*May Allah bless our Master Muhammad and his family and grant them peace.*

**Fatwa and Qada' [sentence] in the Maliki School**

**by Sidi Ali al-'Iraqi al-Husaini**

**Preface**

I want to preface this study by explaining my reason for choosing this topic. The reason for my choice of this subject lies in the claim made by some ordinary people, and even some eminent thinkers, that holding to a specific school of fiqh leads to the rigidification of *fiqh* and closing the door of *ijtihad*. The legal and historical facts are very far from this claim, at least in respect of the application of the Maliki school by its scholars in the Maghrib and Andalusia. That is because the method on which they originated gave Maliki *fiqh* great flexibility and an extraordinary capacity for adaptation. This productive school has shown itself to be adaptable in different environments and times, right up to present times, by the virtue of the fact that the door of *ijtihad* in the School remains open right up until today. It is a definitive evidence which refutes the opinion of those who claim that holding to a school of *fatwa* and *qada'*(sentence) rigidifies *fiqh* and makes it capable of being adapted to different places and times.

**Definitions:**

***Fatwa* (Linguistic definition)**

According to the *Qamus*: *futya* and *fatwa* designate the opinion which a *faqih* gives. *Aftahu* in a matter means "he gave him an explanation on a matter."

According to the *Mu'jam al-Wasit*: it is the answer to a problematic legal case in the Shari'a or law.

***Qada'* (Linguistic definition)**

According to the *Qamus*: *qada'*is judgement. The verb is *qada*, and *qada*, *qada'*and *qadiya* are nouns. It means "accomplishment, final decision and elucidation".

According to the *Mu'jam al-Wasit*: *qada'*means "judgement, decision and the action of the Qadi".

In technical usage, a *fatwa* is communicating a legal ruling without making it binding.

In technical usage, *qada'*is communicating the legal ruling while making it binding (i.e. sentencing).[1](https://bewley.virtualave.net/fatwa.html#1)

The one who issues a *fatwa* is a *mufti* and the one who gives judgement or issues a ruling is a Qadi.

It is deduced from the two previous definitions that *fatwa* refers to a legal ruling when someone asks for a legal opinion without that person who asked for the opinion being obliged to implement what he is told. It is left to his conscience whether to accept that ruling or to turn from it and he bears the responsibility for that. As for sentence (*qada'*), it refers to a legal ruling in answer to a dispute and it is obliged for the authority specifically concerned with that to implement the ruling.

**The ruling of *Fatwa* and *Qada'*in the Shari'a**

The ruling of *fatwa* and *qada'*is that they are *fard kifaya*. When some of the community of Muslims undertake them, then that is no longer the responsibility of the rest of the community. If no one undertakes them, then the entire community sins.

In the Chapter on Jihad of the *Mukhtasar*, Khalil mentions some of things which are *fard kifaya*: "like establishing the sciences of the Shari'a, *fatwa*, averting harm from Muslims, *qada'*, testimony, the imamate, etc."

So in every community of Muslims there must exist those who give them *fatwa* on rulings of their *deen* concerning worship and transactions so that they will know what they are commanded and forbidden. As for *qada',* it is also a *fard kifaya*. It is one of the greatest ranks since it entails settling disputes, averting factionalism, establishing the *hudud*, helping the wronged and restraining the wrongdoer.[2](https://bewley.virtualave.net/fatwa.html#2)

As for appointing the Qadi, that is done by the Amir of the community. In *at-Tuhfa*, Ibn 'Asim defined the Qadi:

He carries out judgements by the Shari'a

    and represents the ruler.

As for the *mufti*, he is either restricted to appointment by the Amir, as is the practice in the east, or not restricted so that *fatwa* is undertaken by those who are qualified to do that and whom people view as qualified, as was the custom of the people of the Maghrib and Andalusia.[3](https://bewley.virtualave.net/fatwa.html#3)

**The reason for multiple positions in the Maliki School in a single case**

The reason for multiple positions on a single case derives from the great number of students who studied with Malik, may Allah be pleased with him. Allah Almighty verified the words of His noble Prophet, may Allah bless him and grant him peace, reported in a sound *hadith* from Abu Hurayra, may Allah be pleased with him, when he said, "A time is about to come when people will beat the livers of camels seeking knowledge and will not find anyone with more knowledge than the scholar of Madina." At-Tirmidhi and Ahmad related it. So Allah made many people come to Imam Malik from every deep ravine, seeking the knowledge for which he was famous. Those students constitute the primary source for the multiplicity of views on a single case, but there are various reasons for the development of this phenomenon:

**One:** The great number of those who studied with the Imam lead to different transmissions reaching us from him about what is connected to a single case. The Imam may have retracted one position and changed his opinion in a matter because he came across a proof which he did not previously know, or social circumstances may have changed, or the state of the one asking for the *fatwa* may have changed. The one who stayed with the Imam for a certain period of time transmitted a view and did not transmit the Imam's retraction of that view since that student was not present when that retraction and change of opinion took place.[4](https://bewley.virtualave.net/fatwa.html#4)

**Two:** Using the transmissions already mentioned as a basis for deduction by the Imam's students. The students of the Imam used to arrive at answers for cases that the imam did not mention by using analogies based on the original text. This operation is called "*takhrij*" (extraction). It designates using the texts of the Imam as bases for the derivation of rulings for new secondary cases by means of analogy. It is a type of *ijtihad* which is called '*ijtihad* in the School'[5](https://bewley.virtualave.net/fatwa.html#5). Due to the many transmissions from the Imam, there are several possibilities of deduction based on his views and texts.

**Three**: At certain times the students of Malik and his companions would undertake unrestricted affiliated[6](https://bewley.virtualave.net/fatwa.html#6)*ijtihad*. They were limited by the principles of their Imam, although at times their ijtihad led them to disagree with some of the views of their Imam according to their preference for certain evidence and legal reasons.

So to summarise what was mentioned, the basis for the variety of views within the Maliki school are;

- The variety of transmissions from Imam Malik at different times and different situations.

- The variety of the ways of deduction based on his verdicts and texts.

- Affiliated unrestricted *ijtihad* done by the students and companions of Malik.

Since Malik had many students, that made the Maliki school one of the most prolific schools since often there is more than one answer in the different secondary rulings and legal cases.

This is without a doubt a fact which enriched the school, but at the same time, it is also a reason for the confusion of *muftis*, qadis and rulers in the generations in which the process of *ijtihad* came to a stop since they needed to select a specific verdict in order to issue their *fatwas* and resolve disputes.[7](https://bewley.virtualave.net/fatwa.html#7)

**The need to choose a specific verdict or preference (*tarjih*)**

In the early periods of *ijtihad*, the school of *fatwa* and *qada'* were entrusted to the Qadi and *mufti* and they used to judge every case or occurrence according to their choice and *ijtihad*. Then it was left up to the ruler and the authorities began to specify the school which the mufti or qadi must follow in giving *fatwa* or sentence, whether that school was followed by the overwhelming majority or simply followed by the Khalif and a party of the men of government. Every *madhhab* had its own *mufti* and qadi appointed, and they gave judgement among its followers, and this was the case in most of the eastern lands.

Since the Madhhab became the basis which was followed in sentence and *fatwa*, and consequently general behaviour, the same disagreements which occurred about the derivation of rulings from Shari'ic proofs also occurred in its application in cases and rulings, i.e. a sort of *ijtihad* occurred within the madhhab, even in the times of greatest *taqlid* (imitation) and stagnation. This was how things were: either the qadi and *mufti* were allowed to choose and exercise *ijtihad* in following the verdicts of the school and relying on them, or he was constricted to follow a procedure established by the authorities, in order to maintain uniformity in judgements. So it was not allowed for the qadi or mufti to shift between verdicts for the best interest of one of the litigants. Indeed, the *fuqaha'*and authorities stipulated judgement and *fatwa* on the basis by the preferred (*rajih*) or well known (*mashhur*) or the opinion in practice *('amal*) by the school followed in their land. The edicts began to stipulate that qadis must follow that procedure. So first the Muslims were confined to the school of fiqh which they followed in their land, and then it was stipulated that judgement should be on the basis of the well-known and preferred or that which was the practice.[8](https://bewley.virtualave.net/fatwa.html#8)

In brief, *fatwa* and *qada'*went through three stages:

1. The first stage was at the beginning when a *mufti* or qadi employed *ijtihad* with independence and unrestriction, i.e. he derived the rulings directly from their legal proofs (Book, Sunna, consensus, etc.), whether by using his particular principles or by following the *usul* of a particular Imam.

2. The second stage was when a mufti or qadi used ijtihad in the *madhhab* which had been decided on by those in authority by choosing from the verdicts of the school that which he thought is soundest or most appropriate.

3. The third stage was when authorities obliged *muftis* and qadis to take the preferred or well known or what was the practice in the school. That is by the desire to unify the legal system, and in order that it will not be any arbitrariness, and to avoid favouritism or bias on the part of the qadis in resolving disputes.

**Approved (*mu'tamid*) verdicts in *Fatwa* and Sentence in the Maliki school**

The existence of multiple verdicts on a single case made it necessary to compare them in respect of their transmission, those who espouse them, and their proof. This comparison was undertaken by scholars of the school called "*mujtahids* in *fatwa*". That is the level of *mujtahids* who confine themselves to comparing transmitted verdicts by means of preference (*tarjih*), and then state their preference for some verdicts over others based on the strength of the proof, the strength of the transmission, or the suitability of its application according to the circumstances of the time and similar methods[9](https://bewley.virtualave.net/fatwa.html#9)which is not considered to be new independent or dependent[10](https://bewley.virtualave.net/fatwa.html#10) inference. So then these scholars confined the verdicts of the school to seven categories, which are:

1. The agreed upon (*muttafaq 'alayhi*) verdict

2. The preferred (*rajih*) verdict

3. The well known (*mashhur*) verdict

4. The verdict which is equal to another one

5. The existing*'amal*

6. The weak verdict

7. The irregular (*shadhdh*) verdict.

Five of these verdicts are relied on in *fatwa* and sentence:

1. The agreed upon verdict

2. The preferred (*rajih*) verdict

3. The well-known (*mashhur*) verdict

4. The verdict which is equal to another one

5. The existing *'amal*[11](https://bewley.virtualave.net/fatwa.html#11)

**The Agreed upon (*muttafaq 'alayhi*) verdict**

What is meant by this is the verdict on which the people of the Maliki *madhhab* agree rather than other schools in respect of a particular case.

**The Preferred (*rajih*) verdict**

In technical usage, the preferred is that whose proof is strong, but that is only in respect of a *mujtahid* in the school who is able to examine the strength of the evidence in transmission and meaning. As for the imitator, *mufti* and qadi who are limited in *fatwa* and judgement, what is preferred is that which was preferred by the scholars of the school who have the full qualifications for exercising preference. The mention of what is preferred is found in the original books, as it appears in the work of Shaykh Khalil in his *Mukhtasar* when he mentioned the choice of al-Hasan al-Lakhmi, the preference of Ibn Yunus, declaration of Ibn Rushd, and the position of al-Maziri.[12](https://bewley.virtualave.net/fatwa.html#12)

The opposite of the preferred verdict is the weak verdict whose evidence is weak in respect of a *mujtahid* in the School or that which the scholars of the School qualified to exercise preference consider to be weak.

It is self-evident that one must rely on the preferred rather than the weak in *fatwa* and sentence.

**The well-known (*mashhur*) verdict**

Scholars of the Maliki school disagree about the technical definition of the *mashhur*, taking two positions. The first is that it is that which is the verdict of many people, and the second view is that it is the verdict of Ibn al-Qasim in the *Mudawwana*.

In respect to the first position, which is that the well known is that which is the verdict  of a lot of people, it is related to a faqih who is able to analyse the chains of transmission (isnads) of the school and is conversant with them. As for the one who is an imitator, he considers as well known among the scholars of the school that what is stated to be well known in the reference works of the School, like the *Mukhtasar* of Khalil and its reliable commentaries, and *ash-Sharh as-saghir 'ala Aqrab al-masâlik* by ad-Dardir.

In respect of the second view that the well known is the position of Ibn al-Qasim in the *Mudawwana*, in *Tabsira al-Hukkam* by Ibn Farhun[13](https://bewley.virtualave.net/fatwa.html#13) reports from Abu'l-Hasan at-Tanji that the verdicts of Malik in the *Mudawwana*[14](https://bewley.virtualave.net/fatwa.html#14) are more appropriate than the verdicts of Ibn al-Qasim in it because he is the greatest Imam, and the verdicts of Ibn al-Qasim in it are more appropriate than the verdict of others in it because he had the most knowledge of the school of Malik.[15](https://bewley.virtualave.net/fatwa.html#15) The position of others in it is more appropriate than the position of Ibn al-Qasim in other books. That is because of its soundness.[16](https://bewley.virtualave.net/fatwa.html#16)

By unifying the term of mashhur in both views, we can say that the definition of the mashhur refers to the quantitative support of one of the verdicts of the school by more than three individuals. As for the definition of the mashhur as the verdict of Ibn al-Qasim in the *Mudawwana* refers to a qualitative or legal support which substitutes the quantitative support. This is because Imam Malik and his student Ibn al-Qasim represent a qualitative superior number because of their high rank in the school.

The opposite of the *mashhur* is the irregular (*shadhdh*), which is what only a few people say or what Ibn al-Qasim did not say in the*Mudawwana*. It is not permitted for a *mufti* or qadi who is an imitator to give fatwa or sentence by an irregular verdict.

**The verdict which is equal to another**

This is the rank when verdicts are equal in respect of evidence or those who support them, and it is not immediately clear which of them must be preferred.[17](https://bewley.virtualave.net/fatwa.html#17)

When the *mufti* and qadi are *mujtahids* who can examine the proofs and are unable to prefer one of the verdicts, they choose one of them for fatwa or sentence. As for the *mufti* and qadi who imitate, they choose one of the two without following desire or appetite. Similarly it is permitted for the *mufti* but not the qadi to inform the one who asks for a *fatwa* of the two verdicts as long as that does not lead to confusing the common people. One should mention that Shaykh Khalil has a specific technical term for this situation which he mentioned in the Introduction to his *Mukhtasr*:

"When I mentioned about disagreement, that is disagreement about which opinion is considered to be well-known (*mashhur*). When I mentioned two or more verdicts, that is because I did not found any textual preference in connection to them."

**The existing*'amal* (practice)**

What is meant by the existing *'amal* is to take a weak or irregular verdict in the face of a preferred or well known one for the sake of public interest, necessity, custom, or another basis, or it is to prefer a weak verdict and judge by it and give fatwa on that basis, and then the later adoption of it by judges and muftis due to one of the aforementioned reasons.[18](https://bewley.virtualave.net/fatwa.html#18)

The existing *'amal* involves turning from the preferred and well known in the school and taking the weak or irregular in order to bring about public welfare, avert evil or to observe custom. All of these reasons lead to turning away from the preferred and well-known verdict of the school, based on the principles of Malik:

- bringing about public welfare, based on *maslaha mursala*

- averting evil, based on *sadd adh-dhara'i'*

- observing custom, which is one of principles of the School.

The meaning of this is that the existing*'amal*designates abandoning the literal[19](https://bewley.virtualave.net/fatwa.html#19)position of the school in order to maintain "its spirit".[20](https://bewley.virtualave.net/fatwa.html#20)

In fact, when the door of *ijtihad* was closed, – as as a means to stop those who laid claim to it and who were not qualified for it *(sadd adh-dhari'a)* – the *fuqaha'*of the Maliki school opened another door to it via means of the practiced *'amal*every time events and cases arose and had to be examined. This lead to taking into consideration abandoned verdicts and dispersed opinions so that they acquire significance when they are reinforced by proofs and principles.

One must take note of the fact the existing*'amal* grew and developed in the Islamic Maghrib, which includes Andalusia and Morocco, and it knew a number of practical applications. This differed from the situation in the East where the Maliki school was not applied despite the existence of supporters and followers of the School there. That was, however, justified by the predominance of the Maliki School in the Islamic Maghrib and its weakness in the east. The dominance of the School implies the carrying out of sentence as well as *fatwa* to resolve people's problems, and to keep abreast with events and developments which occur in society as a whole.[21](https://bewley.virtualave.net/fatwa.html#21)

The proof of that is that the east had a means other than that which the Maghribis used to resolve those problems. Shaykh ad-Dasuqi, who wrote a gloss on the Great Commentary on the *Mukhtasar* of Khalil said:

"As for the irregular and less preferred (i.e. weak) verdicts, one does not give *fatwa* based on them. Similarly one is not permitted to give fatwa by one of them nor to judge by them, and it is not permitted to act on the basis them in what is personal to oneself. Rather action by the verdict of another school on it is given preference because the verdict of the other school is strong in his school. That is stated by the shaykhs. Al-Hattab reported from Ibn 'Umar that it is permitted to act by the irregular verdict on a personal basis for oneself, and that it is preferred to acting by another school of because it is a verdict in the School. The first position is taken the Egyptians and the second is taken by the Maghribis, as our Shaykh stated."[22](https://bewley.virtualave.net/fatwa.html#22)

This means that in giving *fatwas*, Egyptian Malikis used the same method of turning from the preferred and well known when the circumstances demanded that, acting according to the principles of the School, although they did not resort to irregular and weak verdicts. They went outside the School and took a strong verdict from outside of the Maliki school. That was due to the existence of those who had familiarity with the other schools in their land, which was not the case with the Maghribis who were confined solely to the Maliki School.

Whatever the method, the end is the same, which is to adapt the School to the circumstances of people and society, take account of public welfare, avert evil, remove distress and constriction, and achieve social justice. Existing 'amal has preconditions which must be met in order for *fatwa* and sentence by it to be valid. Shaykh ash-Shinqiti said in Maraqi as-Su'ud:

The weak is given preference, if there is*'amal*by it

      because the reason is there.[23](https://bewley.virtualave.net/fatwa.html#23)

Shaykh Muhammad al-Amin ash-Shinqinti explains this verse:

"He means that when the *'amal*is based on a weak verdict, then it is given preference over the well known. But there are preconditions required for that:

1. The reason for turning from the well known actually exists.[24](https://bewley.virtualave.net/fatwa.html#24)

2. It is a precondition that the *'amal*correspond to a verdict.[25](https://bewley.virtualave.net/fatwa.html#25)

3. The *'amal*is established by clear evidence.[26](https://bewley.virtualave.net/fatwa.html#26)

4. That the first to use it was someone qualified to exercise tarjih.[27](https://bewley.virtualave.net/fatwa.html#27)

The author of *Nur al-Basar* mentioned these preconditions. The later [28](https://bewley.virtualave.net/fatwa.html#28) authorities of the School have corrections and preferences for certain transmissions and verdicts [29](https://bewley.virtualave.net/fatwa.html#29) in which they turned from the well known for the sake public welfare or averting evil. Such was the practice of judges and *muftis*. An example of that is that when the scholars of Fes saw that women lied a lot in claiming the end of the *'idda*, they started to not accept from a woman the claim that it had ended in less than three months while the verdict that she was not to be believed was very weak indeed."[30](https://bewley.virtualave.net/fatwa.html#30)

If the preconditions are not met for the existing *'amal*, then it is definitely mandatory for the imitating mufti and qadi to give *fatwa*by the preferred or well known. *Fatwas* and sentence by the existing *'amal*are limited to the factors of time and place and the existence of what obliges it. *Fatwa* and sentence by the existing *'amal*are established to remove some social problems particular to the time and place and particular circumstances. When the facts of time or place changes or that which obliges turning from the preferred and well-known is removed, then one must return to the preferred and well known verdict, or re-examine the social circumstances for the establishment of another*'amal*if that is demanded by necessity, public welfare or new custom. This requires that the door of *ijtihad* remain open in the school until Allah inherits the earth and those in it.

**The Order of Reliable Verdicts in *fatwa* and sentence**

One should observe the order of these verdicts, taking the strongest one and then the next in strength, since the mufti and qadi must take first the verdict agreed upon in the school, [31](https://bewley.virtualave.net/fatwa.html#31) then the existing *'amal*, then the preferred verdict, then the well-known verdict, and then the verdict which is equal to another.

As for the weak and irregular views, scholars disagree about the permission to do that. Some of them allowed it in the case of necessity or for public welfare or to remove constriction and distress, and some of them forbid it and prefer to take what is strong outside of the school.

It should be noted that the reason for mentioning weak and lesser verdicts in the books of *fiqh* is the need for giving *fatwa* by them in case of actual necessity, public welfare, or removing constriction and distress.

**Conclusion**

All of what we mentioned makes it clear that the Islamic Shari'a in general, and the Maliki School in particular, does not designate a legal mechanism which is applied to the person literally and arbitrarily. On the contrary, it is an expression of Allah's mercy to His slaves which is compatible with their circumstances in order to realise their best interests, remove their constriction and distress, and to achieve social justice. So it is clear that holding to a particular legal school does not lead to rigidification of fiqh and closing the door of *ijtihad*, at least in relation to the history of the Maliki school in the Maghrib and Andalusia. We saw how the system which the scholars of the Maghrib and Andalusia created makes the door of *ijtihad* remain open, and that has helped the application of the School in different environments and times right up until today.

Furthermore, the Maliki School is tolerant in the matter of *talfiq* (performance of an act of worship or transaction made by combined views of different schools) which is part of what makes it suitable for applications in cases of difficulty when the Muslims have no power to change social conditions, as is their situation in Europe and America. If someone he wants to verify that, he will find a number of fatwas in *the Mi'yar* of al-Waranshiri directed to those who asked for *fatwa* who were living under a non-Muslim authority in Andalusia.

Finally, we want to say that the flexibility of the Maliki school derives from the great number of its principles. It has the most *usul* [32](https://bewley.virtualave.net/fatwa.html#32)of all the schools of *fiqh*. This abundance of *usul* gives it a necessary awesome ability to adapt in order to realise the aims of the Shari'a.

Allah knows best what is correct.

**Notes**

1. *Jawahir al-Iklil,* commentary on the *Mukhtasar* of Khalil, vol. 1, p. 7.

2. Commentary of al-Kharashi on the *Mukhtasar* of Khalil, vol. 4, p. 7.

3. *Muhadarat fi Tarikh al-Madhhab al-Maliki*, by Dr. 'Umar al-Jidi, p. 95.

4. This is the reason that the Malikis consider Ibn al-Qasim to be the most knowledgeable of Malik's students because he stayed with Malik for 20 years until the Imam died. Ibn al-Qasim is therefore the person who had the best knowledge of Malik's changes of view.

5. *Usul al-Fiqh*, Muhammad Abu Zahra, p. 395.

6. *Usul al-Fiqh*, Muhammad Abu Zahra, p. 393.

7. *Usul al-Fatwa wa'l-Qada' fi'l-Madhhab al-Maliki*, Muhammad Riyad, p. 466.

8.*Sharh Mudawwana al-Ahwal ash-Shakhsiyya al-Maghribiyya*, Shaykh Shahbun, vol. 1, p. 18.

9 This is one of the most important points connected to the process of weighing (*tarjih*) between secondary cases of fiqh. The requirements for establishing preference between verdicts are:

1. The strength of the transmission of the verdict.

2. The strength of the verdict.

3. The suitability of the application of the verdict.

These requirements are confined to a particular *madhhab*. It is not permitted to employ preference (*tarjih*) between schools of *fiqh*because what is considered to be a strong transmission, strong proof or the suitability of the application varies greatly from one school to another. Each school has particular *usul* which lead to preferring one verdict over another. To consider the disagreement of the schools in a particular case and then prefer one of those verdicts is a gross mistake which is widespread among many contemporaries. The sound approach is that a verdict is preferred according to the principles of a particular school rather than the principles of another. When an author says, "The preferred verdict is such-and-such," then the author must specify by the principles of which school in which he prefers one verdict to another. If the author does not confine himself to the principles of a particular school and claims unrestricted independent *ijtihad*, then he is starting a new school of *fiqh* other than those with which we are familiar. In short, it is not permitted to apply preference to differences to between schools. It only occurs inside a particular school. That is illustrated by the preference of Imam Malik, in which he relied on the principle of the practice of the people of Madina which he considered reliable, and which he preferred to single *hadiths*. Often the disagreement of the Malikis in other secondary rulings of the School is based on that principle.

10. *Usul al-Fiqh*, Muhammad Abu Zahra, p. 396.

11. *Usul al-Fatwa wa'l-Qada' fi'l-Madhhab al-Maliki*, Muhammad Riyad, p. 470.

12. See the preface of the *Mukhtasar* of Khalil.

13. vol. 1, p. 70.

14. What is meant by the *Mudawwana* is the Great *Mudawanna* transmitted by Imam Sahnun ibn Sa'id at-Tanukhi from Imam 'Abdu'r-Rahman ibn al-Qasim al-'Utaqi from Malik ibn Anas, may Allah be pleased with him.

15. He stayed with Malik for more than twenty years and did not leave him until he died.

16. The Great *Mudawwana* is the most important source of the Maliki school after the *Muwatta'*.

17. *Usul al-Fatwa wa'l-Qada' fi'l-Madhhab al-Maliki*, Muhammad Riyad, p. 509.

18. *Al-'Urf wa'l-'Amal fi'l-Madhhab al-Maliki*by al-Jidi, p. 342.

19. The preferred or well known verdicts.

20. That which its prolific principles demand.

21. *Usul al-Fatwa wa'l-Qada' fi'l-Madhhab al-Maliki*, Muhammad Riyad, p. 515.

22. *Hashiyat ad-Dasuqi*, the gloss on the *Great Commentary*, vol. 1, pp. 36-37.

23. Verse 950.

24. This precondition demands:

1. Local knowledge about whether the *'amal*is general or specific to the country.

2. Knowledge of the time in which the*'amal*existed.

3. Knowledge of the reason why one turns from the well known.

25. Even if that verdict is irregular or weak according to the method of the Maghribis or a verdict outside of the School by the method of those of the east.

26. By the sound transmission of the *'ulama'*making use of the weak verdict. This is confirmed by the testimony of reputable (*'udul*) witnesses who are well acquainted in verdicts.

27. When the*'amal*issues from the Imams who are followed and have a firm grasp the science of the objectives (*maqasid*) of the Shari'a.

28. In the technical usage of the people of Madina that is the generation of Shaykh Ibn Abi Zayd al-Qayrawani, the author of the famous *Risala*, and those after him. See *Manh al-Jalil*, the commentary on the *Mukhtasar* of Khalil, by Shaykh Muhammad 'Illish, pt. 1,p. 26.

29. These preferences are collected in some of the texts common among *fuqaha'*, including*"al-'Amal al-Mutlaq"*by as-Sijilmasi and *"al-'Amal Fasi"*by 'Abdu'r-Rahman al-Fasi and "*al-Lamiyya"*by az-Zaqqaq."

30. *Nathr al-Wurud 'ala Maraqi's-Su'ud*, pt. 2, p. 629.

31. As for the method of those who in the east who went outside of the School, that was tantamount to following the existing*'amal*over the agreed upon verdict in the School.

32. There are twelve *usul* on which Imam Malik relies on in his *ijtihad* and deduction: the Qur'an, the Sunna, the *'amal*of the people of Madina, the fatwa of the Companions, consensus, taking note of disagreement, analogy, *istihsan* *istishab*, *sadd adh-dhara'i',maslaha mursala*, and taking note of custom.

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