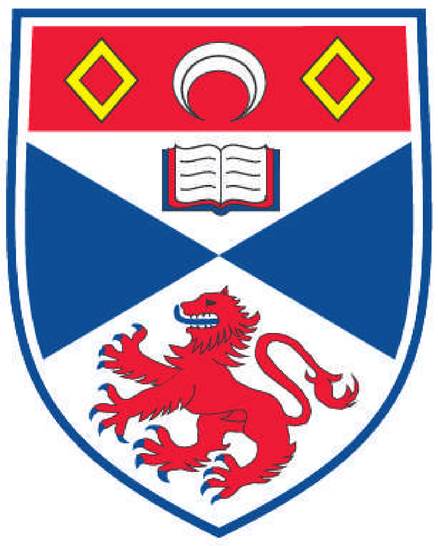
THE PRINCIPLES OF ABROGATION : WITH SPECIAL REFERENCE TO THE 'USŪL' OF AL-JASSĀS

Mohammad Akram

A Thesis Submitted for the Degree of PhD at the University of St. Andrews



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THE PRINCIPLES OF ABROGATION WITH SPECIAL REFERENCE TO THE USŪL OF AL-JASSĀS

BY

MOḤAMMAD AKRAM

Thesis presented to the University of St. Andrews
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DEDICATION

To my dear mother and to the memory of my late father, I dedicate this thesis.

ABSTRACT

I have prepared a critical edition of the portion on al-Nāsikh wa-l mansūkh from Uṣūl al-Jaṣṣāṣ (Uṣūl al-fiqh), by Abu Bakr Aḥmad b. ʿAlī al-Razī al-Jaṣṣāṣ (d. 370 A.H.). The manuscript, used in this edition, is preserved under 229 Uṣūl: Dār al-Kutub al-Miṣrīya. I have also prepared separate notes in order to elucidate and compare this work with the views of the renowned Muslim scholars such as Shāfiʿī, Ṭabarī, Naḥḥās, Rāzī, Sarakhsī and many others. The manuscript itself is edited carefully so that to the best of my knowledge no incorrect materials have failed to be mentioned in the footnotes. I have also provided references to the Qur'ānic verses and āthār mentioned in this work of Jaṣṣāṣ.

To discuss the subject of al-Nāsikh wa-l mansūkh, I have also prepared an introduction. This section consists of eight chapters. The first chapter is devoted to the description of the manuscript and text along with the importance of Uṣūl al-Jaṣṣāṣ. The second chapter is designed to provide details of the author's life and his works. The third chapter deals with the basic sources of Islamic law and throws light on the background of the phenomenon of naskh. In this chapter the views of anti-traditionists are also recorded. The fourth chapter provides details about the principles of abrogation - whether special or general together with the significance of naskh. It also discusses the problem of the change of the qibla and informs us that naskh is a speciality of the Fuqahā'.

In chapters five to seven, I have discussed the three modes of naskh described by the Usūlīs. They are: naskh al-ḥukm dūna al-tilawa, naskh al-tilāwa dūna al-ḥukm and naskh al-ḥukm wa al-tilāwa. The first mode involves the discussion of the problem of waṣiyya (bequest) and ʿidda (waiting period). The second mode investigates the origin of the Islamic stoning penalty for adultery. The third mode is concerned with the Tafsīr of Q.87,6-7. In the final chapter, I have examined Jaṣṣās' concept of the relationship of the Qur'ān with the sunna and vice versa in the formation of the aḥkām.

DECLARATIONS

(a) I, Mohammad Akram, hereby certify that this thesis which is approximately 99,000 words in length has been written by me, that it is the record of work carried out by me and that it has not been submitted in any previous application for a higher degree.

Date 7.11.1986 Signature of Candidate 

(b) I was admitted as a research student under Ordinance No. 12 on 11th October, 1982 and as a candidate for the degree of Ph.D. on 24th June, 1983; the higher study for which this is a record was carried out in the University of St. Andrews between 1982 and 1986.

Date 7.11.1986 Signature of Candidate 

CERTIFICATION

I hereby certify that the candidate has fulfilled the conditions of the Resolution and Regulations appropriate to the degree of Ph.D. of the University of St. Andrews and he is qualified to submit this thesis in application for the degree.

Name of Candidate: Mohammad Akram

Title of Thesis: The Principles of Abrogation with special reference to the Usūl of Al-Jassās.

Date 7th November, 1986. Signature of Supervisor .....

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I must express my gratitude to my supervisor, Dr. J. Burton, for his scholarly guidance and valuable suggestions which he afforded me from the very beginning of my studies until this thesis took its final shape. I also offer him my warmest thanks for his providing me with enough material on the subject of al-Nāsikh wa-l mansūkh.

My thanks are also due to Dr. Jackson, Dr. Suleiman and Mr. Kimber who gave me help in many ways. My thanks go also to the staff of the main Library of the University of St. Andrews, and to all my friends and relatives who helped me directly or indirectly in preparing this thesis. I have also to thank Mrs. Kerr for typing a part of this thesis. My thanks are proffered to the Ministry of Education of the Government of Pakistan and the Embassy of Pakistan in London for sponsoring my studies.

