Al-Maliki Lexical Items in the Semantic Implications of Command and Prohibition: A Case Study

مفردات المالكية في دلالات الألفاظ: الأمر والنهي أنموذجا

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Abstract:
The Maliki view of Islamic law as a complete and comprehensive law had a clear impact on the establishment and development of their legal principles. This view was reflected in their methodological approach, which is characterized by breadth and coherence, along with a degree of disciplined flexibility that takes into account the objectives of Sharia and its general meanings. This resulted in a number of foundational juristic choices that distinguish the Maliki school and became among its most prominent characteristics. These choices had a clear influence on their juristic rulings, particularly in combining transmitted evidence with rational consideration. This study aims to highlight these foundational choices in the section of the semantic implications of words, in which the Malikis differed from other schools of jurisprudence, especially in the chapters of commands and prohibitions and their impact on juristic branches.
Keywords: Terminology, Maliki school, indication, words, command.

ملخص:
إن نظر المالكية إلى الشريعة الإسلامية بوصفها شريعةً كاملةً شاملةً، قد كان له أثر واضح في تأسيس أصولهم وبنائها، فقد انعكس هذا النظر على منهجهم الأصولي سعةً واتساقًا، مع قدر من المرونة المنضبطة التي تراعي مقاصد الشريعة ومعانيها العامة، ونتج عن ذلك جملة من الاختيارات الأصولية التي تميز بها المالكية، وصارت من الخصائص البارزة في مذهبهم، وكان لها أثر بيّن في توجيه اختياراتهم الفقهية، من حيث الجمع بين الدليل النقلي والنظر العقلي،وتهدف هذه الدراسة إلى إبراز تلك الاختيارات الأصولية في قسم دلالات الألفاظ التي انفرد بها المالكية عن غيرهم من المذاهب الفقهية، ولا سيما في باب الأمر والنهيوبيان أثره في الفروع الفقهية.

كلمات مفتاحية: مفردات، المالكية، دلالة ، الألفاظ، الأمر.

Introduction:

Whoever reflects on the foundations of Islam and the principles of Sharia will realize that the principles of Malik and the people of Medina are among the soundest and strongest foundations. This was indicated by al-Shafi‘i, Ahmad, and others.

This is due to the distinguishing features of these principles compared to others, as they are numerous and abundant. They granted the school consistency in structure and flexibility in application. They were able to accommodate new issues and emerging cases and adapt to different situations. Despite their large number, they combine authentic transmission and clear

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reasoning. The proper use of these principles helped fill the gaps that a jurist may notice when applying rulings to practical reality.
It thus becomes clear that the Malikis are distinguished by a set of foundational juristic terminologies that are specific to them compared to other legal schools, and these have a clear juristic impact.

Research Objectives:

From this, the importance of this research and its objectives become clear, which can be summarized as follows:
First: To highlight the foundational uniqueness of some Maliki scholars and to examine the validity, breadth, and comprehensiveness of their methodological approach.
Second: To show the impact of this uniqueness on applied jurisprudence.
Third: To clarify the extent to which the theoretical foundation is consistent with practical application through Maliki terminologies.

Research Problem:

All of this will be addressed through answering the following question: What are the foundational issues in which the Malikis, or some of them, were unique in the chapter of commands and prohibitions within the section of the semantic implications of words compared to others? And did the effect of this uniqueness extend to applied jurisprudence?

Research Methodology and Scope:

To answer this problem, the study adopted the inductive, analytical, and comparative method. This was done by examining the issues in which Maliki scholars were unique in their foundational juristic choices, clarifying this uniqueness, and comparing it with the positions of others, while noting areas of agreement or intersection.
The study was limited to the chapter of commands and prohibitions within the section of "the semantic implications of words," in order to present a clear and complete picture of Maliki uniqueness in this field.
The condition for this was reliance on what is مشهور (well-known) among them or what was reported from the Imam. As for what was held by only one of them and not مشهور, it was included only if a juristic effect resulted from it according to them.
Uniqueness was also recorded even if an individual from another school agreed with them, as long as the view was well-known among the Malikis and not well-known among others. This was noted in its proper place. Since the scope does not allow listing everything in which the Malikis differed from the Hanafis, Shafi'is, and Hanbalis in all chapters of legal theory, the study was limited to the second main field of Usul al-Fiqh, namely the semantic implications of words, specifically the chapter of commands and prohibitions as a model. The material mentioned was presented according to the needs of the study, as follows:
Introduction: Including the importance of the topic, its objectives, its problem, the research methodology, and the structure of the study.

Main Text:

Including an introduction and five sections:
Section One: The implication of a command to a child as recommendation in all cases.
Section Two: Interpreting a command concerning one of several things as applying to all of

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them.
Section Three: Interpreting divine command as obligation and prophetic command as recommendation.
Section Four: A prohibition of something, if it is a right of God, implies invalidity, but if it is a right of a human, it does not imply invalidity.
Section Five: Prohibition implies invalidity, but the disagreement of those who say it does not imply invalidity is taken into consideration.
Conclusion: Including the results of the research and suggested recommendations.

Framework for Study:

The semantic implications of commands and prohibitions are among the most precise topics in the principles of jurisprudence and have one of the strongest effects on the formation of legal rulings and their application to real situations. Through them, the intended meaning of the Lawgiver is understood from the outset, and the different levels of legal demand are distinguished, such as obligation and recommendation, as well as prohibition and dislike. From this also result the rulings related to validity and invalidity, sufficiency, and liability. For this reason, these topics occupied a central position in the foundational structure of legal theory among the leading scholars, and their influence appeared clearly in the diversity of juristic methodologies and the variety of practical rulings.
The Maliki school distinguished itself in the chapter of commands and prohibitions through a number of foundational principles that reveal a precise analytical approach. This approach balances between the literal meaning of the text, the objectives of legislation, and the effect of legal discourse on the responsible individual, without being restricted to purely literal interpretations or rigid application of general rules.
With regard to commands, the Malikis established that a command addressed to a child does not indicate obligation in any case, but is interpreted as recommendation in all cases. This is because the child does not possess the legal capacity for obligation, and this interpretation is consistent with the objective of Sharia in gradual training and discipline rather than obligation and accountability.
Some Maliki scholars also held that a command concerning one of several things implies the obligation of all of them in the sense of choice — contrary to the well-known opinion in the school. According to this view, the legally responsible person is required to perform the act in a way that does not specify a particular one, while the أصل (principle) of obligation remains established in general. This is a precise opinion that shows the effect of choice within obligation without cancelling the meaning of binding demand.
Some of their معتبر scholars also made a distinction between divine command and prophetic command. They considered that a command issued by God indicates obligation when it is given in an absolute form, whereas a prophetic command in its original form indicates recommendation. This is because the Prophet غالبًا speaks in the مقام of explanation, teaching, and encouragement, unless there is an indicator that shifts the command to obligation. This distinction reflects their consideration of the context of discourse and its situation, not merely the verbal form.

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As for prohibition, the Maliki approach moved beyond absolute generalization regarding whether prohibition implies invalidity. They did not adopt the opinion that everything prohibited is invalid in an absolute sense, nor did they say that prohibition never implies invalidity. Rather, they established a precise principle based on distinguishing the type of right connected to the prohibition. If the prohibition relates to the right of God, then it implies the invalidity of the prohibited act and that it is not legally valid, because this right cannot be waived and because the act lacks legal legitimacy from the outset.
However, if the prohibition relates to the right of a human being, then they do not consider it to imply invalidity. Instead, the act remains valid in itself, while the option or compensation may be established, in order to achieve justice, remove hardship, and apply the right where it exists without nullifying the act completely.
From this precise analysis, it becomes possible to say that the prohibited act may be considered invalid in principle when the right of God is involved, while still taking into account the juristic disagreement of those who say that it does not imply invalidity in some cases. Therefore, invalidity is not judged in an absolute manner unless its effective cause is clearly established. This method reflects the caution of the Malikis in legal verdicts and judicial rulings and their combination of strong evidence and broad legal reasoning.
Therefore, the study of Maliki principles in the chapter of commands and prohibitions reveals a complete foundational methodology that does not stop at the level of literal meanings, but goes deeper into the objectives of legal discourse and its practical effects. It treats the issues of command and prohibition as essential matters in understanding legislation, not merely theoretical discussions. This is what this research aims to clarify by analyzing these juristic choices, explaining their principles, their effects on legal deduction, and their place within the broader foundational and juristic disagreement.
The following topics will be presented according to the subsequent sections:

Section 1: The implication of a command addressed to a child as recommendation. This section is studied through two subsections:

I: Explaining that the issue of a command addressed to a child indicates recommendation according to the Malikis.

