

فضل مذهب الفقهاء في الفقه

على غيرهم

Virtue of the Juristic Approach in Fiqh

By Dr. Mohammad Akram Nadwi

Translation by Dr. Abu Zayd

سلسلة إملاء الخاطر | Imlā al-Khāṭir Series



AL-SALAM
INSTITUTE

A Centre for Arabic and Islamic Sciences

Oxford . London . Online

©Al-Salam Institute 2018 C.E./1440 A.H.

Translation review Sumara Khan | Proofreading Moiz Mohammed

All rights are reserved.

جميع الحقوق محفوظة

Imlā al-Khāṭir Series

In this series, which he names *Imlā al-Khāṭir* (literally, “dictation of thoughts”), Dr. Mohammad Akram Nadwi follows in the tradition of the Ḥanbalī scholar Ibn al-Jawzī’s *Ṣayd al-Khāṭir* and shares with the world his reflections on a variety of topics ranging from theology to law, history to heart softeners, philosophy, education and more. Composed in a casual, conversational style consisting of questions followed by their brief answers (each portion predicated by *qālū/qultu*, “they said”/“I responded”), he utilizes therein the highest level of Arabic, reflecting his love of the language and his extensive expertise in Arabic grammar and rhetoric. These short but poignant reflections are part of the *balāghah* genre and tradition of Arabic literature. It should be noted that these translations, done by his senior students, serve as a guide and can never fully match the style, tone and eloquence of the original Arabic. Also note that Dr. Akram does not necessarily review each translation and is not responsible for any errors, improper word choices, or the likes, that are an inevitable part of the translation process.

Dr. Mohammad Akram Nadwi

Dr. Mohammad Akram Nadwi is a world-renowned scholar of Indian origin who has resided in England for an extensive time. After receiving in-depth training to an advanced level in the traditional Islamic disciplines at the famous Nadwat al-Ulama seminary in Lucknow, India, and receiving a PhD in Arabic literature from Lucknow University, he became a research fellow at the Oxford Centre for Islamic Studies, where he conducted research for a number of years on a variety of topics, including Ḥadīth and Sufi orders in India. He has published widely in Urdu, Persian, Arabic and English, including translations (like his work on Shāh Waliullah, *Bustān al-Muḥaddithīn*), editions of Arabic texts (such as a renowned critical edition of Uṣūl al-Shāshī in Ḥanafī jurisprudence), and original monographs on Islamic law, female ḥadīth narrators and such figures as Abū Ḥanīfah and Sayyid Abul Ḥasan ‘Alī Nadwi. His groundbreaking work, yet to be published, is an encyclopedic 40-volume documentation of the legacy of female scholarship in the Islamic tradition. He co-founded the Al-Salam Institute in 2006 where he continues to serve as Principal and Senior Lecturer.

Introduction

Building on his previous articles looking at the intersection of ḥadīth and fiqh, this monograph pushes that discussion further to more forcefully delineate the boundaries of each discipline. Specifically, he sees the two broad sources of attaining knowledge as being historical reports (in which you are informed of information from someone else) and intellectually derived views, termed philosophy (in which you essentially derive your own information). Ḥadīth reports fall under the former and require their own set of rules for verification, while fiqh, and most other disciplines, fall under the latter and require a different approach. In this monograph, Dr. Akram defends the school and approach of the early scholars of jurisprudence and demonstrates how their approach was later distorted and wound up being misunderstood as a result of blurring these lines.

بسم الله الرحمن الرحيم

فضل مذهب الفقهاء في الفقه على غيرهم

بقلم: محمد أكرم الندوي

أو كسفورد

قالوا: قد أهمنا أمر. قلت: ما هو؟ قالوا: اختلف الناس في الفقه، فمنهم من يأخذه من الفقهاء، ومنهم من يأخذه من المحدثين. قلت: ما لكم تستوضحونني شيئاً بسيطاً لا خفاء فيه ولا إشكال، لو أعلمتم عقلكم وفكركم لأدركم حقيقته وأصبت مغزاه، ألا تحترمون شيخكم فتحرصوا على حفظ وقته من الضياع؟ فإن أغلى ما أعتكف عليه هذه الأيام هو شرحي لصحيح مسلم، ولا أريد أن أشغل عنه بما تستمتعون به من حشو الكلام ولغووه.