I must mention my wife Farḥat whose love and continual encouragement throughout the writing of this work has been invaluable, and our daughter ᶜAmāra who has been a joy to us both. Finally, I appreciate the patience and moral support of all my family at home.

TRANSLITERATION

ء	'
ب	b
ت	t
ث	th
ج	j
ح	ḥ
خ	kh
د	d
ذ	dh
ر	r
ز	z
س	s
ش	sh
ص	ṣ
ض	ḍ
ط	ṭ
ظ	ẓ
ع	c
غ	gh
ف	f
ق	q
ك	k
ل	l
م	m
ن	n
هـ	h
ة	a; at (construct state)
و	w
ى	y

Short vowels

ـَ	a
ـُ	u
ـِ	i

Long vowels

ا آ	ā
و	ū
ى	ī
يّ	iyy

Diphthongs

ـَ و	au
ـَ ي	ai

ABBREVIATIONS

A.H.	After Hijra
b.	Son of
bt.	Daughter of
cf.	Compare
d.	Died
ed.	Edited
E.I.	Encyclopaedia of Islam
fo.	Folio
ff.	Folios
K.	Kitāb
l.	Line
ms.	Manuscript
n.d.	No date
p.	Page
pp.	Pages
Q.	Qur'ān
v.	Verse
vv.	Verses
vol.	Volume
vols.	Volumes

TABLE OF CONTENTS

CHAPTER ONE

INTRODUCTION TO THE MANUSCRIPT AND TEXT

The manuscript used in this edition.

The number of the manuscript used in this edition is 229 Uṣūl al-Jaṣṣās (Uṣūl al-fiqh).[1] The original copy of this manuscript is preserved in the Dār al-Kutub al-Miṣrīya. The manuscript was obtained on microfilm through the kind assistance of N.D. Aḥmad, First Secretary to the Embassy of Pakistan, Cairo, to whom my thanks are due.

The measurement of each page of the present work is 4" x 6". The manuscript has 329 folios. Each half folio contains 25 lines. At the top of the first page of the manuscript is written كتاب اصول الفقه للعلامة ابى بكر الرازى الحنفى الشهير بالجصاص. On the left side of the same page, one can see the stamp but unfortunately the writing is indistinct. The bottom line on the same page of the manuscript is water-stained. The manuscript starts with the following words: الحمد لله و سلام على عباده الذين اصطفى and continues with فهرست ابواب كتاب وما عداه فضلال بالصواب. It finishes with اصول الفقه لابى بكر الرازى.

A few pages of the manuscript are missing.[2] Although they are mentioned in the index given on the second page, they are not contained in the text itself. The manuscript is well preserved and clearly written. The transcription of the work was completed on a Monday in

Rabī^{c} al-thānī 748 / April 1347 in Masjid al-Aqsā. (3)

In the present edition, 44 folios are annotated. In these folios the theory of naskh is discussed. The first chapter starts on folio 115a with the title باب الكلام فـــى الناسخ و المنسوخ followed by the sub-title فصل فى الكلام فى ماهية النســـخ . The last chapter is باب الكلام فى آخر النســـخ which ends with folio 158b.

The copyist and the orthography.

The name of the copyist was Muḥammad b. Qāḍī. (4) He does not seem to have been well known, because no biographical account of him is traced. Having edited this portion of al-Nāsikh wa-l-mansūkh, we can say that he had insufficient knowledge of the principles of abrogation. We know little about him apart from the fact that he was alive in 748/1347 the date when the transcription of the manuscript was completed. His orthography is generally good and clear. The consonants bear no diacritical points. Therefore, one has to be very careful in transcribing the text.

Hamza is omitted after final long alif as 'بقـــا' for 'بقـــاء' (fo. 118a), 'بـدا' for 'بـداء' (fo. 115b), 'اشيا' for 'اشياء' (fo. 118b) and at the end of a word, for example 'شـــي' for 'شـــيء' (fols. 117a, 120b). Occasionally, yā replaces the alif such as 'كذ ى' for 'كـذا' (fo. 117b). Generally, yā is written instead of hamza in 'مايـة' for 'مائـة' (fo. 119a). In some cases the copyist uses long alif instead of alif maqṣūra such as 'المتونـا' for 'المتوفـى' (fo. 133b).

He does not seem to have taken care in copying. After the name

of the Prophet sometimes he used صلى الله عليه و سلـــم and sometimes عليه الســـلام . He missed out numerous words and repeated others. Several corrections have been made in the text; these are consistently noted in the apparatus. Because the handwriting of these corrections is similar to that of the original, it is to be presumed that the corrections were made by the copyist himself. This gives us the idea that the copyist had revised his transcription and made the corrections. He has made corrections in various ways. When some words are missed out, the correct words are placed between the lines or in the margin. Sometimes incorrect words are simply crossed out. Occasionally the copyist uses the sign ' ↄ ' at the end of a sentence as full stop. Some words are found which seem to have no obvious connection with the passage which in turn suggests that the copyist had missed out some words or lines from the original copy.

Critical apparatus.

