بسم الله الرحمن الرحيم

The Special Characteristics of the Mālikī Madhhab

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The following translation has been adopted from the annual Ramadan lectures delivered in the presence of the King of Morocco, Muḥammad VI. The lessons were originally initiated by his father, King Ḥasan II. Consequently, the lessons are referred to as "Ḥasan's Lessons" (Al-Durūs Al-Ḥasaniyya). An Arabic transcript of the main text of the speech can be found at the following link: http://hidayamosque.free.fr/Shari3a/5a9a2e9.php

All praise is due to Allah, Lord of the worlds, and may mercy and peace be upon the Messenger of Allah and all his companions.

All praise is due to Allah. My Benefactor! Your majesty! Commander of the Faithful! Guardian of the sanctuary of the denomination and religion, and grandson of the trustworthy Messenger, the exalted Muḥammad VI—may Allah support, aid, elevate your mention among the upright, grant you permanence as an impenetrable fortress of this secure land, a point of boast for its noble people, and a symbol of its unity and sovereignty. May He also bring delight to your eyes through your natural heir to the throne—his highness, the prince, my benefactor—Al-Ḥasan, and your brother, my benefactor—Rashīd, and to the rest of the members of the generous and noble family. Verily, He (Allah) hears and answers prayer.

My Benefactor! Your majesty! Indeed, this is a delightful opportunity and a noble occasion that Your Majesty has conferred upon me to speak by your permission in your presence, in front of you, and in your scholarly assembly that is ennobled by your leadership. [I am to speak] about the special characteristics of the Mālikī madhhab. This madhhab is the one that [our] fathers and grandfathers chose out of faith, conviction, authority, and proof, and casted off all other madhhabs that preceded it which some nations attempted to impose on them forcefully. In spite of that [coercion, it] only increased their faith, tenacity, and attention to judge from it in their devotional acts and interpersonal dealings; in their mosques, courts, market places, homes, and the rest of their private and public life. They sought out no substitute for it from the time they first came to know it. They used it to settle their disputes, unify their voices, secure their nation, and protect themselves from dispersion and disagreement due to the special qualities by

which it is distinguished. [It has qualities] that no other legal school, whether preceding it, existing beside it, or coming after it, possesses in both the field of legal theory (uṣūl al-fiqh) and of law itself (fiqh).

My Benefactor! Your majesty! I have divided this lesson into an introduction and two areas of study. I have dedicated the introduction to talk about the noble prophetic tradition that has come regarding the scholar of Medina. The first area of study is dedicated to the special characteristics of the Mālikī School on the field of legal theory, while the second area of study relates to the special characteristics of the Mālikī School in the area of legislation.

In the introduction, I cover the discussion of the ḥadīth, its narrators from the Ṣaḥāba, its documenters, its chain of narration, its description, grade, explanation of its words, and the clarification of its meaning and interpretation. So, these are eight points that I will cover with extreme brevity.

As for its narrators from the Ṣaḥāba, Abū Hurayra, Abū Mūsā al-Ashʿarī, and Jābir b. 'Abd Allāh have related it. Those who have documented it are Aḥmad, Tirmidhī, and Nasā'ī— in his *Muṣannaf*, Ibn 'Abd Al-Barr— in his *Tamhid*, and Ibn Ḥibbān—in his *Ṣaḥīḥ*.

As for its chain of narration and its variant paths, it has been related with a number of chains. Qāḍi 'Iyāḍ said, "The most popular of them is Sufyān b. 'Uyayna from Ibn Jurayj from Abū Al-Zubayr from Abū Ṣāliḥ from Abū Hurayra. The transmitters of this chain are all reliable and well-known. Bukhārī, Muslim, and the authors of the *Sunans* report ḥadīths on their authority. Nasā'ī reports it by way of Muḥammad b. Kathīr, and said in its regard, "From Ibn Jurayj from Abū al-Zināḍ." Nasā'ī said, "This is an error. The correct view is "Abū Al-Zubayr in place of Abū Ṣāliḥ."

As for its description, Sufyān relates it and attributes it to the Prophet (rafaʿahu). Al-Maḥāmilī relates it on the authority of Ibn Jurayj as a statement of Abū Hurayra (mawqūfan), and Muḥammad b. 'Abd Allāh Al-Anṣārī relates it with a connected chain to the Prophet (musnadan). And he is firmly reliable as Qāḍi 'Iyāḍ has stated. Tirmidhī also relates it by way of Al-Ḥasan b. Al-Ṣabāḥ and Isḥāq b. Yūnus, and he said in its regard, "On the authority of Abū Hurayra "riwāyatan" (as a narrative), but he did not expressly attribute it to the Prophet.