قالوا: استبشعنا لفظك واستهجنه استهجاناً، لقد آذانا ما رميت قولنا به من حشو ولغو، قلت: وهل جزاء الإيذاء إلا الإيذاء، فلتأذوا حتى تعرفوا مدى معاناتي فيكم. قالوا: أعفنا إن كنا أتقلنا عليك أو أزعجناك إزعاجاً، ولكن أخبرنا عن وجه إداثتك سؤالنا كل هذه الإذاتة. قلت: هل تأخذون الهندسة من الأطباء، والطب من المهندسين، والرياضيات من

علماء النفس، والنفسيات من الرياضيين، بل تأخذون الفقه من المفسرين والمتكلمين؟ قالوا: لا، قلت: فكيف تستسيغون أن تأخذوا التاريخ من المقنين، والقانون من المؤرخين؟ قالوا: وأنى فعلنا ذلك؟ قلت: ألم أبين لكم فيما مضى أن الحديث تاريخ، وأن الفقه قانون؟ قالوا: بلى، ولكن الذي سخرت منه ليس محدثاً من المحدثات، بل قد وقع فيه كبار العلماء. قلت: نعم وقعوا، وبئس ما فعلوا.

قالوا: فمن نأخذ الفقه عنهم؟ قلت: خذوا الفقه عن أهله، وأفضلهم فقهاء المدينة، وفقهاء الكوفة، ثم من حدا حدوهم واقتفى أثرهم من فقهاء سائر الأمصار.

قالوا: فما لك قدمت أهل المدينة والكوفة على غيرهم؟ قلت: إن المدينة هي مدينة النبي صلى الله عليه وسلم والخلفاء الراشدين المهديين والسابقين الأولين من المهاجرين والأنصار، فنشأ أهلها على سنن راشدة وأعمال قوية، هي بيان لمعاني القرآن الكريم، وأخذها فقهاؤها وأفتوا بها وتناقلوها، وتشبهها الكوفة في توارث السنن والأعمال، إذ انتقل إليها عبد الله بن مسعود رضي الله عنه معلماً ومفتياً وفقهاً، وقد رضي له أهل الكوفة أمير المؤمنين عمر بن الخطاب رضي الله عنه وأثنى عليه وأشاد بعلمه وفضله، كما أثنى عليه ونوه بشأنه ورفع ذكره غيره من الصحابة من الواردين إلى الكوفة والنازلين بها حتى قال أمير المؤمنين علي بن أبي طالب رضي الله عنه: رحم الله ابن أم عبد فقد ملأها علماً، وأنشأ ابن

مسعود أصحابا له أجلة أخذوا عنه وعن عمر بن الخطاب، وعائشة أم المؤمنين، وعلي بن أبي طالب، وحذيفة بن اليمان، وأبي موسى الأشعري، وغيرهم رضي الله عنهم، حتى صار للكوفة مذهب مستقل في الفقه له خصائصه ومزاياه، واشتهر المذهبان مذهب أهل المدينة ومذهب أهل الكوفة بين العلماء دارسين لها ومتناقلين، وموافقين لها ومخالفين، ومؤيدين لها ورايين.

قالوا: فما تقول في البصريين والمكيين والمصريين والشاميين؟ قلت: لم يكن لأهل البصرة ومكة ومصر والشام مذاهب مستقلة، ولم ينشأ أهلها على سنن وأعمال يمتازون بها عن غيرهم، ولكن كان فيها فقهاء أخذوا عن فقهاء المدينة والكوفة، فمنهم من غلبت عليه نزعة أهل المدينة، ومنهم من غلبت عليه نزعة أهل الكوفة، ومنهم من جمع بينهما توفيقا وتأليفا، ومن كبار الفقهاء في البصرة الحسن، وابن سيرين، وقتادة، وأيوب، وحامد بن زيد، وفي مكة عطاء بن أبي رباح، وابن جريج، وسفيان بن عيينة، ومسلم بن خالد الزنجي، وفي مصر الليث بن سعد، وعبد الله بن وهب، وعبد الرحمن بن القاسم، وعبد الله بن لهيعة، وفي الشام أم الدرداء، وأبو مسلم الخولاني، وأبو إدريس الخولاني، ومكحول، والأوزاعي.

