

Introduction to Islamic Legal Theory

Lesson 5



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ENRICHING THE SOUL

Consensus

- One of the four primary sources of Islamic law is consensus.
- Although, Sunnis and Shias consider consensus to be a source of Islamic law, they differ on the meaning of consensus.

- Sunni scholars claim that the Prophet said:

لَا تَجْتَمِعُ أُمَّتِي عَلَى ضَلَالَةٍ

“My nation will not [collectively] consent to misguidance.”

- Basing their view on this, they say if the Muslim nation (ummah) all agree on a particular issue, that view is clearly the correct one.

Consensus

- With respect to the Shia view on the topic of consensus, three points need to be clarified:
- 1. Shias doubt the authenticity of the hadith which alleges that the ummah cannot unite upon falsehood.
- 2. Shias agree that it is impossible for all members of the whole Muslim nation to stray and err because of the presence of the Infallible. Thus, the consensus of the ummah has no intrinsic value, it only serves as a source of Islamic law if it includes the Infallible.
- 3. Consensus does not mean the consensus of the whole Muslim nation. Rather It refers to the consensus of the scholars of one sect of that nation, namely the Shia scholars.

Consensus

- With regard to the Shias, whenever there is no proof in the Book and the Sunnah about a certain subject, but it is known that the general body of the Muslims or a numerous group of the companions of the Prophet or the companions of an Imam all used to act in a particular way, then we must assume that in those times an instruction of the Sunnah existed of which we are unaware.

Consensus

- There are two types of consensus:
 - 1. Acquired consensus **إجماع مُحصَّل**: the consensus of which the mujtahid has himself directly acquired knowledge as the result of meticulous research into the history, view and opinions of the companions of the Prophet or the imams.
 - 2. Narrated consensus **إجماع منقول**: the consensus about which the mujtahid has no direct information, but which has been related by others.

Reason

- When we speak of “reason” in Islamic legal theory we are discussing its role as a source of Islamic rulings, not as our general ability to understand.
- This means that, by means of rational arguments, we discover a religious ruling. In other words, with the help of reasoned inference we discover that in a certain instance a certain obligatory or prohibitive law of the shariah exists, or with regard to a certain law, we discover what type of law it is and is not.

Reason

- The binding nature of reason is proven both by reason itself and also by the confirmation of the shariah.
- Basically, we prove the truthfulness of the shariah and of the doctrinal principles because of reason, therefore, how could it be possible that the shariah does not endorse the authority of reason.
- The Usulis have discussed the issue of the authority of reason under a topic known as *حجية القطع* “the authority of certainty”. This topic basically explores the authority and binding nature of knowledge which brings about certainty.

Reason

إِنَّ لِلَّهِ عَلَى النَّاسِ حُجَّتَيْنِ : حُجَّةً ظَاهِرَةً ، وَحُجَّةً بَاطِنَةً ، فَأَمَّا الظَّاهِرَةُ فَالرُّسُلُ وَالْأَنْبِيَاءُ
وَالْأَئِمَّةُ عَلَيْهِمُ السَّلَامُ ، وَأَمَّا الْبَاطِنَةُ فَالْعُقُولُ

“Verily God has two authoritative proofs over people: a manifest proof and an inward proof. The manifest proof is represented by the prophets and messengers and imams and the inward proof is represented by the intellects.”- Imam al-Kadhim

Reason

- The issues related to reason in Islamic legal theory are two:
 - 1. How reason helps us understand مناط الحكم الشرعي or the basis for the legislation of a ruling. Jurists say that Islamic rulings are based on real harm and benefit. الأحكام الشرعية تابعة للمصالح والمفاسد الواقعية. If our intellects knew about those benefits and harms, its judgement would be the exact judgement of religion.
 - 2. How reason allows us to understand the implications of rulings لوازيم الأحكام

Reason

- When it comes to the implications of rulings, there are a few main topics that are discussed in Islamic legal theory:
 - 1. The pre-requisite of an obligation **مقدمة الواجب**: If something is obligatory, does it imply that its pre-requisites are also obligatory.
 - 2. The implication that a command prohibits its opposite which the usuli scholars refer to as **دلالة الأمر على النهي عن الضد**: If something is commanded, is its opposite forbidden.
 - 3. Does prohibition necessitate invalidity?: If something is forbidden, does it automatically render it void?
 - 4. The combination of obligation and prohibition **إجتماع الأمر والنهي**

Procedural Principles

- After defining the sources of the shariah, the jurist has to set up a mechanism to solve the problems which have not been mentioned in the Quran and the Sunnah.
- For example, when a mujtahid looks into his sources for the ruling on smoking, he does not find anything specific on it. In Islamic legal theory, the jurist establishes some "procedural rules" or "practical principles" which he will use in such cases. These rules or principles are known as *الأصول العملية*

Procedural Principles

- The Procedural Principles are four:
 - 1. The Principle of Exonerat on  صالة الراءة
 - 2. The Principle of Precaution  صالة الإحتياط
 - 3. The Principle of Choice  صالة التخيير
 - 4. The Principle of Continuity  صالة الإستصحاب

Procedural Principles

- **1. The Principle of Exoneration** أصالة الراءة
- This procedural rule is applied in a case which has not been mentioned, explicitly or implicitly, in the sources of the shariah. This principle says that since the shariah has no opinion in this issue, the Muslims are free to do whatever they like. For example, when dealing with the question of cryptocurrency, the mujtahid does not find any opinion about it in the sources of shariah. In such a case, he would apply the principle of exoneration and say that "Cryptocurrency is not haram."

Procedural Principles

قال: قال رسول الله (صلى الله عليه وآله وسلم): رفع عن أمتي تسعة أشياء: الخطأ، والنسيان، وما أكرهوا عليه، وما لا يعلمون، وما لا يطيقون، وما اضطروا إليه، والحسد، والطيرة، والتفكر في الوسوسة في الخلوة ما لم ينطقوا بشفة

“My nation (ummah) are exempt [from the burden of religious responsibility] with regard to nine things: mistakes, forgetfulness, what they have been compelled to do, what they don't know, what they cannot bear, what they have found themselves in desperate need of, envy (which they have not acted on), misfortune, and temptation of fruitless thoughts about the creation.” - The Prophet

Procedural Principles

- **2. The Principle of Precaution** أصالة الاحتياط
- This principle is applied in a case where there is only partial knowledge about the law; that is, in cases of علم إجمالي where there is a semi-doubt and a semi-certainty. In such cases, the shariah expects us to act precautionarily.
- A most familiar example where this principle is applied is the case of Friday prayer during the major occultation of the Present Imam. We know that on Fridays, one of the two prayers -either Friday prayer or noon prayer- is definitely wajib, but we do not know which one. Application of this principle would mean that it is precautionarily better to pray both prayers to ensure that we have performed what was expected of us.

Procedural Principles

- **3. The Principle of Choice** أصالة التخيير
- This principle is applied in cases similar to that of "The Principle of Precaution", that is, semi-doubt and semi certainty. However, the principle of choice is applied where it is not possible to act on both sides of the issue. For example, when dealing with the noon or Friday prayer issue, some mujtahids may conclude that saying both prayers is not practical and specifying one without a clear evidence is not correct -- therefore, they apply the principle of choice and say that one can say either Friday prayer or noon prayer.

Procedural Principles

- **4. The Principle of Continuity** أصالة الإستصحاب
- This principle is used in a case in which a person has "a previous certainty" and "a present doubt" about the same thing. For example, there is a glass of water on my table. I am sure that it was ritually pure in the morning, but now I doubt in its ritual purity. This principle says that act on your previous certainty and ignore your present doubt because doubt cannot over-ride certainty.

Procedural Principles

- This procedural rule has been taken from the following hadith of Imam al-Sadiq who said in the answer to Zurarah that:

ولا ينقض اليقين أبدا بالشك، ولكنه ينقضه بيقين آخر

“...doubt cannot over-ride certainty; it can be over-ridden only by another certainty.”