Maalik’s (93-179) Letter to Layth ibn Sa`d

Maalik’s Letter to Layth regarding the excellence of the knowledge of the Medinans and their knowledge being preferable to the knowledge of others and of how the elders would follow their knowledge.

1. From Maalik ibn Anas to Layth ibn Sa’d.

Assalam alaykum. I praise to you God, other than whom there is none worthy of worship. Amma ba’d: May God save me and you by means of us obeying him openly and in secret. May God save me and you from all unpleasant things.

2. As I write to you me and all my children and family are as you would like them—God alone is to be praised. Your letter came to me and you told me how you were and you spoke, to my pleasure, of God’s blessing on you. May God complete all His good gifts on me and you, and make us thankful people.

3. I understood what you have said about the books you sent to me that you wanted me to correct for you and send to you: I have done this and I have made the changes in the manuscripts so that they are now correct, as you would like them.

4. I love to care for you and to be of use to you in anything you need—and you deserve this. I took the time to fulfil your need at a time when I normally do not read in order that the person who brought the manuscripts to me could get them back to you and I have spent the effort on it that is your right and that your respect demands of me.

5. My study of the manuscripts that you sent me encouraged me to give you some advice on my own initiative, and I hope that this advice will have a place in your eyes. I had only held back from this previously because you had not hitherto discussed things in this manner with me and you hadn’t written anything to me about these things, not because I did not have a good opinion of you.

6. Know that it has come to my notice that you give decisions on religious matters which go against the position of the scholars of this city of ours [i.e. Madina]. You are a leading scholar, a man of position and eminence in your area. People need you and trust you in your decisions. Because of this you must fear for yourself and tread the path that is likely to take you to safety.

7. God, Greatest and Most Lofty, has said in his Mighty Book: ‘The earliest Muslims, the first to emigrate [from Makka] and to help them [in Madina], and those who followed them virtually: God was pleased with them and they were pleased with God and He has prepared gardens for them underneath which streams flow and they shall live within them forever, that is great success’ [Tawbah 100].

God, exalted, has said: ‘Give good news to my slaves who listen to what is said and follow the good in it.'
Those are the ones to whom God has shown the way and they are the intelligent people’.

8. People are but followers of the people of Madina, the city to which the Prophet migrated, and where the Qur’an was revealed and made permissible things permissible and forbid forbidden things. Madina is where God’s Messenger (may God send peace and blessings on him) was amongst the people, the people were present during the very act of revelation. He would command them and they would obey him, he would establish Sunnahs for them and they would follow him, until God took him up to Himself and chose for him what is in His presence. God send peace on Him and keep him well, may His mercy and blessings be upon him.

9. Then those people came to rule who were the strictest of all Muslims in following him. Whenever something came up that they knew about, they put that knowledge into practice. If they did not have knowledge about it they would ask and then they would rely on their understanding and their proximity to the days of the Prophet to take whatever was the strongest position in the matter. If anyone opposed them or if someone said that another position in the matter was stronger, that person’s position would be abandoned and no one would follow him.

10. So when there is a clear practice in Madina and people follow it, I do not see room for anyone to go against it. This is because the people of Madina have in their hands the inherited tradition that no one else can claim or falsely attribute to themselves.

11. If the people of various cities were to begin saying, ‘This is the practice in our area’ and, ‘This is what people amongst us have been doing’ their claim would not be reliable. Their claim would not have the support that the claim of the people of Madina would have when they say this same thing.

12. So, look into what I have written for yourself (may God have mercy on you). Know that I hope that it is only well wishing, concern and consideration for you, for the sake of God’s pleasure, that has called me to write to you. Read this letter carefully for, if you do so, you will see that I have been as sincere to you as is possible.

May God grant us and yourself His obedience and the obedience of His Messenger in all issues and in all conditions. Peace on you, and God’s mercy and His blessings.

13. Written on Sunday, 9 Safar.
Layth’s response to Malik ibn Anas (God have mercy on them)

1. Salam on you. I praise to you God, other than whom none is worthy of worship. 
   Ammaa ba`d, God grant well-being to us and to you, and take us to a good end in this world and in the hereafter. I have received your letter in which you speak of your well-being, which pleased me--may God keep you like this forever, and may He complete this blessing by helping you thank Him and increasing his favor to you.

2. You wrote of your having looked at the books I sent you, that you corrected them and put your seal on them--I have received them, so God reward you well for the work you have done in them. These were books that came to me and I wanted to verify them by your looking at them.

3. You said that my writing to you asking you to verify the things that had come to me from you incited you to write some words of advice to me. You said that you hoped that your words would find a place in my eyes. You said that it was not that you did not have a good opinion of me that held you back from this previously, it was just that I had not hitherto discussed things in this manner with you.