قالوا: ما منبت فقهاء الحديث؟ قلت: البصرة، وهي مدينة لم ترث سننا وأعمالا توارثها أهل المدينة، ولم تشهد فقهاء الصحابة والتابعين الذين حظيت بهم الكوفة، وظهر فيها علماء استفادوا من الكوفيين والمدنيين،

وتنازعهم الاتجاهان الكوفي المدني تنازعا شديدا، فمنهم من مال إلى أهل الكوفة كابن سيرين وشعبة ويحيى القطان، ومنهم من مال إلى أهل المدينة كالحسن وأيوب وعبد الرحمن بن مهدي، رحمهم الله تعالى، وكان ابن مهدي مؤسس مذهب الفقه الحديثي، لازم سفیان الثوري واختص به، ثم رحل إلى المدينة وأخذ عن مالك وغيره من علماءها، ومال إلى مالك مع مخالفته إياه فيما ترك من الأحاديث والآثار، وشدد على الرجوع إلى الحديث والأثر، وتلاه الشافعي، وهو من مكة قرينة البصرة، إذ لم تكن بها سنن وأعمال متوارثة، وكان قد أخذ عن أهل المدينة والكوفة، ثم دخل البصرة وجالس عبد الرحمن بن مهدي وأعجب بمذهبه، وألف رسالته البديعة الرائعة، واحتج لهذا المذهب الجديد احتجاجا قويا، وجعل الحديث أصلا للدين وشدد على إخضاع الفقه له تشديدا لم يسبق إليه.

قالوا: فما مذهب علماء المدينة والكوفة قبل الشافعي؟ قلت: هو المذهب الطبيعي الذي تشهده العقول، فأهل المدينة والكوفة جعلوا القرآن والسنة والعمل والإجماع والقواعد الكلية والقياس أسسا لاجتهادهم وفقههم وفتواهم.

قالوا: فما للحنفية والمالكية لم يحافظوا على مذهبهم؟ قلت: قد كانت دعوة الشافعي إلى العمل بالحديث دعوة عزيزة مدعومة بحجج قاهرة ودلائل باهرة، صادفت آذانا صاغية وعقولا بها مقتنعة وقلوبا لها خاضعة، فتبعه عامة أهل الحديث وكثير من الفقهاء، وساعدهم على ذلك ما في القلوب

من محبة النبي صلى الله عليه وسلم وإجلال لحديثه، فوجد الحنفية والمالكية أنفسهم في موضع الدفاع، وبحثوا عن أحاديث وآثار تؤيد أقوالهم وتعزز آراءهم، فملاًوا كتبهم بالضعاف والشواذ والمناكير، ولما طعن فيهم المحدثون قالوا: لنا أصول مختلفة عنكم في التصحيح والتضعيف، فجاؤا بغير كان شراً، وزاد موقفهم ضعفاً ووهناً.

قالوا: فما تنصح الحنفية والمالكية؟ قلت: أن يدرسوا الموطأ وكتب أبي يوسف ومحمد بن الحسن الشيباني، ويستوعبوا مناهجهم في بسط المسائل والاستنباط والاستدلال، ثم يشرحوها للناس شرحاً أميناً صادقاً، فالحنفية والمالكية يحتاجون إلى شرح مذاهبهم وبيانها، لا إلى الدفاع عنها والاحتجاج لها بما لم يحتج به أئمتهم الأولون من هذه الأحاديث والآثار التي طعن فيها المحدثون، وأصابوا في طعنهم.

قالوا: فما موقفك مما ذهب إليه الشافعي؟ وهل كان للأمة فيه من نفع؟ قلت: نعم، نفع كبير، فالشافعي حمى الإسلام من أن يكون محلياً، إسلام مدني، وآخر كوفي، وآخر مصري، وآخر شامي، وكان على الحنفية والمالكية أن يستفيدوا من منهج الشافعي، لا أن يغيروا به مذاهبهم ويشوهوها تشويهها، كان الواجب عليهم أن إذا نسب قول إلى النبي صلى الله عليه وسلم أو الصحابة أو التابعين أن يتحققوا منه في ضوء أصول الشافعي ويطوروها كما فعله المحدثون ولا سيما الشيخان البخاري ومسلم.

قالوا: فما توصينا به؟ قلت: إياكم أن تجعلوا الحديث أصلا من أصول الدين، فالأصول ما ذهب إليه أبو حنيفة ومالك وأمثالهما من علماء الأمصار، وهي كتاب الله وسنة رسوله صلى الله عليه وسلم والإجماع والقواعد الكلية والقياس، وإياكم أن تبدعوا أصولا للحديث والرواية، فأصول الحديث هي ما قرره الشافعي، وأحمد بن حنبل، والبخاري، ومسلم وسائر أهل الحديث، فخذوا الفقه من الفقهاء، والحديث من المحدثين، ولا تلبسوا بينها تلبيسا.

قالوا: قد بينت الأمر بيانا شافيا. قلت: لا تطروني، ولكن احمدوا الله الذي سخرنى لتعليمكم، والحمد له أولا وآخرا.