The critical apparatus has been designed to deal with the problems of the manuscript. The main aim in this edition is to preserve the original reading of the text whenever possible. Modern Arabic orthography has been preferred and several letters in the manuscript have had to be altered as not conforming with modern Arabic usage, for example ' يخلوا ' to ' يخلـــو ', ' الصلوة ' to ' الصـــلاة ', ' تعلى ' to ' تعـــالى '. In such cases no mention has been made in the footnotes as this is only a matter of orthography. This applies also to words which have no diacritical points, because it would be impractical to mention them all. Further, some words in the manuscript have had to

be changed because they did not agree with the ideas of Jaṣṣāṣ.

References for the quotations, Qur'ānic verses and Ḥadīths have been provided in the notes. The text has been explained and compared with the works of renowned scholars. Missing words have been provided and mentioned in footnotes. Parentheses '( )' have been used only for Qur'ānic verses but inverted commas have been applied for the aḥādīth of the Prophet and the āthār of the companions and successors.

The numbers of the Qur'ānic verses are traced in al-Muᶜjam al-mufahras li-alfāẓ al-Qur'ān al-Karīm by M. Fu'ād ᶜAbd al-Bāqī, printed in Beirūt n.d. The quotations from the traditions are traced to A.J. Wensink's Concordance et indices de la tradition Musulmane, Leiden 1936-69.

Punctuation and paragraphing have been added whenever required in the present edition. Oblique strokes '//' have been used in order to indicate words that have been added by the editor. The mark '+' in the Arabic text indicates the end of a folio. The figures in the left hand margin give the number of the new folio. The lines of each page are counted in fives. The Western numerals in the right hand margin are employed for that purpose.

The importance of Usūl al-Jaṣṣās.

In the usual classification of Muslim sciences, the Usūl al-fiqh are generally defined as the sciences of the proofs which lead to the establishment of legal standards.(5)

The usūl had been the subject of study by jurists as attested

by the fact that Abū Yūsuf (d.182/798) discusses certain aspects of it in his K. al-Kharāj[6] and Shaibānī (d.189/804) is reputed to have written a book on uṣūl.[7] But this term had not yet acquired the technical meaning of a science dealing specifically with the sources of Islamic law. The Risāla,[8] a unique work in the literature of Islamic law, gave Shāfiʿī (d.204/820) a name as the founder of the science of Uṣūl al-fiqh. The Risāla is not a complete work on jurisprudence dealing with the nature and principles of law, although the reader may well gain insight into Shāfiʿī's concept of the nature of law. Several sections are devoted to an exposition of the broad principles and rules of the Sharīʿa.[9]

Shāfiʿī was followed in his monumental work on the principles of jurisprudence by a Hanafī jurist, al-Karkhī (d.340/931), the teacher of our author Jaṣṣās. Although his treatment was very sketchy, it was a fruitful start in the field concerned.[10]

Al-Karkhī was followed by Abū Bakr al-Jaṣṣāṣ who wrote a comprehensive book about Uṣūl al-fiqh in which he explained the views of his teacher, al-Karkhī.[11] Uṣūl al-Jaṣṣāṣ, as a matter of fact, is the first systematic attempt ever made to describe the principles of Muslim jurisprudence. The late Ḥanafī works on uṣūl and particularly on al-Nāsikh wa-l-mansūkh give us clues that most of the ideas expressed were borrowed from Uṣūl al-Jaṣṣāṣ.[12] M. Zaid,[13] a modern writer on the subject of al-Nāsikh wa-l-mansūkh, states that Jaṣṣāṣ' definition of naskh was followed for five centuries. Its importance increases when we recall that most of the works of Jaṣṣāṣ are lying neglected in the

shelves of the Dār al-Kutub al-Miṣrīya beyond the access of the learned of today. Jaṣṣās made an effort to deal with the Fiqh problems. Each topic is discussed in very great detail. The importance of this work may be estimated by the fact that the views of his opponents are discussed and examined carefully. The views of those who do and do not believe in the theory of naskh are also recorded. The views of his fellow Ḥanafīs like ʿĪsā b. Abān (d.221/835) are explained. Some of these views are not acceptable to Jaṣṣāṣ because according to him Karkhī's opinions were clearer than those of ʿIsā b. Abān's. (14)

Records show that Jaṣṣāṣ was an exponent of the Ḥanafī school and its acknowledged usūlī but this did not mean that he blindly accepted all the agreed doctrines of this school. Generally the function of the usūlī was to verify the law that existed in the circle in which he grew up. The production of Uṣūl al-Jaṣṣās, which is an enormous book, was intended to verify the Fiqh of Imām Abū Ḥanīfa (d.150/767). Jaṣṣāṣ narrated aḥādīth and āthār in support of the Ḥanafī views and examined carefully the āthār of his opponents. He endeavoured to document the Ḥanafī views in the light of the verses of the Qur'ān and the aḥādīth of the Prophet. He rejected Abū Yūsuf and Shaibānī's views when they differed from those of Abū Ḥanīfa. (15)

An edition of the section of Uṣūl al-Jaṣṣās on al-Nāsikh wa-l-mansūkh reveals that the work is certainly by Jaṣṣāṣ, because all the ideas mentioned in this work can be traced in Aḥkām al-Qur'ān, which is a second well-known work by Jaṣṣāṣ. Moreover, Zarkashī (16) and Suyūṭī (17) have quoted passages of Uṣūl al-Jaṣṣās in their works. It

should be noted that there is no single indication which leads one to believe that the work is not by Jaṣṣāṣ.