The foundational rule of the scholars of ḥadīth and those of legal theory is that whenever there is conflict between the ascription of a ḥadīth to the Prophet or to a Companion, the version that attributes it to the Prophet is preferred, because it is the addition of a trustworthy transmitter, and such an addition is acceptable. Likewise, a transmitter's statement "riwāyatan" is taken to be an indication of it being attributable to the Prophet by the agreement of the scholars of ḥadīth.

What motivated the transmitter to abandon explicitly ascribing it to the Prophet and to utilizing this wording was that he was doubtful about how it was conveyed i.e. did the Companion say, "I heard the Messenger of Allah." Did he say, "The Messenger of Allah said" or did he say, "From the Messenger of Allah..."?

So whenever the transmitter has some doubt surrounding the chain of narration about the manner by which the Companion conveyed the words, he deviates and says "riwāyatan" (as a

narrative) or says "He elevates it to the Prophet."

As for the grade of the ḥadīth, Tirmidhī said, "It is a ḥasan ḥadīth." Qāḍi 'Iyāḍ said, "ṣaḥīḥ mashhūr. Some of them declared it to be weak due to being severed in its chain, but without clarifying where it is severed." As for its text, it has been related with the wording, "...they will beat the armpits of camels." It has also been related as, "...they will beat the livers of camels..." This [second narration] is a metaphor because it is not possible to beat their "livers." Rather, [the reference is to] the "side" of the camel that encloses the liver, [because that] is what is [actually] beaten. This is a metaphor that falls under the category of "speaking about the place of a thing while intending its state of being." It is also an expression that indirectly indicates the speed of the journey and desire to arrive at a desired destination due to fear of missing one's aim. The reason is that camels were the only means of travel during that era. Hence, it is an indirect expression built upon a metaphor.

Likewise, it has been related by some as, "Then, they will not find anyone more knowledgeable than the scholar of Medina." And in one version, "Then, they will not find anyone with greater understanding than the scholar of Medina." So they are two narrations. In one of them [it says] "more knowledgeable," and in the other, "with greater understanding." Consequently, many jurists consider "knowledge" ('ilm) and "understanding" (fiqh) to be synonymous. Both of them convey the same meaning. This is so, while others view "fiqh" to be "clarity of understanding." So, it is something added to cognizance (ma'rifa). Shirāzī holds "fiqh" to be "the knowledge of hidden and subtle matters" and that it is a degree above mere "knowledge" ('ilm), or, it is a distinct form of it. Therefore, he ﷺ said, "Whoever Allah desires good for, He gives him understanding (fiqh) of the religion." And he did not say, "He gives him knowledge of the religion" (yu'allimhu al-dīn), because "fiqh" is more subtle and profound than mere knowledge ('ilm) and cognizance (ma'rifa).

As for the overall meaning of the ḥadīth, it is a notification from him ﷺ that very soon the people will be falling over one another in search of knowledge, but will not find a scholar more knowledgeable than the scholar of Medina.

After this, there remains nothing more than to clarify who this scholar is whose coming has been heralded. Sufyān b. 'Uyayna and other contemporaries of Mālik and those who came after him have said, "Verily it is Mālik b. Anas ﷺ."

The ḥadīth is one of the prophetic miracles in that the Prophet ﷺ informed of a matter that happened in a future time just as he said it would happen. So, history has registered that the people used to travel to Mālik from the east and the west seeking knowledge and fatwa. The number of those who have narrated on his authority has reached one thousand and three hundred (1300) scholars of ḥadīth. Such has happened neither for anyone before nor anyone after him. And the ḥadīth from another regard is a testimony for Mālik—may Allah ﷻ show him mercy—in that he is the most knowledgeable and the one with the greatest understanding of the people of his time. And sufficient a testimony it is from the Messenger ﷺ for Mālik, for his madhhab, and for his understanding (fiqh). So, congratulations to the Moroccans and all Mālikis in general by the prophetic testimony for their madhhab.

The First Pivotal Discussion: The Special Characteristics of the Madhhab with Regard to Legal Theory (Uṣūl al-Fiqh)

The Mālikī Madhhab is characterized with regard to legal theory by a number of advantages and special characteristics. Among the most important of them are:

[1] The abundance and proliferation of its legal sources represented in the Kitāb, the Sunna, the Consensus of the Umma (Ijmāʿ), the Practice of the Scholars of Medina (ʿAmal Ahl al-Madīna), Legal Analogy (Qiyās), Analogous Departure (Istiḥsān), the Statement of the Companion (Qawl al-Ṣahābī), the Sacred Laws of Previous Nations (Sharʿ man qablanā), the Law of Presumption (istiṣḥāb), Unspecified Interests (Al-Maṣāliḥ Al-Mursala), the Barring of Means (Sadd al-Dharā'iʿ), Custom (ʿUrf), Axiomatic Application (Istiqrā'), Abiding by what is Most Cautious (Al-Akdh bi al-Aḥwaṭ), and the Observation of Legitimate Points of Disagreement (Muraʿāt al-Khilāf).

