NON-ANALOGICAL ARGUMENTS IN SUNNI JURIDICAL QIYĀS*

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I. Introduction

That the Sunnī juristic conception of arguments can generally be characterized as nonformal is due to the fact that the validity of arguments rests primarily upon the epistemological value of the revealed premises from which they are constructed. The linguistic and legal structure of these premises determine the type of argument to be used in reaching the legal norm, the *ḥukm*. Accordingly, methods of reasoning employed in the construction of positive and substantive law range, as we shall see, from syllogistic to inductive arguments, including irregular deductions such as relational arguments. These arguments, though often disguised by the seemingly impenetrable and unique formulations of the *usūlis*, can with the assistance of logic and dialectic be deciphered, and subsequently labeled with the corresponding designations given to them in these fields. Without such a procedure the identity of arguments prescribed in the works of *usūl al-fiqh* will remain in the realm of the obscure.

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2 On the logical properties of relational inferences see section IV below.

*Arabica*, Tome xxxvi, 1989
Muslim legal theoreticians conceive the material sources—the Quran, the Sunna and consensus—as linguistically consisting of two basic categories: one encompassing clear premises, subject to only one interpretation, and the other ambiguous, capable of varying interpretations. Premises in the first category, unlike the second, yield necessary and thus certain knowledge ('ilm 'darūri qaṭī'). Necessary or immediate knowledge is defined as the cognition which compels itself upon the mind without inference, such as the knowledge of the law of the excluded middle, the feeling of illness and the hearing of a particular sound. Through the sense of hearing, for instance, knowledge of certain revealed 'clear speech' necessarily obtains in the intellect. Furthermore, necessary knowledge is said to obtain even with regard to matters unspecified by the sources, but matters which are tacitly subsumed under a categorical textual statement. An excellent case in point is Quran V:3 «forbidden to you are carrion, blood, pork (laḥm al-khinzīr)…». Sunni jurists unanimously argued that the term 'khinzīr', though it was originally intended to mean only 'pork', covers all types of swine meat, including that of wild boars (khinzīr barri). Though reasoning in this case can be clearly reduced to a syllogistic form, the jurists insisted that reaching the conclusion 'The meat of wild boars is forbidden' needs no inference since it is understood from the language of the Quranic statement itself (min jihati dalālati al-lafz). Thus matters specified in the material sources and those which can be immediately subsumed under them were considered to be purely linguistic and certainly outside the sphere of inferential reasoning. Only points of law and fact that were not covered by the sources were to be the object of reasoning through what is known as qiyyās. The domain of the operation of qiyyās was therefore predetermined to a significant extent by the volume of textual statements which were deemed to have been imbued with dalālat al-nass. Admittedly, however, the constitution of such statements

3 Although consensus cannot be considered as a revealed source of law, the great majority of usūlists argued that once a consensus has been reached on a case of law, the case itself becomes an authoritative precedent upon which a further qiyyās can be based. See the introduction to my «On the Authoritativeness of Sunni Consensus,» in the International Journal of Middle East Studies, 18, 1986, pp. 427-454.


5 Ibn Rushd, Bidāya, I,3; Ṭāhānawi, Kashshāf, s.v. «māḥūm», II, 1153, 11. 20 f.