

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

رسالة مالك بن أنس إلى الليث بن سعد في فضل علم أهل المدينة وترجيحه على علم غيرهم واقتداء السلف بهم

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.

I have put my seal on the final page of each manuscript, the words of which are: "God is sufficient for me and He is an excellent Doer of things."

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 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]. God, exalted, has said: 'give good news to my slaves who listen to what is said and follow the good in it.

من مالك بن أنس إلى الليث بن سعد، سلامٌ عليك، فإني أحمد الله إليك الذي لا إله إلا هو. أمّا بعد عَصَمْنَا الله وإياك بطاعته في السرِّ والعلانية، وعافانا وإياك من كلِّ مكروه.

كُتِبْتُ إليك وأنا وَمَنْ قَبْلِي مِنَ الْوُلْدَانِ وَالْأَهْلِ عَلَى مَا تُحِبُّ، وَاللَّهُ مَحْمُودٌ، أَنَا كِتَابُكَ، تَذَكَّرْتُ مِنْ حَالِكَ وَنِعْمَةَ اللهِ عَلَيْكَ الَّذِي أَنَا بِهِ مَسْرُورٌ، أَسْأَلُ اللَّهَ أَنْ يُنِّمَ عَلَيَّ وَعَلَيْكَ صَالِحٌ مَا أَنْعَمَ عَلَيْنَا وَعَلَيْكَ، وَأَنْ يَجْعَلَنَا لَهُ شَاكِرِينَ.

وفهمتُ ما ذَكَرْتَ فِي كُتُبِ بَعَثْتَ بِهَا لِأَعْرَضَهَا لَكَ^(١)، وَأَبَعْتُ بِهَا إِلَيْكَ، وَقَدْ فَعَلْتُ ذَلِكَ وَغَيَّرْتُ مِنْهَا مَا غَيَّرْتُ حَتَّى صَحَّ أَمْرُهَا عَلَى مَا تُحِبُّ،

وختمتُ على كلِّ قُتْدَاقٍ مِنْهَا بِخَاتَمِي^(١)، وَنَقَشْتُهُ: «حَسْبِيَ اللهُ وَنِعْمَ الْوَكِيلُ».

وَكَانَ حَبِيبًا إِلَيَّ حَفِظْتُكَ، وَقَضَاءُ حَاجَتِكَ، وَأَنْتَ لَذَلِكَ أَهْلٌ، وَصَبَرْتُ لَكَ فِي نَفْسِي فِي سَاعَةٍ لَمْ أَكُنْ أَعْرِضُ فِيهَا لِأَنْ أُتَّجِحَ ذَلِكَ^(٢)، فَتَأْتِيكَ مَعِ الَّذِي جَاءَنِي بِهَا، حَيْثُ دَفَعْتُهَا إِلَيْهِ، وَبَلَّغْتُ مِنْ ذَلِكَ الَّذِي رَأَيْتُ أَنَّهُ يَلْزَمُنِي لَكَ فِي حَقِّكَ وَحُرْمَتِكَ.

وَقَدْ نَشَطَّنِي مَا اسْتَطَلَعْتَ مِمَّا قَبْلِي مِنْ ذَلِكَ، فِي ابْتِدَائِكَ بِالنَّصِيحَةِ لَكَ، وَرَجَوْتُ أَنْ يَكُونَ لَهَا عِنْدَكَ مَوْضِعٌ^(٣)، وَلَمْ يَكُنْ مَتَّعْنِي مِنْ ذَلِكَ قَبْلَ الْيَوْمِ أَنْ لَا يَكُونَ رَأْيِي لَمْ يَزَلْ فِيكَ جَمِيلًا، إِلَّا أَنْكَ لَمْ تُذَاكِرْنِي شَيْئًا مِنْ هَذَا الْأَمْرِ، وَلَا تَكْتُبُ فِيهِ إِلَيَّ.

