

"Vahid" in kısımları

17 5 HAZİRAN 1993

el- Cürcânî, Şerhül-Mevâkıf, c.1, s. 348

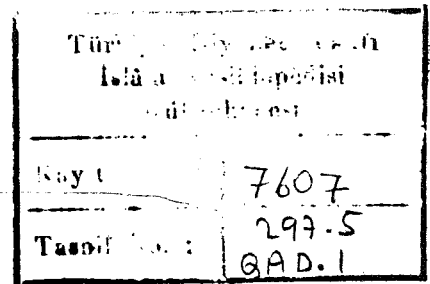
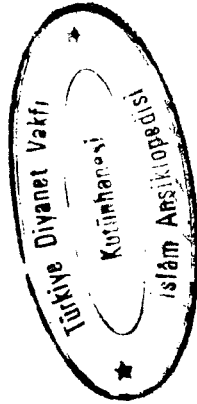
	■ الشیخ . العید معاذ .	
Ibrahim Saffi	الإمام الشافعي وخیر الواحد / العید - خطبه	
-	معاذ الشیخ . - المدينة المنورة : الجامعة	
	الإسلامیة ۱۴۰۱ هـ . - ماجستير .	
	اشراف عبد العظیم جودة	
-	فیاض .	
	(۲۲۰)	
20 EKİM		
1996		

U AHID 26 10/12
In the Name of Allah, the Most Gracious, the Dispenser of Grace!

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ISLAMIC JURISPRUDENCE
IN THE
MODERN WORLD

علم الفقه في العالم العصري
[‘Ilm al-Fiqh fi’l-‘Ālam al-‘Aṣrī]

BY
ANWAR A. QADRI
B.A., LL.B.; M.L.I. (Wisconsin) U.S.A.;
C.C.L. (UISC) Luxembourg



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method. The Ḥanafī school belongs to the group of lawyers and jurists while the Shāfi‘ī and others adopt the traditionary view. Presently, for the subject of our book, the lawyer’s interpretation has been adopted and on other aspects the readers will find the Ḥadīth teachers’ approach in Qaṣṣallānī and Nawawī’s commentaries on Bukhārī and Muslim.²⁸

Primarily, under the universally accepted principles, a tradition may be *Ḥadīth-i-Qaulī*, that is, an account of something the Prophet said; or *Ḥadīth-i-Fi‘lī*, a record of something which he did; or *Ḥadīth-i-Taqrīrī*, a statement of some act performed by other persons in his presence, and which action he did not forbid. The researches, generally in the field of Traditions, are termed *rijāl al-jāh wa’l-ta’dīl*, the men who declare the Traditions as valid or invalid as a science. However, there have been some differences of opinion among the schools on the method of acceptance of Traditions as there is a difference between a jurist and a moralist or a historian—the law and the morals or other science in other systems.²⁹

From the point of view of “continuity” or *ittiṣāl*, i.e. completeness of the chain of transmission from the last transmitter all the way back to the Prophet, the jurists having distinguished four kinds of *Sunnah* (the sayings instead of doings: cf. *Kashf*, 679, but on principles both: cf. *Tauḍīh*, 358; *Talwīh*, 359), the first three being “continuous” and the fourth “discontinuous”.

The “continuous” or *muttaṣil* report of the *Sunnah* includes: (a) the *Mutawātir*—an undoubted tradition, the chain of which is perfect and of which chain each narrator possessed all the necessary qualification for his office. In other words, it is a report of a people numerically indefinite (*la yusha’ adadun*: cannot be collected into an aggregate by numbering) whose agreement upon a lie is inconceivable, in view of their large number, reliability (*‘adalah*), and diversity of residence. Some authorities say there are only a few of such Traditions, while others hold otherwise. According to one view, a report would not be called *mutawātir* if its content is believed on grounds as matters of axiomatic knowledge or reason. It is held that the term *mutawātir* applies only to the report which inspires confidence by virtue of the large number of reporters. In order to classify a report as *mutawātir*, it is essential that: (1) the number of reporters must be large enough to

exclude an agreement among them to spread a false report; (2) the reporters must base their reports on sense-perception; and (3) the above conditions must have been met from the origin to the very end. The examples of the kind are passages in the Qur’ān and the *Sunnah* on the number of prostrations, rates of *Zakat*, etc.³⁰

(b) The *Mashhūr* (lit. widespread)—a report originally supported by a few individuals (*aḥād*) but later spread and transmitted by numerically indefinite people whose agreement upon a lie is inconceivable, these people belonging to generations succeeding to the Companions. It is necessary that the report should have been diffused in the first or second generation after the Prophet, and not later. According to the general view, a *mashhūr* tradition stands higher than the individual or *aḥād* tradition and its non-acceptance entails error, though not heresy. It endangers conviction but not positive knowledge or *yaqīn* (cf. Bazdawī, 688).

(c) The *Khabar al-Wāḥid*—a report transmitted by one or more or two or even more, provided their number falls short of that required for the *mutawātir* tradition. This tradition does not establish positive knowledge but does create an obligation for human conduct, according to the Ḥanafī lawyers. Others as of the *Ḥadīth*-folk expressed an opinion that an individual report engendered knowledge since it creates an obligation for human conduct. Some others held that it did not create obligation for human conduct, since it does not endanger knowledge as a conduct may be based on knowledge alone. The Ḥanafī view is supported by legal evidences from the Qur’ān, the *Ijmā’* and reason.

(d) The “discontinuous,” or *Khabar al-Munqa‘ī*, is a report in whose continuity of transmission, unlike that of the above, there is a break. The discontinuity may be of two kinds: (1) formal or *Zāhir* and (2) real or *Bā‘in*, as explained below.

(1) *Formal discontinuity*: It occurs when the continuity of transmission is not complete all the way back to the Prophet, as in the case of an unsupported report or *mursal*, i.e. when there is a failure to mention the chain of transmitters.³¹

a. *Illustration*. When someone says, “The Prophet said so and so,” without supporting (*isnād*) his statement by saying: “So and so related to us, on the authority of so and so, on the authority of the Prophet.”³¹

30. For details, see *Minhāj*, II, 77; *Technical Dictionary*, 147 f.; Ṣadr-ush-Sharī‘ah, *Tauḍīh*; Taftazānī, op. cit., Bazdawī, op. cit.; 681 f.; Aghnides, op. cit., 40 ff.

31. Cf. Aghnides, op. cit., 45; also see Ṣadr-ush-Sharī‘ah, op. cit., 367; Bazdawī, 724; Karkhī, *Kashf*, 683. It should be noted that, according to *Ahl-ul-Ḥadīth*, *mursal* means a report none of whose transmitters has been mentioned and *musnad* is the opposite as supported. The report is termed *munqa‘ī* if one transmitter is omitted, or, if more, it is *mu‘dall*.

28. For this reason, it is submitted that the modern writers generally do not approach the legal research and legal problems with the lawyer’s approach. Adopting the *Ahl-ul-Ḥadīth* method, they do not properly analyse the current legal problems as they should be judged.

29. The best treatment is given in Ibn al-Ṣalāḥ, *Muqaddimah fi ‘Ulūm al-Ḥadīth* (Bombay, 1938); Qāsimī, *Qawā‘id al-Taḥdīth min Funūn Muṣṭalah al-Ḥadīth* (Damascus, 1925).