First: The form of the issue and the point of disagreement:

The issue of a command addressed to a child is understood as a legal text that comes in the form of a command or prohibition related to acts of worship or other acts, such as the command to pray or perform الحج, while the one addressed is a child who has not reached puberty. The question is then examined: Is the child included in the legal address of obligation in the first place, or is he completely outside it, or is he included in some types of legal address but not others?
The point of disagreement is not whether obligations and prohibitions are lifted from the child, because this is agreed upon. Rather, the disagreement concerns whether the child is addressed with recommendation and dislike. Is he addressed in such a way that the command in his case indicates recommendation and the prohibition indicates dislike, or is he not addressed by any of these at all? In this way, it becomes clear that the disagreement is a precise foundational

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disagreement concerning the basis of legal responsibility and the meaning of command when it is directed to someone who does not meet the condition of obligation.

This disagreement goes back to two main principles. The first is defining the nature of legal responsibility and its conditions, and whether puberty is a condition for the legal address itself or only for obligation. The second is the meaning of command: Is it originally established for obligation, such that if the condition of obligation is absent the legal address is absent completely, or is it established for the request of an action in general, and then the request becomes either obligation or recommendation depending on the condition of the legally responsible person? Those who considered conscious intention of obedience a condition for an act to be considered obedience, and that this intention is only fully achieved after puberty, said that the child is not addressed at all. This is the opinion of the majority.

Those who distinguished between the address of legal ruling, guidance, and recommendation and the address of obligation, affirmed that the child has the capacity for some types of legal address but not others. They considered puberty a condition only for obligation in duties and prohibitions, not for legal address in general. They used as evidence the hadith of the Khath'amiyyah woman when she asked about a child: "Is الحج valid for him?" The Prophet said: "Yes, and you will have the reward." According to them, this shows that the address of acts of worship is directed to the child in the sense of recommendation, not obligation. Based on this, they concluded that the command in his case is interpreted as recommendation in all cases, because he is not included in the sphere of obligation, not because he is not addressed at all.

Thus, the point of disagreement becomes clear, and it is shown that the disagreement is not about whether obligations are lifted from the child, but about whether the address of recommendation and dislike is established for him or not. This is a foundational disagreement that has an effect on a number of juristic rulings.

Second: Explaining the uniqueness of this issue:

It can be said that this issue is one in which the Malikis were distinct from the majority, as some of them chose an opinion that differs from the majority and built juristic rulings on this disagreement. This can be clarified by explaining that the majority hold that the child is not addressed by command or prohibition because he is not legally responsible, whereas the Malikis held that the command addressed to a child is interpreted as recommendation in all cases, as will be explained below.

A — Explaining the opinion of the majority:

The majority of legal theorists held that the child is not addressed by commands and prohibitions at all, neither in the sense of obligation nor recommendation, because the condition of legal responsibility, which is puberty, is not fulfilled. They also argued that legally recognized obedience cannot be considered an act of worship unless it is accompanied by a correct intention that results from a complete understanding of the meaning of the legal address and its consequences, and this is not present in the child, even if he is able to distinguish.

Accordingly, the legal commands mentioned in the texts are directed to the guardians in the sense of instruction and training, not to the child in the sense of legal address. Any reward or benefit that results is due to the فضل of God or to the reward of the guardian, not because the

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child is truly legally addressed. Therefore, according to them, when a command is directed to someone who does not have the capacity for obligation, it is not interpreted as recommendation; rather, the legal address is removed from him completely. The details of this view can be explained through the statements of scholars from different schools:

Al-Zarkashi said: "The third condition is puberty; the child is not legally responsible at all because his understanding is insufficient to comprehend the meanings of legal discourse."[1]

Al-Tufi said: "There is no legal responsibility upon a child because he does not understand, nor upon the insane because he does not reason. A condition for compliance to be considered an act of obedience is that it is intended for God, seeking what is with Him in terms of promise and warning. This intention is what makes compliance an act of obedience, and it is absent in the child and the insane because they do not understand. Whoever does not understand the discourse cannot be expected to intend what it requires."[2]

Based on this, it was established that the insane person is not legally responsible, and likewise the child who has not reached the age of discernment, because they do not understand the legal discourse in the required manner[3]. Ibn al-Sa‘ati said: "Whoever has basic understanding but not detailed understanding — such as the insane and the non-discerning child — is not addressed, because the intended purpose depends on understanding the details."[4]

Muhammad al-Amin al-Shinqiti summarized the opinion of the majority by saying: "As for the discerning child, the majority of scholars hold that he is not legally responsible for anything at all."[5] He also said in *Nathr al-Wurud*: "According to the majority of scholars, the child is not legally responsible for anything, based on the statement of the Prophet: 'The pen has been lifted from three — and he mentioned among them — the child until he reaches puberty.'"[6] [7]

B — Explaining that this issue is among the distinctive opinions of some Malikis: The Malikis — in general — were distinct in affirming that the child is addressed with recommendation and dislike. They stated that puberty is a condition for obligation, not for legal address in general. Therefore, the child is not qualified for obligation or prohibition, but he is qualified for recommendation and dislike, because these do not involve punishment or liability;

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[1] **Al-Bahr al-Muhit fi Usul al-Fiqh**, Badr al-Din ibn Muhammad ibn ‘Abd Allah al-Zarkashi, Dar al-Kutubi, 1st ed., 1414 AH / 1994 CE, Vol. 2, p. 56.

[2] **Sharh Mukhtasar al-Rawdah**, Sulayman ibn ‘Abd al-Qawi ibn al-Karim al-Tufi, Mu'assasat al-Risalah, 1st ed., 1407 AH / 1987 CE, Vol. 1, pp. 180–181.

[3] **Irshad al-Fuhul ila Tahqiq al-Haqq min ‘Ilm al-Usul**, Muhammad ibn ‘Ali ibn Muhammad ibn ‘Abd Allah al-Shawkani, ed. Ahmad ‘Azzu ‘Inayah, Dar al-Kitab al-‘Arabi, Damascus, Syria, 1st ed., 1419 AH / 1999 CE, p. 37.

[4] **Badi‘ al-Nizam**, Ahmad ibn ‘Ali al-Sa‘ati, ed. Sa‘d ibn Ghurayr ibn Mahdi al-Sulami, 1405 AH / 1985 CE, Vol. 1, p. 202.

[5] **Memorandum in Usul al-Fiqh**, Muhammad al-Amin ibn Muhammad al-Mukhtar ibn ‘Abd al-Qadir al-Shinqiti, Maktabat al-‘Ulum wa al-Hikam, al-Madinah al-Munawwarah, 5th ed., 2001 CE, p. 36.

[6] Reported by **Abu Dawud Sulayman ibn al-Ash‘ath**, *Sunan Abi Dawud*, in *Kitab al-Hudud*, chapter: "Regarding the insane person who steals or incurs a hadd punishment," Vol. 4, p. 139, Hadith no. 4398, ed. Muhammad Muhyi al-Din ‘Abd al-Hamid, al-Maktabah al-‘Asriyyah, Sidon–Beirut.
Al-Albani graded it **Sahih**. See: **Irwa' al-Ghalil fi Takhrij Ahadith Manar al-Sabil**, al-Maktab al-Islami, Beirut, 2nd ed., 1405 AH / 1985 CE, Vol. 2, p. 4, Hadith no. 297.