These are the foundational sources. Added to them are the secondary overarching legal axioms that branch out from these foundations, and those that some Mālikis have numbered to reach one thousand and two hundred (1200) overarching legal axioms that cover all chapters of fiqh and its different fields.

This great abundance has enriched Mālikī fiqh, given it strength and vivacity, and placed before its scholars a means for scholarly endeavor and tools of legal extrapolation whereby they can acquire qualification for reaching the level of scholarly endeavor (ijtihād), enable them to practice it, and facilitate for them their duty.

While some schools share with the Mālikī madhhab some of these legal foundations, the advantage the Mālikī fiqh is hidden in the acceptance of all of these legal foundations, while others have only accepted some of them and rejected the remainder.

[2] The [second advantage is the] diversity of these legal sources. Indeed they fluctuate between the confirmed transmitted reports and the sound employment of reason procured from the scripture (sharʿ) and rests upon it, like legal analogy (qiyās) and analogous abandonment (istiḥsān). This diversity in legal sources and marriage between reason and revelation, transmitted knowledge and mental reflection, the lack of stiffness in clinging to transmitted reports or being steered by mere reason is the special characteristic that has made the Mālikī Madhhab distinct from the school of the scholars of ḥadīth and the school of the people of reflective opinion (ra'y). It is the secret of its centrality between extremes (wasaṭiyya), its spread, the strong interest in it, and why the livers of camels were beaten to reach its Imam during the days of his life.

[3] [The third advantage is] its broad expansion in the profitable use of the agreed upon legal sources in a manner that has helped and still helps to fill in the blanks that the mujtahid may be faced with when involved in scholarly endeavor and legal extrapolation. Thus, we find it in the interaction with the Kitāb and the Sunna not sufficing itself with explicit texts (naṣṣ) or those that are pseudo-explicit (ẓāhir). Rather, it accepts all contrasting indications (mafāhīm al-mukhālafa), conforming indications (mafāhīm al-muwāfaqa), and what is indirectly alerted to by the address (tanbīh

al-khitāb); just as it accepts contextual indications (dalāla al-siyāq), associative indications (dalāla al-iqtirān) as well as incidental indications (dalāla al-tabaʿiyya).

Mālik—may Allah show him mercy—even used His statement—the most high, *"And (He made) horses and mules and donkeys that you might ride upon them and as an ornament; and He creates what you do not know" (16:8)* as evidence of the non-compulsoriness of *Zakāt* on horses due to it being associated with donkeys for which no *Zakāt* is due by consensus and unambiguous text. Likewise, he opened wide the door of legal analogy, to the point of accepting types of legal analogy that others did not accept. And he did not apply that to only one chapter of fiqh nor to only one kind of legal ruling.

On the other hand, we find many jurists rejecting certain kinds of legal analogy and restricting the fields of what type is acceptable in their view. Hence, some do not accept a legal analogy to be derived from something that is itself established by legal analogy, a legal analogy composed of a compound *ratio legis* (al-qiyās al-murakkab), a legal analogy derived from a text revealed regarding a specific incident (al-qiyās ʻalā makhsūs), nor an analogy derived from an opposite (qiyās ala al-ʻaks). Such scholars also do not permit legal analogy in the scripturally determined punishments (ḥudūd), dispensations (kaffārāt), concessions (rukhas), prescribed measurements (taqdīrāt), causes (asbāb), prerequisites (shurūṭ), nor barriers (mawāniʿ). Because of this, the field of scholarly endeavor has become restrictive and straitened with such people,`` as is known.

The Second Pivotal Discussion: Its Special Characteristics In The Juristic Field (Fiqh)

We will summarize this in ten major points:

1- The Absence of Strictures
2- Its susceptibility to evolution and renewal
3- Resilience
4- Liberality and Facility
5- Moderation and Temperance
6- Aim-driven far-sightedness
7- Exponential and Experiential Far-sightedness
8- Social and Reformative Far-sightedness
9- Logical and Rational Nature
10- Realism

FIRSTLY: The Absence of Strictures

Māliki jurisprudence is distinguished by an absence of strictures, leading to openness by comparison with other juridical schools and previous heavenly law codes, despite its acknowledgement of all [of them], its poise to coexist with them and to take benefit from them by virtue of the rule "The law of those who were before us is law for us as long as abrogation has not occurred." This is [a rule] that Mālik took as one of his foundational sources upon which he built his school and founded his jurisprudence, and originated from his belief in the freedom of scholarly endeavor (ijtihād), its compulsoriness, that a mujtahid may not uncritically follow another, and that the correct view can only be one as was the view of Mālik and the majority of the scholars of legal theory (uṣūl). That reveals itself in:

