

The nature of vengeance and its legal effects

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Abstract

Vengeance is developed in order to oblige the debtors to return their debts and to support those creditors who, for administration of justice, cannot deliver any acceptable document to the machinery of justice. The exercise of vengeance is applicable, sometimes by taking back the corpus of usurped property and some other times by taking an intervenient exchange. Religious jurists have different options about revenger's style of ownership when he tries to take the exchange instead of the corpus of property. Some of these jurists believe that the exercise of vengeance will result in the precarious possession and the other ones find it as the cause of permanent ownership, and some of them, even have chosen the detailed word. Accepting each of this viewpoints will have different result and consequences, especially in that case where the revenger, after taking vengeance and receiving the exchange, will be capable of taking back the corpus of property. Briefly, the author of this essay believes that taking the intervenient exchange does not have a united effect and according to various hypotheses, it will have different consequences. This essay is compiled in order to specify the word of the essayist and criticize the word of the competitor.

Keywords: debt-amount, intervenient exchange, permanent ownership, right, vengeance.

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Comprehensibility of religious texts from *Usulis*' perspective

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Abstract

Religious texts are divided into Quranic verses and *hadiths* of the infallible-innocent personalities. Disputing over comprehensibility of such texts, *Usulis* have presented different opinions in this connection. Although *Usulis*' disagreements concern both major and minor premises of that discussion, the present research deals only with the major premise. By the minor discussion is meant meaningfulness, and by major discussion is meant comprehensibility of those texts. *Usulis* have presented different views all of which differentiate between various states. In the present essay, we firstly survey and analyze those views relying on an intellectual analysis as well as religious texts, and then present the accurate theory, which is absolute and general comprehensibility of religious texts, and its proofs. The chief achievement of this research is indication of incorrectness of differentiating between various states on the one hand and affirmation of theory of absolute, general comprehensibility of religious texts on the basis of sources of the science of *usul al-fiqh* and opinions of *Usulis* on the other.

Keywords: comprehensibility, *hadiths* of the infallible-innocent personalities, religious texts, science of *usul al-fiqh*, *Usulis*.

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The nature of governmental ordinance and fatwa

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Abstract

According to any of the three positions of fatwa-giving, ordering, and judging, every *mujtahid* will be vested with a specific authority and power. According to the first position, *mujtahid* can give verdicts – those verdicts being products of a methodological *ijtihad*. According to the second position, he can order something to be done or to be eschewed because of its particular expediency. This is not the same with secondary judgments, and can be done because of *mujtahid*'s being in the position of authority. And according to the third position, *mujtahid* can become a judge in legal claims and issue judgments. Now, the question is that whether or not two positions of fatwa-giving and judging as two separate position of *mujtahid* are separate in their nature as well. Should they be separate, the scholarly and practical result of this research would appear in the position of proving in the discussion of contradiction, or interference, of fatwa and judgment– which should be dealt with in another essay. The present writing intends to find the answer to this fundamental question through a descriptive-analytical approach by gathering evidence from authentic juristic sources so that it may determine the criterion for distinguishing those two positions.

Keywords: fatwa, governmental ordinance, Islamic governor, *mujtahid*.

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The validity of *rijal* experts' opinions from the viewpoint of conjectures authorized by the judgment of the wise

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Abstract

Recognition of whether hadith transmitters are trustworthy, which is considered among necessary preliminaries of juristic deductions, is mostly dependent upon statements of *rijal* experts. In order to authenticate opinions of earlier *rijal* experts Muslim scholars have suggested some ways, such as authority of single report, that of testimony, that of expert's opinion, or the Closure Proof each of which encountering some problems or, at least, some limitations and conditions in such a way that one cannot make acceptance of opinions of *rijal* experts dependent on them. While surveying and criticizing those ways, which presuppose that actualization of one of such designations is necessary for the departure from prohibition of acting on the basis of conjecture, the present essay proposes a perspective according to which actualization of a particular designation or causality of a specific factor plays no role in the authority of conjectures; rather, what causes departure from prohibition of acting on the basis of conjecture is that the opinion should reach a level that it could remove the wise's state of perplexity in the position of action and propel them to the action. By authenticating such conjectures, which we call "conjectures authorized by the wise," one can prove validity of most of statements of *rijal* experts concerning trustworthiness or otherwise of hadith transmitters.

Keywords: statement of *rijal* expert, single report, testimony, statement of experts, closure, the conjectures authorized by the wise.

