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# The Jurisprudence of Tolerance a study on Transmission and Vision

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## Abstract

*This study attempts to resolve two jurisprudential issues, the first one is objective, and the second is methodological.The objective issue is linked to the atrophy of the tolerance concept in the jurisprudential heritage. That is, in the books of general jurisprudence or the collections of calamities, as indicated by the jurisprudential laws of the subject of "Jihad" in both sources.While the second one appears in the illusion that the approach of principles of jurisprudence can produce only inherited jurisprudence in which tolerance does not seem to have any effect.This research has adopted a critical and analytical approach to resolving the first issue. In contrast, it has adopted a constructive and structural one for the second issue, as indicated by the proposed title with the terms: "transmission" and "vision".*

**Keywords:** *Jurisprudence, Tolerance, Transmission, Vision, Atrophy, Appearance, Construction.*

## Introduction

This study aims to investigate the subject of tolerance to define its concept and clarify its place in Islamic jurisprudence "Shari'a" to identify the reasons for its atrophy in texts explaining it, including jurisprudential books and collections of calamities.

This need has become more urgent because of the consequences of the non-definition of this concept, particularly in the contemporary Arab-Islamic context, and what it knows about the movement of research, exploration, investigation, and discussion on the issues of pluralism, coexistence, and the relationship to the other with different religion and beliefs.

*Research Problem*

This study incites a scientific discussion on a postulate and seeks to affirm a claim. As for the postulate in question revolves around the atrophy of tolerance in the jurisprudence heritage in general, anyone who studies Jihad would have to admit it .

While the claim, which seeks the study to prove, focuses on the authenticity of tolerance in Islamic jurisprudence.

To this end, the following questions are asked:

What are the reasons for the discrepancy between the postulate and the claim?

What necessitated the predominance of the postulate over the claim?

How to give priority to the postulate over the claim?

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## Objectives of the Study

In light of the questions this study aims to answer, we can first set a set of objectives that we aspire to achieve, which have been mentioned in the explanatory title: "A study on Transmission and Vision". These objectives are detailed as follows:

Define the concept of tolerance and its connotations from the linguistic situation up to contemporary idiomatic usage.

Clarify the reasons leading jurisprudents to condition the laws of Jihad and struggle on unbelief and doctrinal difference, not on terrorism and war, until they prevail over the jurisprudence of Jihad over that of tolerance.

Specify that the question of tolerance is more methodologic than objective and that the prevalence of the theory of intolerance is due to the opinions of jurisprudents and their historical circumstantial diligence and not to established jurisprudential principles.

Indicate the necessity of widening the jurisprudential studies for new diligence in the perception of the relationship to the other with different beliefs.

Prove that the methodology of principles of jurisprudence is normative; and allows from the possibilities of deduction what can build a new jurisprudential theory of tolerance and acceptance of different others.

*The Importance of the Study*

The importance of this study is drawn from its role, which related to correcting the course of reconsideration of jurisprudence for managing the relationship with the other by the same authentic tools produced by the heritage. And that reassures legislators that they will not deviate from the methodology of principles of jurisprudence towards incoming or inauthentic methods.

It will help provide prospects for in-depth research on various issues and concepts to reread the foundational texts of the jurisprudential heritage. So, to explain the definition of concepts relating to analyzing the Fatwas of jurisprudential calamities issued in related matters.

*Study Plan*

This study is based on three pillars:

First one: The concept of tolerance, definition, and rootedness.

Second one: Tolerance in the transmission of jurisprudence: Causes of atrophy and obstacles to emergence.

Third one: The jurisprudence of tolerance: a vision under construction.

It is accompanied by a conclusion summarizing its content, results, and outcomes.

First Part: Analyzing and rooting the concept of tolerance

The word "tolerance" in Arabic comes from the triple infinitive: "Samaha", which means: forgive and transcend. It also indicates in some indicators the meanings of givenness, amplitude, flatness, speed, absolute softness, docile, ease, and facility .