4. You said that you had heard that I oppose the unified opinion of your people in my fatwa about things and that it I should fear for myself since people in my area rely on my fatwa, and that people are but followers of the people of Madina to which the emigration took place and in which the Quran was revealed.

5. God willing, you are right in what you have written me, and I have taken your letter in the spirit which you desired. I don't know of anyone whom people sometimes consider to have knowledge, who is more averse to giving unusual fatwa than I am, nor anyone who holds the past scholars of Madina in higher esteem than I do, nor anyone who adheres more closely to their fatwa in things they were agreed upon than I do--and praise is for God alone, the lord of the worlds, who has no partners.

6. Indeed things are as you have described regarding God's Messenger's (God bless him and grant him peace) residence in Madina, and the Quran being revealed there in the midst of his Companions, and the knowledge of it that God granted them, and that people became their followers in this knowledge.

7. You mentioned the word of God, mighty and great: "The earliest Muslims, the first to emigrate [from Makka] and to help them [in Madina], and those who followed them virtuously: God was pleased with them and they were pleased with God and He has prepared gardens for them underneath which streams
flow and they shall live within them forever, that is great success” (Tawbah 100). But many of those “earliest Muslims, the first to emigrate” went out for jihad in God’s path, searching His pleasure. They gathered together armies and people joined them, so staying among them they told them of God’s Book and the sunnah of His Prophet and they didn’t hide anything that they knew from them.

8. In each army there was a group of them who would, for God’s pleasure, teach God’s Book and the sunnah of His Prophet, and they would use their ra’y in things that the Quran and the sunnah didn’t make clear to them, and Abu Bakr, ‘Umar and ‘Uthmaan, whom the Muslims had chosen for themselves would correct their mistakes in this.

9. These people would neither neglect the Muslim armies, nor were they heedless of them. Rather, they would decide by God’s Book and His Prophet’s sunnah even the smallest issue that might have to do with establishing religion and with taking measures against divisiveness. So they taught them all that the Quran has stated clearly and that the Prophet (God bless and him and grant him peace) practiced and that the people decided upon after his demise.

10. So if there is something that the Companions of God’s Messenger practiced in Egypt or Syria or ‘Iraq in the time of Abu Bakr, ‘Umar or ‘Uthmaan, and which they adhered to until [these three] passed away, and they did not command them to do it differently—then we don’t consider it permissible for the Muslim armies to innovate a matter today that their elders from the Companions of God’s Messenger and their Successors did not do, when scholars have departed and only those are left who are not like those that have departed.

11. Along with this, the Companions of God’s Messenger disagreed in their fatwa about many things, and if I didn’t know that you already know this I would write these things to you. Then the Successors, like Sa’iyy ibn al-Musayyab and other of his calibre, also disagreed about things severely after the Companions of God’s Messenger.

12. Then those that came after them also differed and I saw them in Madina and elsewhere. Their leader in fatwa in those days was Ibn Shihab [Zuhri] and Rabiy’ah ibn Abu ‘Abd al-Rahmaan—and you know and were present when Rabiy’ah opposed some of the things of the past. I heard what you said about it, and I heard what the people of sound opinion said, people like Yahya ibn Sa’iyy and ‘Ubaydullah ibn ‘Umar and Kathiyr ibn Farqad and others who were older than

وعمر وعثمان الذين اختراعهم المسلمون لأنفسهم.

وإن كان أولئك الثلاثة مُطيعين لأجداد المسلمين ولا غايل عنهم,

بل كانوا يكتبون في أمر السير لإقامة الدين والحدود من الاتفاق كتاب

الله وسماً على الله علماً وسماعاً فلم يرى أحداً أسوأ النوايا أو عمل به

النبي صلى الله عليه وسلم أو أكرهوا فيه بعد إلغائهما.

إذا جاء أمر الله به المسير والشام والعراق على

عمر أبي بكر وعثمان، ولم يبوا على حتى قضاها لم يُؤثرهم بغيره,

فلا تراهم يُتجرؤون للأجانب المسلمين أن يُفخّروا بالأعمال أسوأ لم يُستعمل به سلوكهم من

أصحاب رسول الله صلى الله عليه وسلم والتابعين لهم، حين دُعى العلماء

وبقَامهم منهم لا يُعبة من مضى.

إن أصحاب رسول الله صلى الله عليه وسلم اختُلقوه بعده في الحنا

في شيوخ كثيرة، ولولا أن قد عُرف أن قد علّمتها لكتبها بها إلى ذلك، ثم

عُلِّمت البشري والبشري نظرًا ونظرًا، ثم الأجانب.

