consequently] the invocation of the name of The Only God Most High had been overheard. In the first case, i.e. when nothing has been heard of it, it will be assumed that he did invoke the name of God Most High, giving him the benefit of the doubt (*taḥṣinan li’l-ẓann bihi*), as if it concerned the case of a Muslim.

If one would hear him call out God’s name, whereas he meant with ‘God’, the Messiah (*Masīḥ*) - peace be upon him - then the general view is that it can be eaten, unless it is explicitly stated and the person [slaughtering the animal] pronounces ‘In the name of God Who is the third of three.’ In that case it is not permitted. As for the case he is heard mentioning [the name of] the *Masīḥ* - peace be upon him - or only mentioning God’s name, praise be unto Him, while [at the same time] mentioning the *Masīḥ*, then the meat slaughtered by him should not be eaten.’ End of quotation.

To summarize: his slaughtered animal is forbidden if he deviates fundamentally from the invocation of God Most High or associates anyone else to Him.

But there is no harm in [in the fact] that we know, in addition to [hearing] his uttering the name of God Most High, that he believes in Christ as God.

This view is in conformity with what is mentioned in *Al-Shurūbulāliyya*,¹⁰ on the authority of *Al-Ikhtiyār*, in which is brought forward: ‘If he says ‘In the name of God’, meaning Christ, the meat may be consumed on the basis of the outer meaning. This is the view generally applied.’

Concerning the statement transmitted by al-Ḥamawī on the authority of *Al-Mustasfā*,¹¹ namely that it is applicable only if he does not believe that Christ is a god, for if that is his faith, he is like a pagan, it has already been weakened by the transmitter himself, for it is contrary to all versions, in view of the evident meaning of the words of God Most High: ‘People of the Book, go not beyond the bounds in your religion,’¹² notwithstanding their words: ‘Christ is the son of God.’

Moreover, Ibn ‘Abbās¹³, when asked about the permissibility to consume meat slaughtered by them, gave as his opinion: ‘God has permitted it to you.’ But it was then said [to him]: ‘They

⁹ *Fatāwā al-‘Ālamgīriyya al-ma‘rūfā bi’l-fatāwā al-Hindīyya*, a leading Ḥanafī book of law, composed in Iondia in the seventeenth century. The book was translated in Urdu and English and used in colonial British courts. The collection was assembled by a committee of forty scholars head by Shaykh Nizam of Burhanpur (d. 1679) and was undertaken at the command of the Mughal emperor, Awrangzeb ‘Alamgir (1618-1707). In: M.K. Masud, *Islamic Legal Interpretation*, 14.

¹⁰ Chapter III, 90.

¹¹ *Al-Mustasfā min ‘ilm al-usūl*, of Abū Ḥāmid Muḥammad al-Ghazzālī (d. 1111).

¹² *Sūra* 4, 171(169)

¹³ ‘Abd Allāh ibn al-‘Abbās, cousin of the Prophet. His birth is said to have taken place (...) a couple of years before Muḥammad’s emigration to Medina. In: SEI, 4.

invoke a name other than that of God over it!¹⁴ He answered: ‘The person among them who permitted it, knows best about what you are saying!’

In *Al-Shurunbulāliya* the origin of the transmitted text in *Al-Mustasfā* is established: ‘We have already mentioned earlier that the legal decision should be based on what they openly show and not on what they do in secret.’

As for your question whether it is stipulated with respect to the slaughtered animal to be consumed to ascertain whether it is safe and free of [any] uncleanness (*najāsa*), the answer is that there is no explicit obligation to control, the condition [here] is rather to ascertain the absence of uncleanness, which is a more general rule than the determination of purity (*tahāra*). The summary of this is, that as long as no uncleanness is established, consumption is allowed.

In the Great Commentary on *Al-Siyār* of Imām al-Sarakhsī, is stated the following: ‘There is no objection against the consumption of food of the Christians or of the Jews, slaughtered or otherwise, according to the words of [God] Most High: ‘...The food of those who were given the Book is permitted to you.’ There is no objection against [the consumption] of any food of the pagans (*al-majūs*) at all. Only for the animal that is slaughtered as a sacrifice an exception should be made, following the word of him on whom is God’s peace: ‘Follow with respect to the pagans (*al-majūs*) the custom of the People of the Book without marrying their women and do not eat the animals they have slaughtered.’