[7] **Nathr al-Wurud ‘ala Maraqi al-Su‘ud**, Muhammad al-Amin al-Shinqiti, Dar al-Manarah for Publishing and Distribution, Jeddah, Saudi Arabia, 3rd ed., 1423 AH / 2002 CE, p. 40.

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rather, they are a light request or a non-binding discouragement. Based on this, they concluded that when a command is directed to a child, it is interpreted as recommendation in all cases, not because he is not addressed at all, but because he is addressed with a discourse of gentleness and gradual training, not a discourse of obligation.
They supported this view by arguing that acts of devotion performed by a child are recognized in Sharia and that legal rulings are based upon them. The texts also indicate that the child's acts of worship are valid in general. According to them, this proves that the child is included in the original legal address, but without the attribute of obligation.
Al-Qarafi explicitly stated that this issue is one of the distinctive positions of the Maliki school when he said: "We understood that children are commanded with recommended acts based on the statement of the Prophet in the hadith of the Khath'amiyyah, when she said: 'O Messenger of God, is there Hajj for this child?' He said: 'Yes, and you will have the reward.'" [8] [9] Al-Dasuqi also said: "Based on this, the child is legally addressed with recommended and disliked acts, and puberty is only a condition for legal responsibility in obligations and prohibitions, and this is the relied-upon opinion in our school."[10] Al-Sawi said: "Legal responsibility is the request to perform something that involves effort; therefore, the child is addressed with recommended and disliked acts."[11]
Shaykh Abdullah ibn Ibrahim al-'Alawi said in his poem *Maraqi al-Su'ud*: [12]
"And the command addressed to a child indicates recommendation,
As reported in the hadith of Khath'am."

II: Explaining the juristic effect resulting from this issue:
When the Malikis established that the child is included in the general non-obligatory legal address, and that the command directed to him is interpreted as recommendation in all cases, a specific foundational principle resulted from this regarding the application of rulings to the actions of a child. This principle is based on distinguishing between the address of obligation and the address of devotion and discipline. The first does not apply to the child due to lack of legal capacity, while the second does apply to him in the sense of recognition, not in the sense of liability.
Based on this principle, a number of juristic issues developed that are clearly defined and do not mix with other issues. All of them are based on recognizing the actions of a child in acts of devotion and similar matters as recommended acts.
The effect of this distinctive opinion — that the command addressed to a child indicates recommendation — appears in the following issue:
First: The validity of following a child as an imam in voluntary prayer but not in obligatory prayer:

[8] Reported by **Muslim ibn al-Hajjaj Abu al-Hasan al-Qushayri**, *Sahih Muslim*, in *Kitab al-Hajj*, chapter: "Validity of the Hajj of a Minor and the Reward for Performing Hajj on Their Behalf," Vol. 4, p. 101, Hadith no. 1336, ed. Muhammad Zuhayr ibn Nasir al-Nasir, Dar al-Minhaj, Jeddah, Saudi Arabia, 1st ed., 1433 AH / 2013 CE.
[9] **Sharh Tanqih al-Fusul**, Ahmad ibn Idris ibn 'Abd al-Rahman al-Qarafi, ed. Taha 'Abd al-Ra'uf Sa'd, Dar al-Tiba'ah al-Fanniya al-Muttahida, 1st ed., 1393 AH / 1973 CE, p. 148.
[10] **Hashiyat al-Dasuqi 'ala al-Sharh al-Kabir**, Muhammad ibn Ahmad ibn 'Urfah, Dar al-Fikr, Vol. 1, p. 186.
[11] **Balaghah al-Salik ila Aqrab al-Masalik**, Ahmad ibn Muhammad al-Sawi, Dar al-Ma'arif, Vol. 1, p. 264.
[12] **Nathr al-Wurud**, p. 185.

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From the Maliki school, a distinction is made between the leadership of a child in obligatory and voluntary prayers. Imam Malik was asked: “Can a child who is near puberty lead people in prayer?” He said: “As for the obligatory prayers, which are the prescribed prayers, then no. But in voluntary prayers, a child may lead people in them.” It was said: “Can they be put forward in Ramadan?” He said: “Yes, there is no problem with that.”[13]

The prohibition of his leadership in obligatory prayer is explained by the fact that the child is not addressed with the obligation of prayer; rather, it is only recommended for him. If someone performing an obligatory prayer follows someone performing a voluntary prayer, the imam’s prayer would be voluntary while the follower’s prayer is obligatory, and this is not permissible. However, in voluntary prayer, leadership is permissible because it is a voluntary prayer behind someone performing a voluntary prayer. The legitimacy of leadership here does not contradict the fact that the child is only addressed with recommendation and that the command directed to him is interpreted accordingly.

Some narrations explained the dislike of a child leading even in voluntary prayer due to the fear that he may not fulfill the conditions of prayer, such as intention and ablution, as Ibn Rushd said: “Because although his voluntary prayer corresponds to the prayer of the child in being voluntary for him, according to those who hold that he is encouraged to perform acts of worship, one cannot be sure that he will not lead the prayer without ablution or without intention.”[14]

In this way, the effect of the Maliki school’s distinctive opinion becomes clear in considering the child as addressed with recommended acts and that the commands directed to him are interpreted as recommendation.

Second: The Issue of the Validity of Children’s Marriages and Guardians’ Authority to Permit or Annul Them, and Their Inability to Divorce:

The Maliki school also exhibits a distinctive influence in matters related to children’s marriage and divorce. Al-Qarafi stated: “The distinction between the two rules lies in the fact that a child’s marriage is valid while divorce is not. The validity of marriage permits sexual relations because they are addressed in permissibility, recommendation, and discouragement, without obligation or prohibition, since the child’s capacity is insufficient for legal responsibility and the punishment attached to obligation is not applicable to them due to their weak intellect. On the other hand, divorce results in prohibition of sexual intercourse by nullifying marital authority over the wife, but the child is not competent to enact this prohibition.”[15]

This illustrates the Maliki school’s uniqueness in defining the scope of the child’s legal capacity under guardianship. The guardian can contract or annul the marriage, whereas divorce does not occur because the child lacks the mental capacity to assume legal responsibility for obligations and prohibitions. Meanwhile, the child may still be addressed with recommended acts, and commands directed to them are interpreted as recommendations or discouraged acts, forming a concept unique to the Maliki school.

[13] **Al-Bayan wa al-Tahsil**, Muhammad ibn Ahmad ibn Rushd al-Qurtubi, ed. Muhammad Haji and team, Dar al-Gharb al-Islami, Beirut, 2nd ed., 1408 AH / 1988 CE, Vol. 1, p. 395.
[14] **Ibid.**, Vol. 1, p. 396.
[15] **Al-Furuq**, Ahmad ibn Idris ibn ‘Abd al-Rahman al-Qarafi, ed. Omar Hasan al-Qiyam, Mu’assasat al-Risalah, Damascus, Syria, 2nd ed., 1432 AH / 2011 CE, Vol. 3, pp. 168–169.

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Section 2: Does a Command Concerning One of Multiple Options Imply Obligation for One Specific Option or for All Options?

I: Demonstrating that, according to Maliki distinct positions, a command concerning one of multiple options entails obligation for all:

1. Form of the Issue and the Point of Dispute:

This issue arises when a legal command is related to one of several options, giving the person a choice, as in the case of certain forms of expiation (*kafarat*). The foundational question is to determine the object of the obligation: does it relate to a specific option, to all options collectively, to an ambiguous command among them, or to what the obliged person chooses to perform?

The disagreement does not concern the existence of obligation itself or the validity of performing one of the options; these points are agreed upon. Rather, the dispute concerns the precise nature of the obligation before the act and what the legal address is attached to.

The majority of jurists hold that the obligation applies to one shared measure among the prescribed options, without specifying any particular option. Choice applies to the particular options themselves, not to the original obligation; one may leave a particular option, but not the shared measure of the obligation.

Some, however, argued that all options are obligatory, but performing one suffices to discharge the obligation. This view is based on the principles of rational good and evil, which may require all options to be equally virtuous for legal command purposes. Scholars criticized this opinion because of the practical consequences it would have on reward and punishment.

The difference in opinions is traced back to varying perceptions of the nature of obligation: whether it is a distinct legal ruling related to a common general meaning, or based on intrinsic virtue in individuals. It also relates to whether indefinite imposition is permissible and how legal rulings attach to specific acts. Based on this principle, practical implications arose in the areas of expiation, wills, enforcement, and judicial rulings.

2. Demonstrating the Maliki School's Distinction on this Issue:

It can be said that this issue represents a distinctive position of the Malikis — based on the choice of some of them — differing from the majority of scholars. While the general opinion holds that a command concerning one option entails obligation for one unspecified act, some Malikis maintain that the command is inherently related to all options from the outset. This is explained as follows:

a — Statement of the Majority Opinion and Supporting Evidence from Jurists:

Ibn al-Muwaqqit, in his explanation of Ibn al-Hammam's Hanafi text, said: "The issue of a command concerning one (option) — that is, an indefinite obligation from known acts — is considered by the majority of jurists and the Ash'aris to entail obligation for one option, which is known as the 'obligatory choice' (*al-wajib al-mukhayyar*), as in the case of expiation for an oath (*kafarat al-yamin*). When God says: {But its expiation is feeding ten needy people} [Al-Ma'idah: 89], the command to feed is obligatory, and this extends to clothing and freeing a slave, making each individually obligatory as alternatives, not collectively."[16]

[16] **Al-Taqrir wa al-Tahbir**, Abu 'Abd Allah, Shams al-Din Muhammad ibn Muhammad ibn Muhammad, known as Ibn Amir Hajj and also called Ibn al-Muwaqqat al-Hanafi (d. 879 AH), Dar al-Kutub al-'Ilmiyya, 2nd ed., 1403 AH / 1983 CE, Vol. 2, p. 134.

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Ibn al-Hajib al-Maliki said: "Scholars differed on whether a command concerning one of multiple options, as in expiation, is straightforward or not. The majority affirmed it, while the Mu'tazilites rejected it, claiming there is no meaning to obligation when there is choice, because the two are contradictory."[17]

Al-Jalal al-Mahalli, explaining Al-Subki, said: "The issue of a command concerning one of several options, as in expiation for an oath, entails one obligation among them, not a specific one."[18]

Ibn al-Liham al-Hanbali said: "In the issue of a command concerning one of multiple options, such as expiation, the majority held that the obligation applies to one option, not a specific one. The Qadi and Ibn 'Aqil agreed that one option must be performed, while Abu al-Khattab held that the obligation is one specific option known to God."[19]

It is not necessary here to report the Mu'tazilite opinion, as it lies outside the scope of this study.

These reports indicate that, according to the majority, the obligation applies to one option, and this was transmitted as the consensus, as Qadi Abu Bakr reported the agreement of the predecessors and the juristic authorities on this point.[20] [5]

b — Demonstrating that the Issue Is a Distinctive Position of Some Malikis:

The Maliki school is also distinguished by its view that a command concerning one of multiple options entails obligation for all options. This was the opinion of Ibn Khuwayd Mandad, as cited by Al-Baji [21]. Al-Sharif Abu Abdullah Al-Tlemsani noted that Ashhab ibn Abd al-Aziz based several legal derivations on this choice[22].

II: Demonstrating the Jurisprudential Consequences of the Issue:

The issue carries several jurisprudential consequences according to the Maliki school:

1. Concerning the Friday Prayer and Leadership of Servants and Travelers:

Al-Sharif Al-Tlemsani stated: "The benefit of this disagreement appears in cases where a servant and a traveler serve as imams during Friday prayer. Does the prayer of the followers behind them remain valid? Ibn al-Qasim held that it does not, whereas Ashhab maintained that it does.

The reasoning of Ibn al-Qasim is that the obligation for the servant is not specific, because he has a choice between the Friday prayer and the regular Zuhr prayer; the obligation applies to

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[17] **Bayan al-Mukhtasar: Sharh Mukhtasar Ibn al-Hajib**, Mahmoud ibn 'Abd al-Rahman (Abu al-Qasim) ibn Ahmad ibn Muhammad, Abu al-Thana, Shams al-Din al-Isfahani (d. 749 AH), ed. Muhammad Mazhar Baqqa, Dar al-Madani, Saudi Arabia, 1st ed., 1406 AH / 1986 CE, Vol. 1, p. 345.

[18] **Hashiyat al-'Attar 'ala Sharh al-Jalal al-Mahalli 'ala Jam' al-Jawami'**, Hasan ibn Muhammad ibn Mahmoud al-'Attar al-Shafi'i (d. 1250 AH), Dar al-Kutub al-'Ilmiyya, Vol. 1, p. 227.

[19] **Al-Mukhtasar fi Usul al-Fiqh 'ala Madhhab al-Imam Ahmad ibn Hanbal**, Ibn al-Lahham, 'Ala' al-Din Abu al-Hasan 'Ali ibn Muhammad ibn 'Abbas al-Ba'li al-Dimashqi al-Hanbali (d. 803 AH), ed. Muhammad Mazhar Baqqa, King Abdulaziz University, Mecca, p. 61.

[20] **Al-Ghaith al-Hami': Sharh Jam' al-Jawami'**, Wali al-Din Abu Zur'ah Ahmad ibn 'Abd al-Rahim al-Iraqi (d. 826 AH), ed. Muhammad Tamer Hijazi, Dar al-Kutub al-'Ilmiyya, 1st ed., 1425 AH / 2004 CE, p. 77.

[21] **Al-Asl al-Jami' li Idah al-Durar al-Manzumah fi Silk Jam' al-Jawami'**, Hasan ibn 'Umar ibn 'Abd Allah al-Sinawni al-Maliki (d. after 1347 AH), Matba'at al-Nahda, Tunis, 1st ed., 1928 CE, Vol. 1, p. 28.

[22] **Miftah al-Wusul ila Bina' al-Furu' 'ala al-Usul (with: Matharat al-Ghalat fi al-Adillah)**, Abu 'Abd Allah Muhammad ibn Ahmad al-Hasani al-Tilimsani (d. 771 AH), ed. Muhammad 'Ali Farkus, al-Maktabah al-Makkiyyah, Mecca; Mu'assasat al-Rayyan, Beirut (Lebanon), 1st ed., 1419 AH / 1998 CE, p. 396.

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one of them in general, not a specific one. Thus, if the follower follows the servant specifically during the Friday prayer — which is obligatory — his following amounts to a follower performing an optional act, which is invalid.

Ashhab's reasoning is that the Friday-specific obligation applies to the servant, based on the principle that a command concerning one of multiple options entails obligation for all options."[23]. Also derived from this issue is[24]:

2. Concerning Divorce and Emancipation:

Other consequences of the issue include: if a man divorces one of his wives or emancipates one of his slaves, the majority of scholars hold that divorce or emancipation does not occur because the obligation is indefinite. The divorce remains ambiguous and does not take effect except upon specification[25].

According to the alternative Maliki opinion, the divorce or emancipation applies to each individual case[26].

Section 3: The Indication of Divine Commands on Obligation and Prophetic Commands on Recommendation

I: Demonstrating that Divine Commands Indicate Obligation and Prophetic Commands Indicate Recommendation (A Distinctive Position of Some Malikis):

1. **Form of the Issue and Point of Dispute:**

   The issue arises when a command appears in a simple form, without any contextual indicators that suggest choice, recommendation, permissibility, warning, or guidance. If such contextual indicators are absent, the question becomes whether the wording itself indicates legal compulsion, or merely requests an act without obligation.

The dispute does not concern cases where the command is accompanied by indicators that remove obligation — this is generally agreed upon. Nor does it concern cases where contextual evidence diverts the apparent meaning of the command. Rather, the debate focuses on whether the command, in its pure form and in the absence of contextual clues, entails obligation from the outset.

The cause of the disagreement lies in differing views regarding the source of the command's meaning:

- Some hold that the wording itself, based on its linguistic origin, is intended to impose obligation, so that leaving the act unperformed constitutes disobedience.
- Others maintain that the wording only indicates a request or permission, and obligation is derived only from additional context outside the wording itself.

[23] **Miftah al-Wusul**, p. 396.
[24] **Al-Muhadhdhab fi 'Ilm Usul al-Fiqh al-Muqaran**, 'Abd al-Karim ibn 'Ali ibn Muhammad al-Namlah, Maktabat al-Rushd, Riyadh, 1st ed., 1420 AH / 1999 CE, Vol. 1, p. 171.
[25] **Tahdhib Masa'il al-Mudawwanah (entitled: al-Tahdhib fi Ikhtisar al-Mudawwanah)**, Khalaf ibn Abi al-Qasim Muhammad al-Azdi al-Qayrawani, Abu Sa'id Ibn al-Baradhi'i al-Maliki (d. 372 AH), ed. and annotated by Abu al-Hasan Ahmad Farid al-Mazidi, p. 459; and **Al-Muhadhdhab fi 'Ilm Usul al-Fiqh al-Muqaran**, Vol. 1, p. 171.
[26] **Al-Muhadhdhab fi 'Ilm Usul al-Fiqh**, Vol. 1, p. 171.

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Thus, the disagreement stems from divergent approaches to determining the intrinsic meaning of the formula — whether it inherently entails obligation or relies on external indicators for its legal effect.

Second: Demonstrating the Distinctiveness of the Issue

It may be said that this issue represents a distinctive position held by some Maliki scholars in contrast to the majority. Some of them adopted an opinion that differs from the majority view and derived jurisprudential consequences from this disagreement. This can be clarified by explaining that the majority view differs from the position adopted by some Malikis, who held that **Divine commands imply obligation, whereas Prophetic commands imply recommendation**.

A — The Majority Opinion

The majority of jurists among the Malikis, Hanafis, most Shafi'is, and Hanbalis held that the imperative form is, in its literal sense, indicative of obligation, and that it implies binding force from the outset unless there is evidence diverting it from obligation. The leading scholars of legal theory explicitly stated this, and some even argued that the apparent meaning of the imperative, when used absolutely, definitively indicates obligation.

A group of theologians, particularly the Mu'tazilites, held that the imperative form actually indicates recommendation. This is based on their principle that a command implies goodness, and goodness is broader than obligation and recommendation; however, recommendation is certain whereas obligation is not. Therefore, they interpreted the command as recommendation — not based on the linguistic form itself, but on their rationalist doctrine of moral good and evil.

Others held that the imperative indicates permissibility, or merely permission to act. This is a weak opinion and was not adopted in juristic practice, even if it was reported from some scholars as a narration rather than an established doctrine.

Another group argued that the imperative form is homonymous between obligation and recommendation. Others said that it is established for the common meaning, which is **absolute request**, and that obligation is determined in legal practice as a precautionary ruling rather than a doctrinal certainty. This was the opinion of Abu Mansur al-Maturidi. Others suspended judgment entirely regarding what the imperative form originally denotes, stating that it is unknown whether it indicates obligation, recommendation, or shared meaning, although it is certainly limited to these possibilities; this is the position of the *Waqifiyyah*.

Al-Ghazali and a group of scholars held that the imperative is مشترَك (shared) between obligation, recommendation, permissibility, guidance, and threat, and that it cannot be interpreted as any one of these without contextual evidence.

Al-Amidi stated that the true meaning of the imperative is **request**, and all other meanings are metaphorical and understood through contextual indicators.[27]

B — Demonstrating that the Issue Is a Distinctive Position of Some Malikis

Abu Bakr al-Abhari held a distinct opinion in which he differentiated between the command of God and the command of the Prophet (peace be upon him). He held that **the command of God indicates obligation**, while **the command of the Prophet indicates recommendation**, unless the Prophetic command serves as clarification of an ambiguous Qur'anic command or

[27] **Al-Bahr al-Muhit fi Usul al-Fiqh**, Vol. 3, pp. 290–292.

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confirms a Qur'anic text. He supported this argument by noting that Muslims conventionally distinguish between *obligations (fara'id)* and *Prophetic practices (sunan[28])*.
Al-Zarkashi stated: "This was reported by Qadi 'Abd al-Wahhab in *al-Mulakhkhas* from his teacher Abu Bakr al-Abhari, and it was also reported by al-Mazari in his commentary on *al-Burhan*."[29]
Al-Sharif al-Tlemsani also transmitted it as a recognized opinion and juristic choice of al-Abhari.[30] [4]
The author of *Maraqi al-Su'ud mentioned[31]*:
وقيل للوجوب أمر الرب *** وأمر من أرسله للندب.
"It is said: the command of the Lord implies obligation, and the command of His Messenger implies recommendation."

II: The Jurisprudential Consequences of the Issue
Based on this principle, several jurisprudential rulings were derived by al-Abhari, all based on the distinction between the indication of Divine commands (obligation) and Prophetic commands (recommendation). The effect of this distinctive position appears in the following issues:
First: Issues in Which Al-Abhari Considered the Ruling Recommended Because the Command Was Prophetic

1. **Pre-prostration (Sujud Qabli)** — He held that it is recommended, contrary to the majority who considered it obligatory. Al-Hattab stated that al-Abhari avoided declaring it obligatory. [32]
2. **Making up the fast for one who vomits intentionally** — He held that القضاء (making up the fast) is recommended, not obligatory, contrary to many Maliki scholars.[33]
3. **Shortening the prayer (Qasr)** — He held that shortening the prayer during travel is recommended, whereas the majority considered it obligatory. [34]

Second: Issues in Which Al-Abhari Considered the Ruling Obligatory Because the Command Was Divine

1. **Washing the extended part of the beard** — He considered it obligatory because it is part of the face which God commanded to be washed in the Qur'an.[35]

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[28] **Idah al-Mahsul min Burhan al-Usul**, Abu 'Abd Allah Muhammad ibn 'Ali ibn 'Umar al-Mazari (d. 536 AH), ed. Dr. 'Ammar al-Talibi, Dar al-Gharb al-Islami, 1st ed., p. 202; **Tahrir al-Manqul wa Tahdhib 'Ilm al-Usul**, 'Ala' al-Din Abu al-Hasan 'Ali ibn Sulayman al-Mardawi al-Dimashqi al-Salihi al-Hanbali (d. 885 AH), ed. 'Abd Allah Hashim and Dr. Hisham al-'Arabi, Ministry of Awqaf and Islamic Affairs, Qatar, 1st ed., 1434 AH / 2013 CE, p. 196; **Al-Asl al-Jami' li Idah al-Durar al-Manzumah fi Silk Jam' al-Jawami'**, Vol. 1, p. 109.
[29] **Al-Bahr al-Muhit**, Vol. 3, p. 292.
[30] **Miftah al-Wusul**, p. 377.
[31] **Nathr al-Wurud 'ala Maraqi al-Su'ud**, p. 175.
[32] **Mawahib al-Jalil fi Sharh Mukhtasar Khalil**, Abu 'Abd Allah al-Hattab al-Ru'ayni al-Maliki (d. 954 AH), Dar al-Fikr, 3rd ed., 1412 AH / 1992 CE, Vol. 2, p. 14.
[33] **Sharh Zarruq 'ala Matn al-Risalah li Ibn Abi Zayd al-Qayrawani**, by Zarruq (d. 899 AH), prepared by Ahmad Farid al-Mazidi, Dar al-Kutub al-'Ilmiyya, Beirut, Lebanon, 1st ed., 1427 AH / 2006 CE, Vol. 1, p. 452.
[34] **Ibid.**, Vol. 1, p. 358.
[35] **Ibid.**, Vol. 1, p. 149.

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2. **Wiping the ears in ablution** — He considered it obligatory because the ears are part of the head which God commanded to be wiped in the Qur'an, contrary to the well-known Maliki opinion that it is Sunnah.[36]

Section 4: If a Prohibition Relates to the Right of God It Entails Invalidity, and If It Relates to the Right of a Human It Does Not Entail Invalidity

I: The Issue Explained

Form of the Issue:

Once it is established that prohibition implies unlawfulness, the discussion turns to the legal effect of this prohibition on the prohibited act in terms of validity or invalidity. Does the prohibition nullify the legal validity of the act or contract, or does the act remain valid despite being sinful?

Point of Dispute:

The disagreement concerns prohibitions related to legal acts that can be described as valid or invalid, such as acts of worship and transactions — not disliked acts, not purely physical acts, and not cases where external evidence establishes validity despite prohibition. There is no disagreement in those cases.

Thus, the issue revolves around whether prohibition removes legality entirely or establishes prohibition while validity remains.

Prohibition may relate either:

- to something external to the act, or
- to the act itself.

If the prohibition relates to something external, it is of two types:

First type: The prohibition relates to an external matter not intrinsically connected to the act — such as the prohibition of selling at the time of the Friday call to prayer, or praying in a usurped house. According to the majority, this does not invalidate the act because the act itself fulfills its essential conditions; the prohibition concerns an external matter.

Second type: The prohibition relates to an intrinsic attribute of the act itself — such as fasting on the Day of Sacrifice or the Days of Tashriq, or usurious transactions. In this case, the prohibited attribute is part of the essence of the act itself, and this is the well-known point of disagreement among legal theorists.

The disagreement regarding whether prohibition entails invalidity returns to two main principles. The first concerns whether a prohibition that applies to some instances of what is commanded establishes a condition or restriction for the validity of the commanded act, such that the act becomes invalid without it, or whether it merely indicates prohibition without affecting validity.

The second concerns whether validity and sin can coexist in a single act from the same perspective, or whether validity necessarily implies legitimacy, while sin contradicts it. Those who held that the condition is required and that validity and sin cannot coexist concluded that prohibition entails invalidity. Those who allowed a distinction between the essence of the act and its attributes held that the act may remain valid despite being sinful.[37]

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[36] **Ibid.**, Vol. 1, p. 140.

[37] **Al-Bahr al-Muhit fi Usul al-Fiqh**, Vol. 3, p. 380 and following pages.

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Second: Demonstrating the Distinctiveness of the Maliki School

A — The Majority Opinion:

The majority held that when a prohibition relates to an act through an essential attribute, it entails invalidity. This is because the prohibition of that attribute conflicts with the obligation of the act and prevents its legitimacy. Thus, fasting on the Day of Sacrifice, performing circumambulation during menstruation, and engaging in usurious transactions are all considered invalid and not legally valid.

However, if the prohibition relates to an external matter not directly connected to the act, it does not generally entail invalidity. The act itself remains valid in its essence, while sin results from the external factor.[38]

The Hanafis distinguished between the essence of the act and its attributes. They held that prohibition entails the فساد of the attribute but not of the essence. Thus, the act is valid in its أصل but defective in its وصف, leading to some legal effects being recognized while others are not. Based on this, they considered contracts valid in their أصل while invalidating the usurious addition, accepted the validity of circumambulation by a menstruating woman while considering it prohibited, and held that a vow to fast on the Day of Sacrifice is valid but must be fulfilled on another day.

As for prohibition that relates to the essence of the act itself — such as selling something that has no legal value or a marriage lacking its essential pillars — the majority held that it entails invalidity absolutely, in both acts of worship and transactions. It cannot be considered valid unless supported by separate evidence. They supported this view by referring to the practice of the Companions and the Successors, who inferred invalidity from mere prohibition without objection.[39]

B — The Maliki Position:

The Malikis established a precise principle in this issue by relating it to the type of right involved in the prohibition. They held that if the prohibition concerns the right of God, it entails invalidity; but if it concerns the right of a human being, it does not entail invalidity. Instead, the act remains valid, while an option or compensation may be established.

Thus, selling during the call to Friday prayer, combining sale with a loan, and *nikah al-shighar* are prohibited due to the right of God, and are therefore invalid and subject to annulment without divorce. However, in cases such as *tasriyah* and similar issues, the right belongs to a human, so the contract remains valid while granting the option of rescission. If it were invalid, it could not be upheld at all.[40]

Based on this principle, they distinguished between marriages that are annulled through divorce because they involve human rights, and marriages that are annulled without divorce because they involve the right of God. Abu Abdullah al-Sharif al-Tlemsani regarded this distinction as a precise representation of the Maliki doctrine.[41]

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[38] **Tahqiq al-Murad fi anna al-Nahy Yaqtadi al-Fasad**, Salah al-Din al-‘Ala’i (d. 761 AH), ed. Dr. Ibrahim Muhammad al-Salifiti, Dar al-Kutub al-Thaqafiyya, Kuwait, p. 77; **Usul al-Fiqh**, Muhammad ibn Muflih al-Hanbali (d. 763 AH), ed. Dr. Fahd ibn Muhammad al-Sadahan, Maktabat al-‘Ubaykan, 1st ed., 1420 AH / 1999 CE, Vol. 2, p. 370; **Sharh Mukhtasar al-Tahrir**, Vol. 44, p. 21; **Irshad al-Fuhul**, Vol. 1, p. 280.

[39] **Al-Bahr al-Muhit**, Vol. 3, p. 382; **Irshad al-Fuhul**, Vol. 1, p. 283.

[40] **Tahqiq al-Murad**, p. 94.

[41] **Miftah al-Wusul**, p. 421.

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This rule serves as a guiding principle for most issues related to validity and invalidity in the Maliki school, and any exceptions are based on separate evidence.

II: The Jurisprudential Consequences of the Issue According to the Malikis: The Maliki principle that prohibition does not automatically entail invalidity, but depends on the type of right involved, leads to precise theoretical and practical consequences in acts of worship, transactions, and marriages. It also reveals their methodological approach in combining textual evidence with legal objectives and in regulating detailed rulings through foundational principles [42] [1]. Among these consequences are the following:

First: Invalidity is not an inherent attribute of every prohibited act. Rather, it depends on whether the prohibition relates to the right of God or the right of a human. If it relates to the right of God, the prohibited act is invalid and has no legal effect, as in selling during the Friday prayer call, which entails invalidity due to the right of God.

In contrast, in the case of *tasriyah*, where the right belongs to a human, the contract remains valid, while the option of rescission is granted.

Second: In the Maliki school, invalidity implies that the intended legal effect of the act does not arise from the outset. Ownership does not result from a sale (as in selling during the call to prayer), nor does marital validity arise (as in *nikah al-shighar* or a marriage of analysis), nor is an act of worship considered valid (such as prayer without purification or fasting on the Day of ‘Eid), if the prohibition relates to the right of God. This is because such rights cannot be waived, and the act lacks legitimacy from the outset.

Al-Kharshi stated: “Fasting on the Day of ‘Eid prevents its validity, because the prohibition concerns the day itself, which represents turning away from the hospitality of God.”[43]

In contrast, when the prohibition relates to a human right, the legal effect exists in principle. Ownership is established in the case of *tasriyah* with the option of rescission, and marriage remains valid with the option of annulment in cases of deception. Thus, the defect is addressed through الخيار or compensation rather than nullifying the act entirely. Likewise, prayer in a usurped place is considered valid, although sinful.

Al-Kharshi explained: “The prohibition of prayer at certain times does not relate to the essence of the act or to something inherent in it that would prevent its validity, but to an external factor. Therefore, it does not prevent validity, just like prayer in a usurped place… unlike cases where the prohibition relates to the essence of the act or to the time itself, such as fasting during menstruation or at night, or fasting on the Day of ‘Eid, which prevents validity.”[44]

Third: Based on this principle, the Malikis developed a systematic distinction in marriage annulments. They distinguished between marriages annulled without divorce, where the prohibition relates to the right of God — because no valid contract exists to dissolve — and marriages involving human rights.

For example, if a non-Muslim guardian marries off his Muslim ward, the marriage is annulled permanently, based on the verse: {You have no authority over them} [Al-Anfal: 72]. Likewise,

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[42] **Ibid.**, pp. 421–423.

[43] **Sharh Mukhtasar Khalil**, by Muhammad ibn ‘Abd Allah al-Kharshi al-Maliki (d. 1101 AH), Dar al-Fikr, Beirut, Vol. 1, p. 225.

[44] **Ibid.**, Vol. 2, pp. 224–225.

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disbelief prevents a guardian from having authority over a Muslim woman, based on the verse: {And God will never grant disbelievers authority over believers} [Al-Nisa': 141]. This applies equally to *dhimmi*, apostate, and hostile non-Muslims.[45]
Similarly, the marriage of a person in a state of ihram is invalid. Khalil stated: "Ihram prevents (marriage) from any of the three," meaning the husband, the wife, and the guardian. None of them may contract, consent, or authorize the marriage while in ihram. If the contract is concluded while any of them is in ihram, it is annulled even if children are born. It is also prohibited for a person in ihram to propose or attend a marriage. The basis for this is the hadith: "A person in ihram must neither marry nor be given in marriage."[46] [47]
Likewise, if a person delays prayer until only the الضروري time remains and then engages in a sale, some Maliki jurists held that the sale must be annulled because it involves neglecting an obligation, which is a right of God. Others held that it should not be annulled.[48] [3]
However, if the marriage involves a human right — such as giving a dowry less than the minimum required (four dirhams in the Maliki school) — the marriage remains valid and is not annulled. Ibn al-Qasim reported that Malik said: "If he gives a dowry of three dirhams before consummation, the marriage is upheld and not annulled. If consummation has occurred, he should be required to complete the dowry without separation."[49]
In conclusion, the impact of this issue in the Maliki school goes beyond a theoretical discussion of the meaning of prohibition. It forms a comprehensive legal framework governing validity, invalidity, and annulment. This framework is based on distinguishing the type of right involved, balancing textual evidence with legal objectives, and demonstrating the precision of the Maliki methodology in applying foundational principles to practical cases.

Section 5: Prohibition Entails Invalidity, but the Disagreement of Those Who Hold That It Does Not Entail Invalidity Is Considered

I: Demonstrating that the Issue "Prohibition Entails Invalidity, but the Disagreement of Those Who Hold That It Does Not Entail Invalidity Is Considered" Is a Distinctive Principle of the Mālikī School

First: The Form of the Issue and the Point of Dispute

The form of this issue is manifested in examining **the effect of legal prohibition on contracts**, and whether a prohibited contract produces a legally recognized effect or not. If it does produce an effect, is that effect complete or deficient? Thus, the issue is not about the existence of prohibition itself, but rather about the legal ruling that results from the prohibition. In uṣūl

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[45] **Sharh Mukhtasar Khalil**, Vol. 3, p. 188.
[46] This hadith is not narrated by al-Bukhari; rather, it is among the narrations reported exclusively by Muslim (i.e., narrated by Muslim but not by al-Bukhari). It was reported by Muslim, Hadith no. 1409.
[47] **Al-Fawakih al-Dawani 'ala Risalat Ibn Abi Zayd al-Qayrawani**, Ahmad ibn Ghanim (or Ghunaym) ibn Salim ibn Mahna, Shihab al-Din al-Nafrawi al-Azhari al-Maliki (d. 1126 AH), Dar al-Fikr, n.d. ed., 1415 AH / 1995 CE, Vol. 2, p. 29.
[48] **Mawahib al-Jalil fi Sharh Mukhtasar Khalil**, Abu 'Abd Allah Muhammad ibn Muhammad ibn 'Abd al-Rahman al-Tarabulsi al-Maghribi, known as al-Hattab al-Ru'ayni al-Maliki (d. 954 AH), Dar al-Fikr, 3rd ed., 1412 AH / 1992 CE, Vol. 2, p. 181.
[49] **Al-Mudawwanah**, Malik ibn Anas ibn Malik ibn 'Amir al-Asbahi al-Madani (d. 179 AH), Dar al-Kutub al-'Ilmiyya, 1st ed., 1415 AH / 1994 CE, Vol. 2, p. 152.

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terminology: does prohibition necessitate the complete nullification of the legal cause, or does it establish a deficient legal effect?
Based on this conceptualization, the prohibited contract is considered either void with no legal effect, valid and effective but sinful, or invalid yet producing a type of legal entitlement that does not reach the level of full validity.
The foundational principle underlying this issue is the rule: **“Prohibition indicates invalidity,”** which branches from the issue of distinguishing between normative rulings (taklīfī) and legal-status rulings (waḍʿī), as well as the principle of **considering juristic disagreement (murāʿāt al-khilāf)**. The Mālikīs established in legal theory that prohibition entails invalidity; however, they did not consider this invalidity to be absolute non-existence in transactions. Rather, they affirmed a deficient effect which they called **“quasi-ownership” (shubhat al-milk)** or **“quasi-validity,”** due to the attachment of rights and the changing of circumstances—unlike acts of worship, which do not admit such an intermediate position.
The point of dispute in this issue concerns the legal effects of the prohibited act, not the prohibition itself. There is consensus that prohibition implies a demand for abstention; however, scholars disagreed on whether prohibition entails the invalidity of the act and the nullification of its effects, or whether it entails validity along with sin, or whether it entails an intermediate rank between validity and invalidity. This disagreement has significant consequences in contracts in particular: does a prohibited contract result in valid ownership, no ownership at all, or a form of entitlement short of full ownership?
The reason for disagreement returns to the اختلاف among legal theorists regarding the object of prohibition: whether the prohibition relates to the essence of the act itself or to an external factor. They also differed regarding whether legal-status rulings must necessarily follow normative rulings. Those who held that prohibition attached to the act itself concluded that its legal effect must be nullified and thus ruled absolute invalidity. Those who distinguished between normative and legal-status rulings held that the contract remains valid though sinful. Those who considered the objectives of Sharīʿa in preserving rights and acknowledging juristic disagreement affirmed a deficient legal effect that is neither full validity nor absolute nullity.

Second: The Distinctiveness of the Mālikī School

A – The Position of the Majority

The majority of legal theorists—especially the Shāfiʿīs and those who agreed with them—held that prohibition entails the invalidity of the prohibited act absolutely, whether in acts of worship or transactions, as long as the prohibition relates to the act itself or to an inherent attribute of it. According to them, a prohibited contract produces no legal effect and is not legally recognized even if it occurs repeatedly; rather, it must be annulled whenever possible, in accordance with their principle of the necessary correlation between prohibition and invalidity, without consideration of subsequent circumstances, because invalidity for them is a decisive attribute that does not admit an intermediate position[50] .

B – The Position of the Mālikīs

The Mālikīs adopted a precise intermediate approach between the schools. They established in legal theory that prohibition entails invalidity—according to previously mentioned details—

[50] **Tahqiq al-Murad fi anna al-Nahy Yaqtadi al-Fasad**, p. 77; **Usul al-Fiqh**, by Ibn Muflih, Vol. 2, p. 370; **Sharh Mukhtasar al-Tahrir**, Vol. 44, p. 21; **Irshad al-Fuhul**, Vol. 1, p. 280.

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but they did not apply this principle uniformly in subsidiary rulings. Instead, they considered juristic disagreement and the consequences of actions. They therefore held that a prohibited contract in transactions is neither purely valid nor purely invalid; rather, it is **invalid but produces quasi-ownership**.

Thus, according to them, prohibition indicates **quasi-validity**, not full validity, and **quasi-ownership**, not actual ownership[51].

They therefore ruled that a prohibited contract must be annulled initially; however, if certain circumstances arise that prevent annulment, the contract is upheld in terms of value rather than in terms of the object itself. This is done in order to reconcile the implication of prohibition with the need for stability and the prevention of harm.

The Mālikīs explained that the confirmation of an invalid contract is not absolute, but depends on the occurrence of one of four circumstances: change in market prices, change in the object, destruction of the object, or the attachment of a third-party right to the object. If one of these circumstances occurs, annulment is no longer possible and the contract is upheld in terms of value, not as validation of the contract, but as recognition of quasi-ownership in order to preserve rights, prevent disputes, and apply their principle of considering juristic disagreement in the foundation of the issue[52] .

This was indicated by the author of *al-Marāqī* in his verse[53]:

بصحة العقد يكون الأثر *** وفي الفساد عكس هذا يظهر
إن لم تكن حوالة أو تلف *** تعلُّق الحقِّ ونقص يؤلف

If the contract is valid, its effect follows,
And in invalidity, the opposite appears,
Unless transfer, destruction, attachment of rights,
Or deficiency brings confirmation.

From this, it becomes clear that the Mālikīs distinguished between acts of worship and transactions. Prohibition in acts of worship entails invalidity absolutely, because there is no meaning for quasi-validity in worship, and no circumstances can validate it afterward. Transactions, however, involve wealth and rights, are subject to change, and involve third-party rights; therefore, it is appropriate to establish an intermediate rank in them. Hence, the terms **ownership** and **quasi-ownership** are specific to contracts and not acts of worship, as understood by Mālikī scholars.

In summary, the Mālikī doctrine of quasi-ownership does not represent a departure from their principle that prohibition entails invalidity. Rather, it is a juristic application that considers disagreement, balances evidence, and considers consequences. They thus moved away from strict absolute invalidity and from absolute validity to a position between the two, in order to achieve justice, preserve rights, and reconcile the positions of scholars without abandoning their foundational principle or weakening the implication of prohibition.

[51] **Nafa'is al-Usul fi Sharh al-Mahsul**, Shihab al-Din Ahmad ibn Idris al-Qarafi (d. 684 AH), ed. 'Adil Ahmad 'Abd al-Mawjud and 'Ali Muhammad Mu'awwad, Maktabat Nizar Mustafa al-Baz, 1st ed., 1416 AH / 1995 CE, Vol. 4, p. 1694.

[52] **Raf' al-Niqab 'an Tanqih al-Shihab**, Abu 'Abd Allah al-Husayn ibn 'Ali ibn Talhah al-Rajraji (d. 899 AH), ed. Dr. Ahmad ibn Muhammad al-Sarrah and Dr. 'Abd al-Rahman ibn 'Abd Allah al-Jibrin, Maktabat al-Rushd for Publishing and Distribution, Riyadh, Saudi Arabia, 1st ed., 1425 AH / 2004 CE, Vol. 2, p. 56.

[53] **Nathr al-Wurud 'ala Maraqi al-Su'ud**, pp. 62–63.

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II: The Juristic Effect Resulting from This Issue According to the Mālikīs

Based on this principle, a prohibited contract according to the Mālikīs is invalid and must be annulled initially. However, if something occurs that prevents annulment legally or results in greater harm, its effect is not entirely nullified. Rather, it is upheld in terms of value, not in terms of the object itself, in recognition of quasi-ownership, not in validation of the contract. This does not depart from the principle of invalidity but rather qualifies it in subsidiary rulings in consideration of consequences and disagreement.

Several legal branches arise from this principle, including[54]:

First: If the price of a defective sale changes in the market such that annulment would result in injustice to one party, the contract is upheld in terms of value.

Second: If the sold object changes, decreases, or is destroyed, compensation is established in value rather than returning the object.

Third: If a third-party right becomes attached to the sold item, such as a pledge or legal claim, annulment is no longer possible and the contract is upheld in value.

Fourth: Subsequent transactions based on the invalid contract—such as sale, gift, or endowment—are not independently valid transactions, but they are legally considered in terms of liability and prevention of revocation due to quasi-ownership.

Fifth: Prohibition in acts of worship does not lead to any of these effects; the act of worship is invalid and produces no legal effect because the concept of quasi-ownership does not apply.

The general principle governing these branches is that **any prohibited contract in transactions whose annulment would lead to harm, instability, or the loss of a legitimate right results in quasi-ownership and is upheld in value; otherwise, it remains invalid**.

Al-Qarāfī said:

"This is the Mālikī derivation: the invalid sale, which is prohibited, produces quasi-ownership. If a subsequent transaction occurs, ownership is established through value, even though their principle is that prohibition entails invalidity in legal theory. However, they considered disagreement in the application and thus said 'quasi-ownership,' neither absolute invalidity nor absolute validity, in order to reconcile the schools."[55]

Thus, the consistency of the Mālikī legal-theoretical framework becomes clear, and their legal branches are not scattered exceptions but structured results derived from a single foundational principle.

Conclusion

In the conclusion of this study, we highlight the distinctiveness of the Mālikī legal-theoretical framework in dealing with the implications of commands and prohibitions through a set of principles that do not depart from foundational legal reasoning but represent a specific juristic application based on considering the direction of the legal address, the degrees of obligation, and the objectives of Sharīʿa in considering consequences.

It has become clear that these principles—such as interpreting commands directed to minors as recommendation, distinguishing between divine and prophetic commands according to some

[54] **Sharh Tanqih al-Fusul**, p. 77; **Al-Bahr al-Muhit**, Vol. 2, p. 26; **Nashr al-Bunud ‘ala Maraqi al-Su‘ud**, Vol. 1, p. 47.

[55] **Nafa’is al-Usul fi Sharh al-Mahsul**, Vol. 4, p. 1694.

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scholars, relating the implication of prohibition to the rights involved, and establishing quasi-ownership in invalid contracts in consideration of juristic disagreement—form a coherent system linking legal theory and legal application.

Among the most important findings of the research:

- The Mālikīs are distinguished by a precise method in analyzing legal expressions, based on distinguishing between obligation and non-obligation, and between the direction of the address and the direction of the right.
- The distinctive principles studied return to general foundations, the most important of which are: consideration of objectives, consideration of consequences, and reconciliation of evidences.
- These principles directly influenced juristic branches, demonstrating the strong relationship between legal theory and legal application.
- The Mālikī school demonstrated methodological flexibility that enabled them to reconcile the doctrine of invalidity with transactional stability through the theory of quasi-ownership.
- Considering juristic disagreement in the Mālikī school is an influential principle in legal verdicts and judicial rulings, not merely a theoretical consideration.
- This study reveals the depth of the Mālikī legal-theoretical school and its ability to balance text and objective, and stability and flexibility.

Recommendations:

- Greater attention should be given to collecting the distinctive Mālikī legal-theoretical principles in independent works, with verification, theoretical grounding, and linkage to their applied juristic branches.
- Comparative studies between the Mālikīs and other schools in issues of command and prohibition should be expanded to highlight methodological differences and their impact on legal rulings.
- The principle of considering disagreement should be studied, theorized, and regulated due to its role in achieving juristic moderation.
- A comprehensive scholarly encyclopedia should be developed to document the distinctive legal-theoretical principles of the schools, with special focus on the Mālikī school as a model.

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