1 His adoption of "The sacred legal code of those before us, as long as abrogation has not occurred." Thus, did Mālikis derive the legality of chore-specific work contracts (jiʿāla) and trusteeship (wakāla) from His (Allah's) saying ﷻ in Sūrat Yūsuf: *"...for him who produces it (the king's beaker), is [the reward of] a camel load: I will be bound by it"* (12: 72). This is from the sacred law code of Yusuf عليه السلام. Similarly, they presented as evidence for the legality of the joint usufruct[1] (muhāya'a) of water sources His (Allah's) saying in narration about Ṣāliḥ, *"This is the she-camel of Allah. It has its assigned time for drinking; just as you have your assigned time for drinking on a specific day"* (26:155). [They also presented as evidence] for the permissibility of time-specific wage contracts (ijāra) and marriage when dowers are utilities the statement of the companion of Madyan, *"I intend to wed one of these my daughters to you, on condition that you serve me for eight years"* (28: 27) Additionally, they presented as evidence for the permissibility of trusteeship His (Allah's) statement in the narration about the companions of the cave, *"Now send then one of you with this money of yours to the town: let him find out which is the best food [to be had] and bring some to you, and let him behave with care and courtesy."* (18: 20).

These are brief examples of the Mālikī jurisprudence's extension from previous sacred legal codes.

2 [This lack of confinement reveals itself also] in its allowance for one to follow the lead [in prayer] of one who follows another school even if the other happens to omit one of the prerequisites of the Ṣalāt or one of its integral components in Mālikī fiqh whenever the Imam does not hold that act to be a prerequisite or integral in his school. An example of that is making Ṣalāt behind one who falls asleep and does not renew his ablution, one who does not recite *Al-Fatiha* in Ṣalāt, or one who starts the Ṣalāt without saying the opening *takbīra*, as in the case of the school of Imām Abū Ḥanīfa رحمه الله.

3 [This is also revealed] in his (Mālik's) rejection of ascribing unbelief to a Muslim because of a sin he committed or because of heresy (hawā). Mālik was once asked about the Muʿtazila as to whether or not they are unbelievers. He said, "From unbelief they fled!" This also is another type of non-confinement in the Mālikī fiqh.

4 [It is also revealed] in its validation of the ruling of the one who opposes the Mālikī madhhab, and its prohibition against declaring such a view to be invalid, even if such a view opposes the standard view (mashhūr) or the weightier view (rājiḥ) in the Mālikī madhhab. It is the rule known in the school as "The judgment passed by the governor lifts the disagreement." It is what is alluded to in Khalīl's statement that, "And the lifting of disagreement

[1] Usufruct is the right to use and enjoy the fruits of another's property for a period without damaging or diminishing it, although the property for a period might naturally deteriorate over time. (Black's Law Dictionary: p. 1580)

does not make an unlawful matter lawful."

5 [This lack of confinement is also revealed] in what the Mālikī fiqh has determined in the topic of enjoining the good and forbidding evil that there is no obligation to enjoin the good and forbid the evil in matters over which there is disagreement. It is among the most important rules for realizing coexistence between different schools and variant factions. It also guards them against factional and sectarian strife in that none of them will object to others regarding what they view to be allowable in one's religion or school.

6 [This is also revealed] in what Mālikī fiqh has determined in that whenever a statement from Mālikī scholars is non-existent in a particular new occurrence, the Shāfiʿī or Hanafī fiqh is to be adopted, although there is disagreement between Mālikī scholars [regarding this rule]. And this is co-opted from outside the Mālikī School.

7 [It is revealed also] in Mālik's rejection ﷺ of the imposition of his madhhab and *Muwaṭṭa* on the entire Umma when the Abbasid Caliph presented that idea to him, and [it is shown] in Mālik's excuse for [not] doing that.

8 [Its lack of confinement is revealed] in its scholars holding it to be better to act in accord with the view of the one who has a different view without being prompted in certain matters of disagreement. It is what is known as "The Chapter of Scrupulousness and Departing from Disagreement." An example of that is the recitation of the *Basmala* inaudibly, and the recitation of *Al-Fātiḥa* behind the Imam to depart from disagreement with Shāfiʿī—may Allah show him mercy.

9 [It is also revealed] in its acceptance of the narration of the innovator whenever he does not call to his [deviant] opinion and as long as he is not among those who deem it permissible to lie. This is also another type of resilience, lack of confinement, and acceptance of an opposing view.

10 [And it is revealed] in its allowance of departure from the school and acting in accord with an opposing view during times of need (ḥāja) and in cases where it is difficult to apply the Mālikī fiqh, or for other justifications.