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Authority of induction as to discovery of purposes of *Shari'a*

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Abstract

Purposes of *Shari'a* are those goals and ends which are considered by the divine lawgiver in all, or the major part, of precepts. The principal purpose of the science of "purposes of *Shari'a*" is to prove principles and generalities of *Shari'a* so that *mujtahid* can use them in inferring precepts. In order to achieve that goal, one should prove authority of such purposes first. However, since authority of purposes of *Shari'a* has a direct relation with the way they are discovered, we should prove authority and validity of ways of discovering them. Considering that the major way of discovering universal purposes of *Shari'a* is searching religious proofs and texts, the present research attempts to prove authority of induction, as well as its criterion, through a descriptive-analytical method and by gathering evidence from sources.

Keywords: authority of induction, certitude, criterion for induction, induction, purposes of *Shari'a*.

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**International jurisdiction of public courts of an Islamic state:
Contradiction of laws in the civil code and jurisprudence; A
comparative study**

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Abstract

In international private law, the problem of international jurisdiction of domestic courts, or, in other words, jurisdiction of domestic courts concerning international claims, is considered a prerequisite for the system of resolving contradictions of laws; and this problem is raised where at least one part of the claim is foreigner or the dispute relates in some way or another to a foreign state. In Islamic jurisprudence and law, Muslims and people of *dhimma* (those non-Muslim who are legally protected due to a protective covenant) are considered citizens of the Islamic state and other unbelievers are treated as aliens. In case of initiating proceedings at an Islamic court over legal relations between citizens of an Islamic state and foreigners or between citizens of an Islamic state who live in the land of infidels, is a public court of Islamic state vested with the responsibility of proceeding that claim? This paper attempts to answer this question by stating the problem and finding its answer in customary law first and then, through an analytical, jurisprudential and legal approach, explain different forms and various assumptions of the problem. It is concluded that in most cases related to international private law, public courts of Islamic states have the right and jurisdiction for preceding those types of legal claims; hence, the prerequisite of designing a system for resolving contradiction of laws does exist in Islamic law and jurisprudence.

Keywords: contradiction of courts, contradiction of laws, foreigners' rights, interfaith legal claims, international jurisdiction of courts, international legal claims.

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Organized crimes form the viewpoint of jurisprudence

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Abstract

The background of organized crime committing is almost the same with that of crimes, though defining this kind of crime and exercising severer punishments compared to individual crimes are actualized only in the contemporary era. There is a major disagreement among lawyers with one another on the one hand and with criminologists on the other with regard to the meaning of “organized” and instances of organized crimes and in spite of their consensus on the possibility of organized committing of some crimes no single definition is presented for such crimes. In the Iranian law, organized crime committing is basically not mentioned in particular, and only such phrases as band, web, and collusion are applied to collective crimes without presenting any specific definition. It is only in the law against transporting that the term “organized” is used – and, of course, without any given definition. Similarly, in juristic texts as well as *hadiths*, organized crimes are not dealt with as a distinct subject, though in criminal designations and some crimes, such as rebellion, fighting, corruption in the land, counseling and procuring sins, dissemination of fornication, and collusion, organization has been taken into consideration causing sometimes change or severeness of punishment of criminals. For example, one can mention those rebels who have organizations whose punishment is severer: their captured and injured men will be killed, their escapee will be pursued, and their properties will be confiscated.

Keywords: collusion, corruption in the land, counseling and procuring sins, dissemination of fornication, fighting, organized, rebellion.

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The theory of religious permissions in the twelver shiite jurisprudence

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Abstract

Necessity of formulating a jurisprudence which could be simply actualized (religious permissions) is the contemporary juristic discourse. Since Islamic *Shari'a* has been based from the very beginning on ease and repelling hardship on the one hand and complexity of modern life necessitates reduction in the position of action on the other, we should seek permissions with regard to the conditions caused by necessities and needs of the modern life. In fact, the mechanism of acting on the basis of facilitating Islamic jurisprudence is among necessary approaches of observing general expediencies which are caused by temporal and special necessities of human life – of course, conditional upon such facilitating not being in contradiction to Islamic principles and essentials. Defining religious permissions and referring to some of their instances first, the present research deals, then, with searching opinions of the Twelver Shiite jurists in order to find all instances of religious permissions in the jurisprudence so that it may present the theory of religious permissions as a base of legitimacy of lawmaking and a specific, practical method of lawmaking.

Keywords: facilitating, *ijtihad*, religious permissions.

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