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In the Name of the Almighty

Principles of Islamic Jurisprudence (Usulul-Fiqh) 1

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Notice:

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Meeting 1: Definition, History, Subjects

Definition:

Usulul-Fiqh is a combination of two words; 'Usul' which means principles or roots and 'Fiqh'. The Arabic term 'Fiqh' literally means deep understanding. Thus, Faqih is an expert in Islam. Nonetheless, from the 2 nd century the term was used to mean deep understanding and deduction of the practical laws of Islam from its reliable sources. In short, it is also translated to 'Islamic Jurisprudence'. Thus, Usulul-Fiqh is 'the science of common principles in deducting jurisprudential rules'. [al-Sadr, 1:43] The relation between Usulul-Fiqh to Fiqh is similar to that of logic to philosophy. Therefore, Usulul-Fiqh enables a Faqih to make a systematically correct jurisprudential deduction and inference.

Significance:

Out of all different sciences necessary for jurisprudential deduction such as mastering Arabic literature, Narratology (E'lmul-Hadith), the science of the biography of the narrators (E'lmul-Rejal), interpretation of the jurisprudential Ayaat of the Quran and logic, Usulul-Fiqh is the most important one. Thus, at least in the recent decades most of the studying period of the students of Fiqh will be spent in learning Usulul-Fiqh. Nonetheless, a mere mastering the Usulul-Fiqh does not make a person a Faqih, insomuch as a mere learning medicine will not mean a person is a physician unless he/she is enabled to correctly diagnose the disease and prescribe a relevant medicine.

History:

Usulul-Fiqh is a science invented by Muslims and is developed within the science of Fiqh to help the jurist in his deduction. Similarly, Fiqh is an Islamic science which was developed within the science of Hadith (Narratology). Ibn Khaldoon in his ' Introduction ' asserts that Imam Shafe'i (150-240AH) was the first author in Usulul-Fiqh. However, Ayatollah Seyyed Hasan al-Sadr in ' The Establishment of Shi'a' shows that Hisham Ibn Hakam; the student of Imam Sadiq (martyred in 148AH) was the first Shi'a scholar who wrote on the topic. In fact, the first inventors of Usulul-Fiqh were Imam Baqir and Imam Sadiq (a.s). In a famous Hadith Imam Sadiq (a.s) said to Hisham Ibn Salem: " Surely, it is out duty to deliver to you the principles and it is your duty to deduct the details ." [al-Wasa'el vol.27:p.61]

The oldest text book on Usulul-Fiqh in the Shi'a seminary was ' al-Tathkera'(The Rminding) compiled by the late Sheikh al-Mufid (died in 413 AH). Then the work of Seyyed al-Murtadha (died in 436 AH) called ' al-Thari'a (The Instrument) . The most famous textbook of the 5 th century was ' Uddatul-Usul' (The Equipments of Usul) written by the late Sheikh al-Tousi. This book was the main recognised textbook for several centuries. Another ancient textbook was 'Ma'alemul-Usul' (the Outlines of Usul) written by Sheikh al-Hasan (died in 1011 AH); the son of the 2 nd Shahid (Sh. Zainul-Din al-Ameli). This book has been one of the textbooks in the Islamic seminaries. In recent years it's being nearly replaced by some other books.

Usulul-Fiqh in the last two hundred years was boasted by the works of Sheikh Wahid Behbahani as a response to the trend of Traditionalists (al-Akhbariyyoun) especially Mulla Muhammad Amin al-Istrabadi. In the last 150 years the school of Sheikh Murtadha al-Ansari (died in 1281AH) has been the most influential school in Usulul-Fiqh and his book Fara'edul-Usul(The Gems of Usul) coupled with al-Makaseb (The Transactions) are two important textbooks.

Subjects:

The subjects in Usulul-Fiqh rotate around two expressions; 1) the Evidence (al-Daleel) and 2) The Principle (al-Asl). The Evidence(s) is any Ayah of the Quran or a Hadith which clearly answers a jurisprudential question. The Principle(s) on the other hand is a general rule for deduction in the absence of evidence. The Principles are also called 'Practical Principles' because they are a practical remedy for certain circumstances.

The Evidence is also divided into 1) divine evidence (Daleel Shar'i) such as the Quran, and the Sunna, and 2) Rational evidence (Daleel 'Aqli) such as the compulsion of the preliminary stages of an obligation.

The Chart of the Main Subjects in Usulul-Fiqh

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Meeting 2: Semantic Issues I (Mabahethul-al-Faath)
ABSTRACT

Introduction

The main sources of jurisprudential deduction are based on the words of the holy Quran and the Hadith of Ahlul-bait (a.s). Thus, the Usulieen (experts in principles of jurisprudence) need to analyse some semantic and verbal issues which are necessary for jurisprudential inference. Semantics is the science of the interpretation of a word or a sentence.

Types of Semantic issues : Semantic issues in every language are of two types; the general issues and the specific ones. The example of the general issues is the discussion on whether or not an imperative verb jurisprudentially indicates the compulsion of the action. The specific issues are the semantic issues with regards to the meanings of a particular word and the history of its development, etc. The first type is the semantic issues that are discussed in the principle of jurisprudence. For instance, in the Ayah " Take Sadaqah from their wealth in order to purify them and sanctify them with it, and invoke Allah for them ." [9:103] The verb 'take' (Khoz in Arabic) is imperative and so is 'invoke' (Salle in Arabic). In Usulul-Fiqh there is a general discussion as to whether the imperative verb indicates the compulsion or not. The two imperative verbs in the above Ayah are only two examples of that general discussion. But the term 'Sadaqah' which could mean 'charity' or 'Zakat' (alms) is a specific discussion on a particular word which is discussed in Fiqh.

Coining a word (al-Wadh'): the first general semantic issue that is discussed in Usulul-Fiqh is whether the indication of a word for a meaning is essential or it is by agreement? For instance, when we observe smoke rising from behind a building it indicates that there is a fire out there. Such an indication is essential and does not need any agreement. Thus, every sane person will come to the conclusion that there is a fire behind the building. However, the indication of the English term 'FIRE' for 'a burning fuel' is not essential. Hence, a person who is not acquainted with the English language does not come to this indication. In conclusion, when a word- in any language- is coined for a meaning its indication for that meaning is by agreement not essential. Linguists further discuss who the inventor(s) of the words are? This discussion is beyond the scope of Usulul-Fiqh.

Usages of a word: The usage of words in any language is divided into real and figurative. The real is when a word is used in a meaning that is agreed upon in that language and there is a verbal relation between that word and its meaning. For instance, the usage of the term 'lion' for the famous large carnivorous animal is real. A figurative meaning is when a word is used in a meaning that is not originally coined for it, but there is one or more than one agreed similarity between them that has allowed the word to be used in that meaning, like 'lion' for a brave man. A term that is used for a meaning with no agreed meaning or similarities is called ' wrong '.

Important Points

Does the figurative usage require the agreement of the inventor (s) of the word or is having a good taste of that language sufficient for its use? It seems a mere sense of it without the permission of the inventor(s) is insufficient; otherwise the purpose of conversation which is for mutual communication may be lost. For, every one could claim that according to his taste that particular usage would be possible.

The correct usage of a word in its figurative usage requires a recognised similarity between the word and its suggested figurative sense.

The correct usage of a word in a figurative sense, when the relation between the word and the figurative meaning is not clear, requires a context- whether verbal or circumstantial- to allow the figurative use.

Conversion of figurative to real: The figurative use of a word in the beginning needs a context. However, when a word is used very commonly in a figurative sense it will no longer require a context, as if the usage is converted to a real sense.

The Signs of Real and Figurative senses: one of the most important issues in this topic is how to distinguish whether a word is used in its real meaning or figuratively. Normally, we distinguish the real meaning from a figurative one by referring to dictionaries or asking the linguists. Nonetheless, sometimes the Usulieen (experts in principles of jurisprudence) are still doubtful as to whether a meaning of a word is real-so that it does not need any context- or is figurative- than requires a context. Scholars usually distinguish a figurative from a real by the following methods:

Crossing the mind: the first common method is called 'crossing the mind'. That means when they look at a word in its context, the first meaning that usually crosses the mind is the sign for its real meaning. For instance, for the one who is acquainted with English when he sees the word 'water' the first comes to his mind is the famous liquid. This method is used very often in jurisprudential deduction.

Validity and invalidity of negation: Another method to distinguish a real from a figurative use is to examine whether it is valid to negate or confirm that meaning for it.

3. Verbal Principles (Usulu-lafdhiyyah)

If we were doubtful as to whether a word is used in a suggested figurative sense or not, the previous methods must be utilised. However, sometimes although we know a figurative meaning for a word, we don't know whether it is used in that context for a figurative or real meaning. In such situations we refer to different principles called ' the verbal principles' . We discuss the verbal principles from two aspects; 1) what are the verbal principles, and 2) what is the proof for their validity. The most important verbal principles are as follow:

3/1: the Principle of Reality:

This principle is used when we are not sure whether the speaker has meant the real meaning of the word or it's figurative. The reason for the doubt is although there is no explicit context for the figurative meaning; it is possible that there is a context for the figurative use. The rule under such circumstances is to refer to the Principle of Reality and conclude: 'the speaker means the real meaning of the word. For instance, in the Ayah " So whoever does good equal to the weight of an atom shall see it ." {Surah 99] Whether it is meant seeing the actual action (real meaning) or the reward of it (figurative). The principle is to say Allah means the real sense of it.

3/2: The Principle of General:

When a term is used in its general sense and we wonder whether the speaker has really meant its general meaning or not, the rule is to conclude 'the principle is that he means the general sense of it. For instance, the Prophet (P) said: " Honour your neighbour ." Then we wonder, did he mean only a Muslim neighbour or did his words include non-Muslims too. The rule is to refer to the principle of general and conclude he means all examples of neighbours.

3/3: The Principle of Absoluteness:

For example, the Almighty Allah says: " Allah has made transaction permissible." Then we wonder if it is necessary for a permissible transaction to be performed in Arabic, the rule is to refer to the Principle of Absoluteness and conclude there are no such conditions.

3/4: The Principle of Apparent:

The application of this principle is when a word appears to have a particular meaning but it is not explicit. The rule is to refer to the principle of apparent and ignore other weak possibilities. All the previous principles in a sense refer to the principle of apparent . Hence the main and the most important verbal principle in Usulul-Fiqh is the principle of apparent .

The proof for the validity of the abovementioned principles is the conduct of the sane people who in their communication rely on the apparent of the words and disregard any possibilities of jokingly, mistakenly or he implied any conditions, etc. unless otherwise specified by the speaker.

Meeting 3: Semantic Issues II (Mabahethul-al-Faath)

ABSTRACT

The common semantic and verbal issues of the Holy Quran and the noble Hadith that are discussed in Usulul-Fiqh are as follows:

The Imperative Form

The imperative form of a verb is exemplified by verbs such as 'Go' (Eth-Hab' in Arabic), 'Fast' (Som in Arabic), etc, as well as a present tense that expresses a common such as "He repeats (Yo'eedu in Arabic) which means 'he must repeat'. The first common verbal issue that is discussed in Usulul-Fiqh is whether the imperative form of a verb indicates the compulsion of the action or not.

In the Arabic language the imperative form is used by three different people for three different meanings: 1) a person whose status is higher, like a father asking his son to get him a glass of water. 2) a person whose status is lower, like a son asking his father to buy him something, 3) a person asking someone whose status is equal to the speaker to do something for him. The first one is the only real imperative form which is discussed in Usulul-Fiqh.

Imperative form indicates the compulsion:

Most experts in Usulul-Fiqh agree that the imperative form indicates the compulsion of the action and its meaning for a ' Mustahab' is figurative and hence needs a context. They have two reasons for this claim: 1) al-Tabador (the first thing that crosses the mind) and as we have learnt in the previous meeting, the first meaning that crosses the mind is a sign of the reality. 2) al-Dhohour (Apparent): An imperative form of a verb appears to reflect the meaning of command.

Others Expressions for Imperative Form:

As mentioned earlier, an imperative form is usually in the form of an imperative verb such as 'Go'. However, in Arabic there are other expressions for an imperative form such as present tense like ' He repeats his Wudu and Salaat ' which means 'He must repeat them." Another expression for imperative form is a passive past tense such as 'It is written' (Koteba in Arabic).

An Imperative Form which indicates permissibility:

If an imperative form is used after a prohibition or even possibility of a prohibition it means the action is no longer prohibited, i.e. it is permissible. Such as 'When you finish the Ihram (of Hajj or Umrah) you hunt'. (Holy Quran 5:2) the term 'hunt' here means you 'may hunt' for it has come after the prohibition of hunting during the Hajj which is mentioned in the previous Ayah. The similar case is in Surah 2 Ayah 187.

Types of Imperative in Islam:

In Fiqh there are different types of imperative. The following are examples: 1) For Worshipping (al-Ta'bbodi), and For Attainment (al-Tawassuli) . An imperative for worshipping is a rite that is to be offered for the sake of nearness to God, such as daily prayers. An imperative for attainment is a religious obligation whereby only the fulfilment of the action is desired by God, such as burying a dead Muslim, or purification of the body and the clothes for praying. 2) Designative (al-Ta'eeni) and Alternative (al-Takheeri) : The designative obligation is the one that cannot be substituted by something else, such as daily prayers. The alternative

obligation is that one that has other substitutions, such as the penalty for intentional breaking of the fast during the month of Ramadan which is nowadays either feeding 60 poor people or fasting 60 consecutive days. 3) For itself (al-Nafsi), and For Something else (al-Ghayri). An obligation for itself is like daily prayers that are compulsory for itself and an obligation for something else is like Wudu which must be performed for Salat.

Prohibitive From (al-Nahy):

The discussions on the prohibitive form is similar to that of the imperative except the prohibitive form means one must refrain from the act such as 'Do not drink wine'.

The Implied Meanings (al-Mafaheem)

Some statements have an explicit meaning which is the apparent meaning of it, and an implicit meaning, which is an indirect meaning of that statement. For instance, the explicit meaning of the Hadith 'when the sun declines offer your Noon prayer' is what appears in the sentence. The implied meaning of it is: 'Don't prayer if the sun has not declined yet.'

Types of Implied Meanings:

There are two types of implied meanings 1) Compatible implied (al-Mafhoomul-Mowafeq) which means the implied meaning is in accordance with the explicit one such as: "Say not to them 'so much' (Uof)' {17:23] the direct implied meaning of which is 'do not hit them' 2) Incompatible implied (al-Mafhoomul-Mokhalef) which is an opposite meaning to the explicit meaning of a sentence. The experts in Usul have mentioned several types of indirect implied. The following is the most important one:

The Conditional Implied:

Every conditional sentence consists of two sentences. The first is called 'if clause' and the second is 'main clause'. Such as, 'If a Fasiq (liar) comes to you with any news, verify it.' [49:6] The implied meaning of this Ayah is 'if a just person comes to you with a news, you don't need to verify it.' The conditional implied is one of the most important and useful semantic discussions in Usulul-Fiqh.

General (al-'Aam) and Specific (al-Khas):

Many a time a general rule is mentioned in the Quran or Hadith and then another rule is mentioned which excludes some examples of that general rule. For instance, the Quran is asking all divorced women to observe a waiting period of three purifications from menstruation. [2:228] On the other hand, an authentic Hadith says that divorced women who did not consummate their marriage do not need to observe the waiting period. The first rule is general and the second is specific. The general is expressed by different words such as 'all' and 'everyone' or by an infinite noun in a negative or prohibitive sentence such as 'there is no creature on earth but its substance is with Allah' [11:6] or the definite plural (a plural with ' al ' in Arabic) such as 'the worlds' as long as there is no context to specify otherwise.

Absolute (al-Motlaq) & Limited (al-Moqayyad):

Absolute and limited is similar to general and specific except that absolute and limited are used for circumstances and attributes. For instance, the Ayah 'O you who believe! Send your Salaat on him (Muhammad) and greet him." [33:56] is absolute, which means there is no limitation in sending Salat to him in term or time, private or public, loudly or quietly, etc.

Obscure (al-Mojmal) & Explained (al-Mobayyan):

An obscure word or phrase is one where the real intention of the speaker is unknown. For instance, the Imam (a.s) says something in front of a stranger. Then we don't know whether he really meant what he said or he had said it for protection (al-Taqiyyah). His word then becomes obscure but

by asking him later on, or by referring to his other words, we will explain and verify his real intention.

Meeting 4: Rational Correlation (al-Molazematul-'aqleeyah)

ABSTRACT

Definitions:

Rational Correlation (a-Molazematul-'aqleeyah) or rational relationship is the judgment of common sense for the relation between a narrative religious evidence and another type of evidence; whether that evidence is also narrative or rational. For instance, there is a rational relationship between compulsion of Salaat and necessity of purification as a prerequisite of Salaat.

Religious Evidence & Rational Evidence:

Every religious evidence is a deduction that consists of two premises. If both of the premises are narrative evidences, their conclusion is called 'religious evidence' (al-Daleel al-Shar'i). But if both of the premises or either of them is rational, i.e. things that human intellect and common sense dictate without any aid from religious evidence, the deduction is called 'rational evidence'.

Independent Rationality & Dependent Rationality:

If both the premises of rational evidence are also rational, the deduction is called 'independent rationality' for we have achieved the deduction without the aid of any narrative evidence. But if one of the premises is rational and the other narrative, the deduction is called 'dependent rationality', because our rational conclusion partially depended on a religious (narrative) evidence. In Usulul-Fiqh we discuss the validity of the rational relationship whether in independent rationality or dependent rationality.

Argument in Rational Good and Shameful Deeds:

There has been an old debate amongst Muslim scholars as to whether the human intellect –irrespective of religious laws- can decide whether an act is a good or shameful deed? Al-Ash'aris (the followers of Abul-Hasan al-Ash'ari died in 330 AH) argue that there is no good or evil but what so defined by God. Thus, there is no room in religious matters for any rational deduction. Al'Adleeyah (those who believe in the rational justice of God like the Shi'a) by contrast asserts that for instance 'justice' is a good deed and 'oppression' is evil -irrespective of any religious law. In fact, without the aid of rational evidence, no narrative (religious) evidence can be proven.

Correlation Between A Rational Deduction and a Religious (Narrative) Deduction:

Nearly all Usuleeyoun (except perhaps one) are unanimous that there is a one sided correlation between rational deductions and religious deductions. That means, if all sensible people –irrespective of their background- agree on something to be a good or a shameful deed, then it is also a virtue or a vice in the sight of God, for He is the creator of the intellect. Thus, it is said: "Whatever the common sense dictates, the religion also dictates." However, not all that the religion dictates, the intellect can also dictate. The reason being, the human intellect is limited and hence can not perceive all the benefits of religious laws. Thus, the human intellect in many instances remains silent about it. For instance, we can not perceive the reason(s) of the numbers of the units of the Daily Prayers with our rationale. This is the

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meaning of the Hadith from Imam Sajjad (a.s): " Surely the religion of Allah will not be perceived by insufficient intellect ." [al-Kaafi]

In conclusion: the correlation between relational deductions and religious deductions are one sided i.e. whatever the human intellect dictates, religion also confirms, but not everything that the religion dictates, the intellect can perceive to confirm.

Some Applications of Rational Correlation

al-Ejzaa' (to suffice instead of):

If there are two divine commands; one is first and real and the other is secondary and in case of an emergency. Then a responsible (al-Mokallaf) Muslim instead of the first and real command met the second and emergency one, for the first command was not possible for him or he was ignorant about it. For instance, the first command was to use water for purification but since he had no access to water followed the second command and performed Tayyammum.

The argument is whether meeting the emergency obligation (Tayyammum in the above example) would rationally suffice the real obligation or the action ought to be repeated –whether in time or after its time is lapsed- according to the real obligation?

It seems the most the common sense would dictate is that if the emergency has been removed after the time of the obligation is lapsed, then there is no need for repeating the action and the emergency action would suffice the real one. But if the time is not lapsed yet, the common sense dictates that we should make up and rectify the missed benefits which would have been achieved by meeting the real obligation. Nonetheless, nearly all jurists are unanimous that once the emergency obligation is met; there is no need to repeat the action whether in time or after the time is lapsed. The reason for this deduction is: 1) emergency rules are meant to ease the situation. " Allah intends for you ease, and He does not want to make things difficult for you ." [2:185] repeating the action is contrary to easing it. 2) Most of the reasons for emergency rules are absolute. For instance, for Tayyammum the Quran says: "… and you find no water, perform Tayammum ." [4:43]. As you can see the rule is not conditioned to anything.

2. Association of a Command and a Prohibition!

This title is quite deceiving. For, the association of a command and a prohibition on something is impossible and Allah does not ask for the impossible. What we mean here is that sometimes a command and a prohibition coincide. For example, a man whilst praying looks (lustfully) at a strange woman. Obviously there is an association of a command (to pray), and a prohibition (to lower his gaze) in this action. At other times , the association of a command and a prohibition is real. The famous example is praying on usurped land. In such situations we should first look for another alternative (Manduha). In the absence of any alternative then if being on usurped land was by the choice of the person, it is the example of association of a command and a prohibition. But if being on usurped land was not by the choice of the person, there is no such association. For prohibition applies to a voluntary deed.

The benefit of this discussion is when there is a real association between a prohibition and a command in a worshipping act, then that act is no longer a worshipping. For, one cannot be near to God by what is distancing him from God (praying voluntarily on usurped land).

The Association of a command and a Kerahat (not recommended) in worshipping: in such situations, Kerahat means it has less rewards. For instance, praying in the bathroom is Makrooh. This means there is less reward for it.

The association of a command and a prohibition in transactions: in most instances it does not void the transaction. For instance, if someone at the time of the call for Jum'a Prayers is doing a transaction, although his action is forbidden (if Jum'a Prayer is decisively compulsory), it does not void his transaction.

Narrative evidence (al-Daleel al-Aqli) is opposite of rational evidence. Narrative evidence is like a Hadith or an Ayah of the Quran.

Meeting 5: The Validity of the Four Evidences #1

ABSTRACT

Introduction

The Meaning of al-Hojjah (Valid Evidence):

'al-Hojjah' literally means something that can be used to prove an argument to someone else. In Usulul-Fiqh it means a valid excuse between a Muslim and God. Al-Hojjah is valid evidence to which a jurist has referred for his verdict. Al-Hojjah is a plea from a Muslim to God as to why he has performed an action (such as an obligation), and refrained from another (such as a forbidden). Thus, if the Hojjah is valid he is excused before God and rather will be rewarded, but if it is invalid he can not plea to God and hence deserves a punishment. In Usulul-Fiqh the Hojjah is also called 'al-Amarah' (sign) or al-Tariq (path) for any evidence is in fact a sign for and a path to reach the rule of God.

Significance: the validity of all the 'evidences' will be discussed in this chapter (and the following one). Without proving the validity of the evidences they hold no value and the entire deduction would be void. Thus, the validity of the evidences is the 2 nd and the main premise in a jurist's deduction. For instance, he says: "P1. The imperative form of 'Pray' in the Quran appears to show it is an obligation. P2. The appearance of the Quran is a Hojjah (valid evidence). Conclusion: the appearance of 'Pray' indicates praying is an obligation." As you can see without proving the validity of the second premise, the first premise (that we learned about it in the previous meetings) is futile.

What can be used as valid evidence? Obviously, if a jurist is certain about something and has full knowledge about it, he can act accordingly, for the common sense dictates that knowledge is a valid excuse. In fact, all intelligent people blame the person who acts against his knowledge. Certain knowledge in religious matters can only be obtained if we directly ask the Prophet (P) or the Imam (a.s). Similarly, ignorance is not a valid excuse. Also, if a jurist has a doubt on something, he can not give any verdict on it, for the doubt means the possibility of 50-50 and to prefer either of the sides over the other is a preference without any justification. The argument is if his knowledge of something is more than 50% (doubt) and less than 100% (certain knowledge) a situation that is called in Usulul-Fiqh the 'Z'an' (literally guess) would this be a valid excuse?

Valid Z'an: The Z'an in its literal sense (guess and imagination) is not valid evidence. But in Usulul-Fiqh it means 'strong possibility' or 'more likely' (50+% but less than 100%). When 'Zán' is strong it can also mean 'reasons beyond doubt'. Is ' Z'an ' in its Usulul-Fiqh sense valid evidence? Some of the Ayaat in the Quran (53:28, 6:116, 10:59) has prohibited us from acting upon our Z'an . Thus, the primary rule indicates that acting according to Z'an is forbidden. However, if there is valid evidence to prove the validity of certain Z'an under certain circumstances, then acting according to that type of Z'an will be valid. Usuliyyoun usually prove the validity of this type of Z'an in two different ways: 1) Through the ' premises of the proof of occlusion' (Daleelul-Ensedaad), 2) Through some of the Ayaat and Ahadith which indicate the validity of certain Z'an .

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The Premises of the Proof of Occlusion (Moqaddamat Daleel Ensedaad):

Premise 1: During the time of major occultation we have no access to the Imams (a.s) or the Prophet (P).

Premise 2: We know in general that God has ordained some rules for us and we are not allowed to totally ignore them.

Premise 3: Since we know in general that we are responsible, then we will not be free from the responsibility unless we meet our obligations by one of the following ways:

To follow a jurist who believes the gate to frequently visiting Imam Zaman (a.f) is open who can constantly ask him about the Islamic rules.

To take precaution in all religious matters.

To refer to Practical Principles such as Exemption, Continuity, etc.

To refer to the evidences that are more possibility true (Z'an).

The only possible option is the last one.

The Validity of the Four Evidences: In Shi'a Usulul-Fiqh there are four types of evidences that are proven to be valid, i.e. the Holy Quran, the Sunna, the Consensus (al-Ejma'), and the Common Sense (al'Aql).

First Evidence: The Holy Quran

Strangely enough, some Muslim scholars (whether Shi'a or Sunni) have denied the validity of referring to the Quran as evidence, unless under two conditions: 1) its verbatim (Nass) is explicit on the meaning we need with no chance for any other possible meaning, 2) it is so explained by the Ahadith. These scholars are called 'al-Akhbariyyoun' (Traditionalists) and they are in minority. They base their arguments primarily on two proofs:

First Proof: Based on Ayah 7 of Surah 3, the Ayaat of the Quran are divided into the Ayaat that have established meanings (Mohkamaat), and ones that their meanings are ambiguous. The above Ayah is forbidding us to act according to the ambiguous Ayaat. Every apparent meaning is ambiguous. Thus, the apparent meaning of the Quran is not valid evidence.

Answer: The response of the Usuleyyoun to the above argument is: 1) the apparent of the Quran is not ambiguous. The Ambiguous is the one that its meaning is obscure. 2) The Ayah is prohibiting from acting upon any am biguity for evil purposes and seeking mischief. 3) If the apparent of the Quran is not valid evidence, then the above Ayah is also not a valid evidence for the traditionalists to refer to!

Second Proof:

The second proof of the Traditionalists is based on some Ahadith that assert that the understanding of the Quran is not possible for other than a Ma'soom. [Wasa'elu-Shi'a vol.27]

Answer: Firstly, all those Ahadith are technically weak, nay seem to be fabricated. Had those Ahadith been authentic the reliable narrators would have narrated them too. Secondly, there are many Ahadith that refer us to the Quran to examine the validity of a narration. [Wasa'el vol.27 p.106]. Thus, either this group of Ahadith should be preferred over the first one as they are more authentic, or at least they contradict each other and as a result both are dropped from validity, the result of which is to refer to the Quran as a valid evidence. For, this is what the common sense

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Meeting 6: The Validity of the Four Evidences #2

ABSTRACT:

Second Evidence: The Sunna

Meaning: Sunna literally means the path or the line and in the expression of the Usulyyoun it means "the line of conducts of the Prophet (P) in terms of his words, actions and confirmation". Shia scholars however have a specific meaning for the Sunna. To them, it means "the line of the conducts of the Ma'soom (the Prophet or any other 13 Ma'soomeen) in terms of their words, actions and confirmation. " The reason being, the Imams of Ahlul-Bayt (a.s) are not mere narrators of the words of the Prophet (P). They access the Reality either by inspiration or spiritual connection with the soul of the Prophet (P), or via learning from the previous Ma'soom.

Validity:

Needless to say that if Muslims hear directly the words of a Ma'soom, it is a valid evidence for them. Nonetheless, in our time that we are deprived of the presence of the Imam (may God hasten his reappearance) our access to the Sunna is via narrations. Thus, narrations available to us today are from the narrators of the Sunna, not the Sunna itself. Thus, the question arises as to whether such narrations can be accepted as valid evidence?

Types of Narrations: In general there are two types of narrations; 1) Recurrent Narration (Khabar Motawater) & 2) Single Narration (Khabar Wahed).

1/ Recurrent Narration is a narration that is repeatedly narrated by a group of people that expressing their agreement on fabricating a narration is usually impossible. Thus, upon hearing the news one is quite certain that it is true. Thus, the condition of a recurrent narration is that it must be repeatedly narrated from different and independent sources.

The Recurrent narration is also divided into 'verbal' (Lafzí) and 'abstractive' (Ma'nawi). The recurrent verbal narrations are very few, such as the Hadith of al-Ghadeer or al-Thaqalayn.

2/ Single Narration is any narration that does not reach the level of recurrence, whether there is only one narrator for it or more than one. The discussion about the validity of the Sunna is in fact about the validity of single narration, for the recurrent narration usually provides certainty and as mentioned in meeting four, certainty is always a valid proof.

Proofs for the Validity of a Single Narration

1/ The Holy Quran

Ayah Naba' (News): 49:6

This Ayah forbids accepting the news of a Fasiq (liar) without any investigation. The implied meaning of it is that we are allowed to accept the news of a just narrator without any investigation.

Ayah al-Nafr (travelling for learning): 9:122

The Ayah does not hold all Muslims responsible for travelling to learn their religion as it is near impossible. However, it is encouraging them alternatively to travel for learning. Those learned in the religion must teach their people and those who are learning must accept the teachings of their teachers. Otherwise, the legitimation of the law of travelling for learning would be futile.

Q. The term 'Taéfah'(group) does not apply to a single narrator, for 'group' means more than two or three people.

A. The Ayah does not mean that a group of students should teach their people congregationally. Thus, it is a group of people who have an individual responsibility for teaching not collectively. More over, the Prophet (P) used to send individuals for Da'wa.

2/ Sunna:

By Sunna we do not mean a single narration. For, obviously proving the validity of a single narration by a single narration is a vicious circle. Thus, by Sunna we mean proving the validity of single narrations by recurrent narrations.

Numerous narrations teach us as how to treat two paradoxical narrations. For instance, they suggest that if the contents of two narrations were contradictory, then the one whose narrator is more pious or truthful should be preferred. If a single narration was not valid evidence, there would be no point talking about the preferences between two single narrations.

Very often people were asking the Imams (a.s) if they could accept the narrations of reliable individuals which the Imams have confirmed. Abdul-Aziz said to Imam Redha (a.s): "My residence is far and I cannot visit your honour every time and ask you my questions, would it be possible to ask Yunus; the freed slave of Ale Yaqteen?" The Imam replied: "Yes." [Wasaél vol.27, p.148]

Third Evidence: Consensus (al-Ejma')

According to Sunni scholars the Consensus means the agreement of Muslim jurists on an issue, or the agreement of the decision makers of the community or the agreement of the Muslim Community, on an issue. To Shiá, however, the Consensus is not an independent evidence besides the Quran and the Sunna. For the agreement of people cannot legitimise a religious rule. Thus, consensus according to the Shiá is a valid evidence only and only if it discovers the words of a Ma'soom.

The Consensus is divided into two types: 1) Obtained Consensus (al-Ejma' al-Mohassal) where a jurist by searching the verdicts of other jurists discovers the consensus of the jurists on a particular issue. 2) Narrated Consensus (al-Ejma' al-Manqool) which means it is narrated that there is a consensus on a particular issue.

Fourth Evidence: Rational Proof (al-Daleel al-Aqlee)

By 'rational evidence' Shiá scholars mean any rational evidence that can certainly discover a religious rule. Thus, rational evidences that are based on assumption and cannot provide certainty such as analogy is not a valid rational evidence.

The reason for validity of certain rational evidence is firstly the fact that certainty is a valid proof as mentioned in the fourth meeting. Secondly, there are numerous narrations acknowledging the validity of any rationality that provides certainty. For instance, Imam al-Kadhem (a.s) said to Hisham: "O Hisham! Surely, Allah has two types of proofs against people; one is the apparent and the other is hidden. The apparent proofs are the Prophets and Messengers of God and the hidden one is the human intellect."[al-Kaafi, vol.1, p.16]

Similarly, any rationality which is based on assumption is denounced. Imam Sadiq (a.s) said: "Surely, the followers of analogies are seeking knowledge by analogies whilst analogies provide them with nothing other than being further away from the truth. Surely, the religion of Allah will not be obtained by analogies." [Wasaél vol.27. p. 43]

Meeting 7: Analogy- Equality and Preferences

ABSTRACT:

Definition of Analogy

Analogy is the method of applying the rule of a subject to another subject with the assumption that they have similar reason. As we learned in logic, analogy is a form of logical inference or an instance of it, based on the assumption that if two things are known to be alike in some respects, then they must be alike in other respects. For instance, like Earth there is water and air in Mars, then, like Earth there must be organisms in Mars too.

In Jurisprudence, analogy is used to deduct a religious rule in the absence of any religious text . Examples: 1) Water removes Najasah and hence it is a purifier. Detergents also remove Najasah. Therefore, detergents are purifiers! 2) In a contract if the price is unknown the contract is void. Marriage is also a contract. Therefore, if the Mahr is unknown the marriage contract is void!

History

Shiá scholars following the teachings of Ahlul-Bayt (a.s) have denounced the use of analogy in jurisprudence. Amongst the Sunni sects, al-Zaheriyya (the followers of Dawood ibn Khalaf who follow the literal text of the Quran and Hadith) such as Ibn Hazm, as well as al-Hanbaliyah (the followers of Imam Ahman ibn Hanbal) have also no value for analogy in jurisprudential deduction. Imam Abu-Hanifa (died in 150AH) was the founder of analogy in jurisprudence. Imam Malek and Imam Shafeí have also followed Abu-Hanifa in utilising analogy.

Validity of Analogy

The Imams of Ahlul-Bayt (a.s) have strongly opposed analogy and considered any inference based on analogy void. Imam Sadiq (a.s) said to Aban ibn Taghleb: "Surely, if analogy is used in the Sunna, the religion will be wiped out." [Behar, vol.104, p.405]

The Imam also narrated from the Prophet (P): "Whoever uses analogy in religious matters, God will associate him with Satan in the Fire. For, Satan was the first who used analogy when he said: "You created me from fire and created him (Adam) from clay." His mistake was that he compared clay with fire, whilst had he compared the (spiritual) light of Adam with the (physical) light of fire, he would have seen the great difference between the two lights."[Behar, vol. 2 p. 288]

The main problem of analogy is that, first of all, there is no valid evidence to prove the validity of utilising analogy in the matter of jurisprudence. Moreover, man with his insufficient intellect cannot comprehend the whole reasoning behind religious rules. Thus, it would be very possible that what we regarded as a reason is not really a reason or is only part of the reason. It is for this reason that the analogy of detergent to water for purification as well as the analogy of the unknown Mahr of a marriage to an unknown price of a transaction is incorrect. Even if the reason of a rule is mentioned in a Hadith, we are not allowed to generalise it to other issues, for there could still be more reasons that are not mentioned.

Valid Analogies: Analogy that its reason is mentioned, and the Analogy of Priority:

Some Shiá scholars such as al-Allama al-Helli (died in 726 AH) asserted that if the reasons of a rule are mentioned in a Hadith the analogy which is based on the mentioned reason (Qiyas Mansousul-E'lla) is valid. Similarly, Analogy of Priority (Qiyas Olawiyyah) is valid.

The reason because of which these two types of analogies are valid is in fact because they are not analogies. For instance, in an authentic Hadith it is narrated from Imam Redha (a.s): "The well water is vast. Nothing would make it unclean except if it changes its smell or taste. Then (to purify it) so much water must be collected from the well till the bad smell or the taste of it is removed, for it (the well water) has a wellhead (source)." [Wasaél vol.1 p.141]

Based on the reason given in the Hadith, we can deduct that the spring water or the pipe water has also the same rule, for they have sources. However, this is not analogy. It is in fact, applying a general rule on its examples.

Similarly, in the Analogy of Priority such as "Say not to them (your parents) a word of disrespect." [17:23] we conclude that hitting the parents is also by far forbidden. This conclusion again is not based on analogy; rather it is an implied meaning which by priority is in accordance with the explicit meaning of the Ayah. (Re. meeting 3).

Equality and Preferences

Equality and preferences is a title in Usulul-Fiqh for the treatment of paradoxical evidences. This discussion is when both of the evidences are seemingly valid. Otherwise, the treatment is obvious.

For instance, it is narrated from Imam Sadiq (a.s) saying: "The pricing of excrement is forbidden." [Wasaél vol.17 p.175) In another Hadith it is also narrated from him: "There is no objection in selling excrement." [Ibid]

The following are some of the main treatments for such paradoxical narrations:

The Law of 'reconciliation is preferred as much as possible'. For instance, with regards to the above two seemingly contradictory narrations, we say: The meaning of 'excrement' in the first Hadith is the faeces of human beings, and in the second one it means the excrement of animals that their meat is Halal.

The Law of ' Preferences of the characters of the narrators'. If it was not possible to make a reconciliation between the meanings of the narrations, then we ought to look at the preferences of the narrators. For instance, the narration of the one who is more pious, more learned, more just, etc. should be preferred.

The Law of 'conformity with the holy Quran' . We ought to also examine both of the narrations with the Quran and accept the one which is in accordance with the Quran.

The Law of 'disagreement with the Sunni verdicts'. Sometimes a Hadith is said for Taqqiyyah (protection). Thus, when two narrations contradict each other, the one that is against the verdict of the Sunnis would be the one that the Imam (a.s) has actually meant.

If none of the preferences were applicable, then there are different opinions amongst the experts in Usul for the solution as follows:

Both of them shall be nullified, and we shall refer to the required procedural principles (as will be discussed in the next meeting).

In the absence of the Imam (a.s), we have the option of whichever we wanted to choose.

We should take precaution.

Meeting 8: The Procedural Principles

ABSTRACT:

Introduction:

Usuleeyoun have suggested four principles in the absence of any valid evidence , called 'Procedural Principles' (al-Usulol- 'Amaliyyah). They determine the duty at the time of confusion. They are 1) Continuity (Isteshab), 2) Exemption (Baraát), 3) Precaution (Ehtiyaat), and 4) Alternatively Optional (Takheer).

Subjective Doubt and Legal Doubt:

Our doubt is sometimes about the ruling of a particular situation such as doubting whether the liquid in this particular glass is vinegar or wine? This is called 'subjective doubt' (Shobha Modhou 'yah). In another time, the doubt is about the rule itself, for instance we don't know whether drinking coffee is permissible or forbidden. This is called legal doubt (Shobha Hokmiyyah). The main concern of the procedural principles is in legal doubts, although they are by and large applicable in both subjective and legal doubt.

First Principle: Continuity (Isteshab):

'Isteshab' literally means to accompany someone or to carry something. In Usulul-Fiqh it means if you are certain about something in the past and then for some reasons doubted whether the situation has changed or not, based on the principle of continuity, you carry the previous certainty to the present time and ignore your doubt.

Conditions of the Principle of Continuity:

Certainty : The first condition for the application of continuity is that we must be certain about the previous situation. For instance, I am certain that two hours ago I did my Wudhu.

Doubt : the second condition is that we must have a doubt about the present situation. For instance, I am doubtful as to whether I still have my Wudhu or not?

Association of certainty and doubt at the same time : That means, at the present time I must be certain about the previous condition and simultaneously be doubtful about its present condition. For instance, I am certain right now that I did my Wudhu two hours ago, and at the same time doubt whether I still have my Wudhu or not?

Multiplicity of the time of the certain matter and the doubtful one : This means our doubt and certainty is about two different times of a matter. For instance, my certainty is for my Wudhu two hours ago and my doubt is about my Wudhu at the present time.

Unification of the subject of the doubt and certainty : Thus, the principle of continuity does not apply if the subject of certainty is Wudhu and the subject of doubt is Nijasat of my body for instance.

Proofs of the Validity of Continuity

Sahiha Zorarah: Zorarah narrated from him (a.s): "… For he was certain about his Wudhu, he should never break his certainty with doubt, rather he can (only) break a certainty with another certainty." [Wasaél vol. 1, p.245]

Correspondence of Ali Ibn Mohammad al-Qasani : I wrote to the Imam (a.s) -whilst I was in Medina- about the day of doubt whether it is in Ramadan to fast or not? He replied: "Doubt does not enter into certainty. Fast when you see (the new crescent of Ramadan), and stop fasting when you see (the new crescent of Shawwal)." [Wasaél vol10, p. 255]

Second Principle: Exemption (Baraát)

If there is no previous situation for our doubt and our responsibility is completely unknown, then it is the subject for the principle of exemption. For instance, we don't know whether alcohol is Najis like wine. The rule in such situations is that we are exempt and hence we regard it as Tahir.

Proof of the Principle of Exemption

"Allah puts no burden on any person beyond what He has given him." [65:7]

Although the first meaning of the Ayah is about the responsibility of men with regards to house maintenance, the term 'what' in the Ayah as it includes wealth, it also includes action and responsibility. Thus, the Ayah could also mean: Allah puts no burden of responsibility unless He has already made it clear to him what that responsibility would be.

"And We never punish until We have sent a Messenger." [17:15]

Imam Sadiq (a.s) said: "Everything is unrestricted until a prohibition is mentioned in it." [Wasaél, vol. 6 p.289]

Imam Sadiq (a.s) again quoted through his ancestors from the Prophet (P): "Nine things are taken away from my Ummah; 1) mistake, 2) oblivion, 3) what they are forced of, 4) what they don't know 5) what they cannot tolerate, 6)What was under compulsion of necessary, 7) jealousy, 8) evil omen, and 9) evil thoughts in private as long as they don't utter it. "[Wasaél vol.15, p.369]

Third Principle: Precaution (Ehtiyaat)

If we know in general about a responsibility without any specification and it is possible to exercise precaution, then precaution could be applicable. For instance, two glasses of liquids are at our disposal. We know for sure one of them is wine and the other is vinegar, but we don't know which one is which. Since, we know in general that the contents of one of these two glasses are Haram and it is possible to take a precaution, then we should avoid both of them by utilizing the principle of precaution.

Proofs of the Principle of Precaution

Imam Redha (a.s) quoted from Imam Ali (a.s) who said to Komayl: " O Komayl! Your brother is your religion, then take the precaution for your religion in whatever you want ."[Wasaél, vol.27, p.167]

The expression of 'for what you want' indicates that the imperative term 'take the precaution' in the Hadith is only a recommendation not an obligation.

It is narrated from Imam Sadiq (a.s): " The most pious of people are those who stop at the dubious (Shobha) matters." [Wasaél, vol.27, 162]

First of all, the expression of 'the most pious' indicates that it is only a recommendation. Secondly, the Arabic term 'Shobha' as translated above most possibly means dubious matters, not doubtful and unknown matter.

In conclusion, after a thorough consideration of the Ahadith about precaution and their paradoxical contradiction with the Ahadith of exemption, most jurists conclude that precaution is only a recommendation not an obligation.

Fourth Principle: Alternatively Optional (Takheer)

The application of Takheer is when there is a general knowledge about a responsibility, yet it is not possible to take the precaution. For instance, we know certainly that on Fridays either Noon prayer is obligatory, like other days of the week, or Friday prayer. We also know for sure that neither both of them are obligatory nor neither of them. Thus, either of them is obligatory. But we don't know which one is obligatory on Friday. For it is possible (based on some Ahadith) that the obligation of Friday prayer is solely at the presence of a Ma'soom Imam (a.s). Thus, it could be Haram to offer the Friday prayer at the time of major occultation. On the other hand, it could be (based on some other Ahadith and the understanding of the Ayah) that it is an obligation. The treatment of such a situation is the application of Takheer, as it is a famous Fatwa that Friday prayer at the time of major occultation (may God hasten the reappearance of our beloved Imam) is alternatively obligatory (Wajib Takheeri).

All praise belongs to Allah the Lord of the Worlds, Who blessed us to finish this course and may the Almighty accept it by His bounty and forgive me for any mistakes. Amen.

30 August 2005

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Although Zorarah has not mentioned who he is narrating from, experts asserted he does not quote from other than a Ma'soom. In this Hadith it is believed that the Hadith is from Imam Baqir (a.s).