This critical editing of the portion of Uṣūl al-Jaṣṣāṣ is an attempt to make known the original Ḥanafī principles on abrogation which were confronted by the principles of other schools of law during, before and after the 4th century Hijri. Jaṣṣaṣ has discussed, as we have mentioned, these principles in great detail. After studying this portion, one should be able to draw a conclusion about Jaṣṣāṣ' concept of the role of the Qur'ān and the Ḥadīth in the formation of the aḥkām. The main aim in editing this text is to examine the principles of naskh which were used as debating instruments by the scholars among whom there had been frequent disagreement.

In a previous partial edition, the chapters on Qiyās and Ijtihād were edited by Sa^{c}īd Allāh Qāḍī. I thank Allāh, who has provided me with this opportunity to edit the section on al-Nāsikh wa-l-mansūkh which is the most important chapter of uṣūl literature as well as of Uṣūl al-Jaṣṣāṣ. The editing of the rest of the portion of Uṣūl al-Jaṣṣāṣ is a debt that is yet owed by me and I hope to undertake it in the near future.

A previous edition of a portion of Uṣūl al-Jaṣṣāṣ.

About five years ago, a prominent Pakistani scholar and Associate Professor, at the Department of Islamic Studies, Peshawar University, prepared the first edition of a portion of Uṣūl al-Jaṣṣāṣ on the chapters of Qiyās and Ijtihād.

In this work a brief introduction to the evolution of the science of Usūl al-fiqh was presented followed by a chapter on the Hanafī Fiqh and its legal position. The historical development of Qiyās and Ijtihād was examined along with their legal and technical value. The viewpoints of those who do not consider Qiyās and Ijtihād to be sources of Islamic law were presented but rejected by producing Jaṣṣās' arguments. This introduction was written in English as well as in Arabic. A number of Hadīths were collected in order to show the recognition of the use of Qiyās and Ijtihād in the lifetime of the Prophet and companions.

In this edition fifty-five folios were considered. The first chapter started with "concerning discussion on the validity of Qiyās and Ijtihād." The last chapter ended with "on mentioning the causes of inductive reasoning." The text was supported by producing extracts from the works of those renowned scholars who preceded and followed Jaṣṣās. The footnotes in this edition were given in Arabic. At the end of the introduction a list of the contents of the manuscript was provided.

The comparison of the manuscript and the edited text shows that many mistakes in the text were corrected but not mentioned in the footnotes. For example in the first chapter "concerning discussion on the validity of Qiyās and Ijtihād", it seems that thirteen items should have been mentioned in the footnotes because they have been altered in the edited text. In this edition, the critical apparatus used to edit the text has not been described. In addition to that,new topics were

introduced in the text. As the sources of these topics were not mentioned in either the footnotes or in the introduction, it could lead one, wrongly, to assume that the topics formed an original part of the Uṣūl al-Jaṣṣās.

CHAPTER TWO

THE AUTHOR

His life.

In the fourth Islamic century which was a period of political anarchy and in which rivalries among the Sunnīs and Shīᶜa were in full swing, our author Jaṣṣāṣ was born. Most of the biographers have failed to mention his place of birth but two reports are available, although they are at variance regarding this issue. ᶜAbd al-Ḥayy Lacknawī[1] records his place of birth as Baghdād, while ᶜAlī Akbar Dihkhūda[2] states that it was al-Ray. Which of these two reports is genuine is a subject for further inquiry. As far as the former is concerned, his statement cannot be trusted, because a number of reports suggest that Jaṣṣāṣ went to Baghdād in 324 A.H.[3] ᶜUmar Riḍā Kaḥḥāla[4] states: Abū Bakr known as al-Jaṣṣāṣ was a Ḥanafī jurist and came down to Baghdād when he was young. Similarly, Khaṭīb Baghdādī[5] mentions that Jaṣṣāṣ came down to Baghdād in his youth and attended the lectures of al-Karkhī. Kaḥḥāla and Baghdādī have used the word "warada" (to arrive or to come) which gives us the clue that Jaṣṣāṣ was not born in Baghdād. Furthermore, it is well-known that Jaṣṣāṣ was called al-Rāzī; this nisba is normally applied to persons born in al-Ray.[6] In addition Ziriklī[7] and ibn Quṭlūbghā[8] narrate that Jaṣṣāṣ stayed in Baghdād; they use the word "Sakana" (to stay or to dwell in). These statements show that Jaṣṣāṣ was, probably, born in al-Ray.

Concerning Jaṣṣāṣ' date of birth biographers were agreed that he was born in 305/917. Were Jaṣṣāṣ and Rāzī two different people? The answer would certainly be in the negative. Ibn Quṭlūbghā[9] remarked that one who has understood Jaṣṣāṣ to be different from al-Rāzī, has made a mistake, in fact they were one. Except for ibn al-Nadīm[10] and ibn Kathīr[11] who have listed Jaṣṣāṣ as al-Rāzī, all the other biographers have named him al-Rāzī, known as al-Jaṣṣāṣ. Apart from that, one certain fact is that al-Rāzī's most famous book on Uṣūl-al-fiqh is called Uṣūl al-Jaṣṣāṣ.

