

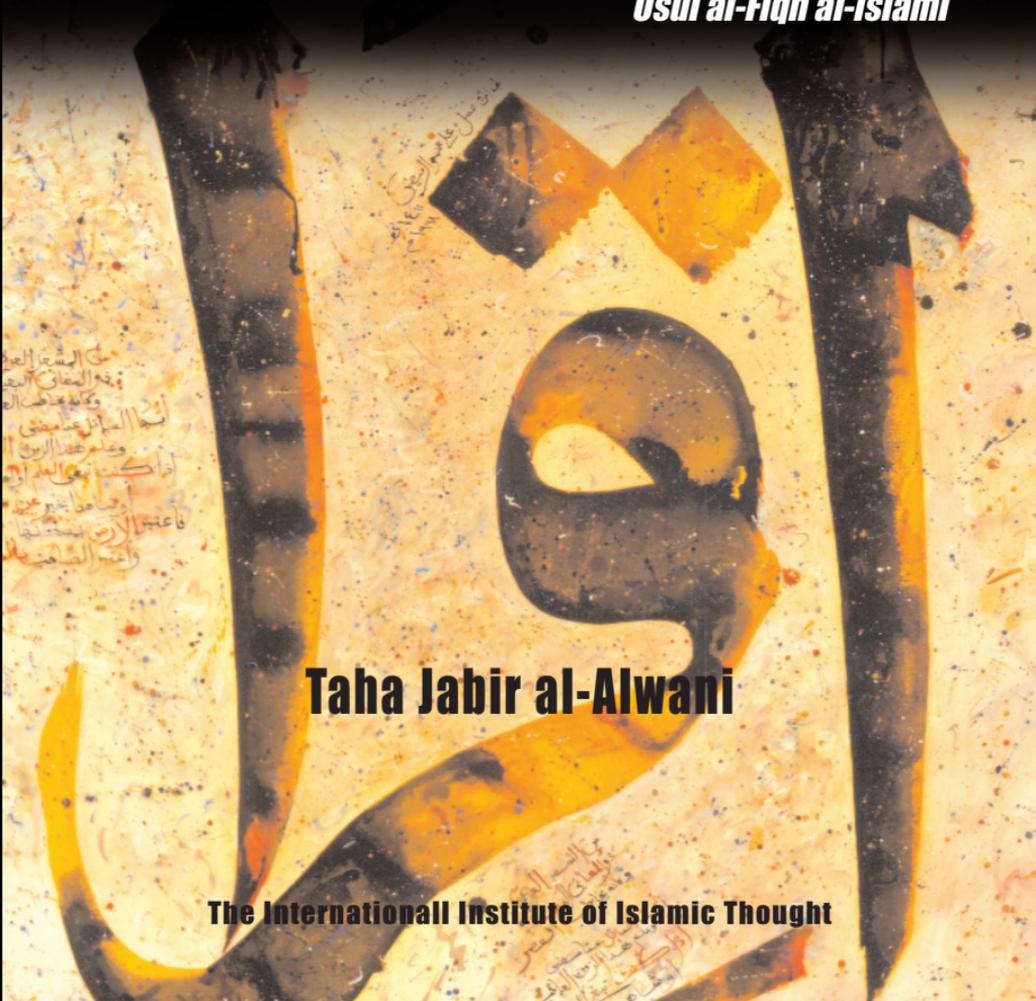
SOURCE METHODOLOGY IN

Islamic Jurisprudence

Usul al-Fiqh al-Islami

Taha Jabir al-Alwani

The International Institute of Islamic Thought



SOURCE METHODOLOGY IN
ISLAMIC JURISPRUDENCE

Uṣūl al-Fiqh al-Islāmī



TAHA JABIR AL-ALWANI

A New Revised English Edition by
YUSUF TALAL DELORENZO & ANAS S. AL SHAIKH-ALI



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DEDICATION

We present this study to those among the Muslim youth who are searching for a ray of light in the deepest darkness that surrounds us, and who are seeking a solution and a way out of the crisis that currently overwhelms us; in the hope that it may be of benefit to them, inshā'Allah.



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Foreword

THE INTERNATIONAL INSTITUTE OF ISLAMIC THOUGHT (IIIT) has great pleasure in presenting a newly revised and edited edition of Dr. Taha Jabir al-Alwani's *Source Methodology in Islamic Jurisprudence: Uṣūl al-Fiqh al-Islāmī*. Since publication of the first edition in 1990, the work has proved to be extremely popular, receiving attention from a large circle of readership worldwide, successful enough, felt the publishers, to warrant the production of a third edition.