Virtue of the Juristic Approach in Fiqh

By Dr. Mohammed Akram Nadwi
Oxford, UK

They said: One particular matter really concerns us.

I asked: What is that?

They replied: People have differed in fiqh, as some take it from the jurists while others take it from the scholars of ḥadīth.

I replied:

Why do you always inquire about simple matters that contain no ambiguities? Were you to exercise your mind and intellect, you would have understood its reality quite well. Do you not respect your teacher enough to protect his time from being wasted? For the most valuable thing I am devoting myself to is my commentary on Ṣaḥīḥ Muslim. I do not want to be diverted from it so that you can enjoy yourselves with non-essential and vain matters!

They replied: We consider your words distasteful and disapprove of them. We are offended by your labeling of our question as non-essential and vain.

I replied: Is not the reward for offense but offense itself? So be offended until you appreciate the extent of my ordeal with you!

They replied: Forgive us if we were burdensome or troublesome to you but tell us why this particular question troubled you greatly.

I replied: Do you take the knowledge of engineering from doctors, or vice versa? Or physical education from psychologists, or vice versa? So will you take fiqh from scholars of exegesis or theology?

They replied: No.

I said: Why will you consider taking history from lawmakers, or law from historians?

They asked: When did we do that?

I replied: Did I not inform you in the past that ḥadīth are historical reports while fiqh is law?

They replied: Of course, but what you censured therein did not apply just to ḥadīth scholars, but many great scholars fell into that.

I replied: Yes they did, and what a terrible thing they fell into.

They replied: So who do we take fiqh from?

I replied:

Take the knowledge of fiqh from its practitioners, and the best of them were the jurists of Madīnah and Kūfah, and then those that followed in their footsteps from the other regions.

They asked: Why have you preferred the jurists of Madīnah and Kūfah over others?

I replied:

Because indeed Madīnah was the city of the Prophet, peace and blessings be upon him, and the city of the Rightly Guided Caliphs and the foremost predecessors of the Emigrants (Muhājirīn) and Helpers (Anṣār). The residents of this city were raised upon guided practices and proper actions, which were an effective application of the Noble Qur'ān. Its jurists took this practice [as a guide], derived their rulings based upon it, and transmitted that to others. The residents of Kūfah were also similar in this aspect of transmitted practice and action, as 'Abdullah b. Mas'ūd had moved there as a teacher, muftī and jurist. He was sanctioned for Kūfah by the Commander of the Believers 'Umar b. al-Khaṭṭāb himself, may God be pleased with him. 'Umar praised him immensely and commended his knowledge and virtue, just as other Companions who had settled in Kūfah had praised him as well. The Commander of the Believers 'Alī b. Abī Ṭālib, may God be pleased with him, said: "God have mercy upon Ibn Umm 'Abd, for he has filled it [Kūfah] with knowledge." Ibn Mas'ūd trained an elite group of students, who also took from 'Umar b. al-Khaṭṭāb, the Mother of the Believers 'Ā'ishah, 'Alī b. Abī Ṭālib, Hudhayfah b. al-Yamān, Abū Mūsā al-Ash'arī and others, may God be pleased with them all. Kūfah then developed its own independent school

in fiqh, with its own characteristics and features. Ultimately, two legal schools— that of Madīnah and Kūfah — became widespread among scholars, who studied and transmitted them broadly with some differences here and there, at times agreeing and sometimes differing on individual matters.

They asked: What do you say about the people of Baṣrah, Makkah, Egypt and Syria (Shām)?

I replied:

These regions did not have independent schools, and their people did not transmit practices that would be unique as compared to others. Rather, these regions contained scholars who learned from the jurists of Madīnah and Kūfah. Some of them inclined predominantly to the scholars of Madīnah while others to those of Kūfah, and others even joined the two. The senior jurists of Baṣrah were Ḥasan, Ibn Sīrīn, Qatādah, Ayyūb, Ḥammād b. Zayd; in Makkah: ‘Aṭā’ b. Abī Rabāḥ, Ibn Jurayj, Sufyān b. ‘Uyaynah, Muslim b. Khālid al-Zanjī; in Egypt: Layth b. Sa’d, ‘Abdullah b. Wahb, ‘Abd al-Raḥmān b. al-Qāsim, ‘Abdullah b. al-Lahī’ah; in Syria: Umm al-Dardā’, Abū Muslim al-Khawlānī, Abū Idrīs al-Khawlānī, Makḥūl, and Awzā’.

They asked: What was the origin of the jurists of ḥadīth?