It has been related that Mālik ﷺ entered the mosque after 'Asr prayer and then sat down without praying the two units for greeting the mosque (taḥiyya). A child said to him, "Stand up, O Shaykh, and pray two units!" So, he stood up and prayed them. It was later said to him about that, "But, you consider it to be disliked to pray the units for greeting the mosque after 'Asr prayer." He said, "I feared for it to be held against me His (Allah's) saying: *"And when it is said to them: Bow! They do not bow""* (77: 49)

Consequently, the scope of the openness of the Mālikī fiqh compared to others becomes clear; as does its conciliation and coexistence with them in peace, understanding, and accord; as well as the possibility of taking and borrowing from them.

This is what agitated the womb of the Moroccan community historically to make it this tolerant and open community that makes room for opposition from those who hold opposing views. However, it did so without losing its special characteristics or identity; [this is considered to be] among those things

that are possibly one of the good deeds of this *madhhab*, and its great favors upon this secure land.

SECOND: Its susceptibility to evolution and renewal

This includes adapting to the time in the shade of the Islamic sacred legal code (sharīʿa), under its supervision, and within its legal framework and moral and philosophical surroundings, by virtue of its adoption of the principles of good custom, unspecified interest, and the barring of means [to evil]. For undoubtedly these matters differ from one age to another and from one land to another. This is among the factors that open the door wide before every capable researcher and qualified jurist who enjoys the needed qualification for extrapolating the judgments he needs to extrapolate, or choosing what is better and more appropriate than what is found and clearly documented in the Islamic juristic legacy.

The Moroccan experience has confirmed the utility of this approach and its benefit in the area of the laws of local customs (fiqh al-'amaliyyāt) or what has been termed "What the Established Practice Has Been" (mā jarā bihī al-'amal): [like] the legal practice of Fes (al-'amal al-fāsī), and the absolute legal practice (al-'amal al-muṭlaq). For indeed the exponents of this remodeled legal approach (fiqh tajdīdī) relied upon unspecified interest and the barring of means in their judgments and legal opinions that became the established practice as well as the praiseworthy customs to support less preferred opinions (marjūḥa) or even some that depart from the madhhab, which were suited to the religious, social, economic, political, and security circumstances that they were living. This availed them from having to import, adopt, copy, or borrow from others, and it helped them to preserve the Islamic identity and the Mālikī seal in their legislation and judicial verdicts. An example of that is the recitation of the Qur'an in community, the testimony of the 12 witness rule (lafīf), solidifying a business transaction by shaking hands (bayʿ al-ṣafaqa), and other things that are known in the established legal practice of Fes and others. The only thing is that this acceptance of evolution and renewal is circumscribed and limited to the area of unexpressed matters (maskūt 'anhu) and those wherein one is given a choice to do or not do (al-mukhayyar fīhi). As for what is expressly referenced as a command, a prohibition, or is referred to as "Legal Customs" ('ādāt sharʿiyya) as Shāṭibi states, such matters are not amendable (thawābit). They do not accept alteration. It is not permitted for one to touch such matters under the name of "unspecified interest" or "renewed custom" ('āda mutajaddida), because that is considered an abrogation of the Sharīʿa, and there is no abrogation after his (the Messenger's) death ﷺ.

THIRDLY: Resilience

[This is revealed] in the treatment of many of the thorny cases, the difficult situations, and in acting to solve the unexpected problems by virtue of the principle of "observing the disagreement" (murāʿāt al-khilāf), which is something that Mālik was unique in adopting as one of his juristic foundational principles upon which he built his legal school. That manifests itself:

1- in his validation of certain contracts, over which there is disagreement about

their invalidity, after their occurrence, in observation of his opponent's view with the condition that that view be founded upon a strong proof in itself. This resembles the adoption of the view of the minority that is known presently.

2- [This is manifested also] in his assigning of the results of valid contracts to contracts over which there is disagreement over their invalidity. An example of that would be marriages over which there is disagreement concerning their invalidity. The Mālikī fiqh validates some of them after consummation has occurred, because after consummation it is not possible to separate spouses from one another in light of the negative consequences that result such as the splitting up of the family and vagrancy of the children. In light of this, the Mālikī fiqh neglects its fundamental view that holds such a marriage to be forbidden, so it validates it as a preservation of this family. The child in such a relationship is ascribed to the husband, it obliges inheritance between each spouse before it is annulled [if one of them dies], as well as other rulings that apply to the valid marriage. Similarly, regarding invalid sales transactions, the obligation of insuring [the safety of the sale item] transfers to the buyer immediately from the time he takes hold of it. So, once the item goes bad [due to the buyer's neglect], he forfeits the price [he paid for the item]. This is so, while we find the Shāfi'ī fiqh adopting the view that an invalid sales transaction is to be annulled even if items exchange hands. Likewise, it holds the view that invalid marriages are to be annulled even if the wife gives birth to children.