Uṣūl al-fiqh is a science in which reason and revelation come together, where considered opinion is accompanied by received law. Yet, *al-Uṣūl* does not rely purely on reason in a way that would be unacceptable to revealed law, nor is it based simply on the kind of blind acceptance that would not be supported by reason. Hence, the science of *uṣūl al-fiqh* has been called the "Philosophy of Islam".

Uṣūl al-fiqh is a very complex and important subject, difficult to grasp even for those with an understanding of the Arabic language the medium in which most written material has hitherto been available. This translation has tried to bridge the gap by presenting to an English-speaking audience an introduction and insight into some of the basic and core aspects of this vital subject.

It is also an attempt to simplify *uṣūl al-fiqh* and introduce it to specialists in the social sciences and humanities who do not have the opportunity to study the details of the science considered to be the most important method of research produced by Muslim thought during its most creative period.

In conformity with the IIIT In-House Style Sheet, *A Guide for Authors, Translators and Copy-Editors*, words and proper names of Arabic origin or written in a script derived from Arabic have been transliterated throughout the work except when mentioned in

quoted text. In such cases they have been cited as they appear without application of our transliteration system. However, words and common nouns of Arabic origin that have entered into general usage are not italicized, nor written with initial capital.

We would like to express our thanks to Dr. Taha J. al-Alwani, who, throughout the various stages of the production of this edition, cooperated with the editorial group at the IIIT London Office.

We would also like to thank the editorial and production team at the London Office and those who were involved in the completion of this book: Shiraz Khan, Dr. Maryam Mahmood, and Melissa Dyson, all of whom worked tirelessly in preparing this new edition for publication. May God reward them and the author for all their efforts.

Shaʿban 1424
October 2003

DR. ANAS AL SHAIKH-ALI
ACADEMIC ADVISOR
IIIT LONDON OFFICE

A Word from the Editors

THE BRIEF EDITORS' INTRODUCTION TO THE FIRST EDITION BEGAN AS FOLLOWS:

Legal studies in any language pose problems to authors and readers alike. In translation, those same problems are compounded, even many times over at some places in the text, so that quite often the result is, to say the least, disappointing. Unfortunately, with regard to English translations of classical works of the Islamic intellectual heritage, this sort of disappointment has been the rule rather than the exception.

Certainly, to the student of *Uṣūl al-Fiqh* this disappointment has been all the more acute. While translations of classical works in the field are nonexistent, with the shining exception of Professor Khadduri's excellent rendition of Imam al-Shāfi'ī's *Al-Risālah*, there is as yet no general and systematic study of the discipline in English. In Western languages, even survey literature on the subject is scarce.

In the years that have passed since the publication of the first edition of this work, however, a number of significant studies on the subject have appeared. The Institute had itself published two works in Arabic on the *maqāṣid*. While mention of several of these works is made at various places in the notes of this edition, it will not be out of place to acknowledge here the valuable contributions to the field of English made by the following scholars: Bernard Weiss, Wael Hallaq, Ahmad Zaki, Frank Vogel, Nuh HaMim Keller, Marcia Hermansen, M. Hashim Kamali, Ahmad Hasan, Khalid Masud and Imran Nyazee. The Institute can only hope that the interest shown by these scholars and others will contribute to a serious effort among Muslims, and particularly among Muslim social

scientists, to approach the classical discipline of *uṣūl* as the forerunner, if not the foundation, of a new methodology for dealing with the sciences of revelation in the overall quest for answers to the problems of Muslim society today.

The present volume should be understood as an overview of the field, and as an introduction to the classical discipline. It remains the conviction of the Institute that the source methodology developed by the scholars of *uṣūl* for dealing with and interpreting the texts of the Qur'an and Sunnah is the sort of tool that needs to be placed in the hands of Muslim social scientists. By acquainting them with the field and with those who have enriched it in the past, the Institute hopes to increase the appreciation of modern scholars for this discipline and the academic excellence which it represents.

Certainly, for our part, we can only hope that we have succeeded in making the text clear. Moreover, we have taken pains to include a full subject index that should prove useful to specialist and generalist alike. Also, while the Arabic edition of this book was published with topic headings, it was not divided into chapters. In the interest of clarity, we have divided the work into chapters by converting, where necessary, topic headings into chapter headings; and by adding brief explanatory notes.

