

Introduction to Islamic Legal Theory

Lesson 2



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ENRICHING THE SOUL

The Sources of Islamic Law

- Since the discipline of Islamic legal theory (usul al-fiqh) examines the methodology used to derive Islamic rulings from the primary sources, it is necessary to first explore those primary sources.
- How many are there?
- Do all Muslim sects have the same views about each detail of the sources or are there opposing views?
- If there are differences, what are those differences?

The Sources of Islamic Law

- According to the Shia, with the exception of a small group called the Akhbaris, there are four sources for Islamic laws:
 - 1. The Quran, which Muslim jurists refer to as الكتاب
 - 2. The Sunnah, السنة meaning the words, actions and silent endorsements of the Prophet and his Ahlul Bayt.
 - 3. Consensus إجماع
 - 4. Reason عقل

The Sources of Islamic Law

- These four sources are called the “four proofs” الأدلة الأربعة
- The discipline of Islamic legal theory (usul al-fiqh) is essentially an elaboration of these four proofs.
- All of the discussions in usul al-fiqh relate to these four proofs.
- Now we will examine each source along with the views of the other Islamic sects and those of the Akhbaris.

The Quran

- There is no doubt that the Quran is the first source of the laws of Islam.
- Of course, the verses of the Quran are not limited to laws. In the Quran, there are hundreds of issues that are discussed, but a part of the Quran deals with legal matters which number approximately 500 verses.
- Muslim scholars have written many books about this particular set of verses آيات الأحكام

The Quran

- Some of the most valuable works in this field among Shia scholars include:
 - 1. Shaykh Al-Miqdad b. 'Abd Allah al-Hilli (826 AH) who wrote “Kanz al-Irfan fi Fiqh al-Quran” كنز العرفان في فقه القرآن
 - 2. Shaykh Ahmad b. Muhammad Ardabili (993 AH) who wrote “Zubdat al-Bayan fi Baraheen Ahkam al-Quran) زبدة البيان في براهين أحكام القرآن
- Sunni scholars have also written extensively on the verses relating to jurisprudential issues.

The Quran

- From the early days of Islam, Muslims have always used the Quran as the first point of reference for inferring Islamic laws.
- However, during the rule of the Safavid dynasty a sect appeared in Iran who maintained that it was forbidden for ordinary people to refer to the Quran and that only the Prophet and the Imams had this right.
- Similarly, this group considered that referral to consensus and reason were impermissible, as consensus had been introduced by the Sunnis and the use of reason is open to error and thus unreliable.

The Quran

- In their view the Sunnah (the reports narrated from the Prophet and the Imams and their hadith) was the sole source of reference.
- For this reason, they were known as “Akbaris” since “akhbar” means “reports”.
- This group, by denying the right of referral to the Quran, consensus, and reason, were essentially denying ijtiḥad, for ijtiḥad, as has been stated, means striving towards a deep understanding of the shariah, and it is evident that a deep understanding of such laws is not possible without making use of reason.

The Quran

- This group came to believe that ordinary people must refer to the hadith for guidance in their daily affairs without the medium of mujtahids.
- The leader of the Akhbari movement was Muhammad Amin al-Istarabadi (1036 AH) who was an Iranian who spent many years in Mecca and Medina.
- He has discussed his ideas in his book “Al-Fawa'id al-Madaniyya”

The Quran

- The appearance of the Akhbaris and the large numbers that were attracted to them in some cities in the south of Iran, islands in the southern part of the Persian Gulf, and in some cities in Iraq, was the cause of severe stagnation and decline in religious thought
- Fortunately, however, with the noteworthy and commendable efforts of the mujtahids of that period, their influence was firmly checked.
- Today their theories have virtually no support except in a few scattered places.

The Sunnah

- The Sunnah signifies the words, actions and silent endorsements of the Prophet (and the Ahlul Bayt in the case of Shia Islam).
- Clearly, if the Prophet verbally explained a certain law, or if it is known how the Prophet performed a certain religious obligation, or if it is known that others performed certain religious duties in his presence in a certain way that earned his blessing and approval— his silence indicating endorsement— that is sufficient proof **دليل** for a jurist to consider that action to be the actual law of Islam.

The Sunnah

- All Muslim scholars agree on the above definition of the Sunnah and its binding nature **حجية**
- The difference that exists on the subject of the Sunnah concerns two points.
- One is the question as to whether the Sunnah of the Prophet alone is binding or whether the Sunnah related by the infallible Imams is also binding.
- Sunni Muslims consider the Sunnah of the Prophet alone as binding, but Shias regard the words, actions and tacit approval of the Imams to also be binding.

The Sunnah

- To argue for their case, Shias refer to some of the verses of the Quran and some of the frequently narrated hadith of the Prophet, which even Sunni Muslims have related. One of these hadith is the Prophet's instruction:

وَأَنَا تَارِكٌ فِيكُمْ ثَقَلَيْنِ أَوَّلُهُمَا كِتَابُ اللَّهِ فِيهِ الْهُدَى وَالنُّورُ فَخُذُوا بِكِتَابِ اللَّهِ وَاسْتَمْسِكُوا بِهِ " . فَحَثَّ عَلَى كِتَابِ اللَّهِ وَرَغَّبَ فِيهِ ثُمَّ قَالَ " وَأَهْلُ بَيْتِي أَذْكَرُكُمْ اللَّهُ فِي أَهْلِ بَيْتِي

“I am leaving among you two weighty things: the one being the Book of God in which there is right guidance and light, so hold fast to the Book of God and adhere to it. He exhorted (us) (to hold fast) to the Book of God and then said: The second are the members of my household I remind you (of your duties) to the members of my family.”

Source: Sahih Muslim, v. 4, p. 1873

The Sunnah

- The second point is that the related Sunnah of the Prophet and the infallible Imams is sometimes certain and frequently narrated, that is, there are different chains of narrators of the same hadith. And sometimes it is not certain, consisting of but a report with few transmissions (khabar wahid) خبر واحد
- Here there is a diverse range of views. Some, like Abu Hanifa, a jurist of one of the four Sunni schools, paid little attention to the related hadith; of all the thousands of hadith narrated by the Prophet, he considered only seventeen to be reliable.

The Sunnah

- Others have found confidence even in 'weak', unreliable hadith.
- But Shia scholars are of the opinion that only reliable hadith are to be given credence. That is, if the people who make up the chain of narrators are Shia and just, or at least truthful and reliable persons [either Shia or Sunni), then the hadith itself can be relied upon. So we must know the narrators of the hadith and must research their biographies and, if it becomes determined that all the narrators of a hadith were truthful and reliable, we rely upon that hadith.

The Sunnah

- Many of the Sunni scholars have this same idea, and it is for this reason that the discipline of rijal (the critical assessment of transmitters of hadith) exist among them.
- The Akhbari Shias, however, considered the division of hadith authentic, reliable/authenticated, and weak to be uncalled for and said that all hadith are reliable, especially those contained in the four most reliable Shia books of hadith.

Consensus

- Consensus means the unanimous view of the Muslim scholars on a particular issue.
- In the opinion of Shia scholars, consensus is binding because of ALL Muslims have one view, this is proof that the view has been received from the Prophet.
- It would be impossible for all Muslims to share the same view on a matter if it came from themselves, and thus their consensus is proof that the origin of that view is the Sunnah of the Prophet.

Consensus

- For example, if it is clear that on one subject all the Muslims of the Prophet's era, with no exceptions, had a certain view and performed a certain type of action, that is proof that they were taught it by the Prophet.
- Likewise, if all the companions of one of the infallible Imams, who took instructions exclusively from their Imam, all had the same view about something, this is proof that they acquired that view from the schooling of their Imam.
- Therefore, in the Shia view, consensus is binding if it authentically goes back to the Sunnah of the Prophet and his Ahlul Bayt.

Consensus

- From the above-mentioned points, we learn two things:
- 1. According to the Shia, only the consensus of the scholars of the same time period as the Prophet or Imams is binding. So, if in the present day a consensus occurs about something among all the jurists, without exception, this is in no way binding for subsequent jurists.
- 2. According to the Shia, consensus is not binding in and of itself, rather it is binding insofar as it is a means of discovering the Sunnah.

Consensus

- In the view of Sunni scholars, however, consensus is a proof in its own right. That is, if the scholars of Islam, at any given time, all agree on a certain judgement about an issue, their view is definitely correct.
- Sunni scholars maintain that it is possible for some people within the community to err but it is not possible for all of them to be in agreement upon something that is false.

Reason

- The binding testimony of reason in the Shia view means that if in a set of circumstances reason has a clear judgement, then that judgement, because it is definite and absolute is binding.
- Here the question arises, whether the laws of the shariah are in the domain of reason or not and whether reason can pass judgement about them.
- The Akhbaris, as was discussed earlier, in no way count reason as binding.

Reason

- Among the Sunni scholars, Abu Hanifa considered analogical reasoning to be the fourth proof, and thus in the view of the Hanafi school, there are four sources of fiqh: The Quran, the Sunnah, consensus, and analogical reasoning.
- The Maliki and Hanbali Sunnis, especially the Hanbalis, pay no heed to analogical reasoning. The Shafi'i Muslims, following their leader, Muhammad b. Idrees al-Shafi'i (d. 204 AH), pay more attention to hadith than the Hanafis and also more attention to analogy than the Maliki and Hanbali Muslims.

A Brief History on the Development of Usul

- The discipline of Islamic legal theory (usul al-fiqh) originated and developed in the environment of the Islamic culture.
- It is generally recognized to have been introduced by Muhammad b. Idrees al-Shafi'i.
- Ibn Khaldun (d. 808 AH), in his famous "Muqaddimah", states:
"The first person who wrote a book on usul was al-Shafi'i, who wrote his famous treatise. In that treatise, he discussed the commands and prohibitions, abrogation ... After him, the Hanafi scholars wrote similar books and did extensive research on this subject."

A Brief History on the Development of Usul

- However, as has been pointed by the late Sayyid Hasan al-Sadr (d. 1935 CE) , in his book “Ta'sis al-Shi'a li-'ulum al-Islam” that various issues such as the commands and prohibitions and "generalities and particularities" had previously been discussed by Shia scholars who had written a treatise about each one of them.
- So perhaps it can be said that al-Shafi'i was the first person to write one book about all the issues of Islamic legal theory that, by his time, had been raised.

A Brief History on the Development of Usul

- Likewise, it has been considered by some Orientalists that *ijtihad* began among the Shia some two hundred years after it began among the Sunnis; a view they base upon the assumption that during the time of the Imams there was no need for the Shias for *ijtihad* and that as a result there was no need for the preparatory studies of *ijtihad*. This is a view, however, that is incorrect.
- The Imams used to encourage their companions to engage in the practice of *ijtihad*.

A Brief History on the Development of Usul

- In the reliable books of Shia hadith, the following statement from Imam al-Ridha is found

علينا إلقاء الأصول وعليكم التفريع

“Our responsibility is to introduce the general principles; and your responsibility is to apply the principles to particular cases to obtain rulings.”

Source: Wasa'il al-Shia, v. 27, p. 62

A Brief History on the Development of Usul

- Among the first Shia scholars, the first outstanding personality to compile books on Islamic legal theory and the one whose views were discussed for centuries was Sayid al-Murtadha (d. 436 AH).
- His best work on this topic was الذريعة
- After him, Shaykh al-Tusi (d. 460 AH) wrote عدة الأصول. The first part of this book is about the principles of religion, and the second is about the principles of fiqh.

A Brief History on the Development of Usul

- Another personality whose books and views in usul al-fiqh gained great fame was Shaykh Hasan b. Zayn al-Din al-Amili (d. 1011 AH) the author of *مَعَالِمُ الدِّينِ وَ مَلَاذِ الْمُجْتَهِدِينَ*.
- He was the son of al-Shahid al-Thani
- The book consists of two parts: jurisprudence and principles of jurisprudence, but it is mainly known for the latter part, which came to be known as ***Ma'alim al-usul***.
- This book was taught as a textbook in Sha seminaries for about two hundred years. Thus, its jurisprudential part was overshadowed by its part concerning principles of jurisprudence. The jurisprudential part does not include all parts of jurisprudence; it only includes cleanliness (tahara). It is believed that this is the reason why this part was ignored.

A Brief History on the Development of Usul

- A later personality in the discipline of usul al-fiqh was Muhammad Baqir (Wahid) al-Behbahani (d. 1208 AH).
- He fought vigorously against the Akhbaris who, at the time, were wielding a great deal of influence in the seminaries.
- The success of the approach of ijtihad over the approach of the Akhbaris owes much to his efforts.

A Brief History on the Development of Usul

- Over the past 200 years, the most important figure in the discipline of usul al-fiqh is Shaykh Murtadha al-Ansari (d. 1281 AH).
- Those who came after him have followed his school of thought.
- Until now no line of thought has emerged to transform or challenge that of Shaykh al-Ansari, although some students of his own school have introduced new ideas in line with the views of their teacher and have occasionally abrogated some of his views.

A Brief History on the Development of Usul

- Shaykh al-Ansari was born in Dezful in Iran and after completing his earlier stages of religious studies travelled to different cities in Iraq and Iran and studied under the masters of fiqh and usul of his time and eventually settled down in Najaf (which was then part of the Ottoman empire).
- When Ayatollah Muhammad Hasan al-Najafi (d. 1228 AH) passed away, he was chosen as the grand ayatollah of the Shia world.
- His two books *فرائد الأصول* and *المكاسب* are today used as textbooks by seminary students.

A Brief History on the Development of Usul

- Among the students of Shaykh al-Ansari, the most prominent was Shaykh Muhammad Kadhimi al-Khurasani (d. 1329 AH).
- He was the author of the seminal work *كفاية الأصول* which is still taught today in the advanced levels of Islamic legal theory.
- Akhund Khurasani had over 1200 students; and about 500 of them were experts in fiqh.
- His most famous student was Mirza Muhammad Husayn Na'ini (d. 1355 AH). He was the teacher of Sayid al-Khoie (d. 1992 CE)