وَاعْلَمْ رَحِمَكَ اللهُ أَنَّهُ بَلَغَنِي أَنَّكَ تُفْتِي النَّاسَ بِأَشْيَاءَ مُخَالَفَةً لِمَا عَلَيْهِ جَمَاعَةُ النَّاسِ عِنْدَنَا، وَيَبْلَدُنَا الَّذِي نَحْنُ فِيهِ، وَأَنْتَ فِي إِمَامَتِكَ وَفَضْلِكَ، وَمَنْزِلَتِكَ مِنْ أَهْلِ بَلَدِكَ، وَحَاجَةٍ مَنْ قَبْلَكَ إِلَيْكَ، وَاعْتِمَادِهِمْ عَلَيَّ مَا جَاءَهُمْ مِنْكَ: حَقِيقٌ بِأَنْ تَخَافَ عَلَى نَفْسِكَ، وَتَتَّبِعَ مَا تَرُجُو النِّجَاةَ بِاتِّبَاعِهِ.

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.

After them their Followers took this same path and followed these same *Sunnahs*.

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.

فإن الله عزَّ وجلَّ يقول في كتابه العزيز: ﴿والسابقون الأولون من المهاجرين والأنصار والذين اتبعوهم بإحسان، رضي الله عنهم ورضوا عنه، وأعدَّ لهم جنات تجري تحتها الأنهار خالدين فيها أبداً، ذلك الفوز العظيم﴾^(١). وقال تعالى: ﴿فبشر عباد الذين يستمعون القول فيتبعون أحسنه، أولئك الذين هداهم الله، وأولئك هم أولو الألباب﴾^(٢).

وإنما الناس تبع لأهل المدينة، إليها كانت الهجرة، وبها نزل القرآن، وأحلَّ الحلال، وحرمَّ الحرام، إذ رسولُ الله صَلَّى اللهُ عليه وسلَّم بين أظهرهم، يحضرون الوحي والتنزيل، ويأمرهم فيطيعونه، ويسئرون لهم فيطيعونه، حتى توفاه الله واختار له ما عنده، صلوات الله وسلامه عليه ورحمته وبركاته.

ثم قام من بعده أتبع الناس له من أمته ممن ولي الأمر من بعده، فما نزل بهم مما علموا أنفذه، وما لم يكن عندهم فيه علم سألوا عنه، ثم أخذوا بأقوى ما وجدوا في ذلك في اجتهادهم، وحدائثهم، وإن خالفهم مخاليف، أو قال امرؤ غيره أقوى منه وأولى، ترك قوله وعمل بغيره.

ثم كان التابعون من بعدهم يسلكون تلك السبيل، ويتبعون تلك الشئنة.

فإذا كان الأمر بالمدينة ظاهراً معمولاً به لم أر لأحدٍ خلافه، للذي في أيديهم من تلك الوراثة التي لا يجوز لأحدٍ انتحالها ولا ادعائها.

ولو ذهب أهل الأمصار يقولون: هذا العمل الذي ببلدنا، وهذا الذي

مضى عليه من مضي منا، لم يكونوا من ذلك على ثقة، ولم يكن لهم من ذلك مثل الذي كان لهم^(١).

فانظر – رحمك الله – فيما كتبت إليك به لنفسك، واعلم أني أرجو أن لا يكون دعائي إلى ما كتبت به إليك إلا النصيحة لله تعالى وحده، والنظر لك والضرب بك، فأبزل كتابي منك منزلة، فإنك إن فعلت تعلم أني لم ألك نصحاً.

وقفنا لله وإياك لطاعته وطاعة رسوله في كل أمر، وعلى كل حال، والسلام عليك ورحمة الله وبركاته.

وكتب يوم الأحد لتسع مضي من صفر.

Layth's response to Malik ibn Anas (God have mercy on them)

رسالة الليث بن سعد إلى مالك بن أنس رحمه الله

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

سلام عليك، فإني أحمد إليك الله الذي لا إله إلا هو، أما بعد – عافانا الله وإياك، وأحسن لنا العاقبة في الدنيا والآخرة – فقد بلغني كتابك تذكّر فيه من صلاح حالكم الذي يسرّني، فأدام الله ذلك لكم، وأتمّه بالعون على شكره والزيادة من إحسانه.

ودكرت نظرك في الكتب التي بعثت بها إليك، وإقامتك إياها، وختمك عليها بخاتمك، وقد أتتنا فجزاك الله عما قدّمت منها خيراً، فإنها كُتبت انتهت إلينا عنك فأحببت أن أبلغ حقيقتها بنظرك فيها.