FOURTHLY: Liberality and Facility in its Judgments and Opinions

Its guides in that matter are the Kitāb, the Sunna, and the foundational axioms and juristic principles extrapolated from them that have helped it to take the simplest of solutions, the lightest of judgments, and those that are easiest, like His (Allah's) saying ﷻ, *"Allah desires ease with you and He does not desire with you difficulty"* (2: 185). [It is also like] His saying, *"Allah burdens a soul only with what it can bear"* (2: 286), His saying, *"And He has made no difficulty upon you in religion"* (22: 78), his saying ﷺ, "Make things easy, and do not make them difficult," his saying ﷺ, "Beware to go to extremes in religion," the axioms, "Difficulty is to be lifted," "Hardship attracts facility," "Harm is to be removed," "Necessities makes unlawful things lawful," "The presumed state of things is one of purity and permissibility," and other axioms that have had a positive reflection on the various chapters of law regarding customs, rituals, interpersonal relations, disputes, family matters, and other chapters of fiqh wherein the Mālikī fiqh has appeared more facilitating, allowing, and more responsive to the needs of people in their rituals and interpersonal dealings. This can also be said about [cases] wherein it is gentler to them and more fitting for them in their religious and worldly matters. These are some of the things that led Al-Ghazālī—may Allah show him mercy—to say, fretfully, after comparing the legal schools in the chapter of water, "I wish the school of Shāfi'ī in the area of water was like the school of Mālik." Likewise are the other chapters.

FIFTHLY: Balance and Temperance

[This is manifested] in its judgments, stances, fundamentals, and branches that are removed from excess and neglect, extremism and strictness, strangeness and irregularity, rigidity and complexity, rebelliousness and accusations of unbelief. It adopts legal analogy. It welcomes acting on concessions. It dislikes accepting strange opinions and irregular judgments. It loves emulation [of the Sunna]. It dislikes blameworthy innovation. It forbids the employment of ruses to escape from one's religious duties or to justify unlawful acts. It rejects the results of such things and punishes the one employing the ruse by voiding his aim; just as it bars him from reaping the benefit of his ruse, and punishes him for his act. An example of that is intromission[2] (tawlīj) in the sales transaction and wills. Intromission (tawlīj) means for one to present gifts in the form of a sale. The one doing so seeks to give something freely to his heir, but fears that the sacred law will deny it to him. So, he records a mock sale (ṣūrī) [to achieve his aim]. In the area of wills too, the same thing happens, as well as the pronouncement of divorce during [life-threatening] illness, and the man's marriage of a woman to make her lawful for her former husband. All of these are ruses that the Mālikī fiqh rejects and grants no legitimacy to their results.

[2] Intromission is the act of handling or dealing with the affairs or property of another; the possession of another's property, with or without legal authority. (Black's Law Dictionary: p. 842)

SIXTHLY: Aim-driven far-sightedness

That is, Mālikī fiqh is considered one of the most profound legal schools in understanding of the spirit of the Islamic sacred law code and its aims; the most far-sighted of them in reflection and consideration of their ends; and the most tenacious of them in observing its judgments and subtleties when extrapolating judgments from its texts and extracting legal rulings from them. This is especially with respect to what pertains to the five universals: religion, self, wealth, honor, and sanity. For it has excelled many legal schools in its care, preservation, and protection of them from near, far, or in any way.

To greater illustrate, one example that is firmly connected with the preservation of souls will suffice. That is, any reader or researcher is able to get a sense of the wisdom of the Mālikī fiqh, the remoteness of its forethought, its adherence to the spirit of the Islamic sacred law code and its aims, and its capacity to crystallize and realize them in its legislation and judgments.

In the chapter of blood violations (dimā'), Islamic law is in agreement in all its schools that the wisdom for the legislation of the law of just retribution (qiṣāṣ) is to preserve human life, and to prosecute, punishment, and chide aggressors from shedding innocent blood wrongfully as taken from His ﷻ statement, *"And for you there is life in the law of just retribution, O You who possess intelligence: so that you will be on guard"* (2: 179).

So, have the different legal schools been able to realize this wisdom and reach this goal? Have they been given success and grace to extrapolate the appropriate rules and precepts for it? Have they succeeded in preserving

human life, in eradicating the crime of murder, or lessening its occurrence?

With respect to Mālikī fiqh, we are able to answer "yes" to all of these questions. It was able to realize that wisdom. It was graced to lay down the rules and precepts to guarantee their success. It succeeded in limiting the spread of the crime of murder in the communities that adopted it during the era of its sovereignty in their courts and during its existence in their legislatures to the point that whenever it was removed from them, matters changed. And, it was no longer responsible for what happened in them (those communities).

Two matters confirm what we are saying:

The first: is theoretical and legislative that is manifested in laying down the stern rules and those that show no leniency to those whose passions would seduce them into transgressing against the lives of human beings. In this fashion, it (Mālikī fiqh) has conferred the right of exacting just retribution (qiṣāṣ) in cases of voluntary manslaughter (al-qatl al-'amd al-'udwān) regardless of the kind of implement used in the homicide. It is also shown in the method followed in its implementation; just as it does not discriminate between the one who perpetrates the crime of murder (mubāshara) and the one who is complicit in it (tasabbub). It also has broadly interpreted the meaning of "complicity" (tasabbub) to include coercion to murder another, ordering one to do so, directing one to locate someone in hiding with the intent of murdering him, detaining someone who another desires to kill, denying food, drink, medicine, or clothing to the one under duress to kill, bearing false testimony about something that will lead to murder, a judge's unjust decree of execution, and the implementation of that decree by one who is known for his tyranny. Likewise, it has conferred the right to it (qiṣāṣ) in cases of intimidation and threats when death results from it, and in cases where the one being murdered is content with being killed and gives his prior permission—what is known as "euthanasia." So, whenever a sick person requests from the one who kills him to kill him and yields his right, just retribution (qiṣāṣ) may be taken from the murderer, because the one who has yielded this right has yielded something he does not have ownership of. It (Mālikī fiqh) has also conferred the right of just retribution in the case when a group of people kills a single person whenever they all participate in his murder or conspire to do so.

It has also negated [the right to exact retribution] in cases of quasi-deliberate intent (shib al-'amd); just as it has narrowed the understanding of the "doubt that repels the punishment for capital crimes" (ḥadd). It has opened the door to scholarly endeavor (ijtihād) in the area of capital crimes (ḥudūd), and has permitted making legal analogy in their regard. It has deemed it sufficient in establishing homicide by *qasāma*[3] or *tadmiya*[4]. But, it has not accepted the pardon offered by the relative of the victim when the murder takes the form of

[3] *Qasāma* is the sworn confession done 50 times, by 2 or more of the victim's relatives, which testifies to that the victim named his murderer prior to his death. If such a murder is judged to be malicious, the relatives may demand the execution of the alleged murderer. However, if the murder is judged to be accidental and unintended, the family may only demand blood money.

[4] *Tadmiya* linguistically means "bleeding." In this instance it is a reference to establishing the right to demand the execution or blood indemnity due from an alleged murderer if he is seen with blood on his person or belongings while standing near the body of the victim of homicide.

an assassination (ghīla) or brigandage (hirāba). Similarly, it does not accept amnesty given by the governor (Imam) when the victim does not have an heir or relative (walī).

With this stern legislation, it (Mālikī fiqh) closed all doors and windows to murder, and it cut off the path to those who seek to quench their thirst with the blood of the innocent and remove immunity from all people. It also has secured for people a tranquil and secure life in the way that Allah ﷻ has promised in His saying ﷻ, *"And for you there is life in the law of just retribution, O You who possess intelligence: so that you will be on guard"* (2: 179).

The second matter: that confirms this is the small number of murder cases (nawāzil al-dimā) found in the Mālikī legal books of "incidental judgments" (nawāzil). This is one of the things that explain the small number of incidents of murder. It also registers a realistic testimony to the security that was a consequence of those times and in the lands where the Maliki fiqh enjoyed dominance.

In the meantime, we find some legal schools narrowing the understanding of murder that confers the right to just retribution (qiṣāṣ), while at the same time expanding the understanding of the doubt by which the right to retribution is lost. We also find them prohibiting legal analogy in the area of punishment for capital crimes, while affirming the case of quasi-deliberate intent [in murder] and rejecting the ḥadīth concerning [the legitimacy] of *qasāma*. Consequently, the door to murder was opened widely and completely, and every criminal was enabled to fulfill his desire, commit his crime, and escape from his enemy by every means to murder that did not result in the right to demand just retribution in his view. And he remained secure and at ease with his soul from [the fear of] retribution and assured that his life would not be taken after escaping from his debtor. This is in contradistinction to the wisdom for which Allah ﷻ legislated just retribution.

SEVENTHLY: Exponential Far-sightedness

This includes experiential far-sightedness with the texts and spirit of the Islamic law as is taken from the noble ḥadīth, "Then they will not find anyone more knowledgeable than the scholar of Medina." And in one rendition, "Then they will not find anyone with greater understanding than the scholar of Medina." And since discussion of the development from one soul, the resting place and depository happen to be among the most hidden and subtle of matters, the [Qur'ānic] verse ended with His saying *"...for a people who understand."* That was after He said, *"It is He who has produced you from a single soul: then there is a resting place and a depository"* (6: 98)

Due to this exponential and experiential far-sightedness, Mālikī fiqh is the closest of schools to the Book of Allah and the Sunna, the least of them in conflict with the ṣaḥīḥ ḥadīth—as Ibn Taymiyya said, the greatest of them in correctness and soundest of them in legal analogy—as Shāfiʿī ﷺ stated, the strongest of them in opinion—as Imam Ahmad said, the least of them in error—as Ibn Khuwayz Mindād said, the best of them in interpretation, and the most apposite of them in reconciliation between the variant texts and conflicting proofs. And the noble ḥadīth bears testimony to that. So the "most knowledgeable one" and "the one with greater understanding", such a person's knowledge and understanding is only such when it is sound and correct being free of error, in conformity with the Book and the Sunna. The one who looks closely at Islamic law

and Mālikī fiqh comparatively finds no choice than to confirm this testimony and the truthfulness of it.

EIGTHLY: Social Far-sightedness

This includes reformative far-sightedness too in its focus and judgments by virtue of its adoption of "unspecified interests" and "good customs" as one of its legal foundations and one of its legislative sources upon which he (Mālik) based his fiqh, anchored down the rules of his madhhab, and derived from them his opinions and judgments.

Thus, we see him every time he sees that there is a particular religious or worldly interest in whose regard no scriptural evidence exists pointing to its exclusion from consideration, or if there is an established custom in a town or a tradition familiar to the people in their actions or statements that does not conflict with scripture nor does it contradict his over-arching legal precepts, Mālikī fiqh acknowledges, welcomes, and fuses it with its legal system; without waiting for specific evidence pointing to the legality of that specific interest or custom; finding it sufficient to rely on the general principle that the Islamic law has come merely to bring about benefit and to repel harm, and that wherever there exists a [legitimate] benefit, that is where the judgment of Allah ﷻ is found until evidence points to the contrary of that.

This is so, except that the kind of unspecified interests that are given consideration are those that the Islamic law considers to be an interest; not merely what realizes peoples' desires and passions. For such interests vary, and following them leads to clashing and conflict. Therefore, Allah ﷻ says, *"If the Truth had been in accord with their desires, truly the heavens and the earth, and all beings therein would have been in ruin"* (23: 71)

NINTHLY: Logical and Rational Nature

The logical and rational nature concerning its judgments: You do not find in it (the madhhab) anything that contradicts sound reasoning or logic; nor is there anything that existential patterns and norms deem impossible. It rejects all of that, and stipulates the possible occurrence of a thing in all of its judgments. It also rejects anything that contradicts that as is the case in the establishment of lineages, the acceptance of testimonies and claims, as is known in Mālikī fiqh.

TENTHLY: Realism Regarding Its Incidental Judgments

Then, its incidental judgments (nawāzil) and secondary rulings in the various chapters are its topics that fluctuate between what is actually happening and what possibly may happen even if only rarely. Whenever Mālik, may Allah ﷻ show him mercy, was asked about something like that he would say, "Ask about what actually exists and leave off what does not exist." At times he would even turn away from the questioner, but when the questioner pressed him [about the matter] in search of an answer, he would say, "Were you asking about something that you could derive use from, I would answer you." And in that [approach]—may Allah show him mercy—he is abiding by the ḥadīth, "O Allah! Verily I take refuge with you from knowledge that does not give benefit..."

My Benefactor! Your majesty! These are an unrestrictive number of the special characteristics of the blessed Mālikī madhhab. Allah ﷻ has adorned this secure land with a group of its distinct attributes that have granted it this status that has become known amongst all peoples; That status is one of openness, tolerance, cooperation, stability, and eminence.

So Moroccans—My Benefactor—have lived under the influence of a school that bears all of these characteristics. It has branded their collective identity with this mark, and has made of their understanding of the religion, of their devoutness to it and of their granting it authority over their daily affairs in their various manifestations a support and a porter toward this Sunni religious horizon, which—My Benefactor—both the common and distinguished people have started to realize its special distinction. They have also started to recognize because of it the Islam of beauty, tolerance, and fraternity that the Prophet of mercy—your grandfather ﷺ—came with. May Allah grant permanence—My Benefactor—to your glory. May He protect you and keep you as a treasure for this secure land, and may He do the same for all the Muslims and for humanity. And let the conclusion be from [you]—Our Benefactor, Commander of the Faithful!

"Verily Allah and His angels send salutations upon the Prophet. O You who believe! Send salutations upon him as well as peace." O Allah! Show mercy to our master, Muhammad, the opener of what was locked, the sealer of what has preceded, supporter of the truth by the Truth, and the guider to your straight path, and do the same for his family by the right of his scope and his great measure. "Glory be to your Lord, Lord of Might, from what they describe. Peace be upon the messengers, and all praise belongs to Allah, Lord of all the worlds."