If you say that this only indicates the principle of the permissibility of the food concerned and not [my underlining] the fact that their food is considered to be pure, so that it is permitted to eat, and if not then not, and there is no proof for what you asserted [earlier], then I answer: It is evident from his discourse that the food should be considered pure.

I will provide you with a further argument from the completion of his discussion, so that your doubt will be resolved completely, among others, what he mentioned by way of argumentation, in favor of his preceding view, viz, what he transmitted on the authority of Suwaid, the slave of Salmān who said: ‘On the day God defeated the Persians I brought Salmān a basket (*salla*) that I had found. There was bread in it, and cheese and a knife. He then presented some of the bread to his friends and cut for them a piece of the cheese. (3) Thereupon they ate, notwithstanding the fact that they were pagans. Thus, it is known to us that there is no objection to their food, except the meat slaughtered [by them].

[Another example is] transmitted by him on the authority of Ibn Sīrīn¹⁵, saying that the Companions of the Prophet, may God’s peace be upon them, overcame the polytheists (*al-mushrikīn*) and [consequently] ate from their utensils and drank [from them]. Thus he concluded that the verification of purity is not a condition to be fulfilled in order to make the action of commencing to eat permitted. The matter remains [to be judged] according to the original purity [as a principle], as indicated by what is quoted to you, and which does not contain any [indication of] the obligation to inspect [that food].

¹⁴ *Sūra* 2, 173(168)

¹⁵ Abū Bakr Muḥammad Ibn Sīrīn. Successor. Contemporary and friend of Ḥasan al-Basrī; he died in the same year as he, forty days later, in 110/728. He was born in 34/654. He was a cloth merchant, and at one time the secretary of Anas b. Mālik. He is said to be the first renowned Muslim interpreter of dreams. In: EI₂ III, 947.

In *Al-Hindiyya* that fact is also indicated by the words of Muḥammad: ‘The food and drink from the utensils of the polytheists (*al-mushrikīn*) is repugnant before they are cleaned.’ Yet, notwithstanding this, if they eat and drink from their vessels before they are cleaned, that is permitted, not forbidden. This [only] applies if one is not aware of the vessels being soiled. If, however, one is aware, then it is not permitted to eat or drink from them: they should be cleaned first. If one drinks or eats anything, then, in that case, that is forbidden. It is similar to [the case of] the chicken farmers: if one knows there was dirt in what [the chickens] pecked, it is not permitted to perform the ritual ablution and the *ṣalāt* in their trousers. Similarly to eating and drinking from their vessels, if it is known that their trousers are unclean and that it is not permitted to perform the *ṣalāt* in them, while if one is not aware of the fact that it is loathsome to perform the *ṣalāt* in them [under such circumstances] and one does, then there is no objection.’ End of quotation.

So it is to be understood from the evident meaning of the preceding words that the person who eats from the vessel of a polytheist or drinks from it, without having verified whether it is impure, does not commit a forbidden act. It [also is evident from the preceding words] that the prudence required by religion stops at verifying the [quality of] purity in order to escape committing a reprehensible act. [In addition], the eating from a vessel is equivalent to the eating of the food, because we know that the hidden issue in all this is the quest for purity and impurity, no more, because the matters related to slaughtering have already been discussed fully before.

Thus, what we have seen and what we have heard from the preceding scholars whose knowledge and faith are to be relied on, as is the permissibility of the consumption of whatever is brought back from the land of the Infidel, like drinks, and sugary food stuffs and the like. Thus, is allowed to us what is allowed to them. This topic, thus, does not belong to the category of subjects falling under the rule of refraining from dubious acts. Nowadays, it is enough for a man of excellence to shrink from indulging to strictly forbidden acts.

As for their quotations of the fatwas of Qāḍī Abī Bakr [ibn al-‘Arabī], I really do not know any parallel of them in the *madhhab* of the Hanafīs, I do not know [either] whether my grandfathers have written on this issue, except for a poem written by my direct grandfather about cheese, which I am providing here, as it may be of some use.¹⁶

This is the answer to the detailed questions I am able to give at this moment.

¹⁶ The poem on the subject of cheese is not translated here, it being of little relevance to the case.