I replied:

Their origin was Baṣrah, which was a place that did not inherit any transmitted practices like Madīnah had, nor did it witness any jurists from the Companions and Followers like those that Kūfah had gained. Scholars of Baṣrah, rather, benefited from the Kūfans and Madīnans, and were involved in great dispute between the two sides. Ibn Sīrīn, Shu’bah, and Yaḥyā al-Qaṭṭān inclined towards the Kūfans while Ḥasan al-Baṣrī, Ayyūb, and ‘Abd al-Raḥmān b. Mahdī inclined towards the Madīnans, may God have mercy on all of them. Ibn Mahdī was the founder of the school of ḥadīth-based fiqh. He studied for a long time under Sufyān al-al-Thawrī and devoted himself to him. Afterwards, he traveled to Madīnah and learned from Mālik and others. He inclined towards Mālik while maintaining some differences in his ḥadīth and other reports. He was very strict in relying on ḥadīth reports in all matters. Imām Shāfi’ī followed him in this regard, as he was from Makkah which was close to Baṣrah in not possessing any transmitted

practices. After having learned from the scholars of Madīnah and Baṣrah, ‘Abd al-Raḥmān b. Maḥdi settled back in Baṣrah, where he became pleased with his own school. He authored his marvelous and magnificent treatise, which quite firmly supported this new approach, made ḥadīth a foundation of religion and strictly subjected fiqh to ḥadīth for the very first time.

They asked: What was the approach of the scholars of Madīnah and Kūfah prior to Shāfi‘ī?

I replied:

It was a natural approach supported by the mind, as scholars of Madīnah and Kūfah had made the Qur’ān, Sunnah, transmitted practice, consensus, universal legal maxims and analogical deduction the bases for their ijthād, rulings and edicts.

They asked: So why didn’t the Ḥanafīs and Mālikīs preserve their schools in this way?

I replied:

The call of Shāfi‘ī to act upon ḥadīth was a powerful one supported by overpowering evidences and overwhelming proofs. It fell on attentive ears and convinced minds and hearts. Most scholars of ḥadīth and many jurists began to follow him in this. This was further strengthened by what the hearts contained of love for the Prophet, peace be upon him, and reverence for his ḥadīth. Ḥanafīs and Mālikīs now found themselves on the defensive. They were forced to find ḥadīth and other reports to support their views and strengthen their arguments, which ultimately filled their books with weak, anomalous and fabricated reports. When criticized by scholars of ḥadīth, they responded by saying that they had different principles in authenticating reports, which was a terrible justification that weakened and deteriorated their standing even further.

They asked: What would you advise the Ḥanafīs and Mālikīs then?

I replied:

They should really study the Muwaṭṭa’ and the books of Abū Yūsuf and Muḥammad b. al-Ḥasan al-Shaybānī in order to absorb their methodology in presenting matters and deriving evidences. They should then explain that

to the people in an honest and trustworthy way, for the Ḥanafīs and Mālikīs are in great need of explaining and presenting their schools, and not just simply defending them or finding evidences for them which their earliest authorities did not rely upon, in terms of ḥadīth and other reports which were rightly criticized by ḥadīth scholars.

They asked: What then is your position concerning what Shāfi'ī called to? Is there any benefit for the ummah in that?

I replied:

There certainly is great benefit in that, for Shāfi'ī protected Islām from becoming regional—Madīnan, Kūfan, Egyptian, or Syrian. Ḥanafīs and Mālikīs need to benefit from the approach of Shāfi'ī, not to change their schools based upon it which winds up distorting them. It is obligatory upon them when they attribute a statement to the Prophet, Companions or Followers, that they verify them in light of the principles of Shāfi'ī and develop those further as the ḥadīth scholars did, especially Bukhārī and Muslim.

They asked: What would you advise us then?

I replied:

Be wary of making ḥadīth a foundation of religion, for the foundations are those that were followed by Abū Ḥanīfah, Mālik and their likes from the scholars of various cities: the Book of God, the Sunnah of His Messenger, peace be upon him, consensus, universal legal maxims and analogical reasoning (qiyās). Be wary of innovating ḥadīth or narration as a new foundation of religion. The principles of ḥadīth are those affirmed by Shāfi'ī, Aḥmad b. Ḥanbal, Bukhārī, Muslim and the rest of the ḥadīth scholars. Take your knowledge of fiqh from the scholars of fiqh and your knowledge of ḥadīth from the scholars of ḥadīth, and do not muddle the two approaches.

They asked: You have clarified the matter greatly.

I replied: Do not praise me but praise God who subjected me in order to teach you, for all praise belongs to Him, in the beginning and in the end.