Ibn al-Atheer mentioned some of these meanings when he explained the use of this term and some of its derivatives in hadiths, as follows: "We say: « Samaha » and « Asmaha » to designate: giving and endowing with generosity and benevolence. However, it is also said: «Samaha » when it designates generosity, while it

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is said « Asmaha » when it designates: following and submission. It is said: « Asmaha nafssaho » to mean that he is submitted, while forgiveness means indulgence." .

It emerges from this definition that the orbit of "Samaha" in Arabic revolves around two meanings:

The innate moral virtue that requires ease and flexibility in relationships , especially regarding situations that tend to be natural, unlike ease. Tolerance is, therefore: "the softness of character in a situation where rigidity abounds." .

The praiseworthy characteristic that distinguished jurisprudence heritage and that led souls to cling to it and embrace it, including what is mentioned in the Hadith of the Prophet, may Allah bless him and grant him peace: {I was sent with the tolerant Hani'fiyah} , meaning the easy way in which there is no embarrassment or restriction for people ". This religion has been called the Tolerant Hani'fiyah because of its ease and flexibility" .

Ibn Faris revolved the subject of tolerance around two meanings and said: "Sin, meem, and ha: a root that indicates softness and ease" .

The existence of correlation is not hidden from the beholder since tolerance in morality is an inherent effect of tolerance in doctrinal methodology and worship, and there is a sweetness and ease in both.

Therefore, one of the characteristics of tolerant people is flexibility in agreements and judgments, like what is mentioned in the Hadith of the Prophet, prayer and peace be upon him: {May Allah bless the tolerant man when he sells, when he buys, and when he judges} .

Thus tolerance, by its inclusion in both senses, is in the same position of universal principles and supreme purposes in religion. It is "the first description of Islamic jurisprudence and its greatest purpose." ; Therefore, "it is, by its ease, more becoming to souls because it contains the comfort of souls in their individual and societal situation. "

This case is perhaps the most considerable space in which Islamic jurisprudence stands out in its vision of tolerance; "Because the tolerant Hani'fiyah permits tolerance conditioned by what can follow its principles"

If the researcher were able to grasp the limits of the contemporary intellectual use of this concept, he would find it confined within the framework of the user to manage the effects of the difference of creeds and races and the benefits flowing from the problems of exclusion, rejection, discrimination and the conflicts they entail.

Nothing is better to shed light on this observation than to cite examples of definitions framed by the visions and perceptions of contemporary thinkers on the concept, in particular:

Tolerance: "An open or free-thinking view toward beliefs and practices different or opposed to those of a tolerant person ". It means: "To yield to other a right which he does not have, or to be indulgent towards him for a fault which he has committed, according to what we believe" .

Or it's: "Allow everyone the freedom to express their opinions, even if they are contrary to yours" .

Other definitions do not require much effort to see that they consider tolerance as a pretentious way of accepting the different other, enduring his presence and his practice of dealing according to what contains the formulas and structures of specific terms . And what emerges from the forms of some verbs used for the rejection of difference by considering the other different wrong and thinking that the best way to treat it is to ignore it and turn away from it.

The adoption of definitions made by the founding authors of the theory of tolerance in Western thought led to the confinement of the tolerance concept within the framework of the refusal to support the other

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and not accept his diversion . These authors wrote describing representations of tolerance in a particular environment at a different historical period, which affected them by the social and political conditions.

That has made tolerance a means of managing differences based on interest and built on ignorance of the other discrepancies and indifference towards him . It is no secret that this "exclusive" vision of tolerance is far from the meanings of moral virtues and supreme values.

The perceptions that emerged from these writings have neglected the high value and the significant consideration of tolerance in the eyes of Islamic jurisprudence.

However, more than stopping the search for tolerance at a level of illustration and foundation may be required to fulfill the right to the claim of study since it needs to be reinforced by new research. Whose task is to explain and justify the atrophy of the concept in transmissions of jurisprudential heritage; In response to the expected objection that they are free from traces of the authenticity of tolerance in Islamic jurisprudence, including the acceptance of difference and not being embarrassed by it, in the second axis of this study.

Second Part: Tolerance in jurisprudential transmission: Causes of atrophy and obstacles to the emergence :

This analysis is similar to a diagnosis of a disease based on the monitoring of its symptoms. It aims to shed light on the question of the atrophy of the concept of tolerance in the jurisprudential heritage, namely:

The traditional tendency has preferred to stick to what was cited in the transmissions and was decided by jurisprudents without any look into its structure and regardless of the consequences of sticking to it.

That situation is due to methodological flaws which contributed to the stagnation of the jurisprudential lesson, plus its separation from reality and impediment from the existence of a mutual influence.

This question appears more clearly in the chapters of "Jihad", in various works where we find laws that have no relation to the reality of people. The condition of combat and conquest in them is stipulated to blasphemy and not to the repulsion of the aggression since there is no jurisprudential book that does not refer to it. The following examples are cited:

The quote from Ibn Abd al-Barr: "Fight all the infidels, People of the Book, and others..., fight them until they convert to Islam or pay the tribute «Jizya» under duress ".

Al-Muzani's quote transmitted by Imam Al-Shafi'I: "The jurisprudential law concerning polytheists is in two judgments:

"Among them is an idolater or a worshiper of what he loves other than the People of the Book, no tribute « Jizya » will be taken from them and will be fought until they are killed or converted to Islam...Whoever among them is of the People of the Book will be fought until they are converted to Islam, or a tribute « Jizya » will be taken from them. Still, if they do not give it, they will be fought and killed, and their offspring, wives, money, and homes will be taken captive, and all this will be attributed «Fay'e», after it has been looted, to the killer as spoils « Anfa'l» .

All these ideas were implemented in the jurisprudential thought same as what had been considered in the definition of Jihad, and its concept was exclusively defined to combat all opponents of belief, as mentioned al-Futuhi al-Hanbali:"The Jihad is the fight against the disbelievers" .

Ibn Hazm found incorrect the statement that conditions jihad on anything other than disbelief, such as highway robbery « Hirabah » or starting fighting, considering that by what has been proved this is a mere distraction not correct, and he said in this sense: "And as for their saying: We only kill the one who fights,

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it is false. We fight from them all those who are called to Islam until they convert or pay the tribute « Jizya » if they are People of the Book" .

The authority of jurisprudential transmissions has expanded in the chapter on Jihad, influencing the orientation of the meanings of the founding legal texts. The clearest example of this is the saying of Ibn al-Arabi, in response to those who saw that the order to kill polytheists is found in the following Quranic verse: {But once the Sacred Months have passed, slay the polytheists} . Moreover, it has abolished at the end of the same verse: {But if they repent, perform prayers, and pay the tribute, then set them free. Indeed, Allah is All-Forgiving, Most Merciful}, by mentioning that: "This is pure ignorance; instead, it is a verification of the judgment of murder and a determination of its cause, which is disbelief" . Thus, murder conditioned by disbelief was admitted in the direct meaning of the verses.

This situation includes the support of interpreters to the opinion that abrogate all verses that call for peace with opponents of belief, to treat them with righteousness and fairness, even the refusal of the constraint in religion brings out the conflict between these verses and the jurisprudential law which conditioned the fight by unbelief.

So, as soon as the jurisprudents are exposed to some of these verses, they take the initiative to mention the sword verse's power and abrogate any other verses that contradict what it demands.

This confusion has led jurists to find themselves in a dilemma of contradiction with the apparent meanings of the founding texts.

The fragmentary tendency in the treatment of founding texts:

Indeed, considering the texts as independent proves to explain the jurisprudential laws of the particularities of questions does not leave the space to consider them as parts collectively forming systems of real meanings that govern the laws and their purposes and ensure the close relationship between them.

It is a vision that separates what must be bound from the components of Islamic jurisprudence: resources, rules, and purposes, and makes thought captive to the illusion of many contradictory texts.

The illusion of a great contradiction has led to thinking about ways to prevent it, and there has been no better way than to say that jurisprudential laws are abolished. Thus, the jurisprudents have resorted to this solution and have widened it until they no longer see any other solutions to the problem of the conflict!

Can the abrogation be the aim of what can manage the contradiction on the assumption that it is proven?

Imam Al-Shatibi believes that contradiction is a problem for those who are deficient in knowledge of Islamic jurisprudence and do not have a comprehensive understanding of the context of its revelation; He said:

Anyone who masters the principles of Islamic jurisprudence finds that its proofs hardly contradict each other, just as anyone who investigates the conditions of its questions encounters hardly any ambiguity; for there is no contradiction in Islamic jurisprudence, and who investigates it, masters the situation, and he should not have a contradiction .

This situation means that the contradiction is the result of the incompetence of those who bend over the study of proof of Shari'a texts because when they extend in the search for what it can avoid the contradiction, they take the initiative to approve the abrogation without verifying the existence of its conditions and Requirements .

We need to understand that this problem is due to the illusion of jurisprudents about the conflict between the verses concerning peace and those imposing fight subjects. On the other hand, abrogation is the only way to settle this conflict .

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The predominance of individual propensity over jurisprudents in their exploitation of jurisprudential texts:

This due because they were extrapolating laws for the individual Muslim, isolated from the group, so they enacted laws for his worship and dealings, which took their effort. They were figuring rules for the individual Muslim, separated from the group, so they passed laws for his worship and relationships, but it took their effort to the point where their product became pigmented. It resulted in the jurisprudential heritage that was made up of individual laws that appears.

But for the regularity of this individual in a collective entity, such as the nation, the society, and the State, the researchers cannot find proof of its invocation by the jurisprudents except in a set of laws qualified as "Al-Kifa'iya" .

The objective of establishing jurisprudential laws was for the individual's well-being. Still, according to what the jurisprudents have enacted, the group's well-being was linked to the individual's and could not be considered separate.

Sheikh Al-Tahir bin Ashour, may Allah have mercy on him, noticed this remark and said:

The essential purpose of Shari'a is to establish the order in affairs of the nation and to bring the good and repel the bad and the corruption. All jurisprudents have captured this meaning for the sake of individuals, but they have not approached its quotation nor proved it for the sake of the general assembly .

Then he sought an excuse for them for what they said by explaining that:

None of them denies that whether the well-being of the individual and the good order of their affairs is the objective of Shari'a, then the well-being of the group and the good order of the community is more significant. Is it not the intention to achieve the well-being of some to achieve the well-being of all? Isn't it right that the composition of good parts can only result in a promising compound?! .

However, societies may be exposed to some conditions that are not suited to the individual because they have interests that cannot be achieved by focusing on the individual isolated from the group. Therefore, Shari'a can be adapted to the individual's life if it achieves their overall interests in individual situations and of the group.

Then jurisprudents must pay attention to the social reality of the nation, assess its needs, and take cognizance of its relations with other nations .

This approach is in the interest of the nation. Then, it is necessary to accept the absolute difference in beliefs and religions, so it is right to consider this an existential necessity that depends on the nation's survival, recognition of its religion, and respect for its belief.

We hardly find in the jurisprudence heritage laws detailing all the texts that the Shari'a has allocated to this. This individual propensity limited the attention of the jurisprudents to the reality in which they lived. They extrapolated laws with the thinking manner of victorious, which distracted them, by the euphoria of triumph and victory, from the reality of the fluctuating conditions and the expectation of their changing.

They have imposed their reality in interpreting the revealed texts without considering the contexts of the revelations and what the shari'a objective units require from its global point of view. Thus, fragmentation had become their way of dealing with texts when they used them to derive laws from them.

It is a set of defects that we observe when we look at the criticism of the jurisprudential heritage linked to the question of tolerance, taking into account the brevity taken in describing the diseases. Now, let us turn to the third part of this study to find a cure for these diseases.

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Third Part: The Jurisprudence of Toleration: A Vision in Construction:

The reasons for the atrophy concept of tolerance were presented according to the widespread version of the jurisprudence heritage. However, we can conclude that the predominance of this version does not require its integrity in the representation of laws and purposes of Shari'a. Thus, presenting this understanding of legal texts with a particular approach and context, believing in its applicability by transgressing and generalizing its laws in all places and ages, would be considered a kind of dominance of the jurisprudence heritage.

This presentation is sufficient for the impact of the vision set by the jurists to realize that reasoning on this topic has become meaningless. Like what it has been said:

دليـــــــــــلِ إلـ ى الـ نهار احـ تاج إذا  شيءٌ الأذهان فـ ي يصحّ ولـ يس

"And nothing is right in the minds  if the day needs proof."

Is there a way out?

We have seen in the first stage the adjustment of the jurisprudence heritage, linked to the question of managing doctrinal differences and the relationship with the other, which consists in reconsidering the extent of its connection with the founding texts of the Shari'a that Allah Almighty has ordered to be followed in His Divine Words. {Then We put you, [O Muḥammad], on an ordained way concerning the matter [of religion]; so, follow It} .

Scholars have always been diligent in understanding the resources of Shari'a through the ages and changing circumstances. Thus, to help the members of their societies, they have developed laws adapted to their realities to help them achieve their interests and relieve embarrassment and difficulties.

Imam Izz al-Din ibn Abd al-Salam declares the prohibition of imitation in matters that contradict the rules of Shari'a even if jurisprudential transmissions prove them. Furthermore, he considers this law immoral and quotes in one of the divorce questions:

In this question, it is not valid to imitate, and imitation here is immoral, ... for the fact that imitation in a matter which does not reveal from Shari'a is misguidance, and this question is contrary to the previous rules. Therefore, it is not valid to imitate here .

Similarly, Al-Qara'fi said, regarding the issue of imposing divorce by metaphors, that custom requires them to be neglected while criticizing the rigidity of jurisprudents on the saying quoted in their books:

We believe that (Imam) Malik and other scholars had formulated jurisprudential laws endorsing divorce by these terms because their time had customs that required the transfer of these terms to the meanings on which they issued their fatwas, to protect themselves from errors. If we find our time devoid of these customs, we must not pass these jurisprudential laws based on these terms; the transmission of customs requires the transmission of laws. We must pay attention to this remark because when we realize it, it appears clear to us the confusion of many "Mufti" jurisprudents, by the fact that they validate the contents of the books of their imams for all times and on all people, although this is against the consensus "Al-Ijma… .

To avoid being stuck in transmissions, Ibn Al-Manasif insinuated, in his study of the subject "laws of jihad", that the way to be safe from this situation is to rely on the founding texts. He says in the introduction of his book "Al-Inja'd": "I have ensured that this compilation is based on the evidence of the Qur'an and the Sunnah, and free from any suspicion of imitation and following a way (Madhhab) without evidence" .

Therefore, whoever calls for a renewal of the review of jurisprudential texts relating to tolerance should not be reprimanded or blamed.

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What his fame exempts us from proving is the impossibility of minds having the capacity to establish jurisprudential laws of tolerance through diligence outside the context of texts.

Imam al-Ghazali had referred to this point in the past when he represented the premises on which presumptive laws are based and which cannot be proven - including jurisprudential laws -by love, peace, reconciliation, and cooperation on livelihoods. Thus, if there had not been an inclination of souls to their finalities and goals- tolerance and coexistence - then minds would not have to judge them by good or bad

Observing the preceding context, represented by the differentiation between confirmed knowledge and presumptive knowledge, guides us to know the problematic aspect of imitation, which we can call the methodological break. It was rooted in the minds of the jurisprudents and pushed them to consider the founding system by which the jurisprudential heritage was deduced as a monocracy capable of producing only this heritage. Therefore, they dedicated themselves to its transmission and admissibility (Takhrij).

The truth is that the standard of the rules of the principles of jurisprudence allows us to have infinite possibilities of deduction. However, many established laws need to be tested for compliance with the rules of the Principles of Jurisprudence methodology, especially concerning the questions of this topic.

Among the interventions that we can propose from this test, we can find:

Restoring evidences and relocating them to their original environment at two levels:

The textual level: It is a question of organizing the partial proof in its appropriate place among all the proofs mentioned in its subject. Since they depend on each other, it would be correct to consider its totality as a single speech in the system of comprehension and deduction ."Who does not acquire knowledge of it and cannot collect its parts will not be able to understand its meaning" .

The spatial level: It is intended to restore each partial evidence related to the subject, bringing it back to its origin in which it was mentioned, so it would not be possible to deduce from the verse except after having examined the circumstances of its revelation, nor of the Hadith except after having evoked the circumstances of its occurrence.

This first entry is crucial because it helps to reach the conditionings of the jurisprudential laws to distinguish what is likely to be generalized and what is a special circumstantial issue.

Undoubtedly, its omission is one of the most significant causes of error in reasoning on many subject questions.

In our reflection on the culture of extremist thought, we find that the absence of this revision and the naive understanding of texts without regard to their general and special contexts are the most critical defects. While it uses perceptions that are abstracted from their original contexts and project them onto different contexts without adaptation or conditioning, which makes the claim of Jihad evident in this culture, and by this fact, it imposes the tribute (Jizya) on the religious minorities to whom it has endured the humiliations in certain Islamic countries, without having examined the circumstances of revelation .

The composition between proves appear inconsistent by using the ability to examine the possibilities of the proofs' combination instead of rushing to the issues of weighing, including abrogation.

Al-Qarafi stipulated the range of possibilities that can be taken as the basis of combination and mentioned some of them, like the combination of two parts or two jurisprudential laws or two cases . The possibilities of combining in these cases are numerous between the seemingly inconsistent evidence on the subject .

Reconsideration of the conditioning of jurisprudential laws in terms of refinement and investigation. It must be in the light of the evolution of the current reality, which is different from the previous eras' realities from what the jurisprudence was inherited, and which has produced a difference that hardly leaves the

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slightest similarity between them; since neither people nor times nor circumstances are at the same rate since each time and circumstance requires its policy, for managing worldly and religious affairs.

Thus, it is necessary to consider reality under the aspects of understanding and analyzing and to consider Shari'a under the aspects of conditioning and reasoning to orient jurisprudential laws according to Shari'a's overall purposes and objectives. The combination of these two considerations can lead to a scale in which the nation's actual needs would be ranked according to its priorities to push the illusion of a conflict between its interests and the purposes of the Shari'a.

Resume the path of diligence by extrapolating the regularities of senses' universalities inducting from the particular texts. So, it will be possible to formulate Shari'a based on universal laws and organize it according to the universality of the world. In this case, no one questions its validity about preserving the order of the world and its improvement by the improvement of humanity .

There is no doubt that what depends on the efforts of determination, analysis, grounding, and reasoning are among the obligations of the times, that severe scientific research must be mobilized toward them with vigor and determination, especially concerning contemporary issues that fall under the relationship with other differences in belief, including tolerance and coexistence…In order to exonerate Shari'a of allegations of fanaticism, exclusion, and accusations of incitement to hatred and annihilation. Moreover, to realize equity in evaluating the jurisprudential heritage with understanding the factors which have affected its results and then have been at the origin of the atrophy's problem of the tolerance concept in its content.

## Conclusion

The above study is an attempt to raise a concern for research on one of the essential issues in contemporary Islamic thought, the question of tolerance, in which the utterance of the last word has become the duty of time and the imposition of the era.

This attempt intends to unveil the pillars of a method capable of creating a clear vision that translates into a statement for people to make them understand the reality of the jurisprudential position towards tolerance.

The reality of the Muslim nation today as it stands on the threshold of a new historical stage in which loyalty must be aimed at common values between it and other nations. Which requires from jurisprudential research makes one of its first concerns to find a sound interpretative methodology that takes jurisprudential texts as its starting point and the approach to the principles of jurisprudential an itinerary, then making the understanding of emerging reality an objective and a purpose.

There is nothing wrong with that, as long as the indicators by the sayings of the scholars are available, including the saying of the Hanafi scholar Ibn' A'bdi'n:

Many jurisprudential laws differ from time to time, because of the change of people's custom, or because of the advent of necessity, or the corruption of people, so that if the jurisprudential law remains as it was in the first time, they will cause hardship and harm to people, and violate Shari'a rules based on mitigating, facilitating and repelling the bad and the corruption, for the survival of the world in the complete system and the best conditions.

What embarrassment is more significant today for the Muslim than to stigmatize his religion and accuse his Shari'a of fanaticism and intolerance? Nevertheless, what danger is greater than the consequences and impacts of this?

It requires attention to the subject, with the hope that Allah will provide pens to give it its due, and its imposed share of care and attention, by tracing the particulars of its questions and deducing the generalities of its system appropriately to its great importance.

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