His full name was Aḥmad b. ᶜAlī, Abū Bakr al-Rāzī, known as al-Jaṣṣāṣ. Most biographers appear to have understood who al-Jaṣṣāṣ was. However, al-Lacknawī[12] has recorded a statement of al-Zurqānī, that Abū Bakr Aḥmad b. ᶜAlī b. Ḥusain al-Rāzī was one of the leading Ḥanafī traditionists from Nīsābūr. He studied aḥādīth with Abū Ḥātim and ᶜUthmān al-Dārimī; and from him aḥādīth were narrated by Abū ᶜAlī and Abū Aḥmad al-Ḥākim. According to ibn ᶜUqda, Jaṣṣāṣ was Ḥāfiz aḥādīth, and died in 315 A.H. Zurqānī's statement, recorded by Lacknawī, as a matter of fact, does not talk about Jaṣṣāṣ. It rather describes a different person's biography which is recorded in Tadhkirat al-Huffāz.[13] Therefore, it can be ascertained that al-Lacknawī confused Aḥmad b. ᶜAlī b. Ḥusain with Aḥmad b. ᶜAlī al-Rāzī al-Jaṣṣāṣ.

Why is Abū Bakr known as al-Jaṣṣāṣ? This has been explained by al-Samᶜānī.[14] He says that nisba, al-Jaṣṣāṣ, has been attributed to

all those who engage in the use of gypsum or work as plasterers.

As far as Jaṣṣāṣ' biography is concerned, no detailed information has been mentioned so far, but through the available sources scattered here and there an outline can be sketched. Abū Bakr Aḥmad b. ᶜAlī al-Rāzī al-Jaṣṣāṣ came down to Baghdād in 324 A.H. at the age of 19. Here he studied law under al-Karkhī.(15) In order to increase his knowledge he left for Ahwāz where he spent some days, but soon he returned to Baghdād and joined the circle of al-Karkhī.(16) Jaṣṣāṣ was an expert on the Qur'ān and Ḥadīth; and the best known jurist of his time. The production of Aḥkām al-Qur'ān is a clear indication of his expertise in Qur'ānic studies. As for the Ḥadīth he studied these with al-Ḥākim al-Nīsābūrī, following the advice of his teacher. For this purpose he travelled to Nīsābūr.(17) There is no doubt that he was a famous Ḥanafī jurist and the chief representative of the Aṣḥāb al-Ra'y in his time. After the death of his teacher, al-Karkhī,he became the head of the Ḥanafīs in Baghdād. By this time he was a great scholar and he mediated between the traditionists and the lawyers.(18) Abū Bakr has produced numerous books, especially on jurisprudence. (see p.16).

According to reports, he was twice nominated for the office of Qāḍī but he declined. Al-Ṣaymarī reported that Abū Bakr al-Abharī said: "An envoy of Muṭīᶜ lillāh, the Caliph of Baghdād, asked me to become a judge but I refused and referred to him Jaṣṣāṣ. Meanwhile I personally met al-Jaṣṣāṣ and told him not to accept this position.

After that Abū al-Ḥasan, the envoy of the Caliph, sought my help. I took him to Jaṣṣāṣ. When Jaṣṣāṣ saw me, he abruptly said, 'Have I not consulted you and you advised me not to accept?' Abū al-Ḥasan disliked my behaviour and asked why I had referred a person to him and then told the person not to accept." I said, "Yes, (I did as you have said). Here I have followed Mālik b. Anas who advised the people of Medina to choose Nāfi^{c} as their Imām for prayer, while at the same time, he advised Nāfi^{c} not to become Imām. When Mālik was asked about his act, he replied that he preferred Nāfi^{c} because no one else reached his standard; and he advised Nāfi^{c} not to accept because he would provoke envy and create enemies against him. Similarly, I preferred Jaṣṣāṣ because no one else is like him and I advised him not to accede to the request because he had submitted to the will of God."(19)

As Jaṣṣāṣ' fame spread far and wide, reaching almost all quarters of the Muslim world, students came in flocks to attend his lectures. Among his students were:

(1) Abū ^{c}Abd Allāh Muḥammad b. Yaḥyā b. Mahdī al-Jurjānī (d.398/1008).(20)

(2) Muḥammad b. Mūsā b. Muḥammad al-Khawārizmī (d.403/1012).(21)

(3) Abū al-Ḥusain Muḥammad b. Aḥmad b. Aḥmad b. Muḥammad b. ^{c}Abdūs b. Kāmil al-Dallāl, known as al-Za^{c}farānī, (d.393/1003).(22)

(4) Abū Ja^{c}far Muḥammad b. Aḥmad al-Nasafī,(d.414/1023).(23)

(5) Abū al-Faraj Aḥmad b. Muḥammad b. ^{c}Umar b. al-Ḥasan known as ibn al-Maslama (d.415/1025).(24)

(6) Abū al-Ḥusain Muḥammad b. Aḥmad b. Ṭayyib b. Ja^{c}far b. Kāmār al-Kāmārī, (d.417/1026).[25]

Abū Bakr al-Jaṣṣāṣ died on Sunday the 7th of Dhul - ḥijja 370 A.H. i.e. 14th of June, 981 in Baghdād.[26] His funeral was attended and blessed by his pupil Abū Bakr Muḥammad b. Mūsā al-Khawārizmī, who led the prayer.[27]

A brief review of some of his sources.