ودكرت أنه قد أنشطك ما كتبت إليك فيه من تقويم ما أتاني عنك إلى ابتدائي بالنصيحة^(١)، ورجوت أن يكون لها عندي موضع، وأنه لم يمنعك من ذلك فيما خلا أن لا يكون رأيك فينا جميلاً، إلا لأنني لم أذكرك مثل هذا.

وأنه بلغك أنني أفني بأشياء مخالفة لما عليه جماعة الناس عندهم، وأني يحقّ عليّ الخوف على نفسي لاعتماد من قبلي على ما أفتيتهم به، وأن الناس تبع لأهل المدينة التي إليها كانت الهجرة وبها نزل القرآن.

وقد أصبت بالذي كتبت به من ذلك إن شاء الله، ووقع مني بالموقع

الذي تُحبّ، وما أعد^(١) أحداً قد يُنسب إليه العلمُ أكره لَشِوَادِ الْفُتْيَا وَلَا أَشَدَّ تَفْضِيلاً لِعُلَمَاءِ أَهْلِ الْمَدِينَةِ الَّذِينَ مَضَوْا، وَلَا أَخَذَ لُفْتِيَاهُمْ فِيمَا اتَّفَقُوا عَلَيْهِ مِنِّي، وَالْحَمْدُ لِلَّهِ رَبِّ الْعَالَمِينَ لَا شَرِيكَ لَهُ^(٢).

وأما ما ذكرت من مقام رسول الله صلى الله عليه وسلم بالمدينة، ونزول القرآن بها عليه بين ظهري أصحابه، وما علمهم الله منه، وأن الناس صاروا به تبعاً لهم فيه، فكما ذكرت.

وأما ما ذكرت من قول الله عز وجل ﴿وَالسَّابِقُونَ السَّابِقُونَ﴾ المهاجرين والأنصار والذين اتبعوهم بإحسان رضي الله عنهم ورضوا عنه وأعد لهم جنّات تجري تحتها الأنهار خالدين فيها أبداً ذلك الفوز العظيم^(٣). فإن كثيراً من أولئك السابقين الأولين خرجوا إلى الجهاد في سبيل الله ابتغاء مرضاة الله، فجنّدوا الأجناد، واجتمع إليهم الناس، فأظهروا بين ظهرانيهم كتاب الله وسنة نبيهم، ولم يكتفوا شياً علموه.

وكان في كل جند منهم طائفة يعلمون – الله – كتاب الله وسنة نبيه، ويجهّدون برأيهم فيما لم يُفسّر لهم القرآن والسنة، ويقومهم عليه أبو بكر^(٤)

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 decide¹ 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`iyd 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 Rabi’yah ibn Abu `Abd al-Rahmaan--and you know and were present when Rabi’yah opposed some of the things of the past. I heard what you said about it, and I heard what the people of sound opinion [*ra’y*] said, people like Yahya ibn Sa`iyd and `Ubaydullah ibn `Umar and Kathiyar ibn Farqad and others who were older than

وعمر وعثمان الذين اختارهم المسلمون لأنفسهم.

ولم يكن أولئك الثلاثة مُصَيِّعِينَ لأجناد المسلمين ولا غافلين عنهم، بل كانوا يَكْتُبُونَ فِي الْأَمْرِ الْبَسِيرِ لِإِقَامَةِ الدِّينِ وَالْحَدْرِ مِنَ الْاِخْتِلَافِ بِكِتَابِ اللَّهِ وَسُنَّةِ نَبِيِّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَلَمْ يَتْرُكُوا أَمْرًا فَسَّرَهُ الْقُرْآنُ أَوْ عَمِلَ بِهِ النَّبِيُّ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ أَوْ ائْتَمَرُوا فِيهِ بَعْدَهُ إِلَّا أَعْلَمُوهُمْوه.