May our modest effort, joined in a worthier labor of the author, be accepted by the Almighty, and may it be of some service to those who seek the truth and work for the betterment of our universal nation.

Author's Introduction

The research for this work originally formed part of the studies I undertook for Islamic jurisprudence for the doctoral program at Al-Azhar University in 1973. On the occasion of the Second International Conference on Islamic Thought, held in Islamabad, Pakistan in 1982 on the subject of the "Islamization of Knowledge," material from this thesis was presented in a revised form.

When the League of Muslim Youth expressed their desire to hold a course on *Uṣūl al-Fiqh* (Source Methodology in Islamic Jurisprudence), the material for this study formed one of the six subjects covered in the course. Then, as many of those who attended the course expressed a wish to obtain the lectures in printed form, and as the study was already being printed as one of the papers for the Islamabad Conference on the Islamization of Knowledge, which the Institute will soon publish*, *inshā'Allah*, we decided to take this opportunity to present this part of the Conference material to both those who attended the course and to others who may wish to gain knowledge of this essential science of Shari'ah.

The science of *uṣūl al-fiqh* is rightly considered to be the most important method of research ever devised by Islamic thought. Indeed, as the solid foundation upon which all the Islamic disciplines are based, *uṣūl al-fiqh* not only benefited Islamic civilization but contributed to the intellectual enrichment of world civilization as a whole. It will not be out of place to note here that the methods of analogical reasoning developed within the framework of Islamic Jurisprudence constituted the methodological starting-point for the establishment and construction of empiricism, which in turn is considered to be the basis for contemporary civilization. We

* The edited proceedings of the Islamabad Conference were published by the Institute as volume number 5 in the Islamization of Knowledge Series, and is entitled *Islam: Source and Purpose of Knowledge* (Herndon, Virginia: IIIT, 1988).

present this brief work to all those who are interested in gaining some knowledge of this science; and we ask Allah to help us benefit from what we learn, and to learn that which will benefit us, and to protect us from knowledge which is not beneficial, and from deeds that are not acceptable to Him. All praise and thanksgiving belong to Him, the Lord and Sustainer of all the worlds!

TAHA JABIR AL-ALWANI

UŞÛL AL-FIQH IS A SCIENCE WHICH IS DEEPLY EMBEDDED IN THE ISLAMIC EXPERIENCE AND ONE WHICH, THANKS TO ITS METHODS AND CONCERNS, HELPED GENERATE AN EMPIRICAL TREND IN MUSLIM CULTURE, IN TURN BENEFITING WESTERN THINKING. ITSELF A CREATION OF INFLUENCES FROM WITHIN AND WITHOUT, AL-UŞÛL, OFTEN CALLED "THE PHILOSOPHY OF ISLAM," INVITES BOTH REASON AND REVELATION TO WORK FOR THE HARMONY AND WELL-BEING OF HUMAN SOCIETY.

ALTHOUGH THE SCIENCE OF AL-UŞÛL IS MAINLY CONCERNED WITH LEGAL MATTERS, ITS RANGE AND THE ARSENAL OF TOOLS IT USES MAKES IT ATTRACTIVE TO STUDENTS OF ISLAMIC JURISPRUDENCE AS WELL AS TO OTHER SCHOLARS OF ISLAMIC KNOWLEDGE AND CULTURE. THE DIFFICULTIES IT POSES ARE INEVITABLE. THIS BOOK, HOWEVER, ATTEMPTS TO SIMPLIFY THIS "MOST IMPORTANT METHOD OF RESEARCH EVER DEvised BY ISLAMIC THOUGHT" DURING ITS MOST CREATIVE PERIOD, AND BRING IT TO THE UNDERSTANDING AND APPRECIATION OF THE MODERN LEARNER, WHILE UNDERSCORING ITS IMPORTANCE AND RELEVANCE TO THE WORLD OF ISLAM TODAY.

DR. TAHA JABIR AL-ALWANI

The author is a graduate of Al-Azhar University, Cairo. He is President of The Graduate School of Islamic and Social Sciences (GSISS), USA; President of The Fiqh Council of North America; Member of the OIC Islamic Fiqh Academy; and former President of The International Institute of Islamic Thought (IIIT), USA. He is also the author of numerous works including: Fiqh for Minorities; The Ethics of Disagreement in Islam; Ijtihad; and The Qur'an and the Sunnah: The Time-Space Factor.



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