As we have already pointed out, Jaṣṣāṣ was highly influenced by the founder of Ḥanafī school, Imām Abū Ḥanīfa. In order to support his doctrines, Jaṣṣāṣ produced āthār and also used his own reasoning. Each viewpoint that became controversial among the jurists was judged by Jaṣṣāṣ using Qur'ānic statements and aḥādīth or āthār and then using logic or reasoning. This left the impression that Jaṣṣāṣ was influenced by the Mu^{c}tazila or at least he was among those Iraqi scholars who shared Mu^{c}tazilī views. Here are some examples which demonstrate the influence on Jaṣṣāṣ of the Mu^{c}tazila.

Good and evil 'الحسن و القبح' could be judged either by a command or prohibition of God and His Prophet or by reasoning 'عقـــل'. The Ash^{c}arīs and some of the Shāfi^{c}ites held that nothing was good or bad in itself. All was dependent upon the law giver's 'الشـــارع' command or prohibition which alone made the thing good or bad. In contrast, the Mu^{c}tazila and some of the aḥnāf argued that good and evil of things could be judged by reason 'عقـل' and once reason had determined something to be good, a Muslim who acted in the specified

way would be rewarded. Similarly, once reason had considered something to be bad, a Muslim who acted in such a way would be punished. They further remarked that good or bad things willed by the law-giver should be commanded or prohibited.[28] Jaṣṣāṣ[29] stated that God, the Almighty, never commanded an act unless it was good and He never prohibited an act unless it was bad. The result was that the very things which were good in themselves like justice and belief in Allāh could not be abrogated by opposite commands.

Like the Mu^{c}tazila, Jaṣṣāṣ did not believe in magic 'سحـــر'. He quoted several examples which indicated that the reality of magic was out of the question. He was certain that magicians were unable to turn a man into an ass or dog or turn an ass or dog into a human being. He attacked magicians by saying: "Man could not perform supernatural acts. If he had been able to perform such acts, he would not have surrendered to Moses."[30]

Among the teachers who influenced Jaṣṣāṣ, two names were prominent - Abū Sahl al-Zajjāj and al-Karkhī. The former did not over influence Jaṣṣāṣ but the latter prevailed on his professional writings. Jaṣṣāṣ has elaborated most of the views of al-Karkhī in his <u>usūl</u> and the collection of these views from <u>Uṣūl al-Jaṣṣāṣ</u> could become a topic for separate research. According to ibn al-Nadīm,[31] al-Karkhī was a man whose counsel was sought and from whom learning was acquired. The most prominent legal authorities of the period studied under him and he was unique in his time because he was not

obliged to defend himself, and was not involved in public disputes. At the age of 81 al-Karkhī became paralysed. He was a very poor fellow and had no money to pay for his treatment. His pupils consulted among themselves and sought the assistance of Sa^{c}īd al-Daula, the ruler of Syria at that time. When al-Karkhī knew that, he was shocked and died before al-Daula could send money. This money was later given to charity. Al-Karkhī died in 340 A.H.(32)

Among the other sources, the names of those from whom Jaṣṣāṣ narrated aḥādīth are worth mentioning. They were Abū al-^{c}Abbās al-Aṣamm (d.346/958), Abū ^{c}Umar Ghulām Tha^{c}lab (d.345/957), al-Ṭabarānī (d.360/971), al-Iṣfahānī (d.346/958) and ^{c}Abd al-Bāqī b. Qāni^{c} (d.352/963). It seemed to us that Jaṣṣāṣ mainly relied on ibn Qāni^{c}, for most of the aḥādīth in Aḥkām al-Qur'ān were narrated on his authority. Dāraqutnī, a well-known traditionist, also narrated aḥādīth on his authority, but stated that ibn Qāni^{c} used to make mistakes in his narrations. According to others he was trustworthy.(33)

His works.

Jaṣṣāṣ made a very considerable contribution to the field of Islamic jurisprudence. He has left numerous books on this subject. Unfortunately, some of them no longer exist, while others are still lying on the shelves of the Dār al-Kutub al-Miṣrīya awaiting scholarly attention. Here these are examined one by one.

(1) Uṣūl al-Jaṣṣāṣ: This is a muqaddama (introduction) to Aḥkām al-Qur'ān. The study of the latter work shows that whenever Jaṣṣāṣ

comes to a point of Uṣūl al-fiqh he refers it back to his uṣūl (Uṣūl al-Jaṣṣāṣ).[34]

(2) Aḥkām al-Qur'ān: This is a second work of Jaṣṣāṣ. ᶜAbd al-Raḥmān took the responsibility of producing the text of Aḥkām al-Qur'ān by Jaṣṣāṣ. It appeared in 3 volumes in Cairo in the year 1347/1928. The next step was taken by the Suhail academy, in Lahore, Pakistan, and the year 1980 saw a new edition. This is an important work in the sense that it provides the views of those scholars whose books are not available to us, such as ᶜUthmān al-Battī, al-Awzāᶜī, al-Thawrī, al-Laith, ibn Abī Lailā and ibn Shubruma. It also provides notice of different views of the leading Imāms - Abū Ḥanīfa, al-Shāfiᶜī and Mālik. This book also contributes to the sciences of tafsīr, ḥadīth, and Uṣul al-fiqh.