فإذا جاء أمرٌ عَمِلُوا بِهِ أَصْحَابُ رَسُولِ اللَّهِ بِمِصْرَ وَالشَّامِ وَالْعِرَاقِ عَلَى عَهْدِ أَبِي بَكْرٍ وَعُمَرَ وَعُثْمَانَ، وَلَمْ يَزَالُوا عَلَيْهِ حَتَّى قُبِضُوا لَمْ يَأْمُرُوهُمْ بِغَيْرِهِ، فَلَا نَرَاهُ يَجُوزُ لِلْأَجْنَادِ الْمُسْلِمِينَ أَنْ يُحْدِثُوا الْيَوْمَ أَمْرًا لَمْ يَحْمَلْ بِهِ سَلْفُهُمْ مِنْ أَصْحَابِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ وَالتَّابِعِينَ لَهُمْ، حِينَ ذَهَبَ الْعُلَمَاءُ وَبَقِيَ مِنْهُمْ مَنْ لَا يُشْبِهُهُ مِنْ مَضَى.

مَنْ أَنَّ أَصْحَابَ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ اخْتَلَفُوا بَعْدَهُ فِي الْفُتْيَا فِي أَشْيَاءَ كَثِيرَةٍ، وَلَوْلَا أَنِّي قَدْ عَرَفْتُ أَنَّ قَدْ عَلِمْتُهَا لَكَتَبْتُ بِهَا إِلَيْكَ، ثُمَّ اخْتَلَفَ التَّابِعُونَ فِي أَشْيَاءَ بَعْدَ أَصْحَابِ رَسُولِ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ سَعِيدُ بْنُ الْمُسَيَّبِ وَنظَرَاؤُهُ أَشَدَّ الْاِخْتِلَافِ.

ثُمَّ اخْتَلَفَ الَّذِينَ كَانُوا بَعْدَهُمْ، فَحَضَرْتُهُمْ بِالْمَدِينَةِ وَغَيْرِهَا، وَرَأَيْتُهُمْ^(١) يَوْمَئِذٍ فِي الْفُتْيَا ابْنَ شَهَابٍ وَرَبِيعَةَ بْنَ أَبِي عَبْدِ الرَّحْمَنِ^(٢)، فَكَانَ

من خلاف ربيعة بعض ما مضى ما عرفت وحضرت، وسمعت قولك فيه وقول ذوي الرأي من أهل المدينة يحيى بن سعيد وعبيد الله بن عمر، وكثير بن فرقد، وغير كثير ممن هو أسنُّ منه، حتى اضطرَّك ما كرهت من ذلك إلى فراق مجليسه.

وذاكرتُك أنت وعبد العزيز بن عبد الله^(١) بعض ما نعيبت على ربيعة من ذلك، فكنتما لي موافقين فيما أنكرت، تكرهان منه ما أكره، ومع ذلك — بحمد الله — عند ربيعة خير كثير، وعقل أصيل، ولسان بليغ، وفصل مستبين، وطريقة حسنة في الإسلام، ومودة صادقة لإخوانه عامة ولنا خاصة، رحمة الله عليه وعقر له وجزاه بأحسن من عمله^(٢).

وكان يكون من ابن شهاب اختلاف كثير إذا لقيناه، وإذا كاتبه بعضنا فربما كتب إليه في الشيء الواحد — على فضل رأيه وعلمه — بثلاثة أنواع ينقض بعضها بعضاً، ولا يشعر بالذي مضى من رأيه في ذلك، فهذا الذي يدعوني إلى ترك ما أنكرت تركي إياه.

وقد عرفت مما عبت إنكاري إياه: أن يجمع أحد من أجناد المسلمين بين الصلاتين ليلة المطر، ومطر الشام أكثر من مطر المدينة بما لا يعلمه إلا الله، لم يجمع منهم إمام قط في ليلة مطر، وفيهم أبو عبيدة بن الجراح،

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-`Aziyz ibn `Abdullah about some of these things that we found amiss with Rabiyy'ah and you both agreed with me regarding what I disliked--you disliked what I disliked. Still, God be praised, Rabiyy'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-Jarraah,

Khaalid ibn al-Waliyd, Yaziyd 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 Hasanah, Abu al-Dardaa' and Bilaal ibn Rabaah.

16. Abu Dharr, Zubayr ibn al-`Awwaam and Sa'd ibn Abu Waqqaas 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'uwad, 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.² 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-`Aziyz 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-`Aziyz 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.

وخالدُ بنُ الوليد، ويزيدُ بنُ أبي سفيان، وعمرو بن العاص، ومُعَاذُ بنُ جبل — وقد بَلَّغْنَا أن رسولَ الله صَلَّى اللهُ عليه وسلَّمَ قال: «أعلَمُهُم بالحلال والحرام مُعَاذُ بنُ جَبَلٍ». وقال: «يأتي مُعَاذُ يومَ القيامةِ بين يدي العلماءِ برثوة»^(١) — ، وشُرْحَيْبِلُ بنُ حَسَنَةَ، وأبو الدَّرْدَاءِ، وبِلاَلُ بنُ رباح.

وكان: أبو ذرٍّ بَمِصْرَ، والزُّبَيْرُ بنُ العَوَّامِ وسعدُ بنُ أبي وقاص، ويحْمِصُ سَبْعُونَ من أهل بدر، وبأجنادِ المُسلمين كُلِّها، وبالعراقِ ابنُ مسعود، وحذيفةُ بنُ اليمان، وعمرانُ بنُ الحُصَيْنِ، ونَزَلَهَا عليُّ بنُ أبي طالبِ سِنينَ بمن كان معه من أصحابِ رسولِ الله صَلَّى اللهُ عليه وسلَّمَ، فلم يَجْمَعُوا بين المَغْرِبِ والعِشاءِ قطُّ.

ومن ذلك القضاءُ بشهادةِ الشاهدِ ويمينِ صاحبِ الحق، وقد عرفت أنه لم يزل يُقَضَى به بالمدينة ولم يَقْضِ به أصحابُ رسولِ الله صَلَّى اللهُ عليه وسلَّمَ بالشام، وبِحِمصِ، ولا مِصْرَ، ولا العراق، ولم يَكُتُبْ به إليهم الخلفاءُ المهديون الراشدون: أبو بكر، وعمر، وعثمان، وعلي، ثم وُلِّيَ عمرُ بنُ عبد العزيز — وكان كما علمت في إحياءِ الشُّننِ، وقَطْعِ البِدْعِ، والجِدِّ في إقامة الدين، والإصابةِ في الرأي، والعلمِ بما مَضَى من أمرِ الناس — ، فَكَتَبَ إليه زُرَيْقُ بنُ الحَكِيمِ: إنك كنتَ تَقْضِي بالمدينةِ بشهادةِ الشاهدِ الواحدِ ويمينِ صاحبِ الحق، وكتَبَ إليه عمرُ بنُ عبد العزيز: إنا كنا نَقْضِي بذلك بالمدينة، فَوَجَدْنَا أهلَ الشامِ على غيرِ ذلك، فلا نقضِ إلا بشهادةِ رجلينِ عدلينِ أو رجلٍ وامرأتين.

ولم يَجْمَعِ بين المَغْرِبِ والعِشاءِ قطُّ ليلةَ المطر، والسماءُ تَسْكُبُ عليه

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 male 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 divorce³ 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`iyd ibn al-Musayyab, Abu Bakr ibn `Abd al-Rahmaan ibn Hishaam and Ibn Shihaab 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 of divorce, while if she chooses three instances of divorce for herself it will count as only one instance. `Abd al-Malik ibn Marwan issued judgment according to this opinion while this was Rabiya'ah ibn `Abd al-Rahmaan's view also.

في منزله الذي كان فيه بخنأصيرة^(١)، سكباً.

ومن ذلك أن أهل المدينة يقضون في صدقات النساء أنها متى شاءت أن تتكلم في مؤخر صداقها تكلمت يدفع ذلك إليها، وقد وافق أهل العراق أهل المدينة على ذلك. وأهل الشام وأهل مصر لم يقض أحد من أصحاب رسول الله صلى الله عليه وسلم ولا من بعدهم لامرأة بصدقها المؤخر إلا أن يفترق بينهما موت أو طلاق فتقوم على حقها.

ومن ذلك قولهم في الإيلاء إنه لا يكون عليه طلاق حتى يوقف وإن مرت الأربعة الأشهر، وقد حدثني نافع عن عبد الله بن عمر - وعبد الله بن عمر الذي كان يروى عنه ذكر التوقيف بعد الأربعة الأشهر - أنه كان يقول في الإيلاء الذي ذكر الله في كتابه: لا يحل للمولي إذا بلغ الأجل إلا أن يفى كما أمره الله أو يعزم الطلاق.

وأنتم تقولون: إن لبت بعد الأربعة الأشهر التي سمى الله في كتابه ولم يوقف لم يكن عليه طلاق، وقد بلغنا عن عثمان بن عفان، وزيد بن ثابت، وقبيصة بن ذؤيب، وأبي سلمة بن عبد الرحمن بن عوف، أنهم قالوا في الإيلاء: إذا مضت الأربعة الأشهر فهي تطلقه بائنة، وقال سعيد بن المسيب، وأبو بكر بن عبد الرحمن بن هشام، وابن شهاب: إذا مضت الأربعة أشهر فهي تطلقه، وله الرجعة في العدة.

ومن ذلك أن زيد بن ثابت كان يقول: إذا ملك الرجل امرأته أمره فاختارت زوجها فهي تطلقه، وإن طلق نفسها ثلاثاً فهي تطلقه، وقضى بذلك عبد الملك بن مروان، وكان ربيعة بن أبي عبد الرحمن يقول.

³ This is a rough translation of the Arabic word "iytaa". This was a pre-Islamic Arab custom where a man would swear that he would not go near his wife—but he would not divorce her either. He would do this to torture his wife. So the Quran commanded that a person making such an oath would be granted four months—if he actually did not go near his wife, she would stand divorced and the woman would be free to marry someone else—he could not leave her hanging.

⁴ I.e. gives her the option to stand divorced, if she chooses.

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`uwd 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 Rabi'y'ah'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 `Aasim al-Hilaali performed the prayer for rain, you had commanded him to perform *salaah* before the sermon and I was distressed by this because the sermon and the *salaah* 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 *salaah*. `Umar ibn `Abd al-`Aziy and Abu Bakr ibn Muhammad ibn `Amr ibn Hazm another others have performed the *salaah* for rain and they all used to give the sermon and make the prayer [*du`aa*] before the *salaah*, so people did not think well of what Zufar ibn `Aasim did and they disliked it.

والاستسقاء كهيئة يوم الجمعة، إلا أن الإمام إذا دنا فراغه من الخطبة حوّل وجهه إلى القبلة فدعا، وحوّل رداءه ثم نزل فصلّى، وقد استسقى عمر بن عبد العزيز، وأبو بكر بن محمد بن عمرو بن حزم، وغيرهما، فكُلُّهُم يُقَدِّم الخطبة والدعاء قبل الصلاة، فاستهتر الناس فعلى زفر بن عاصم من ذلك واستنكروه.

ومن ذلك أنه بلغني أنك تقول في الخليطين في المال: إنه لا تجب عليهما الصدقة، حتى يكون لكل واحد منهما ما تجب فيه الصدقة، وفي كتاب عمر بن الخطاب أنه يجب عليهما الصدقة ويترادان بالسوية، وقد كان ذلك يعمل به في ولاية عمر بن عبد العزيز قبلكم، وغيره، والذي حدثنا به يحيى بن سعيد، ولم يكن بدون أفاضل العلماء في زمانه، فرحمه الله وغفر له وجعل الجنة مصيره.

ومن ذلك أنه بلغني أنك تقول: إذا أفلس الرجل وقد باعه رجل سلعة، فتقاضى طائفة من ثمنها، أو أنفق المشتري طائفة منها أنه يأخذ ما وجد من متاعه، وكان الناس على أن البائع إذا تقاضى من ثمنها شيئاً أو أنفق المشتري منها شيئاً فليست بعينها.

ومن ذلك أنك تذكر أن النبي صلى الله عليه وسلم لم يعط الزبير بن العوام إلا لفرس واحد، والناس كلهم يحدثون أنه أعطاه أربعة أسهم بفرسين ومنعه الفرس الثالث، والأمة كلهم على هذا الحديث، أهل الشام، وأهل مصر، وأهل العراق، وأهل إفريقية، لا يختلف فيه اثنان؛ فلم يكن ينبغي لك — وإن كنت سمعته من رجل مريض — أن تحالف الأمة أجمعين^(١).

وقد كاد الناس يجتمعون على أنها إن اختارت زوجها لم يكن فيه طلاق، وإن اختارت نفسها واحدة أو اثنتين كانت له عليها رجعة، وإن طلقت نفسها ثلاثاً بانت منه، ولم تحل له حتى تنكح زوجاً غيره فيدخل بها ثم يموت أو يطلقها، إلا أن يرد عليها في مجلسه فيقول: إنما ملكتك واحدة، فاستحلقت ويحل بينه وبين امرأته.

ومن ذلك أن عبد الله بن مسعود كان يقول: أيما رجل تزوج أمة ثم اشتراها زوجها، فاشترأه إياها ثلاث تطليقات، وكان ربيعة يقول ذلك، وإن تزوجت المرأة الحرة عبداً فاشترته فمثل ذلك.

وقد بلغتنا عنكم أشياء من الفتيا فاستنكرتها، وقد كنت كتبت إليك في بعضها^(١) فلم تجبني في كتابي، فتحوّفت أن تكون استنكرت ذلك، فتركت الكتاب إليك في شيء مما أنكرت وفيما أردت فيه علم رأيك.

وذلك أنه بلغني أنك أمرت زفر بن عاصم الهلالي^(٢) — حين أراد أن يستسقى — أن يقدم الصلاة قبل الخطبة، فأعظمت ذلك، لأن الخطبة

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 *zakaah* until each one of them has sufficient property that *zakaah* becomes incumbent on each one of them. But `Umar ibn al-Khattaab's letter states that they must give *zakaah* and they will share it proportionately. This is what was done in the reign of `Umar ibn `Abd al-`Aziy 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 you say 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 rahamtullah wa barakatuhu.

والاستسقاء كهية يوم الجمعة، إلا أن الإمام إذا دنا فراغه من الخطبة حوّل وجهه إلى القبلة فدعا، وحوّل رداءه ثم نزل فصلّى، وقد استسقى عمر بن عبد العزيز، وأبو بكر بن محمد بن عمرو بن حزم، وغيرهما، فكُلهم يُقدّم الخطبة والدعاء قبل الصلاة، فاستهتر الناس فعَلَ زفر بن عاصم من ذلك واستنكروه.

ومن ذلك أنه بلغني أنك تقول في الخليطين في المال: إنه لا تجب عليهما الصدقة، حتى يكون لكل واحد منهما ما تجب فيه الصدقة، وفي كتاب عمر بن الخطاب أنه يجب عليهما الصدقة ويترادان بالسوية، وقد كان ذلك يُعمل به في ولاية عمر بن عبد العزيز قبلكم، وغيره، والذي حدّثنا به يحيى بن سعيد، ولم يكن بدون أفاضل العلماء في زمانه، فرحمه الله وعفّر له وجعل الجنة مصيره.

ومن ذلك أنه بلغني أنك تقول: إذا أفلس الرجل وقد باعه رجل سلعة، فتقاضى طائفة من ثمنها، أو أنفق المشتري طائفة منها أنه يأخذ ما وجد من متاعه، وكان الناس على أن البائع إذا تقاضى من ثمنها شيئاً أو أنفق المشتري منها شيئاً فليست بعينها.

ومن ذلك أنك تذكر أن النبي صلى الله عليه وسلم لم يعط الزبير بن العوام إلا لفرس واحد، والناس كلهم يحدثون أنه أعطاه أربعة أسهم بفرسين ومنعه الفرس الثالث، والأمة كلهم على هذا الحديث، أهل الشام، وأهل مصر، وأهل العراق، وأهل إفريقية، لا يختلف فيه اثنان؛ فلم يكن ينبغي لك -- وإن كنت سمعته من رجل مرّضي -- أن تُخالف الأمة أجمعين^(١).

وقد تركت أشياء كثيرة من أشباه هذا، وأنا أحبّ توفيق الله إياك وطول بقائك؛ لما أرجو للناس في ذلك من المنفعة، وما أخاف من الضيعة إذا ذهب مثلك مع استئناسي بمكانك، وإن تأت الدار.

فهذه منزلتك عندي ورأيتك فيك فاستيقنته، ولا تترك الكتاب إليّ بخبرك، وحالك، وحال ولدك وأهلك، وحاجة إن كانت لك أو لأحد يوصل بك، فإني أسرُّ بذلك، كتبت إليك ونحن صالحون معافون، والحمد لله، نسأل الله أن يرزقنا وإياكم شكر ما أولانا، وتمام ما أنعم به علينا، والسلام عليك ورحمة الله.

Translated by Mr. Iftikhar Zaman
www.iftikharzaman.com

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