

Introduction To Usul al-Fiqh

Dr.
Sh'aban Muhammad Ismail¹

Abridged & Translated
Suhaib Webb

Book One
SWISS Series Usul al-Fiqh
(Introduction)

All praise is due to Allah, the Sustainer of the worlds. Prayers and peace be upon the greatest of prophets and messengers, our master Muhammad, and upon his family, his companions, and those who follow his call and cling to his Sunnah until the Day of Judgment.

¹ Shaban Mohammed Ismail:

A professor of Quranic recitations and the fundamentals of Islamic jurisprudence.

- Born in Al-Khattara village, Sharqia Governorate, Arab Republic of Egypt, on August 28, 1939. [This was mentioned by the author in his books, and it corresponds to the Hijri date: 12th of Rajab, 1358 H, contrary to what the author mentioned and was widely circulated about him].

- Memorized the Holy Quran and mastered its recitation, then joined Al-Azhar where he studied at the Institute of Recitations until he obtained a specialization certificate in recitations and Quranic sciences.

- Afterwards, he joined the Faculty of Sharia at Al-Azhar University and obtained a higher diploma in Islamic and Arabic studies, followed by a master's and a PhD in the principles of Islamic jurisprudence.

- Worked as a teacher of Tajweed and Quranic recitations at Al-Azhar institutes, then at the Faculty of Islamic and Arabic Studies - Al-Azhar University, eventually becoming a professor and head of the Islamic Sharia department.

- Was seconded to work at some Islamic universities in Saudi Arabia, Sudan, and Qatar.

- Served as a member of the Quranic Manuscripts Review Committee at the Islamic Research Complex of Al-Azhar and the Islamic Fiqh Encyclopedia Committee at the Supreme Council for Islamic Affairs in Egypt.

- Supervised numerous scientific theses (Masters and PhD) and participated in various scientific conferences both within the Arab Republic of Egypt and abroad.

- Many memorizers of the Holy Quran in the seven and ten readings, especially the Hafs an Asim narration, read to him.

- Was as a professor in the Department of Recitations, Postgraduate Studies, Umm Al-Qura University.

- Has authored numerous books and research papers on Tafsir, Quranic sciences, recitations, the Sunnah, Islamic culture, jurisprudence, and its principles.

- Died in 2022 رحمه الله

From the favors of Allah Almighty upon people is that He, exalted be He, after making them successors on earth, has taken them under His care and guidance and clarified the path they must follow in this life. This is clearly illustrated in the story of Adam (peace be upon him).

Allah Almighty said,

قَالَ اهْبِطَا مِنْهَا جَمِيعًا بَعْضُكُمْ لِبَعْضٍ عَدُوٌّ فَأَمَّا يَاأَيُّهَا النَّاسُ فَاتَّبِعُوا أَمْرِي وَلَا تَتَّبِعُوا هَدْيَ الْفِتَنِ فَلَا تَكُونُوا مِنَ الْخَالِفِينَ. وَمَنْ أَعْرَضَ عَن ذِكْرِي فَإِنَّ لَهُ مَعِيشَةً ضَنْكًا وَنَحْشُرُهُ يَوْمَ الْقِيَامَةِ أَعْمَى قَالَ رَبِّ لِمَ حَشَرْتَنِي أَعْمَى وَقَدْ كُنْتُ بَصِيرًا قَالَ كَذَلِكَ أَتَتْكَ آيَاتُنَا فَنَسِيَتْهَا كَذَلِكَ الْيَوْمَ تُنْسَى. وَكَذَلِكَ نَجْزِي مَنْ أَسْرَفَ وَلَمْ يُؤْمِنْ بِآيَاتِ رَبِّهِ وَلَعَذَابُ الْآخِرَةِ أَشَدُّ وَأَبْقَى.

“Descend from it - all of you. Yet, some of you are enemies to others. Then, if guidance comes to you from Me, whoever follows My guidance will neither go astray nor suffer. And whoever turns away from My remembrance, indeed, he will have a depressed life, and We will gather him on the Day of Resurrection blind. He will say, ‘My Lord, why have you raised me blind while I was once seeing?’ [Allah] will say, ‘Thus did Our signs come to you, and you forgot them; and thus today, you will be forgotten. And thus do We recompense the one who transgresses and does not believe in the signs of his Lord. And the punishment of the Hereafter is more severe and more enduring.’” Quran (20:123-127)

Over time, prophets and messengers, speaking the language of their communities, clarified the divine laws, explaining Allah Almighty’s commands for each nation according to that nation's needs, circumstances and necessities.

Allah Almighty said,

وَمَا أَرْسَلْنَا مِن رَّسُولٍ إِلَّا بِلِسَانٍ قَوْمِهِ لِيُبَيِّنَ لَهُم فَيُضِلُّ اللَّهُ مَن يَشَاءُ وَيَهْدِي مَن يَشَاءُ وَهُوَ الْعَزِيزُ الْحَكِيمُ

“And We sent not a messenger except [speaking] in the language of his people to clarify [the message] for them. Then Allah misleads whom He wills and guides whom He wills. And He is the Mighty, the Wise.” - Quran (14:4).

When Allah Almighty wished to conclude this blessed line of prophets and messengers, He chose the best of His creation and the most complete of His messengers, Muhammad صلى الله عليه وسلم, entrusting him with the final version of the sacred law, that encompassed everything humanity requires for success in the worldly life and the hereafter, serving as the cornerstone that holds the world together.

Allah Almighty said:

بَلْ جَاءَ بِالْحَقِّ وَصَدَقَ الْمُرْسَلِينَ

‘But he [Muhammad] came with the truth and confirmed the [messages of] the messengers.’
Quran (37:37)

Prophet Muhammad's صلى الله عليه وسلم message being the final expression of Allah's law, and the closure of the prophetic line to humanity necessitates the following:

Firstly, the protection and preservation of the fundamentals of his صلى الله عليه وسلم law from distortion and change. A responsibility undertaken by Allah Himself, blessed and exalted is He, as He says:

إِنَّا نَحْنُ نَزَّلْنَا الذِّكْرَ وَإِنَّا لَهُ لَحَافِظُونَ

'Indeed, it is We who sent down the remembrance and indeed, We will be its guardian.' (Quran 15:9)

Secondly, his صلى الله عليه وسلم primary miracle is a book that speaks to the intellect, addresses people's natural disposition, and encourages people to reach the highest human character and potential. That book is the Quran. It is the greatest miracle of the Messenger of Allah صلى الله عليه وسلم, and the most significant sign of his prophethood, challenging both humans and jinn to produce something like it, even a single chapter, and its miraculous nature continues, and will remain until Allah destroys the earth.

Thirdly, this law combines what is fixed and unchangeable, with what changes according to people's circumstances and conditions, adapting for people and recognizing their differing interests over time. Therefore, the legal-texts from the Quran and the Sunnah include what is definitive in its establishment or indication, leaving no room for ijtihad (scholarly theories) or opinion, along with what permits scholarly speculation in its establishment or indication, open to ijtihad and differing viewpoints.

That makes the Shari'ah in line with the ebbs and flows of life; the changing circumstances of people, facilitating the law to accommodate new matters that arise, allowing Muslims to find answers without having to rely on any man-made laws, which often reveal their deficiencies over time.

Islamic law keeps pace with the movements of life in its growth and prosperity with axiomatic rules and universal regulations that achieve the welfare of citizens in line with the spirit of the law and its universal objectives. That is due to the depth of meanings of the Arabic words, especially since the Quran was revealed by Allah Almighty in pure Arabic, and so was the Prophetic Sunnah, which is the speech of the most eloquent of Arabs, as he صلى الله عليه وسلم, said.

Fourthly, Islamic law is demonstrable; there is no ruling without evidence to support it, either directly from religious texts or by inference from them, as Imam Al-Shafi'i, may Allah have mercy on him, said. These four points

Those four points highlight the importance of the subject of this text: usul al-fiqh. Usul al-fiqh identifies the acceptable sources of Islamic legislation, their authority, their correct usage, and the process of deriving evidences and derive rulings from the sources, the Mujtahid, so that the law is not made a plaything in the hands of deviants who speak without any restraint or regulation. This has become widespread lately, leading to anyone and everyone issuing

religious verdicts (fatwas) on the law, sometimes under the pretext of Ijtihad, and at other times under the claims of considering public interest and the ease of the law. As a result, life has become corrupted, people's conditions have become disturbed, and the lawful has been confused with the unlawful.

Allah Almighty said:

وَلَوْ أَتَّبَعَ الْحَقُّ أَهْوَاءَهُمْ لَفَسَدَتِ السَّمَوَاتُ وَالْأَرْضُ وَمَنْ فِيهِنَّ بَلْ أَتَيْنَهُمْ بِذِكْرِهِمْ فَهُمْ عَنْ ذِكْرِهِمْ مُعْرِضُونَ

'Had the truth followed their desires, the heavens and the earth and whoever is in them would have been ruined. Rather, We have brought them their reminder, but they, from their reminder, are defiant." Quran (23:71)

Because of the dangers mentioned in this verse, some scholars contend that the door to Ijtihad is closed, to prevent those who are not properly qualified from engaging in fatwa and Ijtihad.

Texts On Usul al-Fiqh

Islamic legal theorists authored numerous books on the study of usul al-fiqh. Those books vary in style, ranging from the exhaustive, the moderate and small summaries. I ask Allah Almighty to reward those authors with the best of rewards, for it is from those scholars that I have taken the information students will study in this book; it contains nothing but the transmission of scholars' opinions and their evidences, along with discussions, weighing opinions, and selecting the most correct views.

I composed it in an easy and simplified manner, understandable even to the novice, while clarifying the sources and references from which I relied upon. I organized the text into four chapters and a conclusion:

- The first chapter is on legal evidence.
- The second chapter is on the methods of deriving legal rulings.
- The third chapter is on Ijtihad (independent reasoning), Taqlid (following qualified legal opinions), and issuing fatwas.
- The fourth chapter is on legal rulings.
- The conclusion discusses the characteristics of Islamic legislation.

From Allah alone I seek help and success. Peace and blessings be upon our Prophet Muhammad, his family, and his companions.

Sha'ban ibn Muhammad ibn Ismail

Chapter One The Ten Entry Points

This chapter introduces the ten entry points needed to conceptualize usul al-fiqh, its development and its schools. Thus, in this chapter, we will cover:

1. The definition of usul al-fiqh.
2. Its subject matter.
3. Its derivation.
4. Its status and importance.
5. The benefit of studying this science.
6. The ruling on learning it.
7. The difference between foundational principles and jurisprudential rules.
8. Its origin and stages of development during the era of the Companions and their students - may Allah be pleased with them - and the mujtahid Imams.
9. Its compilations.
10. Its methodologies and theories.

Definition of Usul al-Fiqh: Scholars of Islamic law, introduce Usul al-Fiqh using two methods: as a compound phrase, and as a title.

Its definition as a compound phrase

Linguistically Arabic, usul al-fiqh is a compound phrase where each part indicates a portion of the meaning. This means that each word from the two words “usul” and “fiqh” has an independent meaning, and understanding its meaning depends on understanding each word separately. Thus, it is necessary to define both “usul” and “fiqh.”

The Linguistic and Technical Meaning of Usul

“Usul” (roots or principles) is the plural of “Asl” (root or principle).

In Arabic, “Asl” has several meanings:

1. That upon which something else is built.
2. That which is needed or essential.
3. That which the realization of something depends upon.
4. That from which something originates.
5. The origin of something.

As a Shari’ah legal term, usul carries four meanings:

1. Evidence, as in “The basis of this issue is the Book and the Sunnah,” meaning its evidence.
2. Preponderance, as in “The basis in speech is reality,” meaning what is predominant to the listener is the literal, not the metaphorical.
3. The original rule, as in “The permissibility of consuming dead meat for one in dire need contradicts the original principle.”
4. The principle used as a foundation for legal analogy (qiyas).

The Linguistic and Technical Definitions of Fiqh

As for its linguistic meaning, the word fiqh denotes three concepts:

1. Understanding the speaker's intent from his address.
2. Grasping intricate matters, hence it is not said, "I understood (faqihtu) the sky is above us," due to its obviousness.
3. Understanding in a general sense; it implies the understanding of general and intricate matters. Most scholars concluded that this meaning is correct.

Al-Jawhari stated, "Fiqh means understanding. You say, 'I understood (faqihtu) your speech' - with a kasra on the 'qaf' or 'I make (someone) understand (afqihu)' with a fatha - in the present tense meaning 'I understood, I make understand.'"

Allah Almighty says,

"So what is [the matter] with these people that they can hardly understand any statement?" [Quran 4:78].

Allah also says,

"They hardly understand any of what you say" [Quran 11:91]. And He says, "But you do not understand their praise" [Quran 17:44].

As for Fiqh in technical terms, scholars define it as,

"the knowledge of actionable Sharia rulings acquired from their detailed evidences."

Explanation of Fiqh's Definition

Their saying, "the knowledge of rulings," distinguishes fiqh from the knowledge of entities, attributes, and actions. Their saying, "Sharia-based," differentiates it from the knowledge of cognitive conclusions, such as knowing that one is half of two, or that the whole is greater than the part, akin to medicine and geometry, and from the knowledge of linguistic rulings, which is the association of one thing with another positively or negatively, like knowing whether Zaid is standing or not. Their saying, "actionable," distinguishes it from the knowledge of theological (intellectual) rulings, which are the fundamentals of the religion, like knowing God is One, All-Hearing, All-Seeing. This also excludes *usul al-fiqh*, as stated by Imam al-Razi in *Al-Mahsul*; because knowing, for example, that consensus is evidence, is not knowledge of how to perform an action.

Their saying, "acquired knowledge," distinguishes fiqh from the knowledge of Allah Almighty, His angels regarding practical Sharia rulings, and similarly, the knowledge of the Prophet Muhammad ﷺ that came not from *ijtihad* but revelation, as well as our knowledge of matters known necessarily to be part of the religion, like the obligation of the five daily prayers and similar acts, because the knowledge of all these things is not considered *fiqh*; because they are not the outcome of scholarly efforts.

Their saying, “from their detailed evidences,” distinguishes it from taqlid, which is knowledge of actionable Sharia rulings but, unlike fiqh, non-scholars not acquire those rulings from the the fatwa of the mufti; they do not extract them from the shariah texts directly.

The Second Type of Definition: Usul al-Fiqh As Subject As A Field of Study

The second type of definition scholars employed to introduce usul al-fiqh is as a subject.

Al-Qadi al-Baydawi defined usul al-fiqh in that way writing,

“It is the comprehensive knowledge of the general evidences of fiqh, how to benefit from them, and the qualifications of the scholars who benefits from them.”

Explanation of the al-Baydawi’s Definition

His statement, “knowledge” implies the

genus of knowledge in the definition, including usul al-fiqh and all sciences. His statement, “the general evidences of Fiqh,” implies generality, encompassing both agreed-upon and disputed evidences. The agreed-upon evidences (amongst Sunnis) are four:

1. The Book (Quran)
2. The Sunnah
3. The consensus (Ijma’)
4. The analogy (Qiyas).

As for the disputed sources of law, they include presumption of continuity (Istishab), juristic preference (Istihsan), consideration of public interest (Maslahah Mursalah), the statement of a Companion, the legislation of previous nations, blocking the means (Sadd al-Dhara’i), and others.

This condition in the definition: “comprehensive knowledge of General evidences of fiqh” is to avoid three things:

1. Knowledge of non-evidences, such as knowing the rulings themselves.
2. Knowledge of evidences for non-Fiqh matters, like evidences in grammar and monotheism.
3. Third: Knowing some of the evidences of jurisprudence, such as the evidences from a single chapter from usul al-fiqh, but since is a part of the principles of jurisprudence, it cannot be named “the principles of jurisprudence,” nor is the person knowledgeable in it called a jurist in principles; because a part of something is not the same as the whole.

Al-Baydawi’s statement, “comprehensive,” indicates that what is considered essential for a jurist in usul al-fiqh is the vast knowledge of the evidences, such as understanding consensus as proof, and commands indicating obligation, etc.

And his statement, “how to benefit from them,” is linked by conjunction to evidences, meaning correctly deriving legal rulings from those evidences. This involves knowing the priorities of evidences, such as prioritizing the explicit over the implicate, the mutawatir (continuously reported) over the ahad (singly reported), etc.

His statement, “and the condition of the beneficiary,” is also linked by conjunction to evidences, meaning knowing the condition of the beneficiary, who is a seeker of Allah’s ruling from the evidence, i.e., the mujtahid. Thus, the beneficiary is meant to be the mujtahid, not just any seeker of Allah’s ruling. Thus, “beneficiary,” does not include the muqalid, as claimed by some scholars.

In summary, defining the principles of jurisprudence as outlined above highlights the topics around which the science of the principles of jurisprudence revolves. These include understanding the legal evidences from which rulings are derived, knowing how to extract rulings from these evidences, and understanding the characteristics and conditions of the person who can derive these rulings: the mujtahid. These three principles are interegral to the principles of jurisprudence, hence it is said: “the principles of jurisprudence,” in the pluar not “principle of jurisprudence,” in the singular. Understand!

Its Subject Matter

The subject matter of any science is what it investigates concerning its intrinsic accidents that are external to its essence and associated with it. Scholars have differed on the subject matter of usul al-fiqh across several schools of thought:

The First School of Thought

It limits the subject matter of usul al-fiqh to the relationship between the comprehensive legal evidences and the establishment of universal rulings. The scholar of usul al-fiqh studies the legal evidences, their validity, and the general rulings established through them, such as the proof and validity of analogy as evidence for establishing rulings, similar to other evidences, and that a command without a restraintrestriction indicates obligation, prohibition without a restraint without restriction indicates forbiddance, the general is taken as it is, unless there is evidence specifying otherwise, the later text abrogates the earlier, literal is prioritized over metaphor, and the explicit is prioritized over the implicate, etc.

This school’s presentation of usul al-fiqh’s concerns align with the core topics of usul al-fiqh: knowingusul al-fiqh the legal evidences, how to derive rulings from these evidences, and the conditions of the person capable of deriving rulings from the evidences, who is the mujtahid. Therefore, it is defined by Al-Baydawi as, “Principles of jurisprudence: Understanding the evidences of jurisprudence in general, how to benefit from them, and the condition of the beneficiary.”

The Second School of Thought:

It restricts the subject of usul al-fiqh to the legal rulings in terms of their establishment by the evidences. This is a view held by some of the Hanafi scholars.

The majority of legal theorists consider this view weak, since the legal rulings are the fruits of the evidences, the produce of *usul al-fiqh*. So, how can they be the subject matter of *usul al-fiqh* when they are its outcome?

The reason for this perspective might be that because the Hanafis have a unique approach to the principles of jurisprudence, interpreting the foundational principles based on the legal opinions. Sometimes, they might modify some foundational rules if they conflict with the branches, which is a matter of terminology and not subject to dispute.

The Third School of Thought:

Its subject matter includes both the evidences and the rulings. This is the opinion of Ubaidullah ibn Mas'ud al-Bukhari, the Hanafi, known as Sadr al-Shari'ah, who passed away in 747 AH.

His perspective likely stems from the aforementioned relationship between the principles as the outcomes of the speculative rulings among Hanafis. Thus, in this framework, some foundational discussions arise from the evidences, like generality and specificity, and shared and exclusive terms, while others stem from the rulings, such as whether a ruling is related to an act of worship or a transaction. The outcome is that in designating either as the main or subject of *usul al-fiqh* is difficult, without one being inherently superior to the other. Thus, preferring one as the subject and the other as a secondary one involves arbitrary preference without a clear basis.

The Fourth School of Thought:

Its subject matter is limited to the presence of legal evidences, the juristic principles of preference (*al-Murajjihat*), and the qualities of the mujtahid.

This school has a clear deficiency because if we agree with those who say that its subject matter is strictly the existence of legal evidences (not learning them), then the principles of preference and the qualities of the mujtahid have no relationship to *usul al-fiqh*, just as the discussions on the implications of words, abrogation, and the other subjects familiar to students of this science would have no relation, also.

Therefore, we see the superiority of the first school of thought, for reasons previously mentioned, as it aligns with the nature of this science and fulfills the three core themes, defined by al-Baydawi, around which the principles of jurisprudence revolve.

Its Sources:

Upon reflection, one finds that this science encompasses a wide range of topics related to various fields. Some relate to creed, such as the infallibility of the prophets, peace be upon them, the reality of religious obligations: whether non-believers are obligated to follow the branches of Sharia, the ruling on things before the imposition of religious duties, the judgment on people living in periods without a messenger, and whether reason alone is sufficient for accountability, among other doctrinal issues. Others relate to the Arabic language and its literature, including discussions on languages and word origins, whether analogy applies to certain words, the implications of words, such as general and specific, absolute and restricted,

homonyms, synonyms, the implied and the inferred meanings, and the meanings of article of preposition articles of preposition, among many topics related to language. Usul al-fiqh Usul al-fiqh also covers many topics related to the sciences of rhetoric, like the literal the literal and metaphor, the explicit and the implied, and what happens when the literal the literal and the metaphor conflict. Additionally, readers will find that usul al-fiqh addresses numerous legal rulings, such as obligatory, recommended, permissible, disliked, and prohibited actions, validity and invalidity, performance, repetition, compensation, and other rulings related to the science of fiqh, or what some scholars call “the science of branches” in contrast to “the principles.

student Students of usul al-fiqh usul al-fiqh will notice the Sharia’s concern for the immediate and future interests of people, which scholars have termed the objectives of Sharia. In that vein, Imam Al-Shatibi added to the science of the principles of jurisprudence in his book “Al-Muwafaqat,” illustrating that the rulings of Sharia and the process of deducing them from sources are based on two main pillars:

The First Pillar: Knowledge of the Arabic language and its various styles, and understanding the implications of the words used by the Arabs in their communication.

The Second Pillar: Understanding the objectives of Sharia, which are based on safeguarding the interests of the people in this world and the hereafter.

The first pillar was established by earlier scholars, starting with what Imam Al-Shafi’i, may Allah have mercy on him. However, the second pillar did not receive as much attention as it should have. Therefore, Al-Shatibi wrote “Al-Muwafaqat” to fill this gap and complete the structure of this science. He analyzed the objectives of Sharia and detailed its types, making the first pillar a means to the second, as the latter is the primary goal. Thus, Imam Al-Shatibi was pioneering in building the principles of jurisprudence on the objectives of Sharia and safeguarding the interests of the people. With this comprehensive view by Imam Al-Shatibi, the science of the principles of jurisprudence was completed and matured, resulting from continuous and enlightened thought illuminated by the light of the noble Sharia, based on thorough examination and induction.

Therefore, we can say that usul al-fiqh is derived from several sciences:

The first: The science of Kalam - or Tawhid (Islamic monotheism). Kalam addresses what is necessary to believe correctly about Allah in terms of attributes of transcendence and perfection, what is impossible to accept about Him as being unbecoming, and what is permissible in terms of his actions. It also encompasses what is necessary to believe about the messengers and prophets, peace be upon them, what is impossible to believe about them, and what is permissible to believe about them, and related beliefs in the revealed books, the angels, the Day of Resurrection, the Reckoning, and the divine decree and predestination.

The Second: Arabic - The Quran and the Sunnah are conveyed in Arabic. Thus understanding them requires knowledge of Arabic styles in their various forms. Consequently, knowledge of

these styles becomes essential for deriving legal rulings from these two primary sources, the Quran and the Sunnah.

Imam Al-Shafi'i states in his book "Al-Risalah":

"Allah revealed the Quran in the Arabic language exclusively because the intricacies of the Book cannot be fully grasped by anyone who is unaware of the breadth, diversity, and deep meanings of the Arabic language. Those who understand it are free from the doubts that befall those who do not. Indeed, Allah addressed the Arabs in their language with meanings they are familiar with, employing the breadth of their language and its various styles to convey expansive meanings that are clear, broad, and can be easily understood from the beginning of the discourse without the need for its conclusion. There are restrictive terms intended to address specific cases, indicated by their object, and general terms that address do the same; as their are apparent meanings within a context that indicate the figurative, not the literal. All this knowledge is found at the beginning, middle, or end of the shariah discourse."

Al-Jahiz reinforces this, saying:

"The Arabs have unique proverbs, derivations, and structures, and the careful placement of speech indicates their meanings and intentions. These words have other positions- having other implications. Whoever is not aware of them lacks understanding of the interpretation of the Book, the Sunnah, the evidence, and the examples. Thus, looking into speech and various kinds of knowledge without being of the people concerned with this matter is to perish and cause others to perish."

Despite the clarity of these points, some scholars believe that many linguistic issues are unrelated to this science and should be excluded from it, such as the meanings of articles of preposition, for example.

Imam Taj al-Din al-Subki responded to them, clarifying that the relationship between the principles of jurisprudence and language is significant because understanding the Quran and Sunnah depends on understanding the Arabic language, which is fundamental to interpreting legal texts and deducing rulings. Al-Subki writes, "The scholars of the principles of jurisprudence have a closer relationship with linguistic issues than do scholars of language themselves."

Al-Zarkashi, echoing what Imam Al-Subki stated, said:

"The denial of that claim (that some aspects of Arabic are not related to *usul al fiqh*) is necessary, for the scholars of the principles have delved deeply into understanding aspects of the Arabic language that grammarians and linguists have not reached. The scope of the Arabic discourse is vast and its examination multifaceted. Language books focus on words and their apparent meanings but not the intricate meanings that require the jurist's further inductive reasoning that extends beyond the linguist's.

For example, scholars of *usul al fiqh* are concerned with the implication of the command form “do!” indicating obligation, the prohibitive form “do not do!” indicating prohibition, the use of ‘every’ and its likes for generality, and similar matters, yet these are often not found detailed in the works of linguists and grammarians. Similarly, in the books of grammarians regarding exceptions, whether exclusion comes before or after the statement, and other subtleties addressed by the scholars of *usul al-fiqh*, which they derived from the Arab discourse through special induction and specific evidences not necessitated by the craft of grammar.”

The third: *fiqh* - It is because specialists in *usul al fiqh* examine the evidences that produce *fiqh* rulings, so they must be knowledgeable of *fiqh* to conceptualize the science behind establishing or negating laws and to be capable of elucidating the issues with examples and evidences that support their claims.

The extracting of *fiqh* from the proofs sanctioned by *usul al-fiqh* does not mean these rulings exist in individual issues, because the rulings, from this perspective, cannot be established without their evidences. The principles of jurisprudence, as it is known, are the evidences of jurisprudence. If the principles of jurisprudence, that is, its evidences, depended on knowing the rulings from this perspective, it would result in a prohibited circular reasoning.

Al-Amidi said: “We do not say that its derivation, meaning the principles of jurisprudence, is from the existence or negation of these rulings in individual issues because, from this perspective, they cannot be established without their proofs. If the proofs depended on knowing them from this perspective, it would be circular reasoning.”

Al-Qarafi stated: “As for the legal rulings, their conceptualization is necessary to understand how the principles of jurisprudence can derive benefit from them. It does not depend on the rulings in terms of them being outcomes of actions because the rulings depend on the principles of jurisprudence, which are its evidences from this aspect, resulting in circular reasoning, but from the aspect we mentioned.”

Therefore, the misconception that some students of knowledge might have, thinking that basing the principles of jurisprudence on jurisprudential rulings leads to circular reasoning, is dispelled. The derivative rulings are the fruit of the principles; how could they then depend on them? This discussion highlights the foundational importance of the principles of jurisprudence in Islamic legal theory. It clarifies that the principles serve as the bedrock upon which legal rulings are derived, rather than being dependent on those rulings. This understanding prevents the circular reasoning that would occur if the principles were to rely on the outcomes they help produce. By establishing that the principles of jurisprudence are derived from a comprehensive examination of legal evidences, linguistic analysis, and the objectives of Sharia, we see a sophisticated framework that ensures the integrity and coherence of Islamic jurisprudence. This framework allows for the consistent application of Sharia across diverse situations, ensuring that the legal system remains firmly rooted in its foundational principles while being adaptable to changing circumstances.

The derivation of the principles of jurisprudence from the objectives of Sharia

This entails considering the wisdom behind legislation and the imposition of obligations on the liable individuals, with the ultimate goal being the preservation of the five essentials: religion, life, progeny, intellect, and wealth, along with everything that contributes to achieving and safeguarding them. This perspective was notably addressed by Imam Al-Shatibi.

The fourth: Logic - Logic, in the context of *usul al-fiqh*, is the study of conceptual and definitive knowledge in terms of leading to unknown conceptual or definitive conclusions. Or it can be seen as a set of rules that, when observed, protect the mind from error in thinking. Logic aids the mind in avoiding errors in thinking, similar to how the science of grammar assists the tongue in correctly articulating the endings of words. It also cultivates in a person the ability to critique, reason accurately, establish arguments and evidence, and refute those who are misguided.

These aspects illuminate the path for the *mujtahid* (Islamic jurist) and provide a solid foundation for debate. Consequently, many scholars of *usul al-fiqh* commence their works by mentioning logical principles and rules, underscoring the importance of logic in ensuring rigorous and error-free legal reasoning.

The author of *Al-Sullam* said:

“Logic to the mind is akin to grammar to the tongue; it safeguards thoughts from the abyss of error and unveils the cover from the subtleties of understanding.”

Al-Ghazali, in the introduction to “*Al-Mustasfa*,” regarding logical principles, stated: “This introduction is not part of the science of *usul al-fiqh* nor is it one of its specific preliminaries. Rather, it is an introduction to all sciences, and one who does not grasp it cannot be trusted with his knowledge at all.” He then said, “The need of all theoretical sciences for this introduction is like the need of the principles of jurisprudence.”

Given the significance of these preliminaries, some faculties of Sharia include them within the curriculum of the principles of jurisprudence as an introduction to the subject.

Now, let’s circle back to our discussion on the ten ideas needed to envision *usul al-fiqh*.

Its Status and Importance

The importance and status of a science among various disciplines stem from the effects and goals achieved through it. It’s a given that Islamic Sharia is the final divine law, carrying Allah’s methodology in its ultimate form and is the standard to be applied in all aspects of life. Undoubtedly, human intellects vary, perceptions differ, and understandings diverge. If everyone were allowed to freely interpret the rulings from the texts, and if the path were open to anyone wishing to tread in this field, confusion would ensue, rulings would conflict, and the order of this Sharia would be disturbed. Hence, it was necessary to establish rules for those who wish to

deduce legal rulings from their evidence. And if Allah, blessed and exalted, has guaranteed the preservation of this Sharia, then one of the manifestations of this preservation is the establishment of these rules and regulations: *usul al-fiqh*.

Imam Al-Qarafi stated: "Without the principles of jurisprudence, nothing of the Sharia would be preserved, neither little nor much. Every legal ruling necessarily has a cause, a subject, and an evidence indicating both the ruling and its cause. If we eliminate the principles of jurisprudence, we eliminate the evidences, leaving us with no ruling and no cause. Establishing the religion without its evidences and rules, based merely on whims, contradicts consensus. Perhaps they do not consider the consensus significant because it is among the principles of jurisprudence, or they do not realize that it is the first level of the mujtahids. If a mujtahid lacks it, he is definitely not a mujtahid."

If the sources of legislation are generally the Quran, Sunnah, and *ijtihad*, then the science of the principles of jurisprudence is one of the primary conditions that must be met by a mujtahid for his *ijtihad* to be legitimate.

Imam Al-Ghazali said: "The greatest sciences of *ijtihad* encompass three fields: hadith, language, and the principles of jurisprudence."

Imam Fakhr al-Din al-Razi stated, "The most important sciences for a mujtahid are the science of the principles of jurisprudence."

Imam Al-Shawkani stated "The fourth condition is that one must be knowledgeable in the science of the principles of jurisprudence; it encompasses what is needed, and one should extend their expertise in it, familiarize themselves with its summaries and detailed works as much as their capacity allows. For this science is the pillar of the tent of *ijtihad*, and the foundation upon which the pillars of its structure stand. One must examine every issue thoroughly to reach the truth in it; for doing so enables one to easily trace the branches back to their roots... He mentioned: If one falls short in this discipline, the return becomes difficult for him, and he flounders and confuses."

The benefit of studying this science

One of the most significant characteristics of this Sharia is that it is a proven law, based on evidence and argument. There is no legal ruling without evidence and a proof that establishes it, either directly from the text or by inference.

Herein lies the importance of this science, showcasing its benefits and objectives, including:

First: The ability of the scholar to establish Sharia evidence for issues whose rulings need to be known, especially for new occurrences and developments in life. Thus, a mujtahid can deduce the legal ruling from the evidence through the rules of this science, beginning with searching for the ruling of the issue in the Quran, then in the Sunnah of the Prophet, followed by consensus (*ijma'*), analogy (*qiyas*), and then other evidences whose validity is disputed among scholars,

such as juristic preference (istihsan), consideration of public interest (maslahah mursalah), blocking the means (sadd al-dhara'i), legislation from before us, Additionally, a mujtahid is capable of addressing evidences that appear to be in conflict on the surface, thereby dispelling any misconceptions about contradictions and inconsistencies within the rulings of this Sharia—God forbid that such should exist in His wise legislation.

Allah the Almighty truthfully says:

“Do they not then consider the Qur’an carefully? Had it been from other than Allah, they would surely have found therein much contradiction.” [An-Nisa: 82]

What is said about the Holy Quran also applies to the noble Sunnah, for its meaning and foundation are from Allah, and the Messenger of Allah had no role in it except for the verbal expression.

Allah the Almighty says:

“Nor does he speak from [his own] inclination. It is not but a revelation revealed.” [An-Najm: 3-4]

The science of the principles of jurisprudence and the application of its rules and concepts fulfill the undisputed matter among Muslims that Islamic Sharia is the final of all divine laws, applicable in every time and place.

There is no issue faced by Muslims, whether on an individual or collective level, that cannot be addressed and given a Sharia ruling from the texts of the Quran and Sunnah, and what derives from them, through the rules of the principles of jurisprudence.

Secondly: It is one of the greatest means of preserving this religion and defending its evidences against atheists and skeptics. It provides a clear explanation of the validity of different Sharia evidences, especially those questioned by many opponents of Islam, such as the validity of the Sunnah, and the claim that legal rulings can only be derived from the Quran, particularly the ahadith (singular narrations).

The ability of a mujtahid to handle evidences that appear contradictory on the surface eliminates any misconceptions about the Sharia containing contradictions and inconsistencies—God forbid such a thing in His wise legislation.

Allah the Almighty truthfully says:

“Do they not then consider the Qur’an carefully? Had it been from other than Allah, they would surely have found therein much contradiction.” [An-Nisa: 82]

What is said about the Holy Quran also applies to the noble Sunnah, as its meaning and foundation are from Allah, and the Messenger of Allah’s role was only in verbal expression.

Allah the Almighty says:

“Nor does he speak from [his own] inclination. It is not but a revelation revealed.” [An-Najm: 3-4]

The science of the principles of jurisprudence, and the application of its rules and various concepts, achieves the uncontested matter among Muslims that Islamic Sharia is the seal of all divine laws, applicable in every time and place.

There is no issue faced by Muslims, whether on an individual or collective level, that cannot be addressed and given a Sharia ruling from the texts of the Quran and Sunnah, and what derives from them, through the rules of the principles of jurisprudence.

Secondly: It is one of the greatest means of preserving this religion and defending its evidences against atheists and skeptics. It provides a clear explanation about the validity of different Sharia evidences, especially those questioned by many opponents of Islam, such as the validity of the Sunnah, and the claim that legal rulings can only be derived from the Quran, particularly the singular narrations (ahadith).

Thirdly, the need for scholars of comparative Fiqh (Islamic jurisprudence) for this discipline is significant because comparison requires strengthening some evidences over others, to act or issue fatwas based on the more valid opinion and discard the less valid one. This can only be achieved by adhering to the foundational rules, such as understanding the implications of explicit (mantooq) and implicit (mafhum) meanings, their validity, the rule of contradiction between them, and which one takes precedence.

Likewise, understanding the implications of texts, apparent meanings, interpretations, shared terms, singular terms, and other foundational concepts is essential.

Fourthly, it is one of the most important conditions that must be met by a person who has reached the level of Ijtihad (independent legal reasoning). This knowledge transforms a jurist into an enlightened mujtahid, who regulates people's actions with Sharia guidelines, ensuring that his ijtihad is acceptable and within the correct methodology.

By adhering to these rules and applying them in all aspects of life, the claim made by some scholars about the closure of the door of ijtihad, and that all rulings have been recorded and completed by predecessors, rendering ijtihad unnecessary, is proven baseless.

Such a claim is incorrect and contradicts the suitability of Islamic Sharia for every time and place. Life continues, and the events of time and new occurrences are endless. The notion of closing the door of ijtihad implies that Sharia is incapable of providing rulings for new occurrences, which contradicts Allah's statement: “This day I have perfected for you your religion and completed My favor upon you and have approved for you Islam as religion.” [Al-Ma'idah: 3].

This verse affirms that Islam is a complete and perfect religion suitable for all times and places, necessitating the continuous application of *ijtihad* to address new and emerging matters. The necessity for scholars of comparative *Fiqh* to engage deeply with this discipline is crucial. Comparison requires the strengthening of some evidences over others to adopt or issue fatwas based on the more valid opinion, leaving behind the less valid. This is only achievable through adherence to foundational principles, such as understanding the implications of explicit and implicit statements, their validity, the rule of conflict between them, and which one takes precedence.

Similarly, understanding the implications of texts, apparent meanings, interpretations, shared terms, and singular terms, along with other foundational concepts, is essential.

Furthermore, being well-versed in the principles of jurisprudence is one of the most critical conditions for someone who has achieved the level of *Ijtihad*. This knowledge transforms a jurist into an enlightened *mujtahid*, who regulates people's actions with *Sharia* guidelines, ensuring that his *Ijtihad* is acceptable and aligned with the correct methodology.

By adhering to these principles and applying them in all aspects of life, the claim made by some scholars about the closure of the door of *Ijtihad*, suggesting that all rulings have been documented and completed by predecessors, thus eliminating the need for *Ijtihad*, is proven baseless.

Such a claim contradicts the suitability of Islamic *Sharia* for every time and place. Life continues, and the events of time and new developments are endless. The notion of closing the door of *Ijtihad* suggests that *Sharia* is incapable of providing rulings for new occurrences, which contradicts Allah's statement: "This day I have perfected for you your religion and completed My favor upon you and have approved for you Islam as religion." [Al-Ma'idah: 3].

This verse affirms that Islam is a complete and perfect religion, applicable in every time and place, necessitating the continuous application of *Ijtihad* to address new and emerging matters.

The essential role of comparative *Fiqh* scholars in engaging with the principles of jurisprudence underscores the dynamic nature of Islamic law, emphasizing the need to weigh and strengthen certain evidences over others. This process ensures that rulings are made based on the most valid opinions, leaving behind the weaker ones. Achieving this balance requires a deep understanding of foundational principles, such as the implications of explicit and implicit statements, their validity, the rules governing contradictions between them, and determining which takes precedence.

This includes understanding the implications of texts, apparent meanings, interpretations, shared terms, singular terms, and other foundational concepts. Such depth of knowledge is crucial for those who have reached the level of *Ijtihad*, as it equips them to regulate people's

actions with Sharia guidelines effectively, ensuring their Ijtihad is accepted and does not deviate from the correct path.

Adhering to these principles and applying them across various aspects of life refutes the claim made by some scholars about the closure of the door of Ijtihad, arguing that all rulings have been documented and completed by predecessors, thus negating the need for further Ijtihad. This claim contradicts the universality and applicability of Islamic Sharia in every time and place, as life continues to evolve, and new occurrences and developments are endless. The notion of closing the door to Ijtihad suggests a limitation in Sharia's ability to provide rulings for new occurrences, which is at odds with Allah's declaration: "This day I have perfected for you your religion and completed My favor upon you and have approved for you Islam as religion." [Al-Ma'idah: 3].

This verse affirms the completeness and perfection of Islam as a religion suitable for all times and places, necessitating ongoing Ijtihad to address and provide rulings for new and emerging matters, ensuring that Islamic law remains relevant and applicable to the ever-changing circumstances of life.

Fifthly, this science aids in understanding other disciplines. A commentator cannot interpret the verses of the Holy Quran without the light of these rules and returning to foundational concepts, applying the Quranic text to them.

Similarly, the explainer of the Prophet's hadiths, and indeed all other Islamic sciences, cannot be fully understood or their subtleties grasped without knowledge of foundational principles.

Sixthly, there are intermediates among scholars, those who have not reached the level of mujtahids but are not among the laypeople. For these individuals, this science provides reassurance that the rulings derived by jurists of various madhabs (schools of thought) are built on a sound methodology and align with the spirit and general objectives of Islamic Sharia. It also aids them in matters not specifically addressed by early scholars by allowing for proper deduction and theorization.

Seventhly, this science benefits judges and students of law in applying various texts to their specifics and in understanding the potential implications of a text.

Thus, it has a far-reaching impact on forming an enlightened jurist and a juristic mentality capable of thorough study, examination, and sound deduction.

Given the discussion on the significance of the science of "Principles of Jurisprudence" (Usul al-Fiqh) and the necessity for it, it becomes clear that learning this science is considered a collective obligation (Fard Kifayah) like other beneficial sciences. This is because fulfilling certain obligations cannot be achieved without it. There's no doubt that understanding and applying Sharia texts in the Muslim community is crucial and a religious duty. Many scholars of the nation have stated that learning this science is a collective obligation, including Imam Ali bin

Sulaiman Al-Mardawi, the Hanbali jurist, Ibn Muflih, Ibn Hamdan, Taqi al-Din Ibn Taymiyyah, Fakhr al-Din al-Razi, Al-Qarafi, and others