(3) Sharḥ Jāmiᶜ al-Kabīr: is a well-known work by Jaṣṣāṣ. Ibn al-Nadīm[35] states: "Jaṣṣāṣ' commentary on the large compilation of Muḥammad b. al-Ḥasan al-Shaibānī is a delightful book." This manuscript is preserved in two volumes. The first volume was written in 559 A.H., and the second in 560 A.H. It is preserved in the Dār al-Kutub al-Miṣrīya, under Fiqh Hanafī, 745 and 746 respectively.[36]

(4) Sharḥ Jāmiᶜ al-Saghīr - Ḥājī Khalīfa[37] has recorded this book, but there is no further evidence of its existence.

(5) Sharḥ Mukhtaṣar al-Karkhī. It is an established fact that al-Karkhī wrote a book called mukhtaṣar. It is also known that this

was abridged by Jaṣṣāṣ as most biographers mention this. However, it is doubtful whether it has survived.

(6) Sharh mukhtasar al-Tahāwī - All the biographers agree that Jaṣṣāṣ wrote a Sharh mukhtasar al-Tahāwī. This manuscript is preserved in two volumes. S. Fu'ād[38] states: The handwriting of the first volume reveals that it was written in 5th A.H., and the second volume was written by al-ᶜAllāma Itqānī in 748 A.H. Both volumes are preserved in the Dār al-Kutub al-Miṣrīya, under Fiqh Hanafī 756 and 498 respectively.[39]

(7) Sharh al-asmā' al-Husnā. This book, to the best of my knowledge, has not survived.

(8) Sharh adab al-Qādī li al-Khassāf - A manuscript was written in 629 A.H. Its number is Jār Allāh 1689. It consists of 201 folios.[40]

(9) Jawābāt ᶜan masā'il waradat ᶜalaih. This book containing the fatāwā of Jaṣṣāṣ to the best of my knowledge has not survived.

CHAPTER THREE

THE SOURCES OF ISLAMIC LAW AND NASKH

The Qur'ān.

The first and basic source of Islamic law is the Qur'ān revealed to Muḥammad through the angel Gabriel,[1] over a period of twenty-two years. It demands serious study because it is not an easy book. To understand the theory of naskh knowledge of the Qur'ān and the sunna is essential. From the very beginning scholars were busy interpreting the Qur'ānic verses in order to clarify the inner meanings of the rulings. Ibn ᶜAbbās (d. 68/687), for example, is said to have been a remarkable authority on Qur'ānic exegesis. To understand his interpretations of the various verses, attention must be paid to Ṭabarī's tafsīr; this contains interpretations of most passages of the Qur'ān which were attributed to him. Moreover, we can also trace the views of other early scholars, such as Saᶜīd b. Jubair (d. 95/713), Mujāhid (d. 102/721) and ᶜIkrima (d. 105/724), who were also outstanding authorities on the Qur'ānic verses. However, as there are some contradictory reports ascribed to each of the above mentioned scholars, it has been suggested that interpretations were later ascribed to these highly regarded scholars by Jurists and commentators, in order to project back their own legal doctrines. It is believed that during the lifetime of the Prophet, the revelation was explained by the Prophet himself to his companions. Therefore, no controversy resulted over any issue and once the Prophet had decided

upon some matter, then that was binding. It was his role to tell them the inward meanings of the commands and the prohibitions revealed to him.(2)

It is interesting here to note that there was no single reported instance in which the Prophet said that a certain ruling was abrogated. This tells us that the principles of naskh emerged later in the history of Islamic law. It will be seen that when the Commentators and the Jurists could not reconcile apparently contradictory verses and ahādīth, they put forward this theory. We shall see also that in order to justify their theory, they appealed to certain Qur'ānic verses. Further, they produced some traditions which bore witness, according to them, to the fact that acquiring a knowledge of naskh or al-Nāsikh wa-l mansūkh was a necessary qualification for interpreting the Qur'ānic verses. They went one step further by saying that no one could interpret the Qur'ān unless he was an expert on the abrogating and abrogated verses.(3)

Records indicate that the Qur'ān was used to deduce rules from the very beginning. When the territory of Iraq was conquered, ᶜUmar, the second Caliph, consulted the leading authorities of his time concerning the distribution of the land. The majority including Bilāl b. Ribāḥ and ᶜAbd al-Raḥmān were of the opinion that it should be distributed. The opinion of ᶜUmar was contrary to those who insisted upon his distributing it. ᶜUmar remarked: "May Allāh save me from Bilāl and his friends." The discussion went on for some days until

ᶜUmar found a reason in the Qur'ān (59-8-10). He recited the verse until he reached the saying of Allāh: "Those who came after them." ᶜUmar asked, "how could I distribute it amongst you and leave those who came afterwards without any share?" He decided to leave it in the hands of the owners.(4)

