

Professor Abdolkarim Soroush

How Does the Science Of *Fiqh* Evolve?

Like other human-made sciences, the science of *fiqh* needs sustenance; otherwise, it stops flourishing, wanes, and eventually fades away. Its nurturing happens in two ways: practical and theoretical.

Practical nurturing involves what most of the *fuqahā'* (jurists) have been doing. Namely, when facing emerging practical questions, they struggle and try to find answers to them. Practical questions such as: How should women perform *wuḍū'* (minor ablution) if they have implanted nails? How to pray in space or on the Earth's two poles? What about same-sex marriage or white marriage? What about the moon crescent sighting via a telescope? And infinitely more alike. Such numerous endless questions have a practical nature, and the jurists have always been occupied with them. Indeed, the corpulent science of *uṣūl al-fiqh* (science of principles of jurisprudence or the logic of normative statements) has been created, by humans, to solve such practical problems. First, it assists jurists in knowing how to infer relevant meanings from normative statements. Secondly, it shows them how they can apply practical principles such as *istiṣḥāb* and *barā'ah* (assumptions of continuity and innocence) in cases of doubt. Thus, the science of principles of *fiqh* (*ilm al-uṣūl*) is the most important base for using *ʿaql* (human reason) to discern the rulings of the Sharī'ah. The colossal amassment, or perhaps the cancerous growth, of *ilm al-uṣūl*, particularly among the Shī'ī *fuqahā'*, indicates a vivid case of rational exercise in the practice of *fiqh*.

Nevertheless, nurturing and nourishing *fiqh* occurs in theoretical ways too. This is, indeed, an aspect which has been mostly neglected. The science of *fiqh* is a consumer science. It utilises products of theoretical reason. As I have elaborated in my book, *The Theory of Contraction and Expansion of Religious Knowledge*, *fiqh* benefits from and is nourished by sciences like *kalām* (theology), philosophy, anthropology, etc. It is not simply the case that a *faqīh* embarks on deriving new *aḥkām-i far'īyyah* (secondary and minor rulings) with his mind void of such theoretical presuppositions. For instance, if a *faqīh*'s perception of God, revelation, duty, rights, certainty, human being, society, law, etc., changes, his inferences (*istinbāṭāt*) will undoubtedly change. This means that a *faqīh* has to learn much more than simply *uṣūl al-fiqh* in order to become a real *faqīh*.

Suffice it to replace just the previous *fuqahā'*'s perception of the “duty-bound human being” with the “right-bound human being” to witness how [almost] the entire *fiqh* transforms. As such, there will be no room for the killing of an apostate, nor for considering disbelievers as impure. Even in practical issues, like using a telescope in the moon-sighting, it depends on the theoretical understanding of the use of scientific and technological devices. Can what a telescope reveals be considered as “seeing” (*ru'yah*) so that the statement of (*Ṣūm li-ru'yatih wa ifṭir li-ru'yatih*) is realised? Or not? These are theoretical discussions in the philosophy of science, and there is no way forward without knowledge thereof.



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