ثم اختُلقو الذين كانوا بهم، حفظتهم بالمدينة وغيرها،

ورأواهم (1) يوجد في الفتوى ابن شهاب ورُبِّيعًا بين أبي عبد الرحمن (2)، فكان

1 Not sure about translation. IZ.
him, until what you disliked about his position forced you to leave his circle.

13. I spoke with you and 'Abd al-`Aziz ibn `Abdullah about some of these things that we found amiss with Rabiy'ah and you both agreed with me regarding what I disliked--you disliked what I disliked. Still, God be praised, Rabiy'ah possessed great good, sound sense, eloquent speech, obvious eminence, good practice of Islam, and a true friendship for his brothers in general and for us in particular--God have mercy on him, forgive him and give him a reward even better than his deeds might have been.

14. Ibn Shihab used to contradict himself a lot when we met him. When one of us would write to him sometimes, despite his sound opinion and knowledge, he would respond to a single question in three ways, each contradicting the other, and he wouldn’t know of his previous opinion in the issue, and this is what led me to what you disliked, i.e my leaving him.

15. I know that among the things you found fault with me for not accepting from him was that anyone of the Muslim army pray two salahs together on a rainy night--while the rain in Syria, God knows, is much more than the rain in Madina. No commander from among them ever prayed two salahs together on a rainy night while among them have been Abu `Ubaydah ibn al-Jarrahah, Khaliid ibn al-Waliy, Yazid ibn Abu Sufyaan, 'Amr ibn al-Aas, Mu'aadh ibn Jabal (and you know that it has come to us that God's Messenger said: "Mu'adh ibn Jabal is the most knowledgable among them about what is forbidden and what is permissible", and he said "Mu'adh will be one step ahead of all the scholars on the day of judgment"), Shurahbiyl ibn Hasnah, Abu al-Darda' and Bilaal ibn Rabah.

16. Abu Dharr, Zubayr ibn al-Awwaam and Sa'd ibn Abu Waqqas were in Egypt, and seventy of the Companions who fought in Badr were in Hims, and [there were companions] with all the Muslim armies, and Ibn Mas'uwd, Hudhayfah ibn al-Yamaan and 'Imraan ibn Husayn were in Iraq, while 'Aliy ibn Abi Taalib lived there for years with all the Companions of God’s Messenger that accompanied him--and never once did they pray Maghrib and `Isha together.

17. Among these things was the issue of judging on the basis of the evidence of a single witness and the oath of the person who claims the right. You know that even today they judge on this basis in Madina but the Companions of God’s Prophet did not judge on this basis in Syria, Hims, Egypt and Iraq. The rightly guided Caliphs, Abu Bakr, 'Umar, 'Uthmaan and 'Ali did not write to them about this. Then 'Umar ibn 'Abd al-'Aziz became ruler--and you know how he was in reviving sunnahs, finishing innovations, seriousness in establishing religion, sound opinion and knowledge of the way of the predecessors. Ruzayq ibn al-Hukaym wrote to him: In Madina you used to judge on the basis of the evidence of one witness and the oath of the person who claims the right. ‘Umar ibn ‘Abd al-‘Aziz wrote to him: We used to judge on this basis in Madina, but we found that the Syrians do not do this, so don't issue judgment without at least two just male witnesses or one man and two women.

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2 In conflict between two people, the person who does not have possession and claims the right to something (the claimant), will be asked to bring evidence of two just male witnesses or one man and two females. If he can't, he may ask the person who has possession to take oath that the thing is actually his. If he refuses to take an oath, then the claimant will have the right--according to one opinion--to bring one witness and take an oath, and the thing will be turned over to him. Others say that oaths are only to establish continued possession, transfer of possession requires the evidence of witnesses.
18. And he didn't ever pray Maghrib and Isha together on a rainy night [even] while the rain would be pouring down on his house that he lived in, in Khunaasirah.

19. Among these things was that regarding that part of a woman's dowry that is agreed upon to be paid later, the Medinans hold that whenever she wants she may ask for it and it has to be given to her. The Iraqians support the Medinans in this. But all the Companions of God's Messenger and those who came after them among the Syrians and the Egyptians have decreed that the delayed portion of a woman's dowry will only be hers when death or divorce separates them—then she will be given her right.

20. Among these things is their position about the oath of divorce⁴ that it won't be a divorce until he is given notice, even though four months have gone by, while Naafi' narrated to me from `Abdullah ibn `Umar—and this is the `Abdullah ibn `Umar from whom is narrated the mention of giving notice at the end of four months—he used to say regarding the oath of divorce that God has mentioned in His Book that at the end of four months, the person who takes the oath of divorce must either return [to his wife] as God has commanded, or he must finalize divorce.

21. But you say: If he lingers after the four months that God has stated in His Book and he is not given notice, there will not be any divorce. But it has come to us from `Uthmaan ibn `Affaan, Zayd ibn Thaabit, Qabiysah ibn Dhu'ayb and Abu Salamah ibn `Abd al-Rahmaan ibn `Awf that they said about the oath of divorce that when four months have gone by it will be one instance of divorce of immediate separation while Sa`i'yd ibn al-Musayyab, Abu Bakr ibn `Abd al-Rahmaan ibn Hishaam and Ibn Shihab said that when four months have gone by it will be one instance of divorce and the man will have the right to return to her during the waiting period.

22. Among these things is that Zayd ibn Thaabit used to say that when a man “turns the matter of a woman into her own hands,”⁴ and she chooses her husband, this will count as one instance. `Abd al-Malik ibn Marwan issued judgment according to this opinion while this was Rabiy'ah ibn `Abd al-Rahmaan's view also.
But the scholars are almost unanimously agreed that if she chooses to stay with her husband this would not count as an instance of divorce while if she chooses herself [i.e. to leave her husband] once or twice it would count as one instance of a divorce in which there can be return, while if she chooses herself thrice this would be a divorce of immediate separation and she would not be permissible for him until she marries another man who consummates their marriage and then dies or divorces her--unless the man responds to her in that very sitting and says: I only gave you the right to a single divorce. In this latter case he would be asked to take an oath and would be left alone with his wife.

23. Among these things was that 'Abdullah ibn Mas'ud used to say that if a free man marries a slave-girl and then purchases her, his purchasing her counts as three instances of divorce. This was also Rabiyah's position. They held that the same would happen if a free woman married a slave and purchased him.

24. I have also heard fatwa from you that I did not approve of and I had written to you about some of these things but you did not respond to my letter so I feared that this has weighed on you so I stopped writing to you about anything that I disliked and about things in which I wanted to know your opinion.

25. You see, I had heard that when Zufar ibn `Abd al-Rahman al-Mas'udi performed the prayer for rain, you had commanded him to perform salaaah before the sermon and I was distressed by this because the sermon and the salaat for rain should be as they are on Friday except that when the Imam is close to finishing his sermon he should turn towards the qiblah and pray [make du’aa] and rearrange the sheet on his upper body and then he should come down and lead the salaat. `Umar ibn `Abd al-Aziyz and Abu Bakr ibn Muhammad ibn `Amr ibn Hazm another others have performed the salaat for rain and they all used to give the sermon and make the prayer [du’a] before the salaat, so people did not think well of what Zufar ibn `Asim did and they disliked it.
25. Among these things is that I have heard that you say that if two people have shared property they will not have to give zakah until each one of them has sufficient property that zakah becomes incumbent on each one of them. But 'Umar ibn al-Khattaab's letter states that they must give zakah and they will share it proportionately. This is what was done in the reign of 'Umar ibn 'Abd al-'Aziz before you, and in the reign of other people. This is [also] what Yahya ibn Sa'iyd narrated to us and he was not less than any of the scholars of his day--God have mercy on him, forgive him and make heaven his abode.

26. Among these things is that I have heard that when a person is bankrupt and someone has sold him something and he claims a portion of the price of that thing or if the [now bankrupt] buyer has sold some of it [i.e. of what he had bought], the claimant will have the right to take whatever he can find of the goods he sold. But scholars used to say that when the seller [who is making the claim] demands a portion of the price of his goods, or if the purchaser has sold some of it, the right of the claimant will not attach to any specific part of the property of the person who has gone bankrupt.

27. Among these things is that you say that the Prophet (God bless him and grant him peace) gave Zubayr ibn al-'Awwaam only the share of a single mounted fighter while scholars all narrate that he gave him four shares: two for each of the two horses and refused to give him anything for his third horse. The entire ummah is agreed on this hadith--the Syrians, the Egyptians, the Iraqis and the Africans, and no two disagree about it, so it is not appropriate for you to go against the entire ummah, even if you have heard something from someone you trust.

28. I have left a lot of things like this. I would like God to grant you the ability to do good and to give you a long life because I expect that people will benefit from you and because I fear great loss if someone like you departs--along with my own feeling of comfort at your presence—even though you live far away.

29. This is the esteem I hold you in and this is what I think of you, so believe it. Don't forget to write your news to me and how you are, how your children and family are, and of any need that you or someone close to you might have—this will be a pleasure for me. As I write you, we are well and comfortable—God be praised. We ask Him that He grant us ability to thank Him for what He has given us, and that He complete His gifts upon us, wassalam alaykum wa rahmatullah wa barakatuhu.