Another anecdote is found in the form of a hadīth.(5) Saᶜd b. Hishām b. ᶜĀmir asked ibn ᶜAbbās about the prayer of the Prophet. The latter referred him to ᶜĀ'isha, the Prophet's wife, whom ibn ᶜĀmir consulted concerning the behaviour of the Prophet (خلق رسول الله). Ibn ᶜĀmir was answered in the form of a question, "Do you not recite the Qur'ān?" to which he replied, "Yes, I do." ᶜĀ'isha then stated: "The behaviour of the Prophet is the Qur'ān." Ibn ᶜĀmir stated: "I wanted to stand up and not to ask anybody about anything until I died. Suddenly, another question came into my mind and I asked her again, "Could you possibly tell me about the night prayer (قيام) of the Prophet?" She replied, "Do you not recite the Qur'ān (73) 'O you heavily wrapped in a garment ...' ." This anecdote also indicates the tension between the ahl al-Qur'ān and the ahl al-Ḥadīth. ᶜĀ'isha was made to refer ibn ᶜĀmir to the Qur'ān, although she herself could have told him about the behaviour and the night prayer of the Prophet as she had obviously been aware of these during the lifetime of the Prophet. Her name was used in the anecdote in order to stress the importance of the Qur'ān. It has been argued that this anecdote was propounded by the ahl al-Qur'ān.(6) That ibn ᶜĀmir was contented

with the answer provided by ᶜĀ'isha shows that the provisions of the Qur'ān were known to the early Muslims.

The following report confirms our view that reference was made to the Qur'ān, in the initial process of law making. A runaway slave of ibn ᶜUmar, according to a report, stole something. Ibn ᶜUmar sent someone to ask Saᶜīd b. al-ᶜĀṣ, the governor of Medina, to cut off his hands. Saᶜīd b. al-ᶜĀṣ refused to do so saying that a runaway slave should not suffer amputation if he committed theft. Ibn ᶜUmar reportedly said: "In which Kitāb Allāh did you find that?" Thereupon, ibn ᶜUmar ordered that the slave's hand should be amputated.(7)

Kindī(8) reports that ᶜAbīs b. Saᶜīd, the second qāḍī of Egypt, under the Umayyad administration, was asked to solve a problem of inheritance. The qāḍī solved it immediately. The Caliph Marwān was very pleased with his qāḍī's instinct and remarked that he was among those who have mastered such problems. Knowledge of the Qur'ān, according to this anecdote, was essential at least for the post of qāḍī. The verses on inheritance are clear regarding legal heirs and their shares, to the extent that there is little exegetical discussion on them.(9) To a greater or lesser extent, scholars are unanimous on the details of inheritance and these details agree with those provided by the inheritance verses. Furthermore, the categories mentioned in Q.4,23 concerning women with whom marriage is prohibited are unanimously accepted in the Fiqh. This unanimity points out that the Qur'ān was the basic source of Islamic law and was referred to before the emergence of regional schools.(10)

Evidence can also be produced in favour of key scholars who would refer to the Qur'ān in certain cases. According to Mālik,[11] mules, horses and donkeys were forbidden food. Commenting on Q.16,8 and 22,28 he said, "God said that horses, mules and donkeys were to be used for riding and adornment." It should be noted that Mālik derived his doctrine direct from the Qur'ān. He did not refer to any hadīth to this effect. Ibn ᶜAbbās was also of the view that the meat of horses was forbidden in the Book of God. When he was asked to provide evidence, he recited Q.16,8 and remarked that these animals were for riding. Mujāhid, Auzāᶜī and Abū Ḥanīfa have also accepted this view.[12] The latter is also reputed to have based his judgements on certain verses of the Qur'ān. For instance, he proposes that it is acceptable to cut down or set fire to palm-trees which belong to an enemy. Abū Yūsuf supports his master's view and produces āthār. Shāfiᶜī also accepts their views and gives reasons.[13] Abū Ḥanīfa refers to Q.59,5 : "Whether you cut down the tender palm-tree or you left them standing on their roots, it was by God's permission."

The emergence of the ancient schools.

After the demise of the Prophet, the situation was totally altered. Now the process of establishing legislation through Qur'ānic revelation and Prophetic authority came to an end. It was natural that the early Caliphs in consultation with the leading companions of the Prophet should endeavour to guide the Muslim community on the lines of its founder. However, new incidents which occurred through the passage of time had to be solved. We are told that if there were no

precepts in the Qur'ān or the sunna, they used their own opinions. Let us produce an example which will illuminate their reliance on ra'y. When a sum of money from Baḥrain reached Abū Bakr, the first Caliph, he observed equity among the Muslims. But when he was told that there were some people who claimed preference over others because they were first to embrace Islam, Abū Bakr replied: "I do not recognise this excellence; these are merits the reward of which is with Allāh, and this is a worldly matter, i.e. distribution of booty. Equity is far better than discrimination."(14) On the contrary, when ᶜUmar became Caliph, conquests were made and property obtained, then ᶜUmar said, 'Abū Bakr had one opinion with regard to this property and I have a different opinion. I will not treat one who fought against the Prophet like one who fought with him.'(15)

There were, however, numerous cases where ᶜUmar's thinking was contrary to the Qur'ānic rulings. The following example will demonstrate this point. ᶜUmar abolished the giving of a share of zakāