

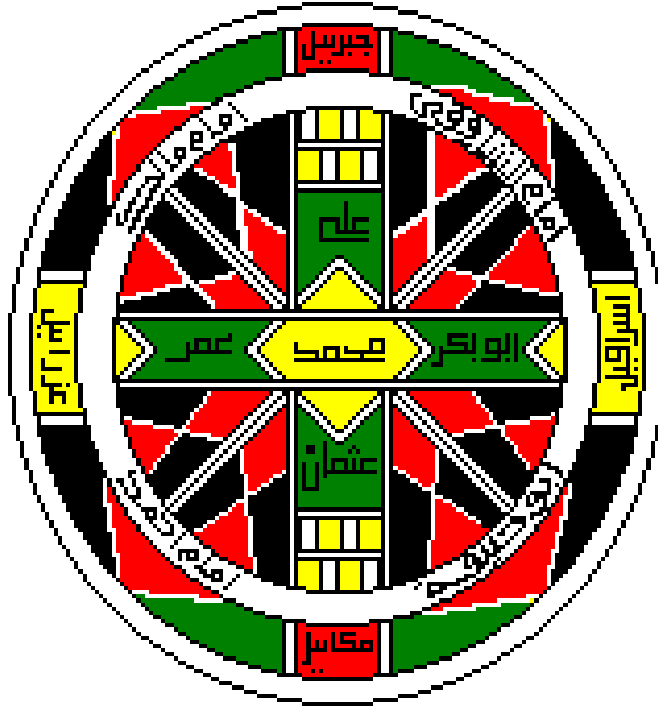
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تَوْفِيقُ الْمُسْلِمِينَ

عَلَى حُكْمِ مَذَاهِبِ الْمُجْتَهِدِينَ الَّذِينَ كَانُوا مِنْ أَهْلِ السُّنَّةِ الْمُوَافِقِينَ



Shehu Uthman Dan Fuduye`

Institute of Islamic-African Studies International

‘Tawfeeq I-Muslimeen’
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The Palace of the Sultan of Maiurno

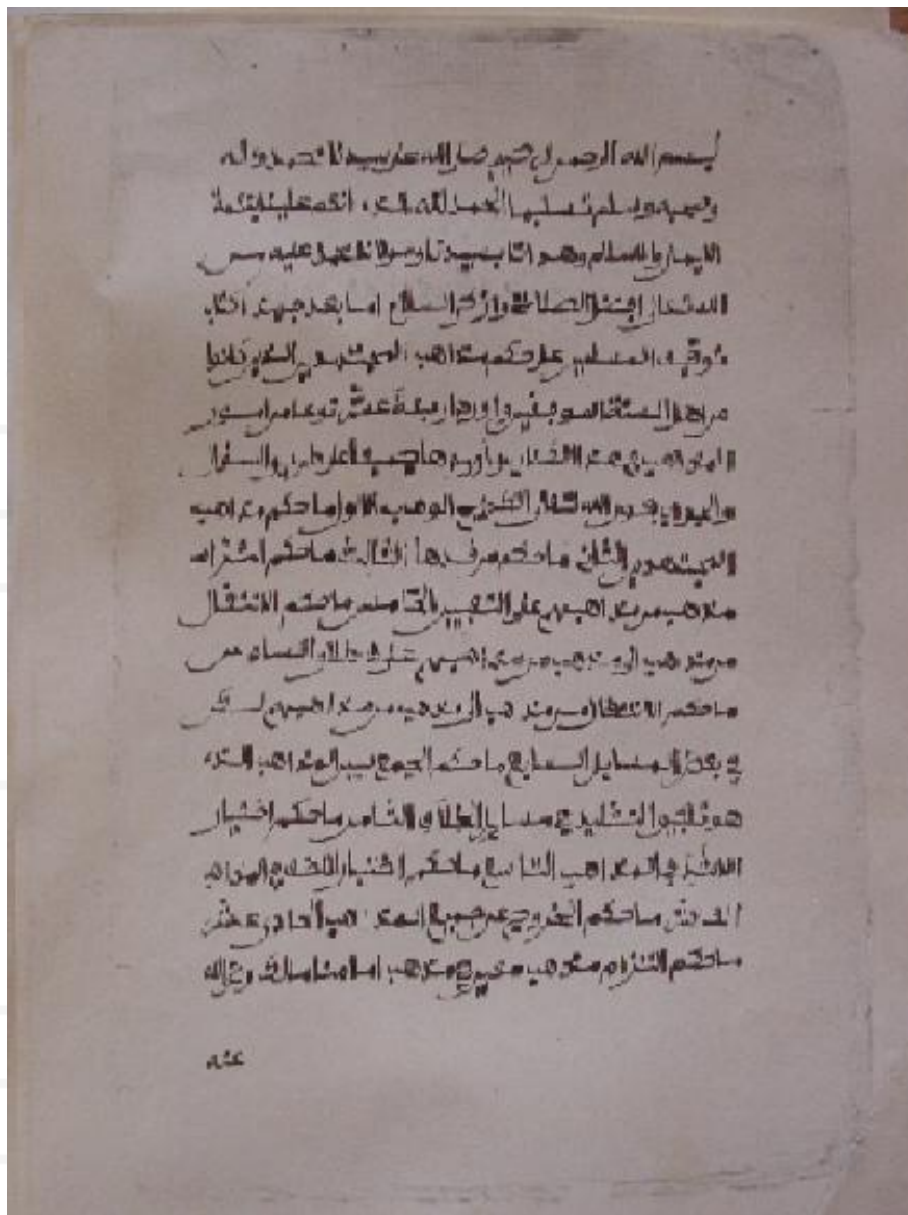
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Folio 2 of the Tawfeeq al-Muslimeen of Shehu Uthman ibn Fuduye`

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The Success of the Muslims

Concerning the Legal Judgement of Following the Schools of Thoughts
of the Scholars of Independent Judgement

by

Shehu Uthman Dan Fuduye`

Translation & Annotation by

Abu Alfa Umar MUHAMMAD SHAREEF bin Farid

called: Ta`leeq Li't-Tullab ar-Raaghibeen `Ala Kitaab Tawfeeq Muslimeen

(An Annotation for the Interested Students Upon the Book the Success of the Muslims)

Institute of Islamic-African Studies International

بِسْمِ اللَّهِ الرَّحْمَنِ الرَّحِيمِ صَلَّى اللَّهُ عَلَى سَيِّدِنَا مُحَمَّدٍ وَآلِهِ وَصَحْبِهِ وَسَلَّمَ تَسْلِيمًا
الْحَمْدُ لِلَّهِ الَّذِي أَنْعَمَ عَلَيْنَا بِنِعْمَةِ الْإِيمَانِ وَالْإِسْلَامِ وَهَدَانَا بِسَيِّدِنَا وَمَوْلَانَا مُحَمَّدٍ عَلَيْهِ مِنَ اللَّهِ
تَعَالَى وَأَفْضَلُ الصَّلَاةِ وَأَرْكَى السَّلَامِ، أَمَا بَعْدُ: فَهَذَا

كِتَابُ تَوْفِيقِ الْمُسْلِمِينَ عَلَى حُكْمِ مَذَاهِبِ الْمُجْتَهِدِينَ الَّذِينَ كَانُوا مِنْ أَهْلِ السُّنَّةِ الْمُؤَفِّقِينَ
وَأُورِدُ أَرْبَعَةَ عَشَرَ نَوْعًا مِنْ أُمُورِ الْمَذَاهِبِ فِي هَذَا الْكِتَابِ، وَأُورِدُهَا جَمِيعًا عَلَى طَرِيقِ السُّؤَالِ
وَالْجَوَابِ بِعَوْنِ اللَّهِ تَعَالَى الْكَرِيمِ الْوَهَّابِ.

الْأَوَّلُ مَا حُكْمُ مَذَاهِبِ الْمُجْتَهِدِينَ؟

الثَّانِي مَا حُكْمُ مَنْ قَلَدَهَا؟

الثَّلَاثُ مَا حُكْمُ التَّزَامِ مَذْهَبٍ مِنْ مَذَاهِبِهِمْ عَلَى التَّعْيِينِ؟

الرَّابِعُ مَا حُكْمُ عَدَمِ التَّزَامِ مَذْهَبٍ مِنْ مَذَاهِبِ الْمُجْتَهِدِينَ عَلَى التَّعْيِينِ؟

الخَامِسُ مَا حُكْمُ الْإِنْتِقَالِ مِنْ مَذْهَبٍ مِنْ مَذَاهِبِهِمْ عَلَى الْإِطْلَاقِ؟

السَّادِسُ مَا حُكْمُ الْإِنْتِقَالِ مِنْ مَذْهَبٍ إِلَى مَذْهَبٍ مِنْ مَذَاهِبِهِمْ لَكِنْ فِي بَعْضِ الْمَسَائِلِ؟

السَّابِعُ مَا حُكْمُ الْجَمْعِ بَيْنَ الْمَذَاهِبِ الَّذِي هُوَ تَلْفِيقُ التَّقْلِيدِ فِي مَسَائِلِ الْخِلَافِ؟

الثَّامِنُ مَا حُكْمُ إِخْتِيَارِ الْأَشَدِّ فِي الْمَذَاهِبِ؟

التَّاسِعُ مَا حُكْمُ إِخْتِيَارِ الْأَخْفِ فِي الْمَذَاهِبِ؟

العَاشِرُ مَا حُطْمُ الْخُرُوجِ عَنْ جَمِيعِ الْمَذَاهِبِ؟

الحَادِي عَشْرُ مَا حُكْمُ التَّزَامِ مَذْهَبٍ مُعَيَّنٍ فِي مَذْهَبِ إِمَامِنَا مَالِكٍ رَضِيَ اللَّهُ تَعَالَى عَنْهُ

خُصُوصًا، هَلْ يَجِبُ أَمْ لَا؟

الثَّانِي عَشْرُ مَا حُكْمُ الْإِنْتِقَالِ مِنْ مَذْهَبٍ إِلَى مَذْهَبٍ فِي مَسْئَلَةٍ فِي مَذْهَبِ إِمَامِنَا مَالِكٍ رَضِيَ

اللَّهُ عَنْهُ خُصُوصًا، هَلْ يَجُوزُ أَمْ لَا؟

الثَّلَاثُ عَشْرُ مَا عَدَدُ الْأُصُولِ الَّتِي بُنِيَ إِمَامُنَا مَالِكٌ رَضِيَ اللَّهُ تَعَالَى عَنْهُ مَذْهَبَهُ عَلَيْهَا؟

الرَّابِعُ عَشْرُ مَا سَدَدُنَا فِي فِقْهِ إِمَامِنَا مَالِكٍ رَضِيَ اللَّهُ عَنْهُ؟

In the name of Allah the Beneficent the Merciful. May Allah bless our Master Muhammad, his Family and Companions and give them peace. All praises are due to Allah who has blessed us with the blessing of **Iman** and **Islam** and who has guided us by our master and chief Muhammad upon him be the best blessings and most perfect peace from Allah ta`ala. To continue this is the book called:

The Success of the Muslims
Concerning the Legal Judgement of the Schools of Thought
of the Scholars of Independent Judgement Who Are From the People in Conformity With the
Sunna^a

I have, with the help of Allah ta`ala, set forth in this book fourteen description from the issues of the schools of thought (*madhaahib*) in the form of questions and answers.

Contents

- One:** What is the Legal Judgement of the Schools of Thought of the *Mujtahideen*?
- Two:** What is the Legal Judgement of One Who Follows Them?
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- Four:** What is the Legal Judgement of Non-Adherence to a Particular School of Thought From Them?
- Five:** What is the Legal Judgement of Transferring From One School of Thought to Another From Among Them Under Any Circumstances?
- Six:** What is the Legal Judgement of Transferring From One School of Thought to Another From Among Them However in Certain Issues?
- Seven:** What is the Legal Judgement of Merging the Schools of Thought Which is Called the Concoction of Imitation (*talfeeq' t-Taqleed*) in the Issues of Disagreement (*khilaaf*)?
- Eight:** What is the Legal Judgement of Choosing the Strongest Within the Schools of Thought?
- Nine:** What is the Legal Judgement of Choosing the Weakest Within the Schools of Thought?
- Ten:** What is the Legal Judgement of Withdrawing From All the Schools of Thought?
- Eleven:** What is the Legal Judgement of Adherence to a Particular School of Thought in the School of Thought of *Imam* Malik, (may Allah be pleased with him) Specifically - Is It Obligatory or Not?
- Twelve:** What is the Legal Judgement of Transferring From One School of Thought to Another in an Issue Within the School of Thought of Our *Imam* Malik (may Allah be pleased with him) Specifically - Is it Permissible or Not?
- Thirteen:** What is the Number of the Foundational Principles of Our *Imam* Malik, (may Allah be pleased with him)?
- Fourteen:** What is Our Chain of Authority (*sanad*) in the Jurisprudence (*fiqh*) of Our *Imam* Malik, (may Allah bless him and grant him peace)?



الأمز الأول

أما الأول الذي هو حكم مذاهب المجتهدين، فقد انعقد الإجماع علماء السنة رضي الله تعالى عنهم أجمعين على أن جميع مذاهب المسلمين على الحق، قال عبد الوهاب الشَّعْرَانِي فِي الْبَحْرِ الْمُرُود فِي الْمَوَاقِفِ وَالْعُهُود: "لَوْ أَطْلَعُ الْمُجَادِلُونَ بِغَيْرِ عِلْمٍ لَرَأَوْا جَمِيعَ مَذَاهِبِ الْمُسْلِمِينَ دَاخِلَةً فِي الشَّرِيعَةِ، لَا يَخْرُجُ مِنْهَا قَوْلٌ مِنْ أَقْوَالِهِمْ كَمَا أَوْضَحْنَا ذَلِكَ فِي حُطْبَةِ كِتَابِنَا الْمُسَمَّى بِكَشْفِ الْعُمَّةِ عَنْ جَمِيعِ الْأُمَّةِ" إِنَّتَهَى، وَقَالَ أَيْضًا فِي كِتَابِ الْيَوَاقِيتِ وَالْجَوَاهِرِ: "قَدْ تَتَبَعْتُ بِحَمْدِ اللَّهِ أدِلَّةَ الْمُجْتَهِدِينَ فَلَمْ أَجِدْ فِرْعًا مِنْ فُرُوعِ مَذَاهِبِهِمْ إِلَّا هُوَ مُسْتَنَدٌ إِلَى دَلِيلٍ، إِمَّا آيَةٍ أَوْ حَدِيثٍ أَوْ أَثَرٍ أَوْ قِيَاسٍ صَحِيحٍ عَلَى أَصْلِ صَحِيحٍ، لَكِنْ مِنْ أَقْوَالِهِمْ مَا هُمْ مَأْخُودٌ مِنْ ذَلِكَ الْمَأْخُودِ، وَهَكَذَا فَمِنْ أَقْوَالِهِمْ قَرِيبٌ وَأَقْرَبُ وَبَعِيدٌ وَأَبْعَدُ، وَكُلُّهَا مُقْتَبَسَةٌ مِنْ شِعَاعِ نُورِ الشَّرِيعَةِ الَّتِي هِيَ الْأَصْلُ، وَمَحَالٌّ أَنْ يُؤْخَذَ فِرْعٌ مِنْ غَيْرِ أَصْلِهِ" إِنَّتَهَى، وَقَالَ عَبْدُ الْعَزِيزِ فِي الدَّرَرِ الْمُلْتَقَطَةِ: "الْمَذَاهِبُ كُلُّهَا عَلَى الْحَقِّ"، وَقَالَ عَبْدُ الرَّحْمَنِ الشُّيُوطِيُّ فِي النَّقَايَةِ، وَهُوَ يَذْكَرُ مَا يَجِبُ إِعْتِقَادُهُ: "وَإِنَّ الشَّافِعِيَّ وَمَالِكًا وَأَبَا حَنِيفَةَ وَأَحْمَدَ وَسَائِرَ الْأَئِمَّةِ عَلَى هُدَى مِنْ رَبِّهِمْ"، وَفِي إِضَاءَةِ الدُّجَنَةِ لِأَحْمَدِ الْمُقْرِي:

"وَمَالِكٌ وَأَهْلُ الْإِجْتِهَادِ * كُلُّ إِلَى نَهْجِ الصَّوَابِ هَادٍ
كَالشَّافِعِيِّ وَأَبِي حَنِيفَةَ * وَأَحْمَدُ ذِي الرُّتْبَةِ الْمَنِيْفَةِ
وَكُلُّهُمْ عَلَى هُدَى مِنْ رَبِّهِمْ".

وَفِي الْكُوكِبِ السَّاطِعِ لِعَبْدِ الرَّحْمَنِ الشُّيُوطِيِّ

"وَمَالِكٌ وَالشَّافِعِيُّ وَالْحَنْظَلِيُّ * إِسْحَاقُ وَالنُّعْمَانُ وَابْنُ حَنْبَلِي
وَإِبْنُ عُيَيْنَةَ مَعَ الثَّوْرِيِّ * وَابْنُ جَرِيرٍ مَعَ الْأَوْزَاعِيِّ
وَالظَّاهِرُ وَسَائِرُ الْأَئِمَّةِ * عَلَى هُدَى مِنْ رَبِّهِمْ وَرَحْمَةٍ".

وَفِي شَافِيَةِ الْقُلُوبِ لِمُحَمَّدِ الطُّغُوغِيِّ

"وَمَالِكٌ وَالشَّافِعِيُّ وَالْحَنْظَلِيُّ * وَالْحَنْفِيُّ إِسْحَاقُ وَابْنُ حَنْبَلِي
وَعَيْرُهُمْ مِنَ الْأَئِمَّةِ الْكَرَامِ * عَلَى هُدَى مِنْ رَبِّهِمْ عَلَى التَّمَامِ".

وَفِي نِظْمِ الْكُبْرَى لِلشَّيْخِ طَاهِرِ بْنِ إِبْرَاهِيمَ

"وَمَالِكٌ وَسَائِرُ الْأَئِمَّةِ * إِلَى الرَّشَادِهِمْ هُدَاهُ الْأَئِمَّةِ
نُعْمَانُهُمْ وَالشَّافِعِيُّ وَأَحْمَدُ * لِكُلِّ وَاحِدٍ طَرِيقُ أَحْمَدِ

Issue One

The Legal Judgement of the *Madhaahib* of the *Mujtahideen*

There is unanimous agreement among the consensus of the scholars of the *Sunna* (may Allah be pleased with all of them) that all of the schools of thought (*madhaahib*) of the Muslims are upon the truth. Abd'l-Wahaab 's-Sha`arani^b said in his al-Bahr 'l-Mawruud Fi 'l-Mawaatheeq wa 'l-Uhuud:^c "If those who argue without knowledge were to analyze the situation they would find that everyone of the schools of thought of the Muslims are embodied within the *shari`a* and not a single idea of their opinions retract from it, as I have clarified in the preface of my book called Kashf 'l-Ghumat `An Jamee`i 'l-Umma".^d He also said in his al-Yawaaqeet wa 'l-Jawaahir: "I have, with the help of Allah, traced the proofs of the *mujtahideen* and have not found a single branch from the branches of their schools of thought except that it was reliant upon sound proof. This is regardless whether that proof was a Qur'anic verse, prophetic tradition (*hadeeth*), historical narrative (*athar*), or sound deduction by analogy (*qiyaas saheeh*) based upon a sound root. However, from their words there are those which are derived from: [1] pure unadulterated prophetic tradition (*sareeh'l-hadeeth*); [2] historical narrative (*'athar*); or [3] analogical deduction (*qiyaas*). Among them are those which are a derivative from the above three derivatives. Among them are those which are close, closest, remote and remotest. Each of these are derived from the rays of the light of the *shari`a* which is the foundation. For it is inconceivable to derive a branch from other than its foundation."^e

Abd 'l-`Azeez said in his ad-Durari 'l-Multaqatat:^f "All of the schools of thought are upon the truth." Abd 'r-Rahmaan as-Suyuti said in his an-Niqaaya^g about what it is obligatory to believe in: "Realize that as-Shaafi`i,^h Malik,ⁱ Abu Haneefa,^j Ahmad^k and the remainder of the *Imams* are upon guidance from their Lord."

It has been mentioned in the 'Ida'at 'd-Dujna of Ahmad 'l-Maqri:^l

"Malik and the people of independent judgement

All of them are guides to the way of correctness

Like *Imam* as-Shaafi`i and *Imam* Abu Haneefa

Imam Ahmad the possessors of outstanding ranks

All of them are upon guidance from their Lord"

It has been mentioned in the al-Kawkab 's-Saati`i of Abd 'r-Rahmaan 's-Suyuti:^m

"Malik, as-Shaafi`i and al-Handhali

that is Ishaq,ⁿ an-Nu`maan and Ibn Hanbali

Ibn `Uyayna^o along with at-Thawri^p

Ibn Jareer^q along with al-'Awzaa`i^r

At-Thaahiri^s and the remainder of the *Imams*

Are upon the guidance and mercy of their Lord."

It has been mentioned in the Shaafiyat 'l-Quluub of Muhammad at-Taghuugi:^t

"Malik, As-Shaafi`i and al-Hanbali

al-Hanafi, Ishaq meaning al-Handhali

And other than them from among the noble *Imams*

Are completely upon the guidance of their Lord "

It has been mentioned in the Nadhm 'l-Kubra of Shaykh Taahir ibn Ibrahim:^u

"Malik and the remainder of the *Imams* are

the Guides of the *Umma* towards Righteousness.

Their Nu`maan, as-Shaafi` and Ahmad

Each one has a Path straight to Ahmad".



الأمر الثاني

وَأَمَّا الثَّانِي الَّذِي هُوَ حُكْمٌ مَنْ قَلَدَ الْمَذَاهِبَ فَهُوَ إِنَّ عُلَمَاءَ السُّنَّةِ رَضِيَ اللَّهُ عَنْهُ أَجْمَعِينَ أَجْمَعُوا عَلَى مَنْ قَلَدَ مَذَهَبًا مِنْ تِلْكَ الْمَذَاهِبِ لَقِيَ اللَّهَ سَالِمًا وَيُوصَلُهُ ذَلِكَ الْمَذَهَبُ إِلَى الْجَنَّةِ، وَفِي تَخْلِيصِ الْإِخْوَانِ لِمُحَمَّدٍ الطُّغُوغِيِّ: "مَنْ قَلَدَ عَالِمًا لَقِيَ اللَّهَ سَالِمًا قَوْلًا وَاحِدًا"، وَفِي الزَّهْرَاتِ الْوَرْدِيَّةِ فِي الْفَتَاوِي الْأَجْهُورِيَّةِ لِعَبْدِ الْعَالِي: "قَالَ الْأَجْهُورِيُّ قَالَ: الْقِرَافِيُّ فِي شَرْحِ التَّنْقِيحِ: الْمَذَاهِبُ كُلُّهَا مَسَالِكٌ لِلْجَنَّةِ، مَنْ سَلَكَ مِنْهَا طَرِيقًا وَصَلَهُ"، قَالَ: قَالَهُ الزَّنَاتِيُّ وَقَالَ ابْنُ جُزَيٍّْ فِي الْقَوَانِينِ بَعْدَ أَنْ ذَكَرَ الْأَئِمَّةَ الْأَرْبَعَةَ وَغَيْرَهُمْ: "إِنَّ كُلَّ وَاحِدٍ مِنْهُمْ مُجْتَهِدٌ فِي دِينِ اللَّهِ وَمَذَاهِبُهُمْ طُرُقٌ مَوْصَلَةٌ إِلَى اللَّهِ تَعَالَى".

Issue Two
On the Legal Judgement of One Who Follows (*qallada*) a *Madh'hab*

The *sunni* scholars, may Allah be pleased with all of them, are unanimously agreed that one who follows (*man qallada*) a school of thought from among the schools of thought of the *mujtahiduun* will meet Allah secure and that particular school of thought will gain him Paradise.

It has been mentioned in the Taklhees 'l-Ikhwaan of Muhammad at-Taghuugi:^v "Whoever follows a scholar will meet Allah secure absolutely." It has been mentioned in the az-Zahraat 'l-Wardiyya Fi 'l-Fataawi 'l-Ujhuuriyya of Abd 'l'Aala,^w "Al-'Ujhuuri^x said that al-Qiraafi^y said in his commentary of the at-Tanqeeh:^z 'All of the schools of thought are paths (*masaalik*) to Paradise. Whoever travels (*salaka*) a path from among them, he will arrive.', as az-Zanaati^{aa} said.'." Ibn Juzayy said in his al-Qawaaneen^{bb} after mentioning the four *Imams* and others: "Each and everyone of them were *mujtahids* in the religion of Allah and their schools of thought are paths which arrive to Allah ta'ala."



الأمر الثالث

أما الثالث الذي هو حكم التزام مذهب من مذاهب المجتهدين على التَّعْيِين، فقد قال عبدُ الرَّحْمَنِ السُّيُوطِيُّ فِي شَرْحِ الْكُوكَبِ: "هَلْ يَجِبُ عَلَى الْعَامِي وَعَيْرِهِ مِمَّنْ لَمْ يَبْلُغْ رُتْبَةَ الْإِجْتِهَادِ التَّزَامَ مَذْهَبٍ مُعَيَّنٍ مِنْ مَذَاهِبِ الْمُجْتَهِدِينَ؟ قَوْلًا: أَحَدُهُمَا نَعَمْ وَصَحَّحَهُ فِي جَمْعِ الْجَوَامِعِ، وَالثَّانِي لَا وَأَخْتَارَهُ النَّوَوِيُّ".



Issue Three

On the Legal Judgement of Adherence to a Particular *Madh'hab* From Among the *Madhaahib* of the *Mujtahideen*

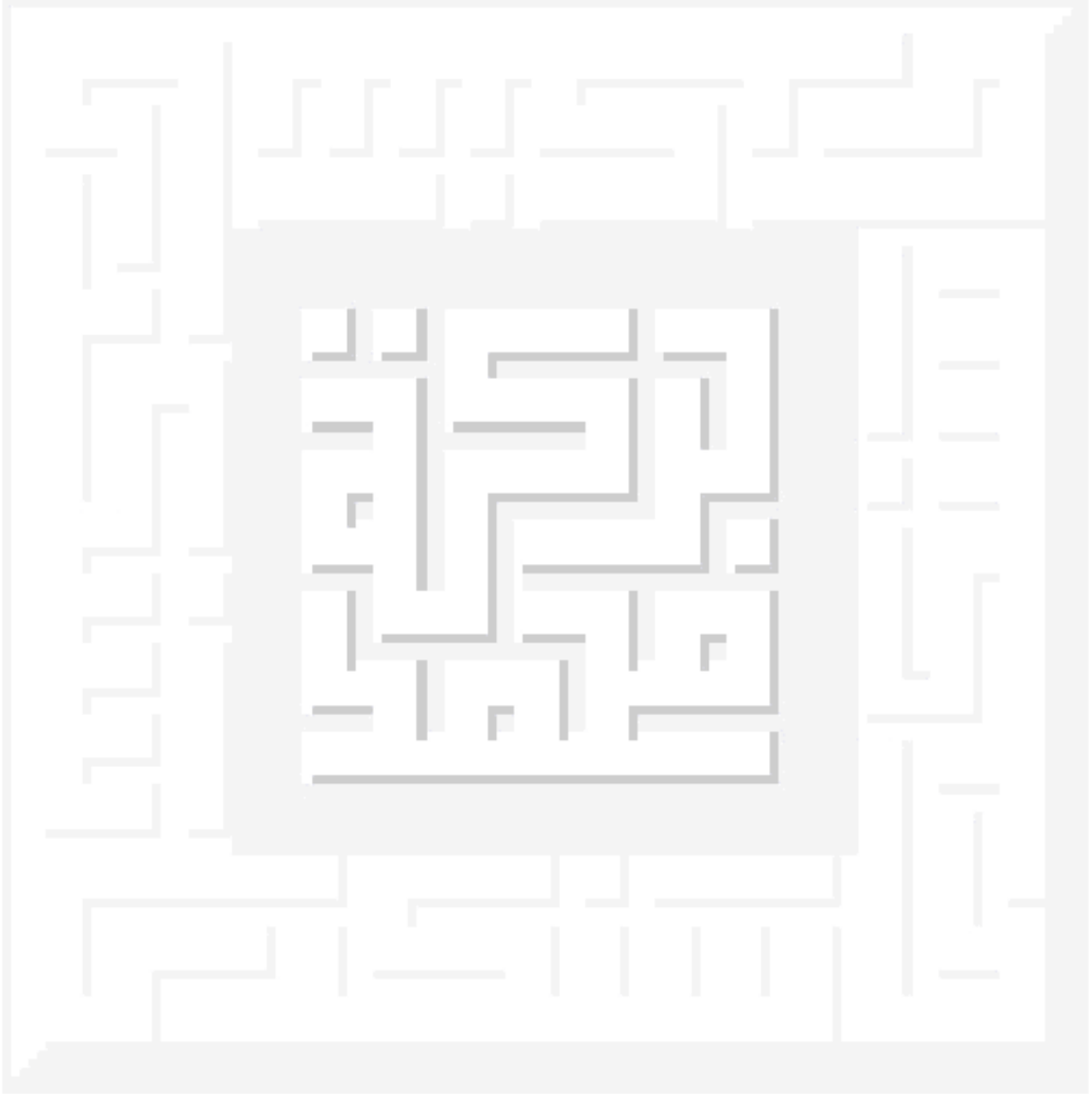
Abd 'r-Rahmaan as-Suyuti raised the question in his commentary of the al-Kawkab:^{cc} "Is it obligatory (*yajibu*) for the common person and others who have not reached the rank of independent judgement (*ijtihad*) to adhere to a particular school of thought (*madh'hab mu'ayyin*) from among the schools of thought of the *mujtahideen*? There are two opinions:

- [1] yes it is obligatory. This was adjudicated in the Jam`i 'l-Jawaami`;^{dd}
- [2] no it is not obligatory. An-Nawawi^{ee} chose this opinion."



الأمر الرابع

وَأَمَّا الرَّابِعُ الَّذِي هُوَ حُكْمُ عَدَمِ التَّرَامِ مَذْهَبٍ مِنْ مَذَاهِبِ الْمُجْتَهِدِينَ عَلَى التَّعْيِينِ فَقَدْ قَالَ عَبْدُ الرَّحْمَنِ السُّيُوطِيُّ فِي شَرْحِ الْكُوكَبِ: "قِيلَ لَا يَجِبُ التَّرَامُ مَذْهَبٍ مُعَيَّنٍ وَأَخْتَارُهُ النَّوَوِيُّ كَمَا تَقَدَّمَ"، وَقَالَ: "الَّذِي يَقْتَضِيهِ الدَّلِيلُ أَنَّهُ لَا يَلْتَزِمُ التَّمَذُّبَ بِمَذْهَبٍ مُعَيَّنٍ، بَلْ يَسْتَفْتِي مَنْ شَاءَ" إِنَّتَهَى، قُلْتُ: وَأَخْتَارُهُ أَيْضًا عَزُّ الدِّينِ ابْنُ عَبْدِ السَّلَامِ وَالْقِرَافِيُّ كَمَا فِي سُنَنِ الْمُجْتَهِدِينَ لِلْمَوَاقِ.



Issue Four
On the Legal Judgement of Non-Adherence to a Particular *Madh'hab* From Among the *Madhaahib* of the *Mujtahiduun*

Abd 'r-Rahmaan as-Suyuti said in his commentary upon the al-Kawkab.^{ff} "It is said that it is not obligatory (*laa yabibu*) to adhere to a particular school of thought. This was specified by an-Nawawi^{gg} as we have previously mentioned. He said: 'He who requires legal proof it is not necessary for him to embrace a particular school of thought. On the contrary, he can seek a legal decision (*yastaftee*) from whomever he desires."

I say: This opinion was also specified by `Izzu 'd-Deen ibn Abd 's-Salaam^{hh} and al-Qiraafiⁱⁱ as it was mentioned in the Sanan 'l-Muhtadeen of *Shaykh* al-Mawwaaq.^{jj}



الأمرُ الخامسُ

وَأَمَّا الْخَامِسُ الَّذِي هُوَ حُكْمُ الْإِنْتِقَالِ مِنْ مَذْهَبٍ إِلَى مَذْهَبٍ مِنْ مَذَاهِبِ الْمُجْتَهِدِينَ عَلَى الْإِطْلَاقِ، فَقَدْ قَالَ عَبْدُ الرَّحْمَنِ السُّيُوطِيُّ فِي شَرْحِ الْكُوكَبِ: "مَنْ التَّزَمَ مَذْهَبًا مُعَيَّنًا هَلْ يَجُوزُ لَهُ الْخُرُوجُ عَنْهُ؟ فِيهِ أَقْوَالٌ: أَحَدُهَا الْجَوَازُ مُطْلَقًا وَصَحَّحَهُ الْفِرَافِيُّ، وَالثَّانِي الْمَنْعُ مُطْلَقًا لِأَنَّهُ التَّزَمَهُ، وَالثَّلَاثُ يَجُوزُ فِي جَمِيعِ الْمَسَائِلِ وَلَا يَجُوزُ فِي بَعْضٍ"، وَقَالَ عَبْدُ الْعَزِيزِ فِي الدَّرَرِ الْمُتَقَطَّةِ: "الصَّحِيحُ أَنَّهُ لَا يَجُوزُ لِلْمُقَلِّدِ أَنْ يَنْتَقِلَ مِنْ مَذْهَبٍ إِلَى مَذْهَبٍ" إِنَّتَهَى.



Issue Five

On the Legal Judgement of Transferring From One *Madh'hab* to Another From Among The *Madhaahib* of the *Mujtahiduun* Under Any Circumstances

Abd 'r-Rahmaan as-Suyuti raised the question in his commentary of the *al-Kawkab*:^{kk} “Is it permissible (*yajuuzu*) for he who adheres to a particular school of thought to withdraw from it (*khuruuj`anhu*)? There are three opinions:

[1] It is permissible (*jawaaz*) absolutely. This was corroborated by *Shaykh al-Qiraafi*.^{ll}

[2] It is prohibited (*man`u*) absolutely because he is under the obligation (*iltazama*) of that school of thought.

[3] It is permissible in most issues and it is not permissible in certain issues.”

Shaykh Abd 'l-`Azeez said in his *ad-Durari 'l-Multaqat*:^{mm} “The sound opinion is that it is not permissible for the follower (*muqallid*) to transfer from one school of thought to another school of thought.”



الأمر السادس

وَأَمَّا السَّادِسُ الَّذِي هُوَ حُكْمُ الْإِنْتِقَالِ مِنْ مَذْهَبٍ إِلَى مَذْهَبٍ الْمُجْتَهِدِينَ فِي بَعْضِ الْمَسَائِلِ، فَقَدْ قَالَ عَبْدُ الْعَزِيزِ فِي الدَّرَرِ الْمُنْقَطَةِ: "الصَّحِيحُ أَنَّهُ يَجُوزُ لِلْمُقَلِّدِ أَنْ يَقْلَدَ غَيْرَ مَذْهَبِهِ فِي بَعْضِ الْمَسَائِلِ وَيَبْقَى عَلَى مَذْهَبِهِ وَلَا إِثْمَ عَلَيْهِ"، وَقَالَ أَيْضًا فِي الْكِتَابِ الْمَذْكُورِ فِي مَحَلِّ آخِرٍ: "وَالْمَذَاهِبُ الْأَرْبَعَةُ وَغَيْرُهَا عَلَى الْحَقِّ، وَمَنْ قَلَّدَ إِمَامًا مِنْهُمْ فَلَهُ أَنْ يَقْلَدَ الْآخَرَ، لَا سِيَّمَا عِنْدَ الضَّرُورَةِ، هَذَا هُوَ الصَّحِيحُ، وَمِنَ الْعُلَمَاءِ مَنْ مَنَعَ ذَلِكَ، وَقَالَ: لَا يَقْلَدُ غَيْرَ إِمَامٍ وَاحِدٍ" اِنْتَهَى، قُلْتُ: قَدْ تَقَدَّمَ إِنَّ الرَّافِعِيَّ صَحَّحَ الْإِنْتِقَالَ مُطْلَقًا، كَمَا قَالَهُ الشُّيُوطِيُّ فِي شَرْحِ الْكُوكَبِ.

Issue Six

On the Legal Judgement of Transferring From *Madh'hab* to Another From Among the *Madhaahib* of the *Mujtahiduun*, However in Certain Issues

Abd 'l-`Azeez has said in his ad-Durari 'l-Multaqatat:^{mm} "The permissibility of the follower (*muqallid*) following other than his school of thought in certain issues and to continue upon his school of thought in the remainder is sound. There is no sin upon him."

He also said in the above mentioned book in another place: "The four schools of thought and others are upon the truth. Whoever follows (*qallada*) an *Imam* from among them, he has the right to follow another, especially out of necessity (*daruuri*). This is sound. There are some scholars who prohibit that (*mana`a dhaalika*) saying: 'Only one *Imam* is to be followed'."

I say: It has been mentioned previously that ar-Raafi` corroborated transferring absolutely as as-Suyuti said in his commentary upon the al-Kawkab.^{oo}



الأمر السابع

وَأَمَّا السَّابِعُ الَّذِي هُوَ الْجَمْعُ بَيْنَ الْمَذَاهِبِ الَّذِي هُوَ تَلْفِيْقُ لِلتَّقْلِيدِ فِي مَسَائِلِ الْخِلَافِ، فَقَدْ جَوَّزَهُ عَبْدُ الْعَزِيزِ لِأَنَّهُ قَالَ فِي الدَّرَرِ الْمُنْقَطَةِ: "إِذَا وَجَدَ الْإِنْسَانُ مَاءً تَغْيِيرُ بِشَيْءٍ طَاهِرٍ جَازَ لَهُ تَقْلِيدُ أَبِي حَنِيفَةَ وَيَتَوَضَّأُ بِهِ وَيُصَلِّي، وَإِنْ عَمِلَ بِمَذْهَبِ مَالِكٍ وَغَيْرِهِ يَتَيَمَّمُ وَلَمْ يَتَوَضَّأْ، وَإِنْ أَرَادَ الْجَمْعُ بَيْنَ الْمَذَاهِبِ تَوَضَّأَ بِهِ وَتَيَمَّمُ وَصَلَّى"، ثُمَّ قَالَ: "فَهَذِهِ مَرَاتِبُ مُتَقَاوَتَةٌ، وَهَكَذَا فِي جَمِيعِ مَسَائِلِ الْخِلَافِ"، اِنْتَهَى.

قُلْتُ: وَمِمَّنْ رَأَى جَوَّازَ الْجَمْعِ بَيْنَ الْمَذَاهِبِ، الَّذِي هُوَ تَلْفِيْقُ التَّقْلِيدِ الشَّيْخُ الْعَلَامَةُ مَرْعِيُّ بْنُ يُوسُفَ الْحَنْبَلِيُّ كَمَا هُوَ ظَاهِرٌ عِنْدَ سُؤَالِهِ لِلْأَجْهُورِيِّ عَنِ ذَلِكَ.

وَفِي الزَّهْرَاتِ الْوَرْدِيَّةِ فِي الْفَتَاوَى الْأَجْهُورِيَّةِ لِعَبْدِ الْعَالِيِّ: سُئِلَ الْأَجْهُورِيُّ عَنِ تَلْفِيْقِ التَّقْلِيدِ وَكَانَ السَّائِلُ لَهُ الشَّيْخُ الْعَلَامَةُ مَرْعِيُّ بْنُ يُوسُفَ الْحَنْبَلِيُّ، طَابَ ثَرَاهُ وَنَصَّ السُّؤَالِ أَنَّهُ قَالَ لَهُ:

"سَيِّدِي رَضِيَ اللَّهُ عَنْكُمْ إِذَا تَوَضَّأَ الشَّافِعِيُّ وَمَسَحَ جُزْءًا مِنْ رَأْسِهِ، ثُمَّ لَمَسَ فَرْجَهُ وَقَلَدَ أَبَا حَنِيفَةَ فِي عَدَمِ النَّقْلِ أَوْ مَالِكًا فِي لُعَابِ الْكَلْبِ أَوْ رَوْتِ الْمَأْكُولِ، فَالَّذِي يَظْهَرُ لِي الْجَوَّازُ، لِأَنَّ وُضُوءَ هَذَا الْمُقَلِّدِ صَحِيحٌ بِاعْتِبَارِ تَقْلِيدِهِ لِلشَّافِعِيِّ، وَتَقْلِيدُهُ لِمَالِكٍ فِي اللُّعَابِ فَضِيلَةٌ أُخْرَى، وَكَذَلِكَ تَقْلِيدُهُ لِلْحَنْفِيِّ فِي اللَّمَسِ، فَإِنَّ الْوُضُوءَ قَدْ تَمَّ صَحِيحًا بِتَقْلِيدِهِ لِلشَّافِعِيِّ، وَيَسْتَمُرُّ صَحِيحًا بَعْدَ اللَّمَسِ بِتَقْلِيدِهِ الْحَنْفِيِّ، وَلَا يَسَعُ النَّاسُ خُصُوصَ الْعَامَّةِ غَيْرَ هَذَا.

فَإِنَّ أَهْلَ الرَّيْفِ يَتَوَضَّؤُونَ بِلَا مَسْحِ جَمِيعِ الرَّأْسِ وَإِنْ تَوَضَّؤُوا بِلَا تَدْلِيكِ وَيُخَالِطُهُمْ رَوْتُ الْمَأْكُولِ، فَإِنْ كَانَ مَنَعَ التَّقْلِيدِ فِي مِثْلِ هَذَا مَنُفُؤًا عَنِ الْأَيْمَةِ الْمُتَقَدِّمِينَ كَمَالِكٍ وَأَصْحَابِهِ فَتَنَعَمْتُ، وَإِنْ كَانَ لِمَجْرَدِ رَأْيِ الْمُتَأَخِّرِينَ، فَلِلْعَقْلِ فِي ذَلِكَ مَجَالٌ.

وَلَا تَرُدُّ مَسْأَلَةَ الْقِرَافِيِّ فِي النِّكَاحِ بِلَا وَلِيِّ وَصَدَاقٍ وَشُهُودٍ لِأَنَّ النِّكَاحَ مِنْ أَصْلِهِ لَمْ يَصِحْ، فَلَيْسَ هُنَاكَ مَا يَبْنِي عَلَيْهِ تَلْفِيْقُ التَّقْلِيدِ كَمَا فِي السُّؤَالِ، وَالَّذِي يَخَالَهُ الْمُحِبُّ هُوَ الصِّحَّةُ وَبُطْلَانُ الْقَوْلِ بِالْمَنَعِ خِلَافًا لِقَاطِبَةِ الْمُتَأَخِّرِينَ، فَإِنَّهُ غُرْهُمُ مُجْرَدَ الظَّاهِرِ وَعِنْدَ التَّحْقِيقِ فَالشَّافِعِيُّ يَرَى صِحَّتَهُ بِمَوْجِبِ تَقْلِيدِهِ لَهُ.

فَإِذَا قُلَدَ مَالِكٌ فِي اللُّعَابِ صِحَّتْ صَلَاتُهُ عَلَى كُلِّ الْمَذْهَبَيْنِ، فَإِنَّ الْوُضُوءَ صَحِيحٌ بِمَوْجِبِ التَّقْلِيدِ إِجْمَاعًا فَقَدْ صَلَّى بِوُضُوءٍ صَحِيحٍ بِثُوبٍ طَاهِرٍ، وَالْمُحِبُّ بِلَا اِرْتِيَابٍ يَرْجُو إِيْضًا الْجَوَابَ.

فَأَجَابَ: فَالْمَنْقُولُ أَنَّ التَّلْفِيقَ يَمْنَعُ النَّقْلِيَّ سِوَاءَ وَقَعَ فِي وَفْتٍ وَاحِدٍ أَوْ فِي وَقْتَيْنِ، فَمَنْ تَوَضَّأَ بِلَا
دَلِكِ مُقَلِّدًا لِلشَّافِعِيِّ ثُمَّ تَلَوْتُ بِرَوْتِ مَأْكُولِ اللَّحْمِ فَقَلَّدَ مَالِكًا فِي طَهَارَتِهِ وَصَلَّى فَإِنَّ صَلَاتَهُ بَاطِلَةٌ لِأَنَّ
كُلَّ وَاحِدٍ مِنَ الْإِمَامِينَ يَقُولُ بِبُطْلَانِهَا، فَمَالِكٌ يَقُولُ بِدَلِكِ لِعَدَمِ الدَّلِكِ، وَالشَّافِعِيُّ يَقُولُ بِدَلِكِ لِلتَّلَوْتِ
بِأَرْوَاطِ الدَّوَابِّ، فَقَدْ ذَكَرَ الْقِرَافِيُّ نَحْوَ هَذَا وَهُوَ عُمْدَةٌ فِي الْمَذْهَبِ وَتَبِعَهُ عَلَيْهِ الْأَيْمَةُ، وَلَمْ يَذْكُرْهُ عَلَى
طَرِيقِ النَّبْحِ، وَأَنَّهُ مِنْ هَذِيانِهِ، وَلَا يَخْفَى أَنَّ مَسْأَلَةَ النِّكَاحِ بِلَا وَلِيٍّ وَلَا صَدَاقٍ وَشُهُودٍ، فَرَدُّ مَنْ أَفْرَادَ
التَّلْفِيقِ فَلَا يَقْتَصِرُ الْأَمْرُ عَلَيْهَا.



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Issue Seven

On the Legal Judgement of Merging the *Madhaahib* Which is Called the Concoction of Imitation (*talfeeq' t-taqleed*) in the Issues of Disagreement (*khilaaf*)

Abd 'l-'Azeez permitted it because he said in his ad-Durari 'l-Multaqatat:^{pp} "If a person finds water which has been altered by something pure (*tagayyar bi shay'in taahirin*), it is permissible for him to follow *Imam* Abu Haneefa and make ablution (*yatawadda'u*) with it and pray. And if he acts in accordance with the school of thought of *Imam* Malik and others, he would make purification with dry earth (*tayammama*) and not make ablution (*lam yatawadda*) with that water. If he wishes he can merge the schools of thought and make ablution and make purification with dry earth and then pray." He then said: "These various ranks are divergent and this is the same in all issues of differences of opinion (*masaa'il 'l-khilaaf*)."

I say: Among those scholars who consider it permissible to merge the schools of thought, which is called concocting imitation (*talfeeq' t-taqleed*), is the learned *Shaykh* Mar'iyyu ibn Yusef al-Hanbali^{qq} as is apparent in his questions to al-'Ujhuuri^{rr} in that.

It has been mentioned in the az-Zahraat 'l-Wardiyya Fi 'l-Fataawi 'l-Ujhuuriyya of Abd 'l'Aala:^{ss} "Al-'Ujhuuri was asked about concocting imitation. The questioner was the learned *Shaykh* Mar'iyyu ibn Yusef 'l-Hanbali, may he rest in peace. The text of his question was he said to him: "My master, may Allah be pleased with you - if a person following Shaafi'i were to make ablution wiping a part of his head, then rubs his private parts following Abu Haneefa in the non-breaching of the ablution. Or he follows Maalik concerning the saliva of a dog or in the dung of foodstuff. What is apparent to me is that it is permissible because the ablution of this adherent is sound with respect to his adhering to the Shaafi` and he continues to be sound after rubbing his private parts by adhering to the Hanafi. Its not permissible for the people to broaden beyond this especially for the common people.

Some of the people of the Rif for example make ablution without wiping the entire head, and when they make ablution they do so without rubbing the limbs and the water is oftentimes mixed with the dung of their animals. Although concoction in the like of this is prevented based upon what has been transmitted from the prior *Imams* such as Malik and his companions, it is nevertheless denied in the opinion of the latter jurist, since there is no reason with regard to this.

Nor is there hesitancy in the issue of al-Qiraafi^{tt} regarding marrying without a guardian, dowry and witnesses because originally marriage under such circumstances is not valid. Thus, here there is no way to build on the concocting of imitation as it is mentioned in this specific legal question. For the one who considers it desirable, then it is valid. The invalidity of the words of those who prevent it differ. For the later jurists without exception say that this will cause the gullible to be denuded of the apparent legal judgment when it is put into effect. Thus, the Shaafi` consider it valid due to the necessity of those who adhere to his opinion.

If a person imitates Malik in the judgment of the saliva of a dog, then his prayer is valid in accordance with all the schools of thought, since based upon consensus the ablution is sound due to the necessity of imitation. To pray with the ablution is valid in clean clothing and it is desirable without doubt. Here I hope that you can clarify the answer."

He then answered him: "It has been transmitted that concoction prevents adherence regardless if it happens in a single time; or twice. For whoever makes ablution without rubbing following in that the Shaafi`, and the water becomes contaminated with the dung of animals whose meat is eatable, following Malik regarding its purification; if he then prays, then his prayer is invalid. This is because each of the *Imams* invalidate the prayer. Malik says it is invalid due to the absence of rubbing while performing ablution; and as-Shaafi` says it is invalid due to the contamination of the water with the dung of livestock.

Al-Qarafi mentioned something similar, which comprises the legal reliance of the school of thought and is followed by the *Imams*. He did not mention it by way of research, but conclusively. It is not hidden that the issue of marriage without a legal guardian, dowry and witnesses is a unique situation from the isolated issues of concoction, thus the affair cannot be limited to that.”

SANKORE'



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الأمر الثامن

وَأَمَّا الثَّامِنُ الَّذِي هُوَ حُكْمُ اخْتِيَارِ الْأَشَدِّ فِي الْمَذَاهِبِ، فَقَدْ قَالَ عَبْدُ الْعَزِيزِ فِي الدَّرْرِ الْمُنْقَطَةِ: "هُوَ مَرْتَبُهُ أَهْلِ الْوَرَعِ"، قَالَ: "وَقَدْ رَأَيْنَا بَعْضَ مَشَائِحِنَا يَلْتَزِمُهَا وَهِيَ أَنْ يَأْخُذَ بِالْأَحْوَطِ وَيَلْتَزِمَ الْأَشَدَّ فِي الْمَذَاهِبِ، فَيَغْتَسِلُ الْمَنِي لِأَنَّهُ نَجَسٌ عِنْدَ مَالِكٍ، وَيَغْسِلُ بَوْلٌ مَا يُؤْكَلُ لِحَمِّهِ لِأَنَّهُ نَجَسٌ عِنْدَ الشَّافِعِيِّ، وَيَمْسَحُ جَمِيعَ رَأْسِهِ وَيَتَدَلَّكَ وَيَفْعَلُ الْأَتَمَّ وَالْأَكْمَلَ فِي كُلِّ شَيْءٍ وَيَتْرِكُ مَا اخْتَلَفَ فِي تَحْرِيمِهِ."



Issue Eight

On the Legal Judgement of Choosing the Strongest Within the *Madhaahib*

Abd 'l-'Azeez said in his ad-Durari 'l-Multaqat:¹⁰⁰ "That is the caliber of the people of pious scrupulousness (*ahl 'l-wara`a*)." He said: "We have seen that some of our *shaykhs* adhered to that, which was embracing the most valid (*ahwat*) opinion and adherence to the strongest ruling in the schools of thought. They would wash away sperm because it was impure (*najas*) according to Maalik. They would wash away urine of the child who eats meat because it was impure according to as-Shaafi`i. They would wipe (*yamsahu*) the whole of the head, rub the limbs (*yatadallak*) and perform perfectly and completely all acts of worship and avoid anything in which there was a difference of opinion concerning its prohibition (*ma ikhtulifa fi tahreemihi*)."



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الأمْرُ التَّاسِعُ

وَأَمَّا التَّاسِعُ الَّذِي هُوَ حُكْمُ اخْتِيَارِ الْأَخْفِ فَقَدْ قَالَ عَبْدُ الرَّحْمَنِ السُّيُوطِيُّ فِي شَرْحِ الْكُوكَبِ:
"الصَّحِيحُ أَنَّهُ يَمْتَنِعُ تَتَبَعِ الرَّخْصَ فِي الْمَذَاهِبِ بِأَنْ يَأْخُذَ مِنْ كُلِّ مِنْهَا مَا هُوَ أَهْوَنٌ، فَيَفْسُقُ بِذَلِكَ، وَقِيلَ
يَجُوزُ فَلَا يَفْسُقُ، حَكَاهُ فِي الرَّوْضَةِ"، اِنْتَهَى.

وَفِي سُنَنِ الْمُهْتَدِينَ لِلْمَوَاقِ قَالَ ابْنُ عَرَفَةَ: "قَوْلُ ابْنِ حَرَمٍ: أَجْمَعُوا عَلَيَّ أَنْ مُتَبَعَ الرَّخْصِ فَاسِقٌ
مَرْدُودٌ بِمَا أَقْتَى بِهِ الشَّيْخُ الْمُتَقِيُّ عَلَى عِلْمِهِ وَصَلَاحِهِ عِزُّ الدِّينِ بِنُ عَبْدِ السَّلَامِ: أَنَّهُ لَا يَتَعَيَّنُ عَلَيَّ
الْعَامُّ إِذَا قَلَدَ مَا فِي مَسْئَلَةٍ أَنْ يَقْلِدَهُ فِي سَائِرِ مَسَائِلِ الْخِلَافِ لِأَنَّ النَّاسَ مِنْ لُدُنِ الصَّحَابَةِ إِلَى أَنْ
ظَهَرَ الْمَذَاهِبُ يَسْتَلُونَ فِيمَا يَسْنُحُ لَهُمُ الْعُلَمَاءُ الْمُخْتَلِفِينَ مِنْ غَيْرِ نَكِيرٍ مِنْ أَحَدٍ، وَسِوَاءِ اتَّبَعِ الرَّخْصَ
فِي ذَلِكَ أَوْ الْعَرَائِمِ"، اِنْتَهَى.

وَفِي الرَّهْرَاتِ الْوَرْدِيَّةِ فِي الْفَتَاوَى الْأَجْهَرِيَّةِ لِعَبْدِ الْعَالِيِّ عِنْدَ قَوْلِ الْقِرَافِيِّ: "وَأَنْ لَا يَتَّبَعَ الرَّخْصَ
عِنْدَ ذِكْرِهِ شُرُوطَ جَوَازِ تَقْلِيدٍ غَيْرِ مَذْهَبِهِ: أَرَادَ الْقِرَافِيُّ بِالرَّخْصِ مَا يَنْقُصُ فِيهِ حُكْمَ الْقَاضِي، وَهُوَ
أَرْبَعَةٌ: [1] مَا خَالَفَ الْإِجْمَاعَ، [2] أَوْ الْقَوَاعِدَ، [3] أَوْ النَّصَّ، [4] أَوْ الْقِيَاسَ الْجَلِيَّ، فَهُوَ حَسَنٌ
مُتَعَيَّنٌ، وَإِنْ أَرَادَ بِالرَّخْصِ مَا فِيهِ سَهُولَةٌ عَلَى الْمُكَلَّفِ كَيْفَ كَانَ لَزِمَهُ أَنْ يَكُونَ مَنْ قَلَدَ مَالِكًا فِي الْمِيَاهِ
وَالْأَرْوَاطِ وَتَرَكَ الْأَلْفَافِ فِي الْعُقُودِ مُخَالَفًا لِشَرْعِ اللَّهِ تَعَالَى، وَلَيْسَ كَذَلِكَ"، ثُمَّ قَالَ: "اِنْتَهَى كَلَامُ الْقِرَافِيِّ
فِي شَرْحِ التَّنْقِيحِ بِالْإِخْتِصَارِ".

قَالَ: "وَهُوَ يَفِيدُ تَرْجِيحَ الْقَوْلِ بِأَنَّ التَّقْلِيدَ جَائِزٌ، وَأَنَّ الْمُرَادَ بِالرَّخْصِ مَا يَنْقُضُ فِيهِ قَضَاءُ
الْقَاضِي لَا مُطْلَقٌ مَا فِيهِ سَهُولَةٌ، فَكُلُّ مَسْئَلَةٍ لَا تَخَالَفُ الْإِجْمَاعَ وَلَا الْقَوَاعِدَ وَلَا النَّصَّ وَلَا الْقِيَاسَ
الْجَلِيَّ يَجُوزُ التَّقْلِيدُ فِيهَا، وَأَكْثَرُ الْمَسَائِلِ عَلَى هَذَا النَّمَطِ، وَمَا يَنْقُضُ فِيهِ قَضَاءُ الْقَاضِي يَسِيرُ بِالنِّسْبَةِ
إِلَى غَيْرِهِ"، اِنْتَهَى.

Issue Nine

On the Legal Judgement of Choosing the Concessions Within the Different *Madhaahib*

Abd 'r-Rahmaan as-Suyuti said in his commentary on the *al-Kawkab*:^{vv} "The prohibition of following the concessions in the schools of thought (*rukhsa fi madhaahib*) is sound because it is embracing that which is the most worthless (*ahwan*) by which one acts unlawfully. It is said that it is permissible and there is nothing unlawful about it. This was narrated in the *ar-Rawda*."

It has been mentioned in the *Sanan 'l-Muhtahideen* of al-Mawwaaq:^{ww} "Ibn `Arifa^{xx} said regarding the idea of Ibn Haazim^{yy} that it is unanimously agreed (*ajma`uu*) that the one who follows the direction of concession is a disapproved sinner (*faasiq marduud*) in accordance with the legal decision (*maa aftaa*) of one whose knowledge and uprightness there is unanimous agreement about - `Izz 'd-Deen ibn Abd 's-Salaam.^{zz} He did not impose (*yata`ayyin*) upon the common person when he follows an *Imam* in an issue to follow him in the remainder of issues wherein there is difference of opinion (*masaa'il 'l-khilaaf*). This is because people from the time of the Companions until the emergence of the schools of thought use to ask about the easy concerning that in which the scholars differed - without anyone objecting to that and regardless whether they followed the concession (*rukhsa*) in that or the uncompromising (*`azaa'im*)."

It has been mentioned in the *az-Zahraat 'l-Wardiyya fi'l-Fataawi al-Ujhuuriyya* of Abd 'l'Aala^{aaa} about the words of al-Qiraafi:^{bbb} "...and that he does not follow concessions": "Here he mentions the prerequisites of the permissibility of following other than his school of thought. What al-Qiraafi^{ccc} meant here by concessions is that which has been revoked from the legal decision of the scholar which are four:

- [1] that which contradicts the consensus (*khaalafa 'l-Ilmaa`a*);
- [2] that which contradicts the fundamental principles (*qawaa'id*);
- [3] that which contradicts the conclusive legal text (*nass*); and
- [4] that which contradicts evident analogy (*qiyaas jalliy*)

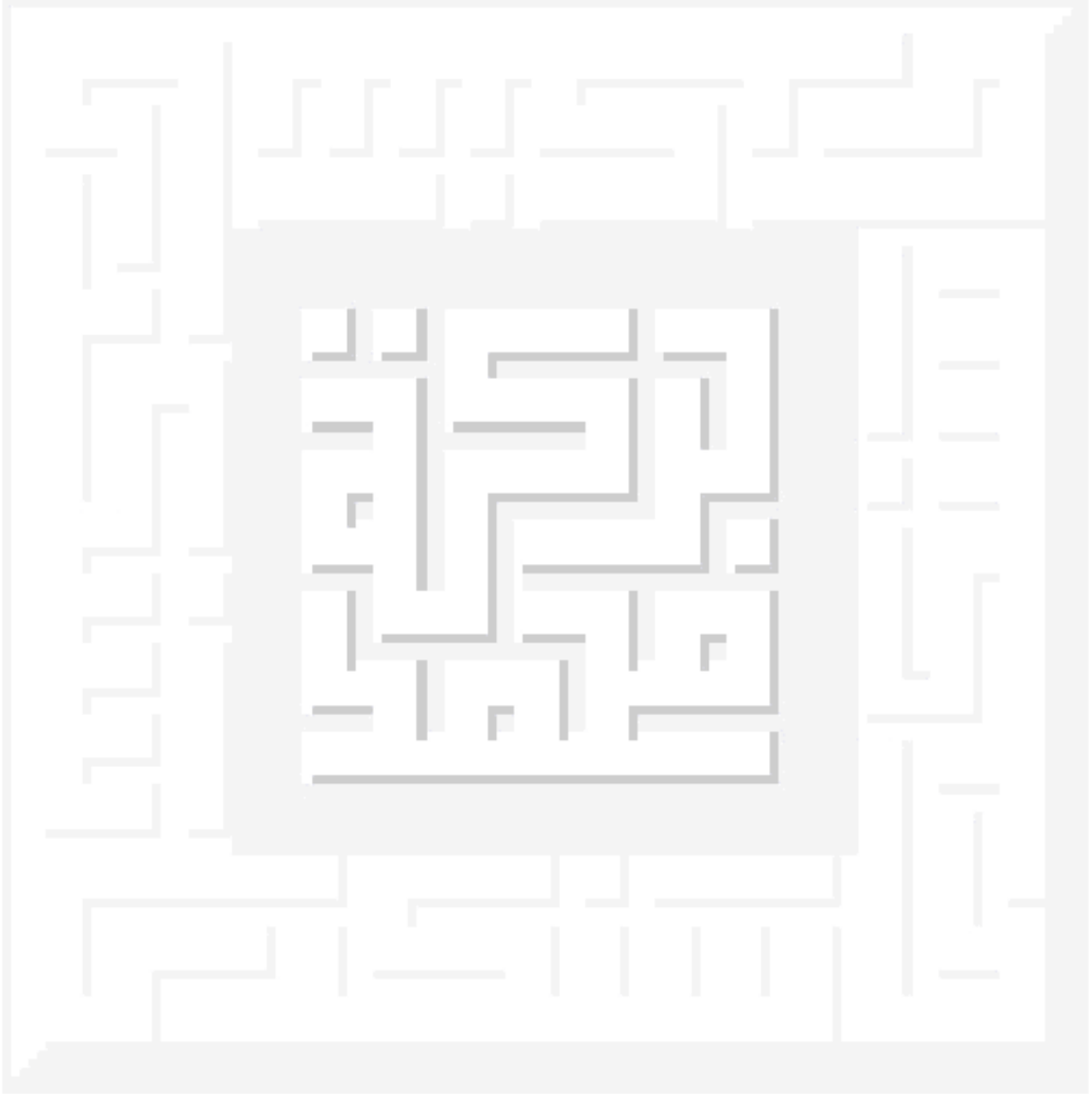
That is preferred and laid down by law. And what is meant by concessions in this context is that which is easy upon the responsible person (*mukalluf*) where it is necessary. For example, the one who follows Malik in the judgment of water and its contamination with animal dung and avoids those expressions regarding indulgence being responsible to the law of Allah ta`ala. It is not like that." He then said: "Here ends what al-Qiraafi said in his commentary upon *al-Tanqeeh*^{ddd} in an abridged fashion.

His words are restricted to giving preference to the idea that adherence to a madh'hab is permissible. And what is meant by concession is that which the judgment of a judicial magistrate rescinds, not absolute concessions in order to make things easy. For every issue which does not contradict the consensus, the legal principles, the textual evidence or sound analogy it is permitted to follow. The majority of the issues falls under this pattern, and that which a judicial magistrate rescinds is done to facilitate matters in relationship to others."



الأمرُ العاشرُ

وَأَمَّا الْعَاشِرُ الَّذِي هُوَ حُكْمُ الْخُرُوجِ عَنِ جَمِيعِ الْمَذَاهِبِ فَهُوَ أَنَّهُ حَرَامٌ، بَلْ فِسْقٌ لِأَنَّهُ خَرَقُ
الإجماع في الشافعية لمحمد الطغوسي:
"وَالْإِفْتِدَاءُ بِوَاحِدٍ مَا حَقٌّ * وَرَغْبَةٌ عَنِ الْجَمِيعِ فِسْقٌ".



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Issue Ten

On the Legal Judgement of Withdrawing From All the Schools of Thought (*Madhaahib*)

Withdrawing (*al-khuruuj*) from following all the schools of thought is forbidden (*haraam*), rather it is unlawful (*fisq*) because it is exceeding (*kharq*) the limits of the consensus (*al-ijmaa`a*). It has been mentioned in the as-Shaafiya of Muhammad at-Taghuugi.^{eee}

"Following one single scholar is what is correct
And dislike of all the scholars is unlawful ."



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الأمر الحادي عشر

وَأَمَّا الْحَادِي عَشْرَ الَّذِي هُوَ حُكْمُ التَّرَامِ مَذْهَبِ مُعَيَّنٍ فِي مَذْهَبِ إِمَامِنَا مَالِكٍ رَضِيَ اللَّهُ عَنْهُ خُصُوصًا، هَلْ يَحِبُّ أَمْ لَا؟ فَقَدْ تَقَدَّمَ إِنَّ عَزَّ الدِّينِ قَدْ أَفْتَى بِأَنَّهُ لَا يَتَّعَيْنُ عَلَى الْعَامِيِّ إِذَا قَلَّدَ إِمَامًا فِي مَسْئَلَةٍ أَنْ يُقَلِّدَهُ فِي سَائِرِ مَسَائِلِ الْخِلَافِ لِأَنَّ النَّاسَ مِنْ لَدُنِ الصَّحَابَةِ إِلَى أَنْ ظَهَرَتْ الْمَذَاهِبُ يَسْتَلُونَ فِيمَا يَسْنُحُ لَهُمُ الْعُلَمَاءُ الْمُخْتَلِفِينَ مِنْ غَيْرِ نَكِيرٍ مِنْ أَحَدٍ، قَالَ: "لِأَنَّ مَنْ جَعَلَ الْمُصِيبَ وَافِقٌ وَاحِدًا لَمْ يَغَيِّنْهُ، وَمَنْ قَالَ: كُلُّ مُجْتَهِدٍ مُصِيبٌ فَلَا إنْكَارَ عَلَى مَنْ قَلَّدَ فِي الصَّوَابِ"، انْتَهَى.

وَقَالَ الْقِرَافِيُّ كَمَا فِي سُنَنِ الْمُهْتَدِينَ لِلْمَوَاقِ: "انْعَقَدُ ابِلِإِجْمَاعٍ عَلَى أَنَّ مَنْ أَسْلَمَ فَلَهُ أَنْ يُقَلَّدَ قَوْلَ مَنْ شَاءَ بِغَيْرِ حَجَرٍ، وَأَجْمَعُ الصَّحَابَةُ عَلَى أَنَّ مَنْ أَسْتَفْتَى أَبَا بَكْرٍ وَعُمَرَ وَقَلَّدَهُمَا فَلَهُ أَنْ يَسْتَفْتَى أَبَا هُرَيْرَةَ وَمُعَاذَ بْنَ جَبَلٍ وَغَيْرَهُمَا مِنْ غَيْرِ نَكِيرٍ، فَمَنْ أَدْعَى رَفَعَ هَذَيْنِ الْإِجْمَاعَيْنِ فَعَلَيْهِ الدَّلِيلُ"، انْتَهَى.

Issue Eleven

On the Legal Judgement of Adhering to the *Madh'hab* of Our *Imam* Malik, may Allah be pleased with him, Specifically - Is It Obligatory or Not

It has been mentioned previously that `Izz 'd-Deen ibn `Abd 's-Salaam^{fff} gave the legal decision that it is not incumbent upon the common person when he follows an *Imam* in an issue that he follow him in the remainder of issues in which there is differences of opinion. This is because people from the time of the Companions until the emergence of the schools of thought use to ask about the easy concerning that which the scholars differed - without anyone objecting to that. He continued: "This is because whoever makes one scholar correct it does not make it incumbent upon him to follow him. Whoever says that every *mujtahid* is correct cannot object to anyone who follows another scholar in what is correct."

Al-Qiraafi^{ggg} said as it was mentioned in the Sanan 'l-Muhtadeen of al-Mawwaaq:^{hhh} "The consensus is agreed (*in`aqada*) that whoever accepts Islam it is necessary for him to follow the teachings of whomever he wants without restriction. The Companions were agreed that whoever asked Abu Bakr and Umar for a legal decision and then followed it, he also had the right to ask Abu Hurayra, Mu`adh ibn Jabal and others without anyone objecting to that. Whoever claims that these two consensus has been lifted then it is incumbent upon him to bring his evidence."



الأمر الثاني عشر

وَأَمَّا الثَّانِي عَشْرَ الَّذِي هُوَ حُكْمُ الْإِنْتِقَالِ مِنْ مَذْهَبٍ إِلَى مَذْهَبٍ فِي مَسْئَلَةٍ فِي إِمَامِنَا مَالِكٍ رَضِيَ اللَّهُ تَعَالَى عَنْهُ خُصُوصًا هَلْ يَجُوزُ أَمْ لَا؟ فَقَدْ قَالَ الْأَجْهَوِيُّ كَمَا فِي الرَّهْرَاتِ الْوَرْدِيَّةِ فِي الْفَتَاوَى الْأَجْهَوِيَّةِ لِعَبْدِ الْعَالِيِّ: "أَمَّا تَقْلِيدُ الْمَالِكِيِّ لِلشَّافِعِيِّ مَثَلًا فِي مَسْئَلَةٍ فَفِيهَا ثَلَاثَةٌ أَقْوَالٍ كَمَا ذَكَرَهُ الْقِرَافِيُّ فِي شَرْحِ التَّنْقِيحِ الْمَحْضُورِ: الْجَوَازُ وَالْمَنْعُ وَالثَّلَاثُ وَهُوَ الْمُخْتَارُ التَّفْصِيلُ، إِنْ كَانَ اتَّصَلَ عَمَلُهُ بِهَا، فَلَيْسَ لَهُ التَّقْلِيدُ وَإِلَّا فَلَهُ"، ثُمَّ قَالَ: "وَلَكِنْ أَقْتَصِرُ فِي شَرْحِ التَّنْقِيحِ عَلَى الْقَوْلِ بِالْجَوَازِ لِكُنْ بِشُرُوطِ ثَلَاثَةٍ: [1] أَنْ لَا يَجْمَعُ بَيْنَهُمَا عَلَى صِفَةٍ تَخَالِفِ الْإِجْمَاعَ كَمَنْ تَزَوَّجَ بِلَا وِلِيِّ وَلَا صَدَاقٍ وَلَا شُهُودٍ، [2] وَإِنْ يَعْتَقِدَ فِيمَنْ يُقَلِّدُهُ الْفُضْلَ، [3] وَإِنْ لَا يَتَّبِعُ الرَّخْصَ"، ثُمَّ قَالَ الْأَجْهَوِيُّ، وَهُوَ يَفِيدُ تَرْجِيحَ الْقَوْلِ: "بِأَنَّ التَّقْلِيدَ جَائِزٌ"، ثُمَّ قَالَ: "قَالَ الْقِرَافِيُّ فِي الْكِتَابِ الْمُسَمَّى بِالْأَحْكَامِ فِي تَمْيِيزِ الْفَتَاوَى وَالْأَحْكَامِ: الَّذِي عَلَيْهِ الْفُتْيَا فِي مَذْهَبِ مَالِكٍ اِمْتِنَاعُ اِنْتِقَالِ الْمَالِكِيِّ لِمَذْهَبِ الشَّافِعِيِّ فِي مَسْئَلَةٍ، وَكَذَا اِنْتِقَالِ الشَّافِعِيِّ لِمَذْهَبِ الْمَالِكِيِّ"، اِنْتَهَى.

قَالَ: "وَلَكِنْ كَلَامُهُ فِي شَرْحِ التَّنْقِيحِ يَقْتَضِي أَنَّ الرَّاجِحَ خِلَافَ هَذَا، وَهُوَ الْمَوْافِقُ لِمَا وَقَعَ لِابْنِ الْقَاسِمِ رَحِمَهُ اللَّهُ تَعَالَى، فَإِنَّهُ أَفْتَى عَبْدُ الْمَجِيدِ: حَلَفَ بِالْمَشْيِ إِلَى مَكَّةَ وَحَنَّتْ بِكَفَّارَةِ الْيَمِينِ، وَقَالَ إِنِّي أَتَّفَيْتُكَ بِقَوْلِ اللَّيْثِ فَإِنَّهُ عَدَّتْ لَمْ أَتَّفَيْكَ إِلَّا بِقَوْلِ مَالِكٍ بِلُزُومِ الْمَشْيِ إِلَى مَكَّةَ"، اِنْتَهَى.

وَفِي الرَّهْرَاتِ الْوَرْدِيَّةِ فِي الْفَتَاوَى الْأَجْهَوِيَّةِ لِعَبْدِ الْعَالِيِّ: "سُئِلَ الْأَجْهَوِيُّ عَنِ النَّقْلِ فِي نَازِلَةٍ مِنْ مَذْهَبٍ غَيْرِهِ يَجُوزُ أَمْ لَا؟ فَأَجَابَ: يَجُوزُ تَقْلِيدُ الْمَذَاهِبِ فِي النَّوَازِلِ بِشَرْطِ أَنْ لَا يَتَلَفِقُ وَإِنْ لَا يَضَعْفُ مَدْرَكَ مَنْ قَلَّدَهُ فِي النَّازِلَةِ الَّتِي قَلَّدَهُ فِيهَا بِحَيْثُ أَنَّهُ لَوْ تَعَلَّقَ بِهَا حُكْمٌ نَقَضَ"، اِنْتَهَى.

Issue Twelve

On the Legal Judgement of Transferring From One *Madh'hab* to Another in an Issue Within the *Madh'hab* of Our Imam Malik (may Allah be pleased with him) Specifically - Is it Permissible or Not

Al-Ujhuuriⁱⁱⁱ said as it is cited in the az-Zahraat al-Wardiyya Fi al-Fataawi al-Ujhuuriyya of Abd 'l'Aala:^{jjj} “As for the one who follows the school of thought of Malik transferring to, for example, to that of as-Shaafi`, in a specific issue, there are three opinions, as al-Qiraafi cited in his commentary upon the al-Mahsuul.^{kkk}

- [1] it is permissible;
- [2] it is prohibited; and
- [3] is that he has a choice;

The particulars is that if his actions are not connected to that school of thought then it is not necessary for him to adhere to it, however if his actions are connected to it then is must adhere to the opinions of that school of thought.”

He then said: “However, in his commentary upon the at-Tanqeeh he restricted his answer to the opinion of permissibility, with the three prerequisites:

- [1] that he does not join the two schools of thought in a way which contradicts the consensus, like one who marries without a legal guardian, dowry and witnesses;
- [2] that he considers the opinion that he follows that it is superior; and
- [3] that he does not follow the concessions.”

Then Al-Ujhuuriⁱⁱⁱ said: “This depends upon the preponderant opinion that adherence is permissible.” He then said: “al-Qiraafi said in his book called al-Ihkaam Fi Tamyeez al-Fataawi wa'l-Ahkaam.^{mmm} ‘That upon which the Maliki school of thought agree in his legal decisions is that it is prohibited to transfer to the school of thought of the as-Shaafi` in a legal issue, and likewise to transfer from the school of thought of as-Shaafi` to that of Malik’.”

He then said: “However, his words cited in the commentary of the at-Tanqeeh gives the judgment that the prevalent view is contrary to that. This is consistent with what occurred with Ibn'l-Qasim, may Allah ta`ala be merciful to him, who gave a legal decision to Abd'l-Majeed who took an oath to walk to Mecca and then violated his oath, that he could make legal atonement for swearing saying: ‘I could give you a legal decision based upon the opinion of al-Layth, but if you have taken a pledge I can only give a legal decision based upon the opinion of Malik that is for you adhere to walking to Mecca’.”

In the az-Zahraat 'l-Wardiyya Fi al-Fataawi al-Ujhuuriyya of Abd 'l'Aalaⁿⁿⁿ that al-Ujhuuri^{ooo} was once asked regarding permissibility of a person following a specific legal issue in another school of thought, was it permissible or not. He answered: “It is permissible to follow all the schools of thought in all legal issues with the condition that you do not illegally concoct them, and that you not weaken the legal perception of the one you adhere to in a specific legal matter which you follow, that is by being connected to it causes the legal judgment to be rescinded.”



الأمْرُ الثَّالِثُ عَشْرُ

وَأَمَّا الثَّالِثُ عَشْرُ الَّذِي هُوَ عَدَدُ الْأُصُولِ الَّتِي بُنِيَ إِمَامُنَا مَالِكٌ رَضِيَ اللَّهُ عَنْهُ مَذْهَبَهُ عَلَيْهَا

فَهِيَ سَبْعَةٌ عَشْرٌ كَمَا قَالَ الرَّعَيْنِيُّ فِي شَرْحِ السَّلَاحِيَّةِ وَهِيَ:

- [1] أَصْلُ الْكِتَابِ، [2] وَظَاهِرُ الْكِتَابِ، [3] وَمَفْهُومُ الْكِتَابِ، [4] وَتَنْبِيهُ الْكِتَابِ، [5] وَدَلِيلُ الْكِتَابِ، [6] وَأَصْلُ السُّنَّةِ، [7] وَظَاهِرُ السُّنَّةِ، [8] وَمَفْهُومُ السُّنَّةِ، [9] وَتَنْبِيهُ السُّنَّةِ، [10] وَدَلِيلُ السُّنَّةِ، [11] وَالْإِجْمَاعُ، [12] وَالْقِيَاسُ، [13] وَمَرَاعَاةُ الْخِلَافِ، [14] وَسَدُّ الذَّرَائِعِ، [15] وَالْمَصَالِحِ الْمُرْسَلَةِ، [16] وَأَخْبَارُ الْأَحَادِ، [17] وَعَمَلُ أَهْلِ الْمَدِينَةِ.

Issue Thirteen

On the Sum of the Foundational Principles of Our *Imam* Malik, (may Allah be pleased with him)

The number of fundamental principles upon which our *Imam* Malik, may Allah be pleased with him constructed his school of thought are seventeen as ar-Ru`ayni^{ppp} said in his commentary of the as-Salaalajiyya.^{qqq}

"They are: [1] the foundation of the Book (*aslu 'l-kitaab*);^{rrr} [2] the apparent meaning of the Book (*dhaahir 'l-kitaab*);^{sss} [3] the comprehensible of the Book (*mafhuum 'l-kitaab*);^{ttt} [4] the admonitions of the Book (*tanbeeh 'l-kitaab*);^{uuu} [5] the evidence of the Book (*daleel 'l-kitaab*);^{vvv} [6] the foundation of the *Sunna* (*aslu 's-sunna*);^{www} [7] the apparent meaning of the *Sunna* (*dhaahir 's-sunna*);^{xxx} [8] the comprehensible of the *Sunna* (*mafhuum 's-sunna*);^{yyy} [9] the admonitions of the *Sunna* (*tanbeeh 's-sunna*);^{zzz} [10] the evidence of the *Sunna* (*daleel 's-sunna*);^{aaaa} [11] the consensus (*al-ijma`*);^{bbbb} [12] analogous deduction (*al-qiyaas*);^{cccc} [13] consideration of disagreement (*muraa`aat 'l-khilaaf*);^{dddd} [14] prevention of pretext for harm (*saddu 'd-dharaa'i*);^{eeee} [15] consideration of the public good (*al-masaalihi 'l-mursalat*);^{ffff} [16] isolated reports of a single narrator (*akhbaar 'l-ahad*);^{gggg} and [17] the established social behavior of the People of Medina (*`amal ahli 'l-madina*)."^{hhhh}



الأمْرُ الرَّابِعُ عَشْرُ

وَأَمَّا الرَّابِعُ عَشْرُ الَّذِي هُوَ سَنَدُنَا فِي فَهْمِ إِمَامِنَا مَالِكٍ رَضِيَ اللَّهُ تَعَالَى عَنْهُ فَقَدْ أَجَازَنِي بِهِ [1]
الشَّيْخُ مُحَمَّدُ بْنُ خَلِيلِ بْنِ مُحَمَّدِ بْنِ خَلِيلِ بْنِ أَحْمَدِ بْنِ عَبْدِ الرَّحْمَنِ بْنِ عَلِيٍّ بْنِ أَحْمَدِ بْنِ غُلْبُونِ
الطَّرَابُلُسِيِّ عَنْ [2] شَيْخِهِ مُحَمَّدِ بْنِ مُحَمَّدِ الْأَمِيرِ الْمَالِكِيِّ الْأَزْهَرِيِّ عَنْ [3] شَيْخِهِ الْعَلَامَةِ عَلِيِّ
الصَّعِيدِيِّ عَنْ [4] شَيْخِهِ السَّيِّدِ مُحَمَّدِ السَّلْمُونِيِّ [5] وَالشَّيْخِ أَبُو عَبْدِ اللَّهِ الْبَنَانِيِّ كِلَاهُمَا عَنِ [6]
الشَّيْخِ الْخَرْشِيِّ [7] وَالشَّيْخِ عَبْدِ الْبَاقِيِّ الزَّرْقَانِيِّ كِلَاهُمَا عَنِ [8] الشَّيْخِ عَلِيِّ الْأَجْهَرِيِّ عَنِ أَشْيَاحِ،
مِنْهُمْ: [9] الْقَاضِي بَدْرِ الدِّينِ الْفِرَافِيِّ عَنِ [10] الشَّيْخِ عَبْدِ الرَّحْمَنِ جَدِّ الْأَجْهَرِيِّ عَنِ [11] الشَّمْسِ
الْمَلْقَانِيِّ عَنِ [12] الشَّيْخِ عَلِيِّ السَّنْهُورِيِّ عَنِ [13] الشَّيْخِ مُحَمَّدِ الْبُسَاطِيِّ عَنِ [14] الشَّيْخِ بَهْرَامِ عَنِ
[15] الشَّيْخِ خَلِيلِ عَنِ [16] الشَّيْخِ عَبْدِ اللَّهِ الْمُتَوَفِّيِّ عَنِ [17] الشَّيْخِ زَيْنِ الدِّينِ مُحَمَّدِ الشَّهِيرِ
بِالْقَوَيْعِ (ح).

وَيُرْوَى [12] السَّنْهُورِيُّ أَيْضًا عَنِ [13] الشَّيْخِ طَاهِرِ النُّوَيْرِيِّ عَنِ [14] الشَّيْخِ حَسَنِ بْنِ
عَلِيٍّ عَنِ [15] أَحْمَدِ بْنِ هَلَالِ الرَّبْعِيِّ عَنِ [16] قَاضِي الْقَضَاةِ فَخْرِ الدِّينِ بْنِ الْمُخَلَطَةِ عَنِ
[17] أَبِي حَفْصِ الْكِنْدِيِّ عَنِ [18] عَبْدِ الْكَرِيمِ ابْنِ عَطَاءِ اللَّهِ الْإِسْكَانْدَرِيِّ عَنِ [19] الطَّرَطُوشِيِّ عَنِ
[20] الْبَاجِيِّ عَنِ [21] مَكِيِّ بْنِ أَبِي طَالِبٍ عَنِ [22] ابْنِ أَبِي زَيْدٍ الْقَيْرَوَانِيِّ عَنِ [23] ابْنِ اللَّبَادِ عَنِ
[24] يَحْيَى بْنِ عُمَرَ الْإِفْرِيقِيِّ عَنِ [25] سَحْنُونٍ عَنِ [26] ابْنِ الْقَاسِمِ عَنِ [27] إِمَامِ الْأَيْمَةِ نَجْمِ
الْمِلَّةِ عَالِمِ الْمَدِينَةِ وَإِمَامِ دَارِ الْهَجْرَةِ مَالِكِ بْنِ أَنَسٍ رَضِيَ اللَّهُ عَنْهُ.

وَهُنَا انْتَهَى كِتَابُنَا تَوْفِيقَ الْمُسْلِمِينَ عَلَى حُكْمِ مَذَاهِبِ الْمَجْتَهِدِينَ قَدَّرَ اللَّهُ خَتَمَهُ يَوْمَ السَّبْتِ

بَعْدَ صَلَاةِ الظُّهْرِ تَاسِعُ عَشْرٍ جُمَادِي الْآخِرِ سَنَةِ "شَرْحِكَ" مِنْ هِجْرَتِهِ

عَلَيْهِ الصَّلَاةُ وَالسَّلَامُ، الْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ، وَأَفْضَلُ الصَّلَاةِ

وَأَتَمُّ التَّسْلِيمِ عَلَى سَيِّدِنَا مُحَمَّدٍ وَعَلَى

آلِهِ وَصَحْبِهِ أَجْمَعِينَ، آمِينَ

اللَّهُمَّ أَرْحَمْ أُمَّةَ مُحَمَّدٍ

عَامَّةً آمِينَ

Issue Fourteen

On Our Chain of Authority in the *Madh'hab* of Our *Imam* Malik, may Allah be pleased with himⁱⁱⁱⁱ

I was given license (*ijaaza*) by my *shaykh* [1] Muhammad ibn Khaleel ibn Muhammad ibn Khaleel ibn Ahmad ibn `Abd 'r-Rahman ibn `Ali ibn Ahmad ibn Galbuun at-Taraabulisij^{jjjj} on the authority of [2] his *shaykh* the learned Muhammad ibn Muhammad al-Amir al-Maliki al-Azhari^{kkkk} on the authority of [3] his teacher Ali as-Sa`eedi.^{llll} He took it on the authority of [4] his *shaykh* as-Sayyid Muhammad as-Salmuuni^{mmmm} and [5] *Shaykh* Abu Abdullah 'l-Banaani.ⁿⁿⁿⁿ Both of them took it on the authority of [6] *Shaykh* al-Kharshi^{oooo} and [7] *Shaykh* `Abd 'l-Baaqi 'z-Zarqaani.^{pppp} Both of them took it on the authority of [8] *Shaykh* Ali al-`Ujhuuri.^{qqqq} He took it on the authority of many *shaykhs*. Among them were [9] *al-Qadi* Badr `d-Deen 'l-Qiraafi^{rrrr} on the authority of [10] *Shaykh* `Abdu 'r-Rahmaan, the grandfather of al-`Ujhuuri.^{ssss} He took on the authority of [11] as-Shams al-Laqaani.^{tttt} He took it on the authority of [12] *Shaykh* `Ali as-Sanhuuri.^{uuuu} He took it on the authority of [13a] *Shaykh* Muhammad 'l-Busaati.^{vvvv} He took it on the authority of [14a] *Shaykh* Bahraam.^{wwww} He took it on the authority of [15a] *Shaykh* Khaleel.^{xxxx} He took it on the authority of [16a] `Abdullah 'l-Manuufi.^{yyyy} He took it on the authority of [17a] *Shaykh* Zaynudeen Muhammad who was famous as al-Qawbaai'.^{zzzz}

[12] *Shaykh* Ali as-Sanhuuri also took it from [13b] *Shaykh* Taahir an-Nuwayri^{aaaa} on the authority of [14b] Hassan ibn `Ali.^{bbbb} He took it on the authority of [15b] Ahmad ibn 'l-Hilaal 'r-Rib`ii.^{cccc} He took it on the authority of the chief judge [16b] Fakhrudeen ibn 'l-Mukhlita.^{dddd} He took it on the authority of [17b] Abu Hafs 'l-Kindi.^{eeee} He took it on the authority of [18] `Abd 'l-Kareem ibn `Ata'illah 'l-Askandari.^{ffff} He took it on the authority of [19] at-Tartuushi.^{gggg} He took it on the authority of [20] al-Baaji.^{hhhh} He took it on the authority of [21] Makki ibn Abu Taalib.ⁱⁱⁱⁱ He took it on the authority [22] Ibn Abi Zayd 'l-Qayrawaani.^{jjjj} He took it on the authority of [23] Ibn 'l-Labbaadi.^{kkkk} He took it on the authority of [24] Yahya ibn `Umar 'l-Ifriqi.^{llll} He took it on the authority of [25] Sahnun.^{mmmm} He took it on the authority of [26] Ibn 'l-Qaasim.ⁿⁿⁿⁿ He took it on the authority of [27] the *Imam* of the *Imams*, the star of the religion, the scholar of Madina and the *Imam* of Dar 'l-Hijra **Malik ibn Anas**, may Allah be pleased with him.^{oooo}

Here ends our book called The Success of the Muslims Concerning the Legal Judgement of the Schools of Thought of the Scholars of Independent Judgement. Allah decreed that I sealed it on Saturday after the prayer of *dhuhr* the nineteenth of *Jumaadi 'l-Akhir* in the year *sharhaka* after the *hijra* of the Prophet, may Allah bless him and grant him peace.^{ppppp} All praises are due to Allah the Lord of the worlds. The best blessings and most perfect peace be upon our master Muhammad, his family and all his companions
Ameen. ^{qqqqq}



^a In the Name of Allah, the Beneficent the Merciful; may Allah bless our master Muhammad and grant him abundant peace. Says the poor slave in need of the mercy of his Lord, *Shaykh* Abu Alfa Umar, Muhammad Shareef bin Farid, may GOD engulf him in His mercy Amen. All praises are due to Allah who has favored us with the blessings of Iman, Islam and has guided us on the path of Ihsan by means of our master and chief, the Seal of the Prophets and Messengers, Muhammad ibn Abdallah ibn Abd'l-Muttalib ibn Hashim, upon him, his family and Companions be the most perfect blessings and most abundant peace. This is an annotation of the concise but brilliant work the Tawfeeq al-Muslimeen `Ala Hukm Madhaahib al-Mujtahideen Alladheena Kaanu Min Ahli as-Sunna al-Muwafiqeen of my spiritual master, the Light of the age, the *mujaddid* of the religion, the Sword of Truth, the *Imam* of the *Awliyya*, the 11th Righteous Caliph, the *Amir 'l-Mumineen* Shehu Uthman ibn Fuduye Muhammad ibn Uthman ibn Saalih, may Allah engulf him in His mercy Amen. My objective and intent in this annotation is to reference brief biographies of the scholars cited in this work; by giving their full names, a concise excerpt of their intellectual lives, place and date of birth and demise. The aim being to garner blessings; since remembering the friends of GOD causes mercy and blessings to descend. I will also endeavor to reference and define each of the technical terms the *Shehu* deploys in the text in order to demarcate their meanings for the reader. Success in this is from Allah, and it is upon Him that I rely. I have named it Ta'leeq Li't-Tullab ar-Raaghibeen `Ala Kitaab Tawfeeq Muslimeen (An Annotation for the Interested Students Upon the Book the Success of the Muslims). I was given *ijaza* for this work as well as all the works of Shehu Uthman Dan Fuduye` by my master and father of meaning, *Shaykh* Muhammad al-Amin ibn Adam Kari`angha al-Khateeb ibn Muhammad Tukur ibn Muhammad Sanbu ibn Muhammad Leeli ibn Abi Bakr ibn Mai Hadajiya Muhammad Sanbu Darneema. He received license from his father, *Shaykh* Adam al-Khateeb; who received it from *Mallam* Musa al-Muhajir; who received it from the gnostic sage, *Shaykh* Ali Dinba ibn Abi Bakr Mallami; who received it from the author, *Shehu* Uthman ibn Fuduye, may Allah be pleased with all of them and benefit us by their *baraka*. This work, the Tawfeeq al-Muslimeen was composed by *Shehu* Uthman ibn Fuduye, as he states in its conclusion, on the 5th of *Jumad 'l-Akhir* in 1228 A.H. (June 18, 1813 C.E.); while he was in Sifawa. This was the tenth year of the *hijra* of the *Jamaat* of the *Shehu* from Degel; and it was the most productive intellectual period in the life of the *Shehu*, when he composed his most forward looking researches. As the title of the text indicates, it concerns the legal rulings regarding the '*madhaahib*' (legal schools of thought) of the '*mujtahiduun*' (the scholars of independent judgment). The *Shehu* arranges the text into fourteen chapters in the form of questions and answers, in which he covers the entire scope of the legal schools of thought (*madhaahib*) in Islam. While many *Sunni* scholars assert that after the 3rd century of the *hijra* (9th century C.E.) there was a closing of the door of '*ijtihaad*' (*insidaad baab 'l-ijtihaad*), *Shehu* Uthman indicates in this text that any jurist who meets the qualifications of *mutjahid* can practice '*ijtihaad*'. In fact, the prophetic traditions regarding the emergence of a *mujaddid* at the head of every century in Islam is evidence that '*ijtihaad*' is not closed. *Shaykh* Abd'l-Qaadir ibn Mustafa asserted that the *Shehu* himself had reached the rank of '*mujtahid*' in his Kitaab 'l-Khilaaf where he said: "He (the *Shehu*) was a '*mujtahid*' (scholar of independent judgement) in this issue; who had attained the truth in his '*ijtihaad*'. What becomes apparent to you in that, is his bounty, the completion of his rank and the height of his station above all the scholars of his time. It also reveals to you the sign of his '*mahdiyya*' (rightly guidedness); since it has reached us regarding the description of the attributes of the *Mahdi* is that he will be opposed by the scholars in many of his legal decisions. This is clear with regard to the *Shehu* in this issue. The *Shehu*, may Allah be merciful to him reached the rank of '*ijtihaad*' in his capacity to deduce legal decisions from problematic issues. Whoever peruses his books will realize this. Therefore, examine his Mir'at at-Tullab, his Sawq al-Umma Ila Ittibai' as-Sunna and you will discover that, may Allah reward you with good for the sake of Islam." Thus, the Tawfeeq al-Muslimeen was composed by the *Shehu* in order to evidence that Muslims should adhere to the schools of thought of the *mujtahid Imams* of the *Umma*; but also that the adherence to their schools of

thought should be 'open ended', in the since that the differences of the schools of thought, while they constitute a mercy, they are not a part of the infallible conclusive Divine law (*shari`a qaati`a ma`suuma*). The only aspect of the schools of thought that are infallible, conclusive and obligatory to adhere to is their consensus (*ijma`*). This is because the Messenger of Allah, may Allah bless him and grant him peace said: "My *Umma* cannot agree upon an error." This means that the people of knowledge capable of making '*ijtihaad*' cannot agree on an error, and thus the consensus of their schools of thought are included within the conclusive infallibility of the *shari`a*. In the Tawfeeq al-Muslimeen, the *Shehu* carefully lays out the evidence that the aspect of the schools of thought which every responsible person is obligated to act upon and about which they will be questioned on the Day of Judgement, is that which is in conformity with the Book, the *Sunna* and the *Ijma`*. The *Shehu* said in his Tarweeh al-Umma: "This is the knowledge which the servant will be questioned about in the Hereafter. In all of this, there is no harm nor is there any difficulty in anyone acquiring it, since it comprises of you simply performing something and avoiding something. Nothing hampers the least of the common people from understanding this, which is contrary to what has been enacted by the scholars of independent judgment (*al-mujtahidun*) from among the *imams*. For no one will be questioned about these issues in the Hereafter. Further in them is much difficulties and hardship and one needs to expend a lifetime and the suspension of causative factors in achieving this level of knowledge as is well known. Thus, there is no blame to the one who acts contrary to this." Thus, the *Shehu* advocated for an 'open ended' adherence to the *madhaahib* and condemned those who adhered to their specific school of thought as if were the religion of Islam in total and considered other schools of thought as if there were outside of the religion. Because it is a part of the *aqeeda* of the Ahl's-Sunna wa'l-Jamaat to believe that all the schools of thought are on the truth and are paths that lead to Paradise; it thus, becomes a violation of faith to believe that a single school of thought is on the Truth and that others are not. Throughout the text of the Tawfeeq al-Muslimeen, the *Shehu* advocates the obligation of believing that all the recognized schools of thought are sound, the lawfulness of following all of them and that it is not an obligation to only adhere to one among them. To corroborate this view, in his Tarweeh al-Umma, the *Shehu* cited *Shaykh Abd'l-Wahaab as-Sha`raani* from his ar-Risaalat al-Mubaaraka: "So from where did this obligation come from when all of the *Imams* are free of commanding others to follow them? For they, may Allah be pleased with all of them, have said: "When a prophetic tradition reaches you, then act in accordance with it and show little regard for our words." *Imam* Abu Hanifa used to say: "It is inappropriate for anyone who knows a legal proof (*daleelan*) to make a legal decision (*yaftaa*) based upon my words." *Malik* and *Rabi`a*, may Allah be pleased with both of them, used to say: "We are not from among the people of infallibility in what we say." *As-Shafi`*, may Allah be pleased with him used to say: "When you hear from me ideas which are contrary to the words of the Messenger of Allah, may Allah bless him and grant him peace, then act in accordance with the words of Allah and show little regard to my words." As for as *Imam Ahmad*, may Allah be pleased with him, his ordering people to adhere to the *sunna* is famous, even to the point that he did not compose (*laa yudawwinu*) any jurisprudential ideas himself except in certain issues of prayer. He used to say: "No one has words next to the Book of Allah and the *Sunna* of Muhammad, may Allah bless him and grant him peace." After reading this the reader will assume that the *Shehu* believed in the abandonment of all the schools of thought similar to the so called *Salafist*; however below in the tenth issue of the Tawfeeq al-Muslimeen, the *Shehu* says the following: "Withdrawing (*al-khuruj*) from following all the schools of thought is forbidden (*haram*), rather it is unlawful (*fisq*) because it is exceeding (*kharq*) the limits of the consensus (*al-ijma`*)." Finally, one of the key reasons that the *Shehu* held to this open-ended view of the schools of thought of the *mujtahid* *Imams*, is since their differences were not a part of the infallible conclusive *shari`a*, that their remained the possibility of these differences being eradicated in the future. This is true because the *Shehu* who claimed to be the *mujaddid* of the 12th century of *Hijra*, openly advocated that he and the social revolution that he ignited in the central *Bilad as-Sudan* were the precursors and heralders of the Awaited Mahdi; who will be an absolute scholar of independent judgement (*mujtahid mutlaq*), that will abrogate all the past '*madhaahib*'; in the same manner that the religion which our master Muhammad, may Allah bless him and grant him peace abrogated the past religions. *Shaykh al-Akbar Muhy`d-Deen ibn Arabi* corroborated this view in his al-Fuutuhaat al-Makiyya where he gives a description of the Awaited Mahdi saying: "He (the Awaited Mahdi) will manifest the religion as the religion actually is in itself, as if the Messenger of Allah, may Allah bless him and grant him peace were giving judgment in it. He will lift the legal rulings of the different legal schools of thought from the earth (*yarfa`u 'l-madhaahib min 'l-ard*); and there will only remain the pure unadulterated religion. For this reason, he will encounter enmity from the followers (*muqallida*) from among the scholars of the people of '*ijtihaad*' from what they will see in his judgments which contradict the legal views of their *Imams*. These jurists will enter by force underneath his judgments out of fear of his sword, and his sovereignty and out of greed for the worldly blessings Allah will grant him. On the other hand the common of the Muslims will be far more joyful with his appearance than will be the elite among the scholars. The Knowers of Allah from the People of the Divine Realities (*ahl 'l-haqaa'iq*) will give the oath of allegiance to him based upon their direct witnessing (*shuhuud*) and spiritual unveiling (*kashf*) of his Divine knowledge." It is because the *Shehu* saw himself and his reform movement as the precursor and herald of the Awaited Mahdi, his approach to the legal schools of thought of the *mujtahid Imams* was expedient and open ended, with the understanding that they will eventually be rescinded. This is a delicate point regarding *Shehu Uthman ibn Fuduye`*'s understanding and approach to the different legal schools of thought which many modern scholars and academics have failed to grasp; leaving many to assert that the *Shehu* remained Maliki and others to assert that he had abandoned all the schools of thought, and had become a *Salafist*. The reality is that the

Shehu had attained the level of *mujtahid* where he knew the legal sources of all the different legal schools of thought and utilized them in passing legal decisions. While this legal approach was unique it was not novel as the Tawfeeq al-Muslimeen substantiates.

^b He was the lordly *Qutb* the *mujaddid* the 8th century *hijra*, *Shaykh* Abu al-Muwaahib Abd'l-Wahaab ibn Ahmad ibn Ali al-Ansari as-Sha`raani as-Shafi` as-Shadhili. He was born in 898 A.H. and was raised in the village of maternal grandfather where he memorized the Quran and some of the fundamental books of *'aqeeda* and *fiqh*. At the age of 30, in the year 910 A.H. he and his brother, *Shaykh* Abd'l-Qadir relocated to Cairo. There he attended the famous al-Azhar University where he took knowledge from *Shaykh* Ali as-Shuuni for no less than five years. He then studied at the al-Ghamari masjid where for seventeen years studied, memorized the essential sciences. It was there that he took the Path of the Sufis at the hand of one of the greatest gnostics of the age, *Shaykh* Ali al-Khawwas. It was at the hand of this great *wali* of GOD that *Shaykh* as-Sha`raani became one of the *mujaddids* and *Imams* in jurisprudence, linguistics, *'aqeeda*, Quranic exegesis, and the sciences of the *haqaa'iq*. He was the author of many outstanding works on jurisprudence and *tasawwuf*. He was a right acting scholar, an ascetic savant, a realized jurists who had gathered together the seas of the *shari`a* and the *haqeeqa*. He died in the year 974 A.H..

^c Al-Bahr'l-Mawruud Fee al-Mawaatheeq wa'l-Uhuud, was composed by *Shaykh* as-Shar`aani to clarify the problematic issues of his al-Mizaan'l-Kubra.

^d Kashf 'l-Ghumma 'An Jami' 'l-Umma, 2 vol., Dar 'l-Fikr, Beirut, 2013. In this chapter the *Shehu* introduces the reader to the concept of *madh`hab* (legal school of thought) and *'mujtahid'* (the jurist capable of giving independent judgment). The word *'madhaahib'* is plural for *'madh`hab'*; and takes its etymological root from the verb *'dhahaba'* (to go, to proceed, to pursue, to hold an opinion). The *Shaykh* of our *shaykhs*, Muhammad al-Murtada az-Zabidi said in his Taaaj al-Uruus that the use of the word *'madh`hab'* as a legal concept comes from the saying: *'dhahaba madh`haban hasanan'* (He pursued a good course); or *'dhahaba fee ad-deen madh`haban'* (He held a particular opinion in the religion). Thus, the technical legal meaning of *'madh`hab'* is a verbal noun which is a legal creed, a body of legal tenets or a legal school of thought derived by a scholar capable of conducting *'ijtihaad'* (independent judgment). The legal rulings of the *Qur'an* and *Sunna* is not consider as *'madh`hab'* because they are both infallible Divine sources, but is designated as the *shari`a* (the Divine law). However, the legal decisions made by the Companions can be considered as *'madh`hab'* (school of thought), since they were derived from the independent judgment of the Companions. Thus, *Imam* Abu 'l-Hamid al-Ghazali said in his al-Mustasfaa Min 'Ilm 'l-Usuul defining the *'madh`hab as-sahaabi'* (the legal school of thought of a Companion): "Some jurists hold the opinion that the legal school of thought of a Companion constitutes an absolute proof (*hujjat mutlaaq*). Some jurists hold the view that their school of thought only constitutes a proof when it is in conflict with a legal decision derived through analytical deduction (*qiyaas*). Some jurists hold the view that the absolute proof for a Companion is only true regarding the words of Abu Bakr and Umar specifically, based upon the words of the Messenger of Allah: 'Follow the two that will come after me.' Some jurists hold the view that absolute proof is in the words of the Righteous Caliphs when they agree. However, all of this is false (*baatil*) with us because for the one whom it is conceivable for them to make mistakes and have lapses of memory and whose infallibility has not be established; then his words cannot constitute an absolute proof. For, how can there be reliance upon their words along with the conceivability of them making errors? And how can infallibility be established for them without conclusive proof from an unbroken line of transmission (*hujjat mutawaatira*)? And how can infallibility be conceived for a people who are permitted to disagree?" Thus, it is clear that Allah has only made His servants responsible for what the *shari`a* has explicitly established from the Book and the *Sunna* and not in that which is drawn out through legal deduction (*laa istinbaatan*). This is because every thing deduced through legal reasoning is not apart of the infallible divine law (*bi shar`i ma`suum*) of Allah ta`ala. These legal deductions are simply to bring about ease to His servants. It is for this reason that there have emerged differences in their legal deductions but not in the clear unambiguous proofs. Allah ta`ala says: "If it was from other than Allah then you would find many differences." [4:82] It is for this reason that the legal school of a Companion (*madh`hab as-sahaabi*) can not constitute a proof against another Companion because both of them were *mujtahids*, and it is unlawful for one *mujtahid* to abandon his legal opinion for that of another. However, the differences (*khilaaf*) among the Companions are legal proofs for the *mujtahiduum* among the *Tabi`uun* (the second generation) and all the *mujtahids* that came after them. The term *'ijtihaad'* independent judgment comes from the word *'jahada'* (to exert effort). *Shaykh* al-Murtada az-Zabidi in his Taaaj al-Uruus defines the term *'ijtihaad'* as a qualified jurists exerting his legal faculties to the utmost regarding a doubtful and difficult matter using analytical analogy (*qiyaas*) of the *Qur'an* and *Sunna*. In this context many scholars consider the terms *'ijtihaad'* and *'qiyaas'* to be synonymous. The jurist qualified to exercise *'ijtihaad'* is called a *'mujtahid'* (a scholar of independent judgment). *Shehu* Uthman ibn Fuduye` classified the *'mujtahid'* into three classes: [1] the *mujtahid* of the principles (*mujtahid at-ta`seel*) which is the absolute *'mujtahid'* (*mujtahid mutlaaq*); [2] the *mujtahid* of the branches (*mujtahid at-tafree`*) which is the jurist who makes *'ijtihaad'* in the branches of a particular school of thought or the *'mujtahid 'l-madh`hab'* (the scholar of independent judgment of a particular school of thought); and [3] the *mujtahid* of the weightier opinion (*mujtahid at-tarjeeh*) which is the jurist who makes *'ijtihaad'* based upon the soundest opinion of the different schools of thought. *Imam* as-Suyuti said in his commentary upon al-Kawkab as-Saati: "The *'faqeeh'* (jurist) and the *'mujtahid'* (scholar of independent judgment) are two names with the same meaning; where the meaning of each term is

true for the other and share the same qualifications.” *Shehu* Uthman ibn Fuduye` list the qualifications of the absolute ‘*mujtahid*’ in his *Fat’h al-Basaa’ir* where he said: “The *mujtahids* have innumerable qualities. The first of them is maturity (*al-buluugh*) because the one who is not mature, his intellect and reason will not be completed and perfected until his words are taken into consideration. The second is intellect (*al-`aql*) because the one without intellect cannot distinguish what reason normally guides him to undertake. The third is that he has self-mastery and natural incontestable comprehension of the import and deeper meanings of ideas so that he can have the ability to act according to his own judgement. Otherwise, he will be unable to deduce the legal objectives inherent in independent judgement. The fourth is that he be an expert of the intellectual proofs and basic fundamentals so that those responsible people (*mukallaf*) who adhere to him do not deem it inappropriate to transmit from him. The fifth is that he be at least middling (*mutawassit*) in knowledge of the instruments of learning like: linguistics (*lughah*); literary style (*al-balaagha*); grammar (*an-nahwa*) from inflection to conjugation; the principles of jurisprudence (*usuul’l-fiqh*); rhetoric (*al-ma`ani*); and eloquence (*al-bayaan*) so that these can be the cornerstone of his legal deductions. As for the principles of jurisprudence, his method of deducing legal matters should be known. As for the remainder of the sciences, the objectives of legal research cannot be comprehended except by them, because the legal sources, i.e. the *Qur’an* and *Sunna*, are in articulate Arabic language. The sixth is that he knows what is associated with the legal rulings from the Book of Allah and the *Sunna*, for these two are the basis of his legal decision. However, it is not a prerequisite to possess knowledge of that in total. Abd’r-Rahmaan as-Suyuti said: ‘I have examined the prophetic traditions (*ahaadeeth*) related to legal judgements - its sound (*saheeh*), its good (*hassan*), and its weak (*da`eef*); and I have arranged these into a book whose chain of authorities (*asaaneed*) have been omitted. In it is an explanation of the condition of every tradition arranged according to its relevant issues.’ It is very beneficial in this sense and in it is an explanation that memorization of all these sciences is not a precondition in arriving at legal judgements. Diametrically opposed to this is what as-Subki said: ‘It is not sufficient for the *mujtahid* who is middling in the above-mentioned sciences to give legal judgements. On the contrary, it is necessary for him to be an expert in them. Along with that, he must have the ability to grasp completely a significant portion of: [a] the fundamentals of the *shari`a* along with knowing; [b] the grades of the one interpreting.’ As-Subki also said: ‘Independent judgement (*ijtihaad*) cannot be enacted by anyone claiming to be a *mujtahid* until he knows: [c] the conditions of the consensus (*al-ijtima`a*) so that he does not encroach upon it by contradicting it in his rulings.’ Shaykh Waliyuddeen said: ‘It is not a prerequisite to memorize this knowledge. Rather it is sufficient that he be familiar with it so that any legal decisions (*af`aa*) passed do not contradict the consensus of opinion (*al-`ijma`*). This is regardless if his decision is in conformity with a scholar or whether he considers that the event is new and none of the foregoing people of the region ever discussed such an issue before him.’ He must know [d] the reason of the descent of revelation (*asbaab’n-nuzuul*) because acquaintance with this knowledge guides to what is truly intended in the message of the verses. There is no comprehensive book dealing with that. However, the *tafseers* which have sound chains of transmission is sufficient in that. He must couple to that [e] the knowledge of the reasons of the prophetic traditions (*asbaab’l-hadeeth*) because this knowledge is also from its type of science. Knowledge of this is very important in arriving at what was intended in the tradition just like the science of *asbaab’n-nuzuul*. Al-Qaadi Abu Ya`ala al-Farad composed works dealing with these sciences. He must know [f] the abrogated and abrogating verses (*an-naasikh wa’l-mansuukh*) in order that he may not act or pass legal decisions with those verses which have been abrogated (*mansuukh*). He must know [g] the science of prophetic traditions - like knowing the sound (*saheeh*) from the weak (*da`eef*) in order to rely upon the former and to avoid the latter. He must know [h] the traditions which are from a successive chain of transmission (*mutawaatir*) from those which are related by a single transmitter (*al-ahad*), in order to give priority to the first during disagreements. He must know [i] the condition of the narrators (*haal’r-ruwaat*), those which are unreliable (*jarhan*) and those which are reliable (*ta`deelan*), in order to rely upon those narrators which are accepted (*maqbuul*) and not upon those which are rejected (*marduud*). He must know [j] the grades of the unreliable and the reliable in order to know who acts with the traditions in conditions of permissibility (*al-hilla*) and prohibition (*at-tahreem*) and who acts with them in conditions highly recommended (*an-nadb*) and reprehensible (*al-karaahat*). What will suffice in that and in the science before that are those books composed on the subject. One must also refer back to the *Imams* of that matter in order to insist on the sound (*tas’heeh*) and the weak (*tad`eef*) among the traditions in these times, like what was related by Ibn as-Salaah and others so that he may be in conformity with the knowledge of the unreliable and the reliable. These two are almost impossible except by means of others. Therefore, reference should first be made to the *Imams*; like al-Bukhari, Muslim, Ahmad, ad-Daraqutni, and others. It is clear from the above that the obtainment of the rank of *ijtihaad* (independent judgement) is very difficult and its accomplishment is costly due to the many matters which condition it in as much as every matter from it makes it appropriate to expend many years trying to learn it in order to become an expert. This takes extensive years and a long life, except if Allah bestows His favor upon him and makes it easy for him. It is not, however, a prerequisite in the rank of independent judgement to have knowledge of the branches of jurisprudence because this science is the fruit of *ijtihaad*. If it were a prerequisite, then that would necessitate an endless circle. It is also not a prerequisite in the rank of *ijtihaad* that he be male nor free born. The degree of *ijtihaad* has been obtained by women and slaves. However, on the precondition of righteousness (*al-`idaala*) there are two opinions about that. The first is that it is not a precondition because it is permissible for the corrupt person (*faasiq*) if he is capable of vigorous *ijtihaad*. The second opinion is that righteousness is a precondition for *ijtihaad* because his words will be relied upon by others. There is no disagreement

concerning the meaning in both opinions because righteousness is a condition for one's words being accepted not a precondition for obtaining the traits of *ijtihaad*. That is a matter about which there is unanimous agreement. Az-Zarkashi and Shaykh Waliyuddeen both said: 'The prerequisite for *ijtihaad* is examination and investigation into possible contradictions. Thus, he should investigate into the general legal judgements (*al-`aam*) - 'are there designated legal judgements (*mukhassas*) inherent in them?' In the unrestricted judgements (*al-mutlaaq*) - 'are there any restricted judgements (*muqayyid*) inherent in them?' In the legal evidence (*an-nass*) - 'is there any evidence which abrogates it (*naasikh*)?' Regarding the expression 'are there any semantic context with it which deverts it from its apparent meaning until one is overcome with doubt concerning the factualness of the apparent expression?' If so then he should act in accordance with the new judgement. If there are no semantic contexts inherent in the expression, then he should give judgement according to the apparent meaning of the expression. The foregoing does not preclude what is permitted in holding to general legal judgements before searching into designated legal judgements due to the fact that it is permitted to hold to what is free of factual evidence (*al-qara'in*). This is preconditioned by the knowledge of any contradictory elements after it has been established as contradictory.' Shaykh Jalaaludeen said: 'This here is in accordance with the way of interpretation not by way of necessity in order to surrender what one has derived by means of mere strident opinion without having researched.' Abd 'r-Rahmaan as-Suyuti said: 'These matters are the conditions for the the absolute *mujtahid*. Presently, one who has obtained this rank is very rare.' He said in his commentary of the *al-Muhadhabbi*: 'Whoever has an *imam* from among the *imams* who are followed should assume the task of making stipulations from his own legal roots (*usuul*) and proofs (*adila*) without overstepping the bounds of the legal roots and legal principles of his *imam*.' He should be knowledgeable of jurisprudence, its legal roots and the proofs of its legal judgement in detail and he should have sound insight (*baseer*) into the requirements of analogous deduction (*aqyisat*) and figurative expression (*ma`aani*). He should have complete training in derivative reasoning (*takhreej*) and deductive reasoning (*istinbaat*) by affixing what is not specified for him by his *Imam* in his fundamentals. He then takes the specifications of his *Imam* as the foundation of his legal deduction, like acting autonomously from the provisions of the *shari'a*. Perhaps he is content with the proofs of his *Imam* in legal judgements where there is no need to research into the contradictory views (*mu`aarid*), like acting autonomously from the texts. This is the characteristics of the adherents of fundamental principles (*as'haab 'l-wujuuh*). Then Abd 'r-Rahmaan as-Suyuti (and others) said: 'This jurist is counted among those who have attained the rank of the *mujtahid* who passes legal decisions (*fatwa*) - (meaning the *mujtahid* of the weightier opinion). He said in his *Jam`u 'l-Jawaam`i*: 'He is the one who is proficient in his *madh'hab* and well established in deducing the weightiest opinion from others.' He also said in his commentary of the *al-Muhdhab*: 'He is the one who has not attained the rank of the adherents of fundamental principles (*as'haab 'l-wujuuh*), however he is an expert of the self, memorizing the *madh'hab* of his *Imam*, knowledgeable of his proofs and he is well established in all its stipulations.' These are the descriptions of many of the *mujtahids* of the latter period up until the last part of the 4th century A.H.. He did not mention any ranks after that in the *Jami`'l-Jawaami`*."

^e *al-Yawaaqet wa 'l-Jawaahir Fee Bayaan `Aqaa'id al-Akaabir*, Dar Ihya 't-Thawraat al-`Arabi, Beirut.

^f He was *Shaykh 'Izz'd-Deen Abd 'l-'Azeez ibn Ahmad ibn Sa'id ad-Dirayni al-Misri as-Shaafi`*. He was born in 613 A.H. in the western Egyptian town of Dirayn. He took knowledge from *Shaykh 'Izz'd-Deen ibn Abd's-Salaam, Shaykh Abu'l-Fatih ibn Abi'l-Ghana'im ar-Ras`ani* and others. *Imam al-Matari al-Madini* said about *Shaykh ad-Dirayni*: "He was an unparalleled scholar, an ascetic *Imam*, jurist and was among the well known teachers and often remembered *Imams* in the sciences of Quranic exegesis, and its sciences, Arabic language, etymology, syntax, linguistics, and prosody. He was an *Imam* in the two schools of thought of *Imam as-Shaafi`* and *Imam Malik*; and was thoroughly acquainted with them." *Shaykh Abd'l-'Azeez* composed many books in each of the Islamic sciences. Among them was this text the *ad-Durraru'l-Multaqattat Fi al-Masaa'il al-Mukhtalattat* in which he gives legal decisions based upon the four schools of thought. He died in the year 694 A.H..

^g He was the *mujaddid* of the 9th century *hijra*, *Jalaal'd-Deen Abd'r-Rahman ibn al-Kamaal Abi Bakr ibn Muhammad Saabiq 'd-Deen as-Suyuuti*, [b. 1st *Rajab*, 849 A.H.] He took knowledge from *Alim'd-Deen al-Bilqini, Shaykh Sharaf 'd-Deen al-Manawi, Shaykh Taqi'd-Deen as-Shibli al-Hanafi, Shaykh Muhy'd-Deen al-Kafinji, Shaykh Sayf 'd-Deen al-Hanafi. Shaykh Abd'r-Rahman as-Suyuuti* traveled to study and teach in Syria, the *Hijaz*, Yemen, India, Morocco, and Takrur. *Imam as-Suyuuti* was one of the most prolific writers in the Muslim world, having composed more than three hundred books in the sciences of *Quranic* exegesis, prophetic traditions, jurisprudence, grammar, etymology, eloquence, logic, *tasawwuf* and history. *Imam as-Suyuuti* died in the year 911 A.H. This text is a work on the division of the sciences in Islam called *an-Niqaaaya*; he later composed a commentary upon the *an-Niqaaaya* called *Itmaam 'd-Diraaya*.

^h He was the *mujtahid Imam Abu Abdallah Muhammad ibn Idris ibn al-`Abass ibn Uthman ibn Shaafi` ibn as-Saa'ib ibn `Ubayd ibn Abduyazid ibn Hisham ibn al-Muttalib*. He was known as *as-Shaafi` al-Makki*. He was raised in the upkeep of his mother because his father died when he was young. He then began to study Arabic language and the law, in which he became extremely proficient and became unprecedented. He then was give fondness for jurisprudence, in which he became the master of the people of his age. He composed many texts, authored treatise of knowledge, narrated from the scholars, adhered to the traditions and composed original text on the foundations of jurisprudence, as well as in its branches. He eventually came to have many students. *Abu `Ubayd* said: "I have never seen a person who was as intelligent as *as-Shaafi`*" *Yunus ibn Abd'l-'Alaa* said: "If you gathered the entire *Umma* together, it would hardly equal his intellect." The scholars

agreed that as-Shaafi` was the reformer (*mujaddid*) of the second century A.H.. As-Shaafi` said: "If the jurists who act by their knowledge are not the *Awliyya* of Allah, then Allah does not have any *Awliyya*". He also said: "Those who invent matters in affairs are two types: those who invent that which is contrary to the Book, the *Sunna*, the narrated traditions or the consensus. This kind of heretical innovation is error. And those that invent something good in which there is no contradiction in any of these. This type of invention is not blameworthy. Umar said regarding the standing in the night of *Ramadan*: 'This is a blessed innovation', meaning by that that it was an invention that did not exist before." As-Shaafi` died on Thursday in the year 104 A.H. at the fifty and some odd years.

ⁱ He was the *mujtahid Imam* Abu Abdallah Malik ibn Anas ibn Malik ibn Abi `Amr ibn `Amr ibn al-Harith in Uthman ibn Khunbal ibn `Amr ibn al-Harith Dhu Asbah ibn `Awf ibn Malik ibn Zayd ibn Shadad ibn Zur`at al-Asfari al-Humayri al-Asbahi al-Medini. He was the *Shaykh al-Islam*, the proof of the *Umma*, the *Imam Daar`l-Hijra*. His mother was Aliya bint Shareek al-Azadi. His paternal uncles were Abu Suhayl, Naafi`, Uways, ar-Rabi`, an-Nadr and the sons of Abu `Aamir. Malik, himself was born in the year 93 A.H., the year of the death of Anas, the servant of the Messenger of Allah, may Allah bless him and grant him peace. He was raised with safeguarding, ease and distinction. He sought knowledge when he was still very young just after the deaths of al-Qasim and Saalim. `Ubaydullah ibn Umar related on Sa`id ibn Abi Hind, on Abu Musa al-Ash`ari who said that the Messenger of Allah, may Allah bless him and grant him peace said: "There will appear people from the east and the west seeking knowledge and they will not find a scholar more knowledgeable than the scholar of Medina." Verily this scholar was Malik because he had no equal in Medina. *Qadi`Iyad* said: "This statement is true on the authority of as-Sufyan; for Ahmad ibn Abi Khutayma said, that Mus`ab narrated to us saying that Sufyan informed us: 'I myself saw this prophetic tradition and it was referring to Malik.' Sufyan used to ask me about the news of Malik. I said: 'That man of the people of `Amr had knowledge, excellent jurisprudence and spiritual distinction. He was always speaking the truth, commanding the good and keeping apart from people. Malik used to be admonished for going off in asceticism, being cut off from people and solitude. May Allah be merciful to those two (Malik and Sufyan).'" Ibn `Uyayna said: "Malik was the scholar of the people of the *Hijaz*. He was the proof of his time." As-Shafi` said: "He was truthful and upright. When the scholars are mentioned, then Malik is the star." He died on the morning of Wednesday, the 14th of *Rabi`l-Awwal* in the year 179 A.H. He lived 86 years. *Qadi`Iyad* narrated that Asad ibn Musa said: "I saw Malik after he died (in a dream) and upon him was a long *jubba* and green garments; and he was mounted on a she camel which was flying between the heavens and the earth. I then said: 'O Abu Abdallah! didn't you die?' He said: 'Indeed!' I then said: 'Where are you going?' He said: 'I just came from being presented before my Lord; and He spoke to me face to face and said: 'Ask Me and I will give you. Wish from Me anything, for I am content with you'."

^j He was the majestic *mujtahid Imam*, Abu Haneefa an-Nu`maan ibn Thaabit ibn Zutiy [b. 70 A.H.]. He was among the leading scholars of the second generation (*at-Taabi`uun*), who narrated on the authority of Anas ibn Malik, and others of the Companions of Muhammad, PBUH. He was a man of praiseworthy character, piety and immense knowledge. He was one of the pillars of Islamic jurisprudence. *Imam* as-Shaafi` said: "Humanity are the children of Abu Haneefa in the matter of jurisprudence." *Imam* Abu Haneefa took jurisprudence from Humaad ibn Abi Sulayman and took prophetic traditions from `Ata ibn Abi Rabah in Mecca. He also listened to the narrations of `Atiyya al-`Awfi, Abd'r-Rahman ibn Hurmuz, `Ikrama, Naafi`, `Adiy ibn Thabit. Many of the notable scholars of the *at-Taabi`uun* studied jurisprudence from him, such as Abu Yusef al-Qadi, Muhammad ibn al-Hassan, Zafar ibn al-Hudhayl and his son Humaad, Nuuh ibn Abu Maryum, Abu Mutee al-Balkhi, al-Hassan ibn Ziyad, Asad ibn `Amr and others. *Imam* Abu Haneefa said: "I have taken knowledge from the Book of Allah, when I found it. If I did not find in the Book, I would take it from the *Sunna* of the Messenger of Allah and the sound traditions from him which were related by the hands of reliable transmitters on the authority of reliable transmitted. When I did not find it in the Book of Allah or in the *Sunna* of the Messenger of Allah, PBUH, I would take knowledge from the words of his Companions whom I wished. and I will leave the words of the Companions that I wished. Then I would never abandon their words for the words of others. And whenever an issue ended with Ibrahim an-Nakha`i, as-Sha`abi, al-Hassan, Ibn Sireen, Sa`id ibn ibn al-Musayyib; then I would give independent judgement based on how they gave independent judgement. The principles upon which *Imam* Abu Haneefa built his school of thought were based upon four foundations: [1] the Book of Allah; [2] the most famous of the sound prophetic traditions; [3] the words of the Companions, and when they differed, he would chose from them and not abandon their teachings; and [4] when he did not find judgment in any of the above he would depend upon his own opinion. *Imam* Abu Haneefa died in the month of *Rajab* in the year 150 A.H.

^k He was the *mujtahid Imam* Abu Abdallah, Ahmad ibn Muhammad ibn Hanbal ibn Hilaal ibn Asad ibn Idris ibn Hayyan, [b. 1st of *Rabi`a al-Awwal* 164 A.H.] He began taking knowledge of the prophetic traditions when he was 16 years old. *Imam* as-Shaafi` said: "The consensus of the scholars agree that *Imam* Ahmad was an *Imam* in eight categories. He was an *Imam* in the science of prophetic traditions; an *Imam* in jurisprudence; an *Imam* in the sciences of the *Qur'an*; an *Imam* in the linguistic sciences; an *Imam* in impoverishment; an *Imam* in asceticism; an *Imam* in scrupulous piety and an *Imam* in the *Sunna*." *Imam* Abu `Ubayd al-Qasim ibn Salaam said: "Knowledge ends with four people and the most jurisprudential of the four is Ahmad. I have not seen a man more knowledgeable of the *Sunna* than him." The chief judge Abu'l-Husayn Muhammad ibn Muhammad said: "Indeed, in the *Sunna* he was an immense *Imam*, and an unfathomable ocean. He was afflicted for the sake of GOD, azza wa jalla, and showed patience. Regarding the Book of Allah, he was its helper and

regarding the *Sunna* of the Messenger of Allah, PBUH he was victorious. GOD made his tongue among the most eloquent, made clear his elucidations and made his scale of good deeds heavy." *Imam* Shams'd-Deen ibn al-Jazri said: "He was the *Imam* of the Muslims, the most ascetic of the *Imams*, the *Shaykh al-Islam*, the most superior of the scholars of his time, the *Shaykh* of the *Sunna* and the master of benevolence for the *Umma*." *Imam* Ahmad died on Friday, the 23rd of *Rabi'a al-Awwal*, 241 A.H.

¹ He was the reformer (*mujaddid*) Shihab'd-Deen Abu'l-Abbas Ahmad ibn Muhammad al-Maqri at-Tilimsani al-Qurayshi al-Maliki al-Ash`ari. He was a historian, literary expert and master of the prophetic traditions. He was born and raised in the city of Tilimsan and settled in the city of Fez, where he was appointed as the judge of the city. He also traveled to Cairo in Egypt where he died in the year 1041 A.H. He composed many seminal works, such as the work referenced here, the Ida`at ad-Dujana regarding the doctrines of belief of the people of the *Sunna*.

^m See end note g for a concise biography of *Imam* as-Suyuuti. This text by *Imam* as-Suyuuti is the al-Kawkab 's-Saati`i referred to here is a versification of the famous Jaami` 'l-Jawaami` Fi Usul 'l-Fiqh by Taj'd-Deen Abd'l-Wahaab ibn Ali ibn as-Subki as-Shaafi` [d. 771 A.H.]

ⁿ He was the *mujtahid Imam* Abu Ya`qub, Ishaq al-Handhali ibn Rawayhi Ibrahim ibn Mukhlad ibn Ibrahim ibn Abdallah ibn Matar ibn `Ubaydullah ibn Ghalib ibn al-Waarith ibn `Ubaydullah ibn `Atiyya ibn Murra ibn Ka`b ibn Himam ibn Asad ibn Murra ibn `Amr ibn Handhala, [b. 161 A.H.] *Imam* Ishaq ibn Rawayhi al-Handhali was a *mujtahid* and an encyclopedia of prophetic traditions, jurisprudence, memorization, truthfulness, piety and austerity. *Imam* Ahmad ibn Hanbal said: "No one ever crossed the bridge to Khorasan who was like Ishaq; and I know of no one in Iraq that is his equal." Wahb ibn Jareer said: "May Allah reward Ishaq with good, for he revived the *Sunna* in the lands of the east." *Imam* Ishaq al-Handhali died in the month of *Sha`baan* in the years 238 A.H. at the age of 70.

^o He was Sufyan ibn `Uyayna ibn `Imran Maymun al-Kufi, [107-178 A.H.]. He was the premiere traditionist of the Sacred Precinct of Mecca. He was a reliable *mujtahid* transmitter of prophetic traditions, well known for his extensive knowledge and piety. When he was a youth he took knowledge in al-Kufa with *Shaykh* `Alqama ibn Mirthad, Ya`ala ibn `Ata`, Qidan al-`Abdai, Shu`ayb ibn Gharqada, Yahya ibn Dinar and others. At the age of 15 he traveled to the *Hijaz*, where he studied with az-Zuhri, Yazid al-Laythi, Umar ibn Abd'r-Rahman al-Qurayshi, Amr ibn Dinar and others. Some of the most learned scholars of the *Umma* studied at his hand. Among them were: as-Shaafi`, Ahmad ibn Hanbal, Ibn Rawayhi Ibn Jurayj, Abdallah ibn al-Mubarak, al-`Amish, Sa`id ibn Mansur, Yahya ibn Mu`ayyin and many others. Sufyan ibn `Uyayna was known have made the pilgrimage seventy times. He used to say: "Knowledge, if it does not benefit you, harms you." He died in the sacred month of *Rajab*, in the year 178 A.H..

^p He was Abu Abdallah Sufyan at-Thawri ibn Sa`id ibn Masruq ibn ibn Habib ibn Rafi` ibn Abdallah ibn Mawhiba ibn Ubayy ibn Abdallah ibn Munqidhi ibn Nasri ibn al-Harith. He was born in the year 97 A.H.. He first studied prophetic traditions with his father, Sa`id ibn Masruq at-Thawri one of the most reliable traditionist of the people of Kufa. He was the *Shaykh 'l-Islam*, the *Imam* of the traditionist, and a *mujtahid* master of the right acting scholars of his time. He was a *mujtahid* who authored the al-Jaami`. *Imam* ibn al-Mahdi said: "My eyes have not seen scholars greater than four men. I have not seen one greater in memorization than at-Thawri, nor more severe in asceticism than Shu`ba, nor more intelligent than Malik, nor more counseling to the *Umma* than Ibn al-Mubaarik." Bishr al-Hafi said: "Sufyan was to our times like Abu Bakr and Umar were to their times." Ibn Mahdi said: "I have not seen anyone more preserving of the prophetic traditions than at-Thawri." *Imam* Hudhayfa al-Mar`ashi said that Sufyan once said: "That my leaving behind 10 thousand *dirhams* that I will eventually be reckoned for by Allah is more beloved to me than being in need of people." *Imam* Rawaad ibn al-Jaraah said that Sufyan once said: "Wealth use to be something reprehensible, but these days it is the shield of the believer." He died in the year 160 A.H. at the age of 63.

^q He was Abu Ja`far, Muhammad ibn Jareer ibn Yazid ibn Kathir ibn Ghalib at-Tabari. He was a master of the exegesis of the Qur'an, a *mujtahid* and historian. He was called the *Imam al-Mufasireen* (the leader of those who give exegesis of the Qur'an). He was born in the year 224 A.H. (839 C.E.) in Tabrastaan. He traveled and studied in Ray, Baghdad, al-Kufa, Basra and Egypt; and took from Malik ibn Anas, as-Shaafi`, Ibn Wahb and others. Ibn Jareer was one of the most learned *Imams* in this world and a *mujtahid* who developed his own *madhhab*. Ibn Kathir said: "Ibn Jareer was among the sincere servants of GOD, steeped in scrupulous piety, austerity, and in establishing the truth he never feared the criticism of the critique. He was among the most notable of the righteous." He composed the famous historical work, the Tarikh at-Tabari. *Imam* al-Khateeb al-Bahgdadi said about him: "He was the most preserving of the Book of Allah, thoroughly aware of its variant recitation, insightful of its meanings, jurisprudential of the legal judgments of the Qur'an; as well as knowledgeable of the *Sunnan*, its paths of transmission, its sound and discarded. He also was an *Imam* in the knowledge of the abrogated and abrogating Qur'anic verses and prophetic traditions. He was well versed in the words of the Companions, and those of the *Tabi`uun*, as well as those who came after them who differed in legal issues, as well as the permissible and prohibited. He was the most learned in the history of the lives of humanity and their narratives." *Imam* Ibn Jareer died in the month of *Shawwal* in the year 310 A.H. (923 C.E.).

^r He was the *Imam* of scholars of prophetic traditions, Abu `Amr, Abd'r-Rahman ibn `Amr ibn Yuhmad al-Awzaai`, the *mujtahid* leader of jurists and scholars of prophetic traditions of the *Taabi`u at-Taabi`een*. He was recognized as the foremost scholar of his time in Syria, Morocco, and Andalusia. He was born in Balbek in Syria in the year 88 A.H. (707

C.E.) *Imam al-Awzaa`* died in the year 157 A.H. (774 C.E.). He was contemporary with some of the leading scholars of second and third generations; such as: Malik ibn Anas, Ja`far as-Saadiq, Sufyan at-Thawri, al-Hassan al-Basri, Muhammad ibn Sireen, Abu Haneefa an-Nu`maan, Layth ibn Sa`d and others. Ibn Mahdi said: “The *Imams* of the people of their times were four: Sufyan at-Thawri in al-Kufa, Malik in the *Hijaz*, al-Awzaa`i` in Syria and Humaad ibn Zayd in al-Basra. There was no one in Syria who was more learned in the *Sunna* than al-Awzaa`i`.” He died in the year 157 A.H. (774 C.E.).

^s He was Abu Sulayman, Dawud ibn Ali at-Thaahiri ibn Halaf al-Asbahani, the *mujtahid* founder of the Thaahiri school of thought, so-called ‘thaahiri’ (apparent), due to the fact that he built the foundations of his school on the apparent judgements of the Book and the *Sunna* and avoided all forms of interpolation (*ta`weel*), opinion (*ray*) and analogy (*qiyaa*s). He was born in al-Kufa in the year 201 A.H. (816 C.E.). He took knowledge from Ishaq ibn Rawayhi al-Handhali, `Amr ibn Marzuq, Musaddid ibn Musarid, Abu Thawr al-Kalbi and others. He was a guide to the religion whose mention spread throughout the Muslim world. Among the jurists who took from him were his son, Abu Bakr Muhammad ibn Dawud, Yusef ibn Ya`qub ad-Dawudi, Abbas ibn Ahmad, Zakariyya as-Saaji and others. *Shaykh* Abu Ishaq said: “*Imam* at-Thaahiri was ascetic, austere and extremely self defacing.” He died in the month of *Ramadan* in the year 270 A.H. (883 C.E.).

^t He was *Shaykh* Muhammad at-Taghuugi, about whom little is known. In this work, the *Shehu* cites two of his works, the above mentioned poem called *Shaafiyyat al-Quluub* and his *Takhlees al-Ikhwaan*, the latter which the *Shehu* cites no less than twenty two times in his *Ihya` s-Sunna` l-Muhammadiyah wa Ikhmad al-Bid`a as-Shaytaniyya*. From an examination of the quotations of *Shaykh* at-Taghuugi’s *Takhlees*, he was a reformer of soughts concerned with the eradication of heretical innovations which emerged in the religion of Islam. The words of *Shaykh* at-Taghuugi: “And other than them from among the noble *Imams* * Are completely upon the guidance of their Lord”; includes all of the *mujtahid imams* from the *Taabi`uun* (the second generations) and those after them such as *Imam* Ali Zayn al-Aabideen ibn al-Husayn ibn Ali ibn Abi Talib, his two sons: *Imam* Zayd and *Imam* Muhammad al-Baqir; *Imam* Ja`far as-Saadiq ibn Muhammad; *Imam* al-Qaasim ibn Muhammad ibn Abi Bakr as-Siddiq; *Imam* Salma ibn Abd`r-Rahman ibn `Awf; *Imam* `Urwa ibn az-Zubayr; *Imam* Abu Abdallah Naafi`; *Imam* Ibrahim an-Nakha`i; *Imam* `Ata` ibn Abi Rabah; *Imam* Taawus ibn Kaysan; *Imam* `Ilqama ibn Qays; *Imam* Abd`r-Rahman al-`Araj; *Imam* Qatada ad-Dawsi; *Imam* Ibn al-Mundhir; *Imam* as-Sa`id ibn Jubayr; *Imam* al-Hassan al-Basri; *Imam* Muhammad ibn Sireen; *Imam* az-Zuhri; *Imam* Abdallah ibn al-Mubarak; *Imam* Dawud at-Taa`iy; *Imam* al-Layth ibn Sa`d; *Imam* Abu`l-Qaasim al-Junayd ibn Muhammad and others from the *mujtahid imams*; all of whom were on the guidance of their Lord and were the guides of the *Umma*; because all of their teachings were extracted and deduced from the expansive *shari`a*, free of blameworthy opinion. For this reason there can be no doubt that their differences were from the mercy of the Most Compassionate to His servants. The innate mercy in the differences among the *Mujtahid Imams* is corroborated by many prophetic traditions. Among them is what was narrated by al-Bayhaqi in his *al-Madkhal* with his chain of authority on Ibn Abbas, that the Messenger of Allah, may Allah bless him and grant him peace said: “Whatever comes to you from the Book of Allah, then act in accordance with it. For, there is no excuse for anyone to abandon it. If it is not in the Book of Allah, then in the past *Sunna* from me. If it is not in the *Sunna* from me, then in what my Companions say. For, my Companions are like the stations of the stars in the heaven; whichever one you follow, you will be guided. For, the differences of my Companions is a mercy to you.”

^u He was *Shaykh* Muhammad at-Tahir ibn Ibrahim ibn Harun ibn Malik al-Fullani al-Barnawi at-Taarazi al-Fayrammi. He was born in *Dhat`l-Baqar* in southwest Bornu, in present day Chad. He took knowledge from *Shaykh* al-Bakri and he returned to his land and initiated learning. He was an erudite scholar, pure, a learned exemplar, a realized leader, unparalleled, learned in the traditional sciences as well as the intellectual sciences, upright, fearfully aware and brilliant. The outcome is that he reached the level of the *rijaal*. *Shaykh* at-Taahir composed many poems. Among them was his versification of the work of al-Bakri as well as its commentary. He composed a versification of the *al-Hikaam* of Ibn `Ata`illahi. He authored his poem called *ad-Durrari`l-Lawaami` Wa Manaar`l-Jaami`* on the science of verbal conjugation and the science of etymology. He also composed a poetic hymn giving advice to the ruler after hearing the words of slander and defamation. Among his poetic works is the work cited here, the *Nadham al-`Aqeeda al-Kubra*, which was a versification of *Shaykh* Muhammad ibn Yusef as-Sanusi’s *Aqeedat al-Kubra*. *Shaykh* at-Taahir, may Allah be merciful to him, was among those who foretold the appearance of the author of this work, *Shehu* Uthman ibn Fuduye`, where he said: “I announce to you the time of a *wali* from among the *awliyya* of Allah who will appear in these lands. He will renew the *deen* for humanity, spread knowledge and give victory to the *sunna*.” He died in the 1158 A.H./1745 C.E..

^v See end note t for a brief biography of *Shaykh* at-Taghuugi. In this chapter the *Shehu* introduces the concept of ‘*taqleed*’ which some modern academics and so-called *Salafist* define pejoratively as ‘blind following’, implying unfounded or thoughtless acquiescence. However, the linguistic meaning of the term ‘*taqleed*’ (imitation, investment) is to place something upon the neck where it completely surrounds the neck; like jewelry. Technically it means the acceptance of the words of another without evidence. The one who makes ‘*taqleed*’ of another is called a ‘*muqallid*’; and the person or thing that he makes ‘*taqleed*’ with is called a ‘*muqallad*’. Thus, ‘*taqleed*’ is when a person who has not attained the rank of *mujtahid* follows a scholar in what he says or does, firmly believing him to be right without regard to proof or evidence. *Imam* as-Suyuti, in his commentary upon the *al-Kawkab* defined ‘*taqleed*’ as: “Taking the words of another as true without knowing their evidence. What is meant by ‘taking the words of another’ means receiving it by believing it is valid or not.” In order to properly understand the context of ‘*taqleed*’, one must know the hierarchy of humanity regarding knowledge.

Shehu Uthman ibn Fuduye` said in his *Fat`h al-Basaa`ir*: “Ahmed az-Zarruq said in his *Umdat`l-Murid as-Saadig* after mentioning the words of Allah ta`ala: ‘Say: this is My way, I call to Allah by way of insight; I and those who follow me’ [12:108]...this is an explanation that insight through investigation and research (*tabassura*) in the *deen* is a firm foundation from among the foundations of the *deen*. Whoever takes the matters of the *deen* from his own ignorant opinion (*raiyihi fi`amaaya*) is not a follower of the Lawgiver. However, people are three kinds, (meaning after the *mujtahids*). [1] The scholar (*`aalim*) who is well established in his researched insight from taking issues by seeking after the proofs, (that is if he is not a *mujtahid*). [2] The intermediate (*al-mutawassit*) between the scholar and the common person. It is not correct to follow him except for the one who has researched insight into his affair (*tabassara fi shaanihi*). It is also binding upon him to make known from the *shari`a* that which he is following. Further, one cannot take from him whose knowledge from the fundamental principles of the *shari`a* is vague (*yaabaahu*). This is because it is not permissible for anyone to overstep his own knowledge (*yata`addaa`ilmahu*) and do not depend upon one whose knowledge is not known. [3] The common person (*`aamiyun*), it is only appropriate for him to stop with that in which there is no doubt concerning its reality (*maa laa yashuku fi haqeeqatihi*) from the commands of Allah and His remembrance. He should behave earnestly in that which he has no doubt about. If he is not like this, then he is merely one who makes jest and toying in his religion. So realize!” From this it is understood that the scholar (*`aalim*), the intermediate student (*taalib mutawassit*) and the common person (*`aami*), all have their level of ‘*taqleed*’. *Imam* as-Suyuti said in his commentary on the *al-Kawkab*: “*Taqleed* is required for everyone besides the *mujtahid*; be they scholar or common person; based upon the words of Allah ta`ala: ‘Therefore ask the people of the Reminder if you do not know’ [16:43]. *Imam* an-Nasafi said in his *Kashif al-Asraar* that if a scholar has not attained the rank of one capable of making ‘*ijtihaad*’; then among the conditions of him being a scholar is that he must understand the soundness of the ‘*ijtihaad*’ of the one he is making ‘*taqleed*’ of; by clarifying for himself the *mujtahid*’s legal reliance (*mustanad*) in order to be safe from following him in an error. *Imam* as-Shirazi said in his *Tabseera Fee Usuul`l-Fiqh* that it is not lawful to make ‘*taqleed*’ of a scholar who has not attained the rank of one capable of making ‘*ijtihaad*’; because he is suited to taking legal judgments from evidence; which is completely opposite that of the common person. Some of the jurists such as *Imam* al-Juyayni, *Imam* al-Kaludaani and *Imam* ar-Razi held the opinion that ‘*taqleed*’ is not lawful in the area of the foundations of the religion (*usuul`d-deen*), doctrines of belief and theology, but it is lawful in the outward juristic and the inward mystical branches of the religion. *Imam* Mar`iy al-Hanbali said in his *Irshaad al-Muqallideen*: “It is obligatory for the common person to make ‘*taqleed*’ of a reasonable *mujtahid*, without exception; and he cannot attain sincerity with Allah ta`ala except by doing so. Likewise the *mujtahid* cannot attain sincerity with Allah by making ‘*taqleed*’; rather it is his sincerity which leads to his ‘*ijtihaad*’ after exerting his best efforts.” However, it is the consensus of the jurists who believe that the common person, the intermediate student and the scholar are obligated to eventually move from ‘*taqleed*’ to being able to make ‘*ijtihaad*’; based upon the well known prophetic tradition: “Seeking knowledge is obligatory upon every Muslim.” Which means the common person is obligated by the necessity to seek and increase in knowledge to become an intermediate student; and the intermediate student is obligated by the necessity to seek knowledge to become a scholar; and the scholar is obligated by the necessity to seek and increase in knowledge to become a ‘*mujtahid*’ (one capable of making independent judgment). It is for this reason that *Shehu* Uthman ibn Fuduye` in the beginning of his affair from 1772 until 1795, he acknowledged his ‘*taqleed*’ in the realms of *Iman* (theology/*usuul`d-deen*), *Islam* (jurisprudence/*al-fiqh*) and *Ihsan* (spiritual purification/*tasawwuf*) by signing his books as: “al-Ash`ari by doctrine of belief (*itiqaadan*) and al-Maliki by school of thought (*madh`haban*)”. However, after 1795, when he had the attained rank of ‘*mujtahid*’, reformer (*mujaddid*) and spiritual axis (*qutbaaniyya*); he stopped attributing himself to any doctrinal creed (*`aqeeda*), juristic school (*madh`hab*) or specific mystical fellowship (*tareeqa*). This does not mean that the *Shehu* abandoned or repudiated the al-`Ash`ari creed, the Maliki school of thought or the Qadiriyya-Khalwatiyya-Shadhaliyya-Baydawiyya-Rufa`iyya-Mahmudiyya fellowships. It means that he arrived at their source which are the Book and the *Sunna*. In the area of *`aqeeda*, the *Shehu* arrived at what his grandson, *Shaykh* Abd`l-Qaadir ibn Mustafa said: “I have taken an oath of covenant to construct my doctrines of belief (*`aqeedati*) upon the verses of the *Qur`an*, and not upon the evidences of reason (*adilat`aqliyya*) or the theories of the scholastic theology (*indhaar kalaamiyya*). In this regard, I am a follower (*muqallid*) and the source of my ‘*taqleed*’ is the Infallible *Qur`an*. For, if for example, I were to be asked for the evidence of the in-time createdness of the cosmos (*daleel huduuth`l-`aalim*); I would not answer with: ‘The in-time createdness of the non-essential contingent exigencies (*bi huduuth`l-`aaraad`l-mustalazim*) is due to the in-time createdness of the creational essences (*li huduuth huduuth`l-`ayaan*).’ Nor would I utilize any other of the axioms from the theories of scholastic theology (*al-wujuuh al-kalaamiyya*). On the contrary, I would say: ‘Allah is the Creator of everything’ [13:16] For, in reality there is no evidence (*daleel*) for me other than that. I would, thus, articulate this evidence from Allah having absolute certainty (*jaaziman*) in the truthful reality of the *Qur`an* and no other; since I have seen that the evidences of reason in no way discloses the direct experiential knowledge of Allah (*laa tafdaa qattun ila ma`rifatillahi bi wajhin*). The evidences of reason are limited to establishing the existence of an incomprehensible deity (*ilahin mubhimin*) and that Its attributes are so and so. But the evidences of reason cannot fathom in any way the precise essential what-ness of that deity. As for the *Qur`an*, it emerged (*saadirun*) from Allah by means (*bi waasitati*) of Jibril to His messenger Muhammad; and that is a matter which is decisive (*maqtuu`un*). So realize that.” It is for this reason that all the books composed by the *Shehu* regarding ‘*aqeeda*’ (doctrines of belief) after 1795, such as the *Umdat`l-Muta`abideen*, the *Mirat`t-Tullab*, the *Sawq`l-*

Umma, The Ihya 's-Sunna, the Umdat 'l-'Ulama and the Shams al-Ikhwaan cited the verses of the Infallible *Qur'an* and the sound prophetic traditions of the *Sunna* to establish the doctrines of belief; and made no reference to theological axioms of *Imam al-Ash'ari*, *Imam at-Tahawi*, *Imam Matarudi*, *Imam as-Sanusi* or any of the *Imams* of scholastic theology and *aqeeda*. In the realm of jurisprudence (*al-fiqh*), the *Shehu* attained the station of '*mujtahid*' and had by 1795 received license for all four schools of thought of *Imam Malik*, *Imam Abu Hanifa an-Nu'maan*, *Imam Muhammad ibn Idris as-Shafi'* and *Imam Ahmad ibn Hanbal*. The *Shehu* would subsequently pass legal decisions based upon all four schools of thought as exemplified in his Najm al-Ikhwaan, the Kitaab 'l-Khilaaf of his grandson, *Shaykh Abd'l-Qadir ibn Mustafa* and the Ishruun Mas'alatun of his great grandson *Shaykh Uthman al-Wali ibn Abd'l-Qadir ibn Gidadu*. Because by 1795, the *Shehu* had attained the rank of '*mujtahid*' and '*mujaddid*', he was no longer bounded by a single school of thought, but was then unveiled to the fundamental evidence of all the *Imams* of the *madhaahib*. The *Shehu* arrived at the level of knowledge of direct experiential tasting (*'ilm ad-dhawq*) which *Shaykh al-Akbar Ibn Arabi al-Hatimi* said: "We are not the people of '*taqleed*', our affair comes directly from GOD; we have witnessed it directly (*shahidnaahu 'iyaanan*)."^w *Shaykh Abd'l-Wahaab as-Sha'raani* further described this understanding of '*taqleed*' in his al-Mizan al-Kubra: "When he arrives at the station of spiritual tasting (*maqam ad-dhawq*) of this aforementioned Divine Balance, he will understand that all the teachings of the scholars and the oceans of their sciences pour forth from the spring well of the primordial *shari'a*; where all these teachings and sciences began and end...For whoever is disclosed to this direct experiential tasting by means of his spiritual unveiling (*bi tareeq kashifihi*) will know that all the different schools of thought and the teachings of their scholars are intrinsically connected to this spring well of the *shari'a* in the same manner that the fingers of the hand are connected to the palm or like the shadow is innately connected to its source. It is for this reason that the one who realizes this spiritual tasting has not been obligated to worship GOD through a specific school of thought because of his direct witnessing of the equity of the schools of thoughts flowing from the spring well of the primordial *shari'a*. For to him, no single school of thought is foremost to another, since they all branch off from a single source." It is for this reason that *Imam al-Qiraafi* said: "All of the schools of thought are paths (*masalik*) to Paradise. Whoever travels (*salaka*) a path from among them, he will arrive." And *Imam al-Juzayy* said: "Each and everyone of them (the *Imams*) were *mujtahids* in the religion of Allah and their schools of thought are paths which arrive to Allah ta'ala."

^w He was *Abd'l-Aala ibn Abd'l-Malik ibn Umar ibn Hamdayn ibn Abd'l-Mawla al-Qurayshi al-Ja'fari al-Maaliki*. He was the disciple of *Imam al-Ujhuuri* and collected together his legal decisions and judgments in this cited work, Az-Zahraat al-Wardiyya Fee al-Fataawa al-Ujhuuriyya, edited by *Abu'l-Fadal ad-Dimyati Ahmad ibn Ali, Daar Ibn Hazim, Morocco*.

^x He was the *mujaddid*, *Abu'l-Irshad, Nuur'd-Deen Ali al-Ujhuuri ibn Muhammad ibn Abd'r-Rahman ibn Ali*. He was the leading *Shaykh* of the Maliki jurists of his time. He was born in Cairo in the year 967 A.H.. He took knowledge from *as-Shams Muhammad Salaama al-Banufuri, al-Badr ibn Yahya al-Qiraafi* and others. *Imam al-Ujhuuri* was the leader of the *Imams* of Egypt, the signpost of guidance, the most learned of the age and the *baraka* of the time. Among his students were: *as-Shams al-Baabili, an-Nuur as-Shibraamili*, the above mentioned *Abdu'l-'Aal ibn Abd'l-Malik* and others. He composed many beneficial works, among them: the Sharh Mandhumat 'l-'Aqaa'id, the Ghaayat al-Bayaan, the Sharh ad-Durrar as-Saniyya Fee Nadhim as-Seerat an-Nabawiyya, the an-Nuur al-Wahaab Fee al-Kalaam 'Ala al-Isra wa'l-Mi'raaj, the al-Ajwiba al-Muharrara Li As'ilat al-Barrara, the Sharh Risaalat Ibn Abi Zayd, the Muwaahib al-Jaleel Fee Sharhi Mukhtasar Khaleel, the Fada'il Ramadan, the Sharh Mukhtasar Ibn Abi Jamra, the above cited az-Zahraat al-Wardiyya and others. He considered as the *mujaddid* of the 10th century *hijria*. He died in the month of Jumad al-Ulaa in the year 1066 A.H. (1655 C.E.).

^y He was *Abu'l-Abbas, Shihab 'd-Deen Ahmad ibn Abi al-'Alaa Idris al-Qiraafi ibn Abd'r-Rahman ibn Abdallah as-Sanhaji, al-Buhinsi al-Misri*, who lived from 626 to 684 A.H. (1228-1285 C.E.). He was a Berber originally from the *Maghrib* who settled in Egypt. He was a learned savant, unique in his time with whom the leadership of Maliki jurisprudence ended. He was an *Imam* in jurisprudence, its foundations, the intellectual sciences and the exegesis of the *Qur'an*. He took knowledge from many scholars, among them: the *Sultan* of the scholars, *'Izz 'd-Deen ibn Abd's-Salaam, Sharf 'd-Deen Muhammad ibn 'Imran, the Chief Judge Shams'd-Deen Ibn Bakr ibn Muhammad ibn Ibrahim al-Maqdasi*, and others. He composed more than twenty two well known texts on diverse sciences in Islam.

^z This text is the Sharh Tanqeeh al-Fusuul Fee Ikhtisaar al-Mahsuul Fee al-Usuul, *Dar al-Fikr, Beirut, 2004*. It is arranged into twenty chapters, with each chapter containing four subsections. It is the most important book composed on the science of *usuul'l-fiqh* (the foundations of jurisprudence) and has long been a source book for every scholar writing on the subject.

^{aa} He was *Abu Yusef Yahya az-Zanaati*, who entered Andalusia and taught in the masjid in al-Baji. Many students gathered around him; among them was *Shaykh Abu Abdallah ibn al-Mujahid*.

^{bb} He was *Abu'l-Qaasim, Muhammad ibn Ahmad ibn Juzayy al-Kalbi al-Granaati*. He was a traditionist and master of many Islamic disciplines, born in the year 693 A.H.. He took knowledge from *Ibn az-Zubayr, Ibn Rushd, Abu'l-Majd ibn Abi al-Ahwat, Qadi Ibn Bartal, Abu'l-Qaasim ibn as-Shaat* and others. Among his students were: his sons, *Muhammad, Abu Bakr, Abdullah*, as well as *Amaan'd-Deen ib al-Khateeb, Ibrahim al-Khazraji* and others. He composed many books, among them the above mentioned al-Qawaaneen al-Fiqhiyya Fee Talkhees Madh'hab al-Malikiyya, which is a famous work on the principles of the legal judgements of the *shari'a* as well as a clarification of the issues of the branches of jurisprudence; based upon the school of thought of *Imam Malik ibn Anas*. *Shaykh Ibn Juzayy* died as a martyr in the year 741 A.H..

^{cc} See end note g.

^{dd} This is the Jam`u al-Jawaami` fee Usuul al-Fiqh of *Shaykh* Taj`d-Deen as-Subki. It is one of the most important works on *usuul`l-fiqh* (the foundations of jurisprudence) ever composed. It is arranged into an introduction and seven chapters. This work was so important to understanding the foundations of Islamic jurisprudence (*usuul`l-fiqh*) that no less than twenty eight commentaries were written on this work. Among them being the above cited al-Kawkab as-Saati` of *Imam* Jalaal`d-Deen as-Suyuti. As for its author, he was Taj`d-Deen Abu Nasr, Abd`l-Wahaab as-Subki ibn Taqi`d-Deen Ali ibn Abd`l-Kafi as-Subki. He was born in the year 727 A.H. (1327 C.E.). He was a Shaafi` jurist and historian, who held the post of chief judge in Syria, and was reported to have been the most famous of the judges of the city of Damascus. He died as a martyr during the plague that struck Syria in the year 771 A.H. (1370 C.E.). Regarding the issue of the *muqallid* (follower) adhering to a particular school of thought (*madh`hab mu`ayyin*), *Imam* as-Subki said in his Jam`u al-Jawaami`: “When the common person acts in accordance with the words of a singular *mujtahid*, it is not for him to then turn away from the decisions of that *mujtahid*. It is said it is necessary for him to act solely with his single legal decision. It is said it is necessary for him to proceed in acting with the decisions of that *mujtahid*. It is said this is because he has necessitated himself to adhere to his school of thought. As-Sam`aani said: ‘It is necessary if he believes in the soundness of the *mujtahid*’. Ibn as-Salaah said: ‘It is necessary if he cannot find another one to provide him with a legal decision. But if does find another, then he can choose between them.’ However, the soundest opinion is that it is necessary to follow a specific *mujtahid*, but permissible to follow another *mujtahid* in other legal judgments. It is obligatory to adhere to a particular school of thought when he believes that that school of thought is the most preponderant (*arjiha*) or when he believes another is equal to it.” *Shaykh* Muhammad Sa`id al-Baani ad-Damashqi said in his Umdat at-Tahqeeq Fee `t-Taqleed wa`t-Talfeeq: “The jurist differ regarding the obligation upon the common person making *taqleed* of a particular school of thought, due to his incapacity to make *ijtihaad*. Some of the jurist hold the view that he is obligated to adhere to the school of thought of a specific *Imam*. While others hold the view of the lack of obligation for the one who has a requirement to seek out another opinion. This because those who sought after legal decisions during the era of the Companions and the *Taabi`uun*, were not required to follow a particular school of thought. On the contrary, a person at that time would sometimes seek legal decisions from one jurist and at other times from another; without any objection (*bi duuni inkaar*). This raises another issue; which is that a person who adheres to a specific school of thought, is he obligated to remain in it or not? It is said that he must adhere to it because his adherence to it has made it a requirement. It is also said that he is not required to remain adhering to it, because his adherence to it is not required since the only obligation upon him is that which *shari`a* obligates him. And neither Allah or His messenger obligated upon anyone to follow a specific school of thought of any specific human.”

^{ee} He was *Imam* Abu Zakariyya, Yahya ibn Sharaf an-Nawwawi, a Shaafi` jurist and master of the prophetic traditions. He was born in the town of Nawwa in Syria in the year 631 A.H. (1230 C.E.). He took knowledge from Ishaq ibn Ahmad al-Maghribi, Abd`r-Rahman ibn Ibrahim al-Fazari, Khalid ibn Yusuf an-Nablusi, Abu Muhammad at-Tanukhi and many others; with whom he learned prophetic traditions, jurisprudence, syntax, etymology and the foundations of jurisprudence. From the age of 18 to the age of 45, when he died, it is said that he transcribed 40 pages of knowledge everyday. He was known for commanding the good and forbidding the evil, even in the presence of tyrannical rulers. He never married, being preoccupied with the pursuit and transmission of knowledge, worship and constant remembrance of Allah. He died at the age of 45 in the year 676 A.H. (1277 C.E.). *Imam* an-Nawwawi said in his al-Majmu` the commentary upon the al-Muhdhib in answer to the above question: “It is not an obligation; because he can follow the legal opinions of whomever he likes from the jurist; since all of them are deserving of being followed.” He also said in another place of the text: “The common person does not have a school of thought; since a school thought can only be for the one who knows the legal proofs. Therefore, it is on the common person to seek legal decisions from whomever he likes from the Hanafiyya, the Shaafiyya or other than them.” *Shaykh* at-Taghuugi said in his Talkhees al-Ikhwaan: “It is not necessary for the common person to adhere to a particular *madh`hab*. The people from the time of the Companions, may Allah be pleased with them continued to imitate the scholars (*yuqaliduuna`l-ulama*) in the incidence of difference without adhering a particular legal decision (*mufti mu`ayyin*), and no one among the scholars objected to this. None of those who gave legal decisions (*al-muftiyeen*) ever said to those seeking a legal decision (*liman istiftaahu*): ‘If you seek legal decision from me, then do not ask anyone else besides me’. This ruling is among those things which we know to be of necessity.”

^{ff} See end note g.

^{gg} See end note ee.

^{hh} He was the *mujtahid* and *Sultan* of the scholars, Abu Muhammad, `Izz`d-Deen Abd`l-`Azeez ibn Abd `s-Salaam ibn Abi`l-Qaasim ibn Hassan ibn Muhammad ibn Muhadhbi as-Sullami as-Shaafi`, known as “al-`Izza”. He was born in the 577 A.H. (1181 C.E.) in the city of Damascus, where he studied in the central masjid of the city. He also traveled to Cairo, Egypt where he completed his education. He took knowledge from Ibn `Asakir, al-Amidi, Abu Muhammad al-Qaasim ibn Abi`l-Qaasim ibn `Asakir, Abd`-Latif ibn Isma`il al-Baghdadi, *Qadi* Abd`s-Samad ibn Muhammad al-Hirastani and many others. He took from two of the masters of the People of Allah of his time: the *Qutb* as-Sahrawardi and the *Qutbi Abu`l-Hassan as-Shadhali*. Ibn al-`Imaad al-Hanbali said: “When he reached the rank of *mujtahid*, students from all over the lands came to study with him.” Among his most well known students were: Abd`r-Rahman ibn Ibrahim al-Fizzazi, Shihab`d-

Deen al-Qiraafi, Ibn Daqeeq al-`Eid, his two sons, Ibrahim and Abd'l-Latif; and many others. *Imam* al-Qiraafi said: “*Shaykh* `Izza`d-Deen took the Sufi *khirq*a from *Shaykh* as-Sahrawardi and studied the Risaalat al-Qushayri with him.” *Imam* as-Suyuti said: “He possessed many miracles and took the *khirq*a of the Sufis from as-Shihab as-Sahrawardi. He would sit in the presence of *Shaykh* Abu'l-Hassan as-Shadhali and listen to his teachings regarding the Divine realities and showed him immense respect.” *Imam* al-`Izza ibn Abd`s-Salaam died in the year 660 A.H. (1262 C.E.).

ⁱⁱ See end note y.

^{jj} He was Abu Abdallah, Muhammad ibn Yusef ibn Abi'l-Qaasim ibn Yusef al-`Abdari; known as al-Mawwaaq or Ibn al-Mawwaaq. He was one of the leading Maliki jurists of the Andalusian cities of Cordoba and Granada; who was appointed as judge in the city of Granada. He took knowledge from *Shaykh* al-Manturi, Abu Bakr Muhammad ibn `Asim, *Shaykh* Abu'l-Qaasim ibn Siraj and others. Among his students were *Shaykh* Ahmad ad-Daquun, Abu'l-Hassan az-Zuqaq, Ahmad ibn Dawud and others. *Shaykh* Ahmad Baba at-Timbukti described him as among the most learned pious *Imams* of Andalusia. He composed an extensive commentary upon the Mukhtasar of al-Khalil called at-Taaj wa al-Ikleeel. Among his works as well, is the work referenced here, the Sanan 'l-Muhtadeen Fee Maqaamaat 'd-Deen in which al-Mawwaaq discusses the foundations of jurisprudence, its branches, the science of *tasawwuf*, and other sciences. He died in the month of *Sha`baan* in the year 897 A.H. (1492 C.E.), the year that Granada was taken by the Christians. As referenced above, in his Sanan 'l-Muhtadeen *Shaykh* al-Mawwaaq corroborated the view that although it is an obligation for the common person to follow the schools of thought of the *mujtahids*, it is not obligatory for him to adhere to a specific school of thought. He said: “I saw in one of the legal decisions (*fatwa*) of Ibn `Arifa who said: ‘Regarding the saying of Ibn Hazm: ‘It is agreed that the one who follows the concessions (*rukhsa*) is sinful (*faasiq*)’; this is disputed by the legal decision given by the *Shaykh* about whom there is unanimous agreement regarding his knowledge and righteousness, `Izz `Deen ibn Abd `s-Salaam that it is not an individual obligation upon the common person who follows an *Imam* in a specific legal issue that he follows him in the remainder of issues in which there is some disagreement. This is because the people from the time of the Companions until the appearance of the different schools of thought, used to question whomever they were able to from the scholars who differed, without anyone blaming them in that. And this was regardless if they followed those scholars in the concessions (*rukhsa*) or in the resolute (*`azaa`m*). This is because the jurists that is regarded as correct in a single issue, does not of a necessity make it an individual obligation to follow him in all issues. And those who acknowledge that every *mujtahid* is correct, then there is no objection to anyone following him in what is correct. Al-Qiraafi said: ‘It is the unanimous agreement of the consensus (*ijma`*) that whoever accepts Islam, then he has the right to follow whomever he likes from the scholars without any hindrance. For the Companions were agreed that whoever sought a legal decision from Abu Bakr and Umar and followed them in that, also had the right to seek the same legal decision from Abu Hurayra, Mu`adh ibn Jabal or any other of the Companions without objection.’”

^{kk} See end note g.

^{ll} See end note y.

^{mmm} See end note f. This final opinion is so because the ‘*muqallid*’, in order for him to transfer from one school of thought to another, would require him having the knowledge to determine that the legal issue in the school of thought that he desires to transfer to is preferable and more preponderate than the legal issue of the school of thought he is transferring from. This means that he would have to have the capacity to examine and understand the evidence of the two schools of thoughts that he is transferring between. Only a scholar who is ‘*muqallid*’ who has the capacity to understand the evidence of the schools of thought can transfer from one school of thought to another in specific issues of disagreement. As for the *mujtahid*, he has the capacity in mastery of the instruments of knowledge to transfer from one school of thought to another absolutely. As for the common person who is ‘*muqallid*’ or the intermediate student who is ‘*muqallid*’; they lack the prerequisite knowledge required to transfer from one school of thought to another because they are under the obligation of that school of thought.

ⁿⁿ Ibid

^{oo} See end note g.

^{pp} See end note f for a brief biography of Abd 'l-`Azeez the author of the ad-Durari 'l-Multaqatat. In this seventh issue, the *Shehu* introduces the reader to the legal concept of ‘*talfeeq 'l-taqleed*’ (the concoction of imitation). The etymological root of the term comes from the verb ‘*lafaqa*’ (to concoct, to patch up, to put together or devise); like when you say: ‘*lafaqtu at-thawba*’ (“I pieced together the cloth”); when you sew two or more cloths together. The verbal noun ‘*talfeeq*’ means a concoction, an assemblage, an amalgamation or fusion of a thing. In the context of jurisprudence, the jurists join the term ‘*talfeeq*’ with the term ‘*taqleed*’ (imitation) where ‘*talfeeq at-taqleed*’ (the concoction of imitation); means when a follower (*muqallid*) who follows a particular school of thought comes in a single issue with two or more interrelated branches in a way that the *mujtahid* whom he follows does not espouse in that issue. The term was not used during the early period of Islam, but was developed by the jurists during the 5th century of the *hijra*; when a jurist found difficulties or harm for a *muqallid* of his school of thought in some legal questions and issues; he was forced to concoct between more than one school of thought in order to find a resolution. It is not lawful for the common person, who lacks knowledge of the legal foundations of the schools of thought to practice the concoction of imitation. It can only be practiced by a *mujtahid*, a jurists or scholar who follows the *mujtahiduun*, who then passes a *fatwa* or gives a *fatwa* to a common person drawing from an

opinion outside of his school of thought where legal opinions of two or more schools of thought are concocted together in a single issue. Concoction of imitation can only be done when it leads to a form which no *mujtahid* has previously formulated; where a jurist assembles together two or more opinions from different schools of thought and develops a compound opinion (*haqeeqa murakkaba*) previously unstipulated. The *Shehu* gives examples of the circumstances of the lawfulness of concocting imitation as well when it is unlawful.

^{qq} He was *Shaykh al-Islam* Zayn'd-Deen Mar`iyyu ibn Yusef ibn Abi Bar ibn Yusef al-Karmiyyu al-Maqdasiyyu al-Azhariyyu al-Hanbali. He was born in the village of Tulakarum, where he studied with teachers of that region. He then traveled to Jerusalem and took knowledge from the scholars in *Bayt'l-Maqdas*. From there he traveled to Cairo and enrolled in the famous *Jaami` al-Azhar*, until he became one of well known scholars. He took Hanbali jurisprudence from *Shaykh* Muhammad ibn Ahmad al-Mardaawi; *Shaykh* Muhammad ibn Muhammad ibn Abdallah al-Akraari as-Shaafi`; *Shaykh* al-Hijaari al-Maqdasi; *Shaykh* Ahmad ibn Muhammad ibn Ali al-Ansari and others. *Imam* al-Muibbiyyu said about him: "He was among the notable of the Hanbali scholars of Egypt. He was an *Imam*, a transmitter of prophetic traditions, and jurists; who possessed an extensive grasp upon the fundamental principles of jurisprudence and an indepth knowledge of the prophetic traditions. He had a perfected knowledge of the transmitted sciences." Among his students were: *Shaykh* Muhammad ibn Musa al-Jummaazi al-Maliki; *Shaykh* Abd'l-Baaqi ibn Abd'l-Baaqi al-Hanbali; *Shaykh* Ahmad ibn Yahya ibn Yusef al-Karmiyyu al-Maqdasi; and others. *Shaykh* Mar`iyyu al-Hanbali died in Egypt in the year 1033 A.H..

^{rr} See end note x.

^{ss} See end note w.

^{tt} See end note y.

^{uu} See end note f.

^{vv} See end note g.

^{ww} See end note jj.

^{xx} He was Abu Abdallah, Muhammad ibn Muhammad ibn Muhammad ibn `Arifa al-Warghammi, a famous Maliki jurists. He was born in the city of Tunis in the year 716 A.H. (1316 C.E.). He took knowledge from: *Shaykh* Muhammad Haruun, Muhammad ibn al-Hubbab, Abu Abdallah ibn Muhammad as-Sattiy, *usuul'l-fiqh* from *Qadi* Ibn Abd's-Salaam al-Hawwari, Quranic recitation from *Shaykh* Muhammad ibn Muhammad ibn Hassan ibn Salaama al-Hafsi. He mastered the sciences of the foundation and branches of jurisprudence, along with Arabic linguistics, Quranic recitation and others. He as became the source of legal decisions for the people north Africa. Among his students were Abu'l-Qaasim al-Burzuli, Abu'l-Fadl Muhammad ibn Muhammad al-Baji, Ibn Marzuq al-Hafeed and many others. He composed many books, among them his famous exegesis of the Quran called Tafseer Ibn `Arifa al-Maliki, the al-Mukhtasar in the science of scholastic theology, the al-Mukhtasar in the science of jurisprudence, and others. He died on the 20th of *Jumad al-Akhira* in the year 803 A.H. (1401 C.E.)

^{yy} He was the *mujtahid mutlaq*, Abu Muhammad, Ali ibn Ahmad ibn Sa`id ibn Haazim ibn Ghalib ibn Saalih ibn Khalf ibn Ma`dan ibn Sufyan ibn Yazid al-Andalusi al-Qurtubi. He was born on the 30th of *Ramadan* in the year 384 A.H. (994 C.E.). He was counted as the most prominent scholar of Andalusia. He was a master of the *Dhahiri* school of thought, a traditionist, a scholastic theologian, poet, biographer, and master of the science of men of prophetic traditions. He composed more than two hundred beneficial works. Ibn Haazim called people to adhere to the Book, the *Sunna*, and the consensus of the Companions of Muhammad, and rejected anything besides that. He did not accept analytical analogy (*qiyaas*) or any of the principles of *usuul 'l-fiqh* based upon supposition. He died on the 28th of *Sha`baan* in the year 456 A.H. (1063 C.E.).

^{zz} See end note hh.

^{aaa} See end note w.

^{bbb} See end note y.

^{ccc} Ibid.

^{ddd} Ibid

^{eee} See end note t.

^{fff} See end note hh.

^{ggg} See end note y.

^{hhh} See end note jj.

ⁱⁱⁱ See end note x.

^{jjj} See end note w.

^{kkk} See end note y for a brief biography of al-Qiraafi. As for his commentary upon the al-Mahsuul, it is the Nafaa'is al-Usuul Fee Sharh 'l-Mahsuul, edited and annotated by *Shaykh* `Aadil Ahmad Abd'l-Mawjuud and *Shaykh* Ali Muhammad Ma`wud, Maktaba Nizar Mustafa al-Baaz, 1416/1995.

^{lll} See end note x.

^{mmmm} See end note y for a brief biography of al-Qiraafi. The text here cited is the al-Ihkaam Fee Tamyeez al-Fataawa `An al-Ahkaam wa Tasarrafaat al-Qaadi wa'l-Imaam, edited by Abd'l-Fattaah Abu Ghudda, Daar al-Basha'ir al-Islamiyya, Beirut, 1416/1995.

ⁿⁿⁿ See end note w.

^{ooo} See end note x.

^{ppp} He was Abu Abdallah, Muhammad ibn Sa'id ibn Muhammad ibn Uthman ar-Ru'ayni as-Siraj al-Andalusi al-Fasi. He was a pious scholar, known for his *baraka*, a transmitter of prophetic traditions. He was born in the city of Fez in the year 685 A.H. (1286 C.E.). Ahmad Baba at-Timbukti described him as: "A bountiful jurist, virtuous transmitter of prophetic traditions, of excellent character, humble, the composer of many books, whom it was rare not to be seen reading a book or composing one." He took knowledge with no less than sixty scholars, with whom he learned the foundations of jurisprudence, prophetic traditions, linguistics, prosody, and received many licenses. Among them were: Abu'l-Hassan as-Saghir, Abu Zayd al-Juzuli, Abu'l-Hassan ibn Sulayman al-Qurtubi, Abu Abdallah Muhammad, ibn Ayyub as-Sanhaaji, Abu'l-Abbas ibn al-Bana'i al-Merrekeshi, Abu'l-Hassan Ali ibn Musa al-Matmaati, Abu'l-Qaasim as-Sabti, Abu'l-Qaasim ibn Ahmad ibn al-Qaasim as-Meknesi and many others. Among his students were: Ibn al-Ahmar, al-Waad'anashi, al-Manturi, Sidi Yahya as-Siraj al-Kabir and others. He composed no less than one hundred and fifty books. He died in Fez, on Thursday night, the 21th of *Rajab*, 778 A.H. (December 1376 C.E.).

^{qqq} In this chapter, I am indebted to Dr. *Shaykh* Umar Faruq Abd-Allah's monumental doctoral dissertation: "Malik's Concept of `Amal in the Light of Maliki Legal Theory"; Diss. University of Chicago, Illinois, 1978.

^{rrr} The '*asl 'l-kitaab*' (foundation of the Book) also referred as the conclusive legal text of the Book (*nass 'l-kitaab*) and is the first of the legal evidences (*adila*) of *Imam* Malik. It comprises the evidences from the Qur'an that are completely unambiguous, absolutely clear and do not have more than one interpretation. Technically, the '*asl 'l-kitaab*' refers to those verses which have only one meaning and which do not have another meaning implied within them. This area of *Quranic* interpolation also includes those verses of specificity (*khass*), where The legal rulings derived from the foundations of the Book are considered conclusive (*qati'*) and indicate its base meaning. Like when Allah ta'ala says: "...but he who cannot find an offering should fast for three days during the pilgrimage and for seven days when you return; these make ten days complete." [2:196] Thus, the foundational evidence or textual evidence of fasting a total of ten days is specific, clear and unambiguous and is a number which does not imply five days, eleven days or any other number of days other than ten.

^{sss} The second foundation of *Imam* Malik's school of thought is the '*dhaahir 'l-kitaab*' (apparent meaning of the Book). The expression '*dhaahir*' means that which appears to be apparent, but which could comprise another meaning other than its apparent meaning. This is interpolated as the apparent or obvious meaning of the *Qur'anic* text that are not completely unambiguous but contains nevertheless a certain obvious contextual meaning, and lends itself to more than one interpretation. This category of the *Quranic* text is also considered general legal statements (*al-'aamm*) and are regarded a conjectural (*dhanni*). The jurist must not stop at the apparent meaning of the Book because unlike the foundation or text of the Book, it has another possible likely meaning. Like when Allah ta'ala says: "GOD has made trading lawful and has forbidden usury", [2:275]; where the expression 'trading' (*bay'a*) is a general legal allowance and 'usury' (*riba*) is a general legal prohibition. Yet there are specific kinds of trade which are not lawful such as '*malaamisa*' (where a buyer simply feels cloth without looking at it) and '*munaabidha*' (where a saler throws a commodity to a buyer without the buyer seeing or examining it). Likewise, with usury (*riba*), which is the unlawful increase on a loan payment; yet '*riba 'l-fadl*' or '*riba 's-sunna*' is lawful; which is the increase in the quantity of a lower quality gold, silver or dates in exchange for lower quantity of a higher quality gold, silver or dates. Thus, the above *Quranic* verse has an obvious allowance of trade and an obvious prohibition of usury, yet the obvious meaning of the allowance and prohibition are not conclusive and lends themselves to more than one interpretation.

^{ttt} The third foundation of the school of thought of *Imam* Malik is the '*mafhuum 'l-kitaab*' (what is comprehensible of the Book), and means the significance of the textual evidence (*dalalat 'l-iqtida*) or the significance which is indicated in the text (*dalalat 'l-ishaara*); and means that the legal significance in a *Quranic* verse is not expressed in the verbal statement but implied. Like when Allah ta'ala says: "...do not say to them as much as: 'Ugh'," [17:23]; where the comprehensible judgment of this verse is the prohibition of opposing one's parents and the obligation of being silent when they are reprimanding you; even though the verse does not say that expressly.

^{uuu} The fourth foundation of the school of thought of *Imam* Malik is the '*tanbeeh 'l-Quran*' (admonitions of the Quran) whose meaning in the technical usage of the scholars of *usuul*, is what is understood of approval from the Quran; or the admonition implicate in the Sacred speech. What is understood of approval from the Quran is the evidence implicate in the *Quranic* expression of a meaning that is not expressly mentioned, but conforms with what is expressly mentioned; either by similarity of meaning (*masaawaat*) or by import (*awaluwiyya*). Like when Allah ta'ala says: "...and be good to your two parents" [4:36]; where the implicate warning or admonition in the verse is do not physically beat them. Thus, what is understood of approval from this verse is the prohibition of beating, even though it was not expressed in the words of the verse.

^{vvv} The fifth foundation of the school of thought of *Imam* Malik is the '*daleel 'l-kitaab*' (the evidence of the Book). The term '*daleel*' (evidence) in jurisprudence is that which makes it possible to arrive at sound classification of a desired judgement. The '*daleel 'l-kitaab*' refers to the proof or evidence taken from the text of the *Qur'an*; where the provision associated with the judgment of a *Qur'anic* verse is connected to a particular element in that verse. Thus, whenever that element exist, then it is incumbent to apply what is associated with that condition. Like when Allah ta'ala says: "Say to those who disbelieve, if they desists, that which is past shall be forgiven to them" [8:38]; where the condition of forgiveness

of the disbelievers past offences against the Muslims depends upon them desisting from attacking. Another example of the '*daleel 'l-kitaab*' is Allah's words: '*Every soul must taste of death*' [21:35]; where the condition of tasting death is possessing a soul, breadth or life. The evidence in the *Qur'anic* verse being that everything which possesses a soul, breadth and life will eventually die.

^{www} The sixth foundation of the school of thought of *Imam Malik* is the '*asl 's-Sunna*' (foundation of the *Sunna*) and is also interpolated as the conclusive legal text of the prophetic traditions (*nass 's-sunna*) and is the sixth of the legal evidences (*adila*) of *Imam Malik*. It comprises the evidences from the prophetic traditions that are completely unambiguous, absolutely clear and do not have more than one interpretation. Technically, the '*asl's-sunna*' refers to those prophetic traditions which have only one meaning and which do not have another meaning implied within them. This area of the *Sunnan* interpolation also includes those prophetic traditions of specificity (*khass*), where the legal rulings derived from the foundations of the *Sunna* are considered conclusive (*qati*) and indicate its base meaning. Like when the Messenger of Allah, may Allah bless him and grant him peace said: "Indeed, Allah has forbidden you maternal disobedience"; where the operative word: 'has forbidden' (*harama*) is foundational (*asl*) and conclusive legal (*nass*) evidence of the prohibition of children disobeying their mothers.

^{xxx} The seventh foundation of *Imam Malik's* school of thought is the '*dhaahir 's-sunna*' (apparent meaning of the *Sunna*); and refers to those prophetic traditions whose judgment appear to be apparent, but which could comprise another meaning other than its apparent meaning. This is interpolated as the apparent or obvious meaning of the prophetic traditions that are not completely unambiguous but contains nevertheless a certain contextual meaning, and lends itself to more than one interpretation. This category of the prophetic tradition is also considered general legal statements (*al-'aamm*) and are regarded a conjectural (*dhanni*). The jurist must not stop at the apparent meaning of the prophetic tradition because unlike the foundation or text of a prophetic tradition, it has another possible likely meaning. Like when the Messenger of Allah, may Allah bless him and grant him peace said as related by al-Bukhari on the authority of Abu Hurayra: "The worst of my *Umma* are the garrulous, the braggarts and the pompous. The best of my *Umma* are those with the best character." The apparent meaning and ruling from this prophetic tradition is the prohibition against pride, boasting and showing-off; yet *Imam al-Kharashi* reports in his commentary upon the *Mukhtasar* that during one of the battles Abu Dujaana was walking around with a proud gait and when the Messenger of Allah, may Allah bless him and grant him peace saw him, he said: "Indeed, this is a manner of walking which GOD hates except in such a place." Thus, while the outward judgment of a prophetic tradition may explicitly prohibit a thing, there could be implicate reasons for its permissibility.

^{yyy} The eighth foundation of the school of thought of *Imam Malik* is the '*mafhuum 's-sunna*' (comprehensible of the *Suuna*), and means the significance of the textual evidence (*dalalat'l-iqtida*) of a prophetic tradition or the significance which is indicated in the text (*dalalat 'l-ishaara*) of the prophetic tradition; and means that the legal significance in a prophetic tradition is not expressed in the verbal statement but implied. Like when the Messenger of Allah, may Allah bless him and grant him peace said: "Indeed, Allah set aside from my *Umma*, mistakes and forgetfulness." The apparent meaning of this prophetic tradition is that the *Umma* of Muhammad, may Allah bless him and grant him peace do not make mistakes nor do they forget because these have been set aside. However, forgetfulness and mistakes do occur from the *Umma*, thus the significance of the textual evidence of this prophetic tradition and the legal indication which are implied is that GOD has lifted the sins of the mistakes of the *Umma* and has set aside the impact of their forgetfulness through His forgiveness and pardon. This is what is meant by what is comprehensible from the *Sunna*.

^{zzz} The ninth foundation of the school of thought of *Imam Malik* is the '*tanbeeh 'l-sunna*' (admonitions of the *Sunna*) whose meaning in the technical usage of the scholars of *usuul*, is what is understood of approval from the prophetic traditions; or the admonition implicit in the expressions of the prophetic tradition. What is understood of approval from the prophetic tradition is the evidence implicit in the prophetic expression of a meaning that is not expressly mentioned, but conforms with what is expressly mentioned; either by similarity of meaning (*masaawaat*) or by import (*awaluwiyya*). Like when the Messenger of Allah, may Allah bless him and grant him peace said: "A judge is not to give judgment while he is angry"; where the implicit warning or admonition in the prophetic words is he cannot also give judgement when he is excessively happy, excessively hungry, ill or in any state other than that of well-being. Thus, what is understood of approval from this prophetic tradition is the prohibition of a judge passing judgment on someone or something while he is not in an emotional state of well-being, even though it was not expressed in the words of the prophetic tradition.

^{aaaa} The tenth foundation of the school of thought of *Imam Malik* is the '*daleel 's-sunna*' (the evidence of the *Sunna*); and refers to the proof or evidence taken from the text of the prophetic traditions; where the provision associated with the judgment of a prophetic tradition is connected to a particular element in that narration. Thus, whenever that element exists, then it is incumbent to apply what is associated with that condition. Like when the Messenger of Allah, may Allah bless him and grant him peace said: "Everything which intoxicates is a wine, and every kind of wine is forbidden." This prophetic tradition infers by the evidence (*daleel*) of the tradition that alcohol, beer, hashish, marijuana, magic mushrooms, opium, cocaine, narcotics or any other mood-altering controlled substance is forbidden (*haraam*) because they meet the condition (*shart*) explicitly stated in the prophetic tradition, which is they have intoxicating effects (*maskar*).

^{bbbb} The eleventh foundation of the school of thought of *Imam Malik* is the consensus (*ijma*); which linguistically means 'a decisive resolution' (*'azm*). Technically it means according to as-Shaafi, the agreement of the learned scholars of

independent judgment (*mujtahid*) of this *Umma* after the demise of the Messenger of Allah, may Allah bless him and grant him peace in any time regardless whether it was the time of the Companions or not. Malik, on the other hand limits the consensus to the jurists of *al-Medina* during the Companions and the Second generation, as it has been passed down to our present time. The opinions of the common people (*awaam*) are excluded from the concept of consensus, and what is meant by 'common' in this case is anyone who has not attained the level of independent judgment (*ijtihaad*). It does however include the *mujtahid* of legal decisions (*fataawi*), and the *mujtahid* of a particular *madh'hab*. *Shehu* Uthman ibn Fuduye` said in his *Ihya's-Sunna*: "The scope of the consensus, it is as Abd'r-Rahmaan as-Suyuuti said in his *an-Niqaya*, 'It is the unanimous agreement of the *fuqaha* of the time. That means its *mujtahids* who pass legal judgments upon new occurrences which occur in any time.' In the *al-Kawkab as-Saati`* it says: '(Consensus) is the agreement which comes from the *mujtahids* of our *umma* after the death of Ahmed, may Allah give him peace, who give legal decisions on new issues in any time as it occurs. This is the boundary of excellent proficiency.'" In the same text he cited the evidence for the obligation of adhering to the consensus from the Book and the *Sunna*: "...following the Consensus is obligatory in accordance with the Book by the words of Allah ta'ala: '*Those who oppose the Messenger after the guidance has been made clear unto him and then follows other than the way of the believers; We shall appoint him to that unto which he himself has turned, and expose him to Hell - an evil destiny*'. [4:115] Following the consensus is obligatory in accordance with the *Sunna* by the words of the Messenger of Allah, may Allah bless him and grant him peace: 'My *umma* cannot agree upon an error. Take hold of the great majority. For whoever separates himself from the community even the length of a hands span, then has removed the noose of *Islam* from his neck.'" *Shaykh* Muhammad Yahya ibn al-Mukhtar as-Shinqiti divides the consensus into two divisions: [1] enunciated consensus (*nutqi*) and [2] and tacit consensus (*sukuuti*). Enunciated consensus is the unanimous agreement of the scholars of independent judgment upon a particular legal issue in which each of them give a pronounced legal statement concerning it. The tacit consensus is when one or some of the scholars of independent judgment enunciate their view on a legal issue while the remainder of them abstain. This later judgment constitutes hypothetical evidence. Enunciated consensus is further divided into two divisions: [1] authoritatively decisive consensus (*qat'i*) and [2] conjectural consensus (*dhanni*). That which is affirmed authoritatively is that which is backed by eyewitness or transmitted in an unbroken transmission; while conjectural is that derived from the transmission of a sound isolated report of a single narrator (*al-khabr 'l-ahad*), and is considered hypothetical evidence. The former is considered conclusive evidence and it is this consensus which is forbidden to break with, and it takes precedence over what contradicts it from the Book, the *Sunna* and analogy, even when the latter analogy is evident. This is because both the Book and the *Sunna* comprise of textual evidence and interpolated evidence, while analogy is susceptible to inferences or may lack one of its prerequisites; while the consensus is safeguarded from all of that. That about which consensus agrees are in three divisions, as *Shaykh* Muhammad Yahya ibn al-Mukhtar as-Shinqiti elaborated: [1] indispensable (*daruuri*); [2] widespread (*mash'huur*); and [3] theoretical (*nadhari*). The indispensable is that which if anyone denies it, is considered disbeliever without dispute, like denying the prohibition of illicit sex. The widespread is that which if anyone denies it, is considered disbeliever especially when it is well known to be stipulated in the Book and the *Sunna*. This is because denying this constitutes denying the Law Giver, like denying the obligation of prayer and *zakat*. The theoretical is that which if anyone denies it, is not considered disbeliever by agreement, even when it is stipulated in the Book and the *Sunna*, like denying the invalidation of pilgrimage by having conjugal relations before stopping at `Arafaat; or like denying the entitlement of the granddaughter from one's son to have a sixth of the inheritance equal to one's daughter. There is consensus regarding both of these, but they are derived theoretically. Whoever denies the validity of the consensus in whole is not to be declared non-believer, but he is considered an offensive heretical innovator.

cccc The twelfth foundation of the school of thought of *Imam* Malik, is '*qiyaas*' (analogous deduction or reasoning by analogy). It takes its root from the word '*qaasa*' meaning to measure, weigh, judge, compare, correlate or bring into relationship. In jurisprudence it is a form of deductive reasoning (*istinbaat*) or inductive reasoning (*istidlaal*) where judgment regarding an unknown legal issue is deduced from a known judgement of the *Qur'an*, the *Sunna* or the *Ijma`* (consensus). *Qiyaas*, thus, forms the fourth pillar of Islamic jurisprudence and it first emerged during the time of the Prophet, may Allah bless him and grant him peace by his Companions who made judgements on unknown issues based upon what they knew from the *Qur'an* and the *Sunna*. The utilization of '*qiyaas*' (analogous deduction) has been established in the *Qur'an* and the *Sunna*. As for the *Qur'an*, Allah ta'ala says: "...therefore take a lesson, O you who have sight." [59:2] Allah ta'ala says: "Thus, do We make clear the message for a people who reflect." [10:24] Both 'taking lessons' (*ta'beer*) and 'reflection' (*tafakkir*) require the ability to make deductive and inductive reasoning which are the essence of '*qiyaas*'. As for the *Sunna*, it has been related in a sound prophetic tradition that at the time the Messenger of Allah, may Allah bless him and grant him peace decided to dispatch Mu`adh ibn Jabal to Yemen as its *Qadi*; he asked him: "How will you give judgment on issues?" Mu`adh said: By what I find in the Book of Allah". The Messenger of Allah, may Allah bless him and grant him peace then said: "And if you do not find it in the Book of Allah?" Mu`adh replied: "Then by what I find in the *Sunna* of the Messenger of Allah." The Messenger of Allah, may Allah bless him and grant him peace then said: "And if you do not find it in the *Sunna* of the Messenger of Allah?" Mu`adh replied: "Then I will decide through the effort of my opinion (*ajtahidu ra'yi*)." An example of analogous deduction (*qiyaas*) performed by the Companions during the time of the Prophet is in what was related in the *Saheeh* al-Bukhari on the authority of Abd'r-Rahman ibn Abri

who said: "A man once came to Umar ibn al-Khataab and said: "I am in a state of major impurity and I cannot pour water over myself." Then `Amaar ibn Yaasir said to Umar ibn al-Khataab: "Do you not recall when you and I were once traveling, and both of us were in a state of major impurity. As for you, you did not pray, and as for me, I wallowed myself in the dust and then prayed? I then mentioned this to the Prophet, may Allah bless him and grant him peace and he said: 'Sufficient for you are these.' The Prophet, may Allah bless him and grant him peace then struck the earth with his two palms, blew away the excess dirt and then wiped his face and hands." In this narration, both Umar ibn al-Khataab and `Amaar ibn Yaasir utilized analogous deduction (*qiyaas*) in this issue. Umar ibn al-Khataab made an analogous deduction (*qiyaas*) because there was no water due to travel and since prayer cannot be performed while he was in a state of major impurity (*janaaba*) based upon the words of Allah ta`ala: "Do not go near the prayer when you are intoxicated until you know what you are saying; nor when you are in a state of major impurity, except when traveling, until you have taken the ritual bath." [4:43] He thus, abstained from praying. Amaar ibn Yaasir, on the other hand when he understood that *tayammum* was a legal substitute for ablution and applied to the same manner of ablution, he also deduced by analogy that *tayammum* when done as a substitute for the ritual bath should also be done in the same manner as the ritual bath, which is the entire body. It was for this reason he deduced by analogy that he should wallow or role his entire body in pure dust. In both cases, Umar and Amaar arrived at the decisions they made by comparing the new situation that they were in to the textual evidence of the *Qur'an*. Because Umar and Amaar both made their own '*ijtihad*' (independent judgment), some jurists consider '*ijtihad*' and '*qiyaas*' to be synonymous. Thus, '*qiyaas*' (analogous deduction) was established as a response to the need to find solutions not foreseen in the textual evidence of the *Qur'an*, *Sunna* and the *Ijma`*. '*Qiyaas*' can only be made by a scholar who is knowledgeable of the *Qur'an*, the *Sunna* and the *Ijma`*, since it is upon these conclusive proofs that analogous deduction can be compared and made. Because '*qiyaas*' is the deduction of a single *mujtahid* it cannot be considered as conclusive judgment (*hukm qati`*), but as compelling presumed probability (*ghaalib 'd-dhann*). However, it is obligatory to adhere to and follow decisions based on '*qiyaas*' when there is no judgment on an issue from the *Qur'an*, the *Sunna* and the *Ijma`*. There are four prerequisites (*shuruut*) for '*qiyaas*': [1] that the problem it addresses is new; [2] that the fundamental basis of the '*qiyaas*' be a judgment from the textual evidence of the *Qur'an* or *Sunna*; [3] that there be a legal pretext (*'illa*) which is parallel with the '*qiyaas*' and the fundamental textual basis from which it will be drawn; and [4] the legal decision (*hukm*) applied to the '*qiyaas*'. In all the schools of thought '*qiyaas*' can only be made based upon the three conclusive judgements of the *Qur'an*, the *Sunna* and the *Ijma`*; and '*qiyaas*' cannot be made from another '*qiyaas*'. Although, '*qiyaas*' was made the twelfth foundation for legal judgment in the school of thought of *Imam* Malik and *Imam* as-Shaafi`, it was a major part of the school of thought of *Imam* Abu Hanifa. While, *Imam* Ahmad ibn Hanbal and *Imam* Dawud ibn Ali at-Thaahiri completely rejected '*qiyaas*' as a source of law.

^{ddd} The thirteenth foundation of the school of thought of *Imam* Malik is '*muraa`at 'l-khilaaf*' (the consideration of disagreements). The expression '*muraa`at*' (consideration) is a synonym of '*munaadhira*' (regulation) and '*muraaraba*' (giving attention). Its etymological root is from the verb '*ra`y*' (to take care of; to watch over; to bear in mind). Thus, the technical meaning of '*muraa`at 'l-khilaaf*' (the consideration of disagreements) is the actions of a *mujtahid* regarding the evidence of another *mujtahid* who differs with him regarding the essential meaning which functions as another opposing evidence. It comprises of a *mujtahid* prioritizing the arguments and opinions of other *mujtahids* over his own; especially when he realizes that the opinion of the opposing *mujtahid* is more accurate. During the early period of Islam, the Companions of Muhammad, each who were *mujtahids* practiced the ruling of giving preference to the opinions of other Companions. For example, Umar ibn al-Khattab gave preference to the legal decisions of Abu Bakr over his own. Abdallah ibn Mas`ud abandoned his own *ijtihad* for that of Uthman ibn Afan. Zayd ibn Thabit gave preference of the legal decisions of Ubay ibn Ka`b over his own. Abu Musa al-Ash`ari gave preference of the legal opinions of Ali ibn Abi Talib over his own. During the time of *Imam* Malik, the Abbasid Caliph, Abu Ja`far al-Mansuur desired to make *Imam* Malik's al-Muwatta as the standard legal code for the government and the courts under his charge. However, *Imam* Malik responded indicating his working understanding of this concept of '*muraa`at 'l-khilaaf*' (the consideration of disagreements): "Indeed the Companions of the Messenger of Allah, may Allah bless him and grant him peace differed in the branches and their views were diversely spread throughout the lands." *Imam* Malik inferred in this statement that his legal opinions should not be given consideration over the legal opinions of others, with the implications of the probability the legal opinions of other may be more preponderant. This legal concept of *Imam* Malik lays the foundation for the ideas which the author, *Shehu* Uthman Dan Fuduye` raises in this work, which are the idea of transferring from one school of thought to another in specific issues; as well as the idea of following those most accurate of all the schools of thought in issues of disagreement.

^{eeee} The fourteenth foundational principle of the school of thought of *Imam* Malik, is the principle of '*saddu 'd-dharaa'i*' (the prevention of pretext for harm). The term '*saddu*' means preventing, blocking, pre-empting, deterring and averting. The expression '*dharaa'i*' is the plural of '*dharee`a*' (a pretext; an excuse; a means). *Imam* as-Shatibi said in his al-Muwaafiqaat: "Preventing of pretext is seeking to abandon that which has been legally certified in order to preempt what should be legally impeded." *Imam* az-Zarkhashi said in his al-Bahr al-Muheet: "It is a legal issue that is outwardly lawful (*dhaahiruhaa al-ibaahatu*); but can lead to committing that which is perilous." This legal principle finds its roots in the *Qur'an*, and the *Sunna*. As for the *Qur'an* there is the words of Allah ta`ala: "...and do not come close to this tree, for then you will be of the unjust." [2:35] *Shaykh* Abdullahi ibn Fuduye` said in his Diya 't-Taweel Fee Ma'an 't-Tanzeel: "The

words of Allah ta`ala: '...and do not come near to this tree' until the end of the verse is a verbal amplification (*mubaalagha*) connecting the prohibition with drawing near, where the drawing near is a metaphorical interpolation preempting the actual committing of the prohibited, which is the actual consuming of the tree. It is also a metaphor for the obligation of avoiding consuming what is on the tree. Thus, the verse is a warning that drawing near to a thing can lead to falling into it." This verse is an example of the principle of '*saddu 'd-dharaa'i'i*' (the prevention of pretext for harm), because Allah ta`ala made drawing near to the tree prohibited because it would preempt Adam and Hawwa from actually committing the forbidden act of consuming the fruit of the tree. As for the *Sunna*, there are many sound narrations from the Prophet, may Allah bless him and grant him peace which corroborate the validity of the principle of '*saddu 'd-dharaa'i'i*' (the prevention of pretext for harm). Among them is what was related by *Imam* Muslim in his *Saheeh* on the authority of an-Nu`maan ibn Bashir who said: "I once heard the Messenger of Allah, may Allah bless him and grant him peace say: 'The lawful (*halaal*) is clear and the forbidden (*haraam*) is clear; but between them are matters which are doubtful (*mutashaabihaat*). Whoever is fearfully aware of the doubtful matters will free himself with regard his religion and his honor. But the one who falls into doubtful matters will eventually fall into the prohibited.'" Thus, avoiding doubtful matters which legally may be lawful is an example of '*saddu 'd-dharaa'i'i*' (the prevention of pretext for harm), since it preempts the person from falling into the prohibited. Thus, both *Imam* Malik and *Imam* Ahmad ibn Hanbal took this principle as foundational axioms in their schools of thought. The objective of '*saddu 'd-dharaa'i'i*' (the prevention of pretext for harm) is to bring about the overall wellbeing of society and to preempt social corruption by blocking, deterring and averting outward lawful matters that could lead to the prohibited. This principle was widely used by both *Imam* Malik and *Imam* Ahmad ibn Hanbal; but was rejected by *Imam* as-Shafi` and *Imam* Abu Hanifa.

^{ffff} The fifteenth foundational principle of the school of thought of *Imam* Malik is '*al-masaalihi 'l-mursalat*' (the consideration of the public good). The term '*masaalih*' is plural for '*maslaha*' and means: that which is beneficial; that which promotes general interest or general welfare. Al-Hafidh az-Zuhid said in his *Tayseer al-Usuul*: "General interest (*masaalih*) from the view of the objective of the Law Giver (*maqsuud as-shaari*) can be divided into three divisions: [1] necessities (*duruuriyya*) which revolve around the preservation of the six universal benefits: [1] the soul, [2] the reason, [3] wealth, [4] the religion, [5] honor and [6] lineages. If anyone of these is violated, then the advantages of life itself are violated. [2] Needs (*haajjiyya*) which are those matters that when fulfilled makes life easier. Or if missing, do not pose a danger to the previously mentioned six universal benefits. [3] Goods (*tahseeniyya*) which are those matters that make life better and revolve around the improvement of human social character, the improvement of the outward social structure and social behavior." The term '*mursalat*' means that which is transmitted openly, publicly or municipally. Thus, *Imam* Fakhr'd-Deen ar-Razi defined the technical meaning of '*al-masaalihi 'l-mursalat*' (the consideration of the public good) as any legal expression indicating the advantage which the Wise Lawgiver (*as-Shaari'u 'l-Hakeem*) intends for the servants in the preservation of their religion; souls; reasons; lineages; wealth; and honor. Thus, '*al-masaalihi 'l-mursalat*' (consideration of the public good) is the legal decision arrived at by the *mujtahid* regarding an advantage or danger which is not explicitly stipulated in the Book, the *Sunna* or the *Ijma*; whose objective by law (*maqasid 's-shari'a*) is to bring about the general public good and welfare. Because decisions arrived at by '*al-masaalihi 'l-mursalat*' (the consideration of the public good) are not from the Book and the *Sunna*, they can be considered as good innovations (*bid'at hassanat*). In his *Ihya's-Sunna was Ikhmad 'l-Bid'a* *Shehu* Uthman ibn Fuduye` classifies these kinds of innovations, which are in the general best interest of society as those which were not done during the first era of Islam and which the *shari'a* has proved to be obligatory (*waajib*), highly recommended (*manduub*) or allowable (*mubaah*). Examples of '*al-masaalihi 'l-mursalat*' (the consideration of the public good) which *mujtahids* established were: the gathering of the *Qur'an* into a single text; the modernization of the police and the military; the implementation of industry; the establishment of hospitals and clinics; the establishment of criminal courts and prisons; the modernization and improvement of roads, bridges and city infrastructure.

^{ssss} The sixteenth foundation of the school of thought of *Imam* Malik is referred to as the isolated reports of a single narrator (*akhbaar 'l-ahad*) or the isolated report of a single narrator (*khabr al-waahid*) or the report of a specific individual (*khabr 'l-khaassa*). It is a sound prophetic narration which has been narrated by a single narrator from a single narrator; or it is a sound prophetic tradition narrated from a single narrator from a group of narrators but has not attained the level of being well-known (*mashhuur*). *Imam* al-Qiraafi said that the isolated report (*khabr al-waahid*) is the narration of a singular upright narrator which with *Imam* Malik constitute a proof (*hujja*). The unanimous opinion is that it is permissible to act in accordance with the isolated report in worldly matters, in giving legal decisions (*fatawi*) and in giving and accepting witness. *Imam* Sayf ad-Deen al-Amidi said the right to act in accordance with an isolated report and following it in the law is based upon the convention of the consensus (*in`iqaad 'l-ijmaa'*) and the consensus in that is conclusive (*qaati'u*). The prerequisites of utilizing and acting in accordance with an isolated report, is as *Imam* as-Shashi said in his *al-Usuul*: "The prerequisite of utilizing an isolated report (*khabr al-waahid*), is that it not be in conflict with the Book, and the well-known *Sunna*; and that it not be in conflict with what is apparent (*dhaahir*)." However, *Imam* Malik added that the only prerequisite in utilizing the isolated report is that it does not conflict with the social behavior of the people of Medina (*`amal ahl 'l-medina*); for when it does, then it is to be rejected. It is for this reason that he gives precedence of the latter over the former. This is the same with the consensus (*ijmaa'*), because according to *Imam* Malik, an isolated report can be refuted by the consensus (*yuraddu bi'l-ijmaa'i*) but the consensus cannot be refuted by an isolated report. The consensus in the view of

Imam Malik first means the behavior of the people of Medina, because they resided with the Messenger of Allah, may Allah bless him and grant him peace, witnessed his actions and behavior and followed him in that. The succeeding generations who came after them narrated from them inter-generationally. Thus, when an isolated report comes which contradicts their unbroken inherited behavior (*`amal mutawaarithh*), then that is evidence of the lack of validity of that isolated report. This is because the social behavior of the people of Medina is the same as their collective narrations. To *Imam* Malik the narration of the collective on the authority of the collective is stronger than the narration of a single person on the authority of a single person; or it is stronger than two narrators on the authority of two other narrators. In his *ar-Risaala*, *Imam* as-Shafi` stipulated that among the prerequisites of narrating an isolated report (*khabr 'l-waahid*) or a report of a specific individual (*khabr 'l-khaassa*) is that the narrator be: [1] veracious (*thiqqa*) in his religion; [2] well-known for his truthfulness (*mashhuur bi's-sidq*) in his narrations; [3] intelligent (*`aaqilan*) with what he is narrating; [4] knowledgeable (*`aaliman*) of how to unravel the meanings of prophetic traditions (*yuheelu ma'aani 'l-hadeeth*) based upon their verbal expressions; [5] and that he be among those incapable of present prophetic traditions (*yu'addi 'l-hadeeth*) exactly as he heard them and not relate them based upon what he thinks they mean. In addition to this, *Imam* as-Shafi` gives precedence of the isolated report over the authority of legal analogy (*qiyaas*). *Imam* Ahmad ibn Hanbal completely abandons *qiyaas* in preference for the isolated report in most legal issues; while *Imam* Malik gives precedence of *qiyaas* over the isolated report in his legal school of thought. *Imam* as-Shirazi corroborated this view in his *at-Tabsira Fee Usul 'l-Fiqh* where he said: "According to the followers of as-Shafi`, the isolated report (*khabr 'l-waahid*) is to be accepted, even when it contradicts the legal analogy (*qiyaas*) and it is given precedence. While the followers of *Imam* Malik say that when the isolated report contradicts the *qiyaas*, then it is not to be given precedence. The followers of *Imam* Abu Hanifa say that when an isolated report contradicts the *qiyaas*, it is not to be accepted." *Imam* al-Kaludhani said in his *at-Tamheed fee Usul 'l-Fiqh* that the description of one from whom an isolated report can be accepted is that he be Muslim, mature, sane, precise in narration; and regardless if the narrator with these cited descriptions is male, female or an enslaved individual.

^{hhhh} The seventeenth and most important foundational principal of the school of thought of *Imam* Malik is the '*`amal ahl 'l-madina*' (the established social behavior of the People of the City of the Prophet). The social behavior of *al-Medina* refers specifically to the established social behavior and consensus of the Companions, and the jurists of the second generation (*Taabi`un*), with the condition that the established social behavior (*`amal*) takes its roots from the legal judgments of the *shari`a*. *Shaykh* Muhammad Yahya ibn al-Mukhtar as-Shinqiti said in his commentary upon the '*Isaal as-Saalik*': "It is said that the established social behavior of the People of *al-Medina* constitutes absolute evidence, even in the legal judgments derived by independent judgment, because they were the most knowledgeable of people regarding the circumstances of the Revelation and resided in the place where the Revelation descended." Although, the *Shehu* cited this principle last indicating its rank, yet in the view of *Imam* Malik, the established social behavior of the People of *al-Medina* actually has a higher status than the isolated report of a single narrator (*al-khabr 'l-ahad*), as cited above. However, the view of the majority of the jurists is that the established social behavior of the People of *al-Medina* is subsidiary to the sound isolated report of a single narrator. This also indicates that the *Shehu* always adhered to the majority view (*sawaad*). The majority of the jurists hold the view that the established social behavior of the People of *al-Medina* does not constitute an independent legal source of judgment because the People of *al-Medina* were only a part of the larger *Umma*, and their established social behavior (*`amal*) only constitutes evidence when it is in agreement with legal evidence which unanimously corroborates it, such as the verified *Sunna* of the Prophet, may Allah bless him and grant him peace. In Malik's view the established social behavior of the People of *al-Medina* constituted an independent legal source of law and is coupled with Malik's view of the consensus (*ijma`*) which he believed to be the local consensus of the People of *al-Medina*. This is corroborated by many narrations from the early community of Islam (*as-salaf*). It has been related that Umar ibn al-Khattab once said while giving the Friday sermon: "Through Allah's help, glory be to Him, I will cause to be severely straitened the circumstances of any man who transmits a prophetic tradition which contradicts the social behavior of Medina (*`amal 'l-medina*)." Zayd ibn Thabit once said: "If you see the people of Medina adhering to a matter then know that it is *Sunna*." Abdallah ibn Umar once said: "If only the people at the time of the occurrence of civil strife would refer the decision regarding it to the people of Medina, and when they reach consensus on a matter of importance, they would do it, the affair of the Muslims would be sound." Abu Bakr ibn `Amr ibn Hazm once said: "If you find the people of this city, Medina, have concurred on a matter then have absolutely no doubt that it is the truth." *Imam* as-Shafi` once said: "If you find among the people of Medina a matter concerning anything upon which they concur, and to which they adhere, then let there not be in your heart the least doubt about its validity." Ibn Abi Zinaad once said: "Umar ibn Abd'l-Azeez used to gather together the jurists and question them about the different parts of the *Sunna* and various traditional decisions which have been given that were part of the social behavior (*`amal*); and he would confirm their validity but he would discard those that were not part of the social behavior of the people of Medina (*`amal ahl 'l-medina*); even though the person had brought it forward as evidence was trustworthy and reliable." Finally, *Imam* Malik ibn Anas once said in a letter to al-Layth ibn Sa`d: "The non-Madinans are, therefore, subordinate to the people of Medina. The *hijra* was made to it. The *Qur'an* was revealed in it. The lawful was declared lawful and the unlawful was declared unlawful; while the Messenger of Allah, may Allah bless him and grant him peace, was in the middle of them, and they were in the very presence of the revelation of the Divine Message, and the act of revelation. He gave them commands and they obeyed him. He established for them the *Sunna* and they followed him until

Allah brought life to its completion and chose for him the reward of what is in His Presence, may Allah bless him and grant him peace. Then after he was gone, those people from his *Umma* who were closest in following him, rose up and assumed authority after him. Whatever matters occurred in their midst for which they had explicit knowledge, they activated that knowledge into practice. And regarding whatever matters they did not have explicit knowledge about, they questioned. They then followed that position of those whom they found, by the light of their *ijtihad* and the proximity of their time to the Prophet, may Allah bless him and grant him peace, to be the strongest. And when there were those who held contrary positions to them in such matters or expressed positions with regard to these opinions which were stronger or more worthy to be followed, they would set their own opinions aside, and follow and practice the others' opinions. It was this same path which the second generation (*at-tabi'uun*) then followed after, and they followed closely these various parts of the *Sunna*. Therefore, when a matter is prominent in Medina and put into practice, I am not of the opinion that anyone has the right to go contrary to it on the basis of that limited legacy which they possess in their own hands. This is impossible for anyone to ascribe to themselves or to lay claim to. And if all the peoples of all the cities should say: 'This is the social behavior (*'amal*) which is in our city, or this is what those of the generations before us have executed and put into practice; they would not have certainty or authenticity in this regard; nor would they, in this regard, be doing what it is legitimate for them to do.' All of the above establishes the validity of the social behavior and practices of the People of Medina as one of the fundamental foundations for jurisprudence in Islam in general, but for *Imam* Malik in particular.

ⁱⁱⁱ All praises are due to Allah and by the best of His bounty, I, *Shaykh* Abu Alfa Umar, Muhammad Shareef bin Farid, received the *sanad* of the Maliki *madh'hab* from my support, my lamp, and guide, *Shaykh* Muhammad al-Amin ibn Adam Kari'angha al-Khateeb ibn Muhammad Tukur ibn Muhammad Sanbu ibn Muhammad Leeli ibn Abu Bakr ibn Muhammad Sanbu Darneema, with his reading it to me (*bi qir'atini ilayya*); who received it from his father, *Shaykh* Adam al-Khateeb; who received it from *Shaykh* Mallam Musa al-Muhajir; who received it from *Shaykh* Ali Dinba ibn Abi Bakr Mallami; who received it from the author, the Light of the age, the *mujaddid* of the religion, the Sword of Truth, the *Imam* of the *Awliyya*, *Amir'l-Mu'mineen* *Shehu* Uthman ibn Fuduye', may Allah engulf them in His mercy and benefit us by means of their *baraka*.

ⁱⁱⁱⁱ I have not come upon his biography. However, he appears to be the great grandson of *Shaykh* Muhammad ibn Khalil ibn Ahmad ibn Abd'r-Rahman, known as Ibn Ghilbuun, [d. 1133 A.H. / 1720 C.E.]

^{kkkk} He was *Shaykh* Abu Muhammad, Muhammad al-Amir al-Kabir ibn Muhammad ibn Ahmad ibn Abd'l-Qadir ibn Abd'l-'Aziz ibn Muhammad as-Sanbaawi al-Maliki al-Azhari [1154 – 1232 A.H./1742 – 1817 C.E.].

^{llll} He was Abu'l-Hassan, Nuur'd-Deen Ali ibn Ahmad ibn Makramallah, as-Sa'eedi al-'Adawiyu al-Maliki, [1112 – 1231 A.H./ 1741 – 1815 C.E.]. His disciple, the above-mentioned *Shaykh* Muhammad al-Amir said about him: "He was the spiritual master, the professor, the bond of sanctuary, the last of the right acting scholars, the trainer of researchers, the author of many scholarly works and possessor of extraordinary exalted teachings."

^{mmmm} He was Abu Abdallah, Muhammad as-Salmuuni, Maliki jurist, traditionists, linguist.

ⁿⁿⁿⁿ He was Abu Abdallah, Muhammad ibn Abd's-Salaam ibn Hamdun al-Banaani an-Nafazi al-Fasi [d. 1163 A.H./1749 C.E.].

^{oooo} He was Abu Abdallah, Muhammad ibn Jamaal 'd-Deen Abadallah ibn Ali al-Kharshi al-Maliki, [1010 -1101 A.H. / 1601 – 1690 C.E.].

^{pppp} He was Abu Muhammad, Abd'l-Baaqi ibn Yusef ibn Ahmad ibn Muhammad ibn 'Alwaan az-Zarqaani al-Misri al-Maliki, [1020 – 1099 A.H./ 1611 - 1687].

^{qqqq} See end note x.

^{rrrr} He was *Qadi* Badr 'd-Deen Muhamamd ibn Yahya ibn Umar ibn Ahmad ibn Yunus ibn Abd'r-Rahman al-Qiraafi al-Misri al-Maliki [939 – 1009 A.H. / 1532 – 1601 C.E.].

^{ssss} He was the learned *Shaykh* Zayn 'd-Deen Abd'r-Rahman ibn Yusef al-Ujhuuri, *Shaykh al-Malikiyya*, [d. 961 A.H./ 1553 C.E.]

^{tttt} He was Burhan 'd-Deen Abu'l-Imdad, Ibrahim ibn Ibrahim ibn Hassan ibn Ali ibn Abd'l-Quddus ibn *al-Wali* Muhammad ibn Harun al-Laqaani al-Maliki al-Misri, [d. 941 A.H. / 1534 C.E.]

^{uuuu} He was *Shaykh* Ali ibn Muhammad 'Izz'd-Deen ibn Muhammad Naasir 'd-Deen as-Sanhuuri al-Maliki, [835 – 926 A.H. /1431 – 1520 C.E.].

^{vvvv} He was *Qadi 'l-Qudaat* Shams'd-Deen Abu Abdallah, Muhammad ibn Ahmad ibn Uthman ibn Nu'aym ibn Muhammad ibn Hassan ibn Ghana'im al-Busaati, [860 – 942 A.H. /1455 – 1535 C.E.].

^{wwww} He was the *Qadi al-Quda*, Taj'd-Deen Abu'l-Baqa, Bahraam ibn Abdallah ibn Abd'l-'Aziz ibn Umar ibn 'Awd ibn Umar ad-Dameeri al-Qahiri al-Maliki, [824 – 905 A.H. / 1321 – 1499 C.E.]

^{xxxx} He was Diya'd-Deen Abu'l-Muwwada, Khaleel ibn Ishaq ibn Musa al-Jundi, al-Maliki al-Misri, [d. 767 A.H. / 1374 C.E.]; the author of the most renown legal work on Malik jurisprudence, the *al-Mukhtasar*.

^{yyyy} He was Abu Muhammad Abdullahi ibn Muhammad ibn Sulayman al-Manufi, al-Maliki al-Misri [686 – 749 A.H./ 1287 - 1348 C.E.]. He was an ascetic upright *wali* and possessor of many miracles.

^{zzzz} He was Rukin 'd-Deen Abu Abdallah Muhammad ibn Muhammad ibn Abd'r-Rahman al-Ja'fari al-Qawbai` [664 – 738 A.H./ 1265 – 1338 C.E.].

aaaaa He was Zayn ‘d-Deen Taahir ibn Muhammad ibn Ali an-Nuwayri al-Maliki [795 – 856 A.H. / 1392 – 1452 C.E.].

bbbbb He was Hassan ibn Ali ar-Rajraji as-Shushawi, Maliki jurist [he died in the last part of the 9th century *hijra*].

cccc He was Abu’l-Abbas Ahmad ibn Hilal r-Rifi’ al-`Uruudi, a Maliki jurist specializing in Arabic linguistics, [d. 755 A.H. / 1354 C.E.].

ddddd He was the chief Judge, Fakhr’d-Deen Ahmad ibn Muhammad, famous as Ibn al-Mukhlata al-Iskandari, [696 A.H. – 759 A.H. / 1297 C.E. – 1357 C.E.].

eeee He was Zayn’d-Deen Abu Hafs Umar ibn al-Madhfar ibn Umar ibn Muhammad ibn Abi ‘l-Fiwaris al-Mu`ari al-Kindi, known as Ibn al-Kindi, [691 A.H. – 749 A.H. / 1292 C.E. – 1349 C.E.]. He authored the famous Mandhuumat al-Buhjat al-Wardiyya, an epic poem on Maliki jurisprudence.

ffff He was Abu Muhammad Abd’l-Kareem ibn `Ata’llahi al-Iskandari, notable scholar, jurist, and *Imam* in jurisprudence, the foundations of jurisprudence and Arabic linguistics, [d. 612 A.H. / 1215 C.E.]. He authored the al-Bayaan wa ‘t-Taqreeb Fee Sharh at-Tahdheeb.

gggg He was Abu Bakr Muhammad ibn al-Walid ibn Khalaf, known as Abu Bakr at-Tartuushi, [451 A.H. – 520 A.H. / 1059 C.E. – 1126 C.E.].

hhhhh He was Abu’l-Walid Sulayman ibn Khalaf ibn Sa’d ibn Ayyub ibn Waarith al-Baaji at-Tujibi [403 A.H. – 474 A.H. / 1013 C.E. – 1082 C.E.]. He composed the famous commentary upon the al-Muwatta of *Imam* Malik, called al-Istiqaa Fee Sharh al-Muwatta and then an abridgement called al-Muntaqa Sharh al-Muwatta.

iiii He was Abu Muhammad Mekki ibn Abu Talib Hammush ibn Muhammad ibn Mukhtar al-Qaysi al-Qayrawaani al-Qurtubi al-Maliki, [355 A.H. – 437 A.H. / 966 C.E. – 1045 C.E.].

iiiii He was Abu Muhammad Abdallah ibn Abd’r-Rahman Abi Zayd al-Qayrawaani, [310 A.H. – 386 A.H. / 922 C.E. – 996 C.E.]. He was known as “the little Malik” due to his thorough knowledge of the Malik school of thought. He was the author of the famous ar-Risaalat ibn Abi Zayd, the most famous compendium on Maliki jurisprudence.

kkkk He was Abu Bakr Muhammad ibn Muhammad ibn Wishah al-Lakhmi al-Ifriqi, known as Ibn al-Labaad, [250 A.H. – 333 A.H. / 865 C.E. – 945 C.E.].

llll He was Abu Zakaria Yahya ibn Umar ibn Yusef ibn `Aamir al-Kinani al-Andalusi al-Ifriqi [223 A.H. – 289 A.H. / 837 C.E. – 901 C.E.].

mmmm He was Abu Sa`id Abd’s-Salaam ibn Sa`id ibn Habib at-Tanuukhi, [160 A.H. – 240 A.H. / 776 C.E. – 854 C.E.]. He was the author of al-Mudawwana al-Kubra.

nnnn He was Abu Abdallah Abd’r-Rahman ibn al-Qaasim ibn Khalid ibn Junaada [132 A.H. – 191 A.H. / 750 C.E. – 806 C.E.]. He was the closest and most knowledgeable of the disciples of *Imam* Malik ibn Anas. Abdallah ibn Wahb said about him: “If you desire this affair (meaning the jurisprudence) of *Imam* Malik; then it is obligatory for you to adhere to Ibn al-Qaasim. He is the one singled out for it and he was more preoccupied with it than any of us.”

oooo See end note i, for a concise biography of *Imam* Malik ibn Anas, may Allah be pleased with him.

pppp According to the science of *jifr* the date has the following correspondence: [*shin* = 1000 + *ra* = 200 + *ha* = 8 + *kaf* = 20] = 1228 (June 18, 1813 C.E.). This text was composed about ten days after the *Shehu* relocated from *Sifawa* to the new capital of Sokoto, which took place on the 5th of *Jumad’l-Akhir* in 1228, as *Shaykh* Abd’l-Qaadir stated in his Rawdat’l-Afkaar. Thus, the text constituted the *Shehu*’s final opinion regarding the *madhaahib* of the *Mujtahid* Imams. Although he thereafter composed other text discussing these issues, his views did not change from what he placed in this text. This text is a proof that although the *Shehu* attributed himself to the *fiqh* of *Imam* Malik, and believed that it was lawful for a person who had not attained the level of *mujtahid*, to adhere to a single *madh’hab*; he also held the view that it was permissible for a person to follow another *madh’hab* in certain issues, and that it was permissible for a person to adhere to the strongest opinions of each of the *mujtahid* Imams. This opinion of the *Shehu* is clearly corroborated in the Diya’s-Sanad of *Shaykh* Abdullahi ibn Fuduye` in which he cites the chains of authorities that he and the *Shehu* received in jurisprudence of Malik, as-Shafi`, Abu Hanifa and Ahmad ibn Hanbal. This is a clear proof against the objectors (*munkiruun*) who follow the *madh’hab* of Najd who claim that they are ‘*salaf*’, who impute lies to the *Shehu* claiming that he did not adhere to a *madh’hab* and that he followed a legal path similar to Muhammad ibn Abd’l-Wahaab. All the evidence of this text and in all the other works of the *Shehu* give evidence that this claim is far from the truth. What is unique about this text is that the *Shehu*’s approach to the *madhaahib* was opened ended and constituted a Middle Way between the so-called ‘*Salafist*’ who deny the validity of following the *madh’hab* of the *Mujtahids* and those who claim that adherence to a single *madh’hab* is an obligation. Because the *Shehu* saw himself as a herald of the Awaited *al-Mahdi*, this view of the *madhaahib* is very significant because according to sound transmission the *Mahdi* will be an absolute scholar of independent judgment (*mujtahid mutlaq*) and will not be bound by the *ijtihaad* of any of the *mujtahid* Imams, because he will follow in the footsteps of the Messenger of Allah, may Allah bless him and grant him peace precisely taking his *usuul* directly from the Two Infallible Sources – the Book and the *Sunna*. It is for this reason that the majority of those who will deny him and reject his claim will be the jurists who will harbor feelings of resentment because he will not adhere to the *usuul* (the juristic roots) which they blindly follow. Those jurists who claim to adhere to the Book and the *Sunna* will first proclaim him, similar to the way the Jews proclaimed the appearance of the Messenger of Allah, but will be more vehement in their denial of him, because of his reliance up spiritual unveiling, the news of the Unseen and his support from the perfected *Awliyya*.

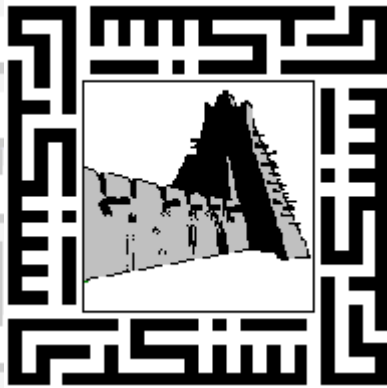
For just as the disagreements of the *mujtahid Imams* is a mercy to the *Umma*; likewise, the appearance of the Awaited Mahdi will be a mercy which will abrogate the disagreements of the schools of thought. *Shaykh 'l-Akbar* Muhy'd-Deen Ibn Arabi said in his *al-Futuuhāt al-Makiyya*: "For, the Mahdi will be a mercy just as the Messenger of Allah, may Allah bless him and grant him peace was a mercy. Allah `azza wa jalla says: 'And We have not sent you except as a mercy to all the worlds'. For, the Mahdi will stop in the traces of the Messenger of Allah and not make any errors. Therefore, there is no doubt that he too will be a mercy." It is in this light that the *Shehu* composed the *Tawfeeq al-Muslimeen* as a means of [1] verifying that all the legal schools of thought of the *mujtahid Imams* are valid and should be adhered to; [2] withdrawing from following them is sinful; [3] that adherence to their schools of thought should be open ended because they will eventually be rescinded with the appearance of the Seal of the Muhammadan *Awliyya* and Seal of the *Mujtahid Mutlaq*, *Imam al-Mahdi* Muhammad ibn Abdullahi; may Allah expedite his appearance and make us among his helpers.

⁹⁹⁹⁹ After this supplication the scribe added the following supplication: 'O Allah be merciful to the *Umma* of Muhammad with an all-encompassing mercy.' This is an all-embracing supplication which is considered as the most superior and most beloved supplication to Allah ta`ala. It has been related by al-Hakim in his *Tarikh* on the authority of Abu Hurayra who said that the Messenger of Allah, may Allah bless him and grant him peace said: "The most superior supplication is your saying: 'O Allah be merciful to the *Umma* of Muhammad with an all-encompassing mercy'." In the narration of al-Khateeb on the authority of Abu Hurayra also who said that the Messenger of Allah, may Allah bless him and grant him peace said: "There is no supplication which is more beloved to Allah than the servant saying: 'O Allah be merciful to the *Umma* of Muhammad with an all-encompassing mercy'." Finally, just below this supplication on the margins is the following statement: "I have noticed that people incline * Towards those who have wealth * And for those who lack wealth * People incline away from him * These two poetic verses are those of *Amir 'l-Mu'mineen* Muhammad Bello, the descendant of *Amir 'l-Mu'mineen* Uthman ibn Fuduye`, may Allah engulf him in his mercy Ameen." With its ending, I end my annotation of the *Tawfeeq al-Muslimeen* of the Light of the Age, the *Mujaddid* of the religion, the Reviver of the *Sunna*, the *Imam* of the *Awliyya*, the Sword of Truth, *Amir 'l-Mu'mineen* Shehu Uthman ibn Fuduye, may Allah be pleased with his spirit and engulf him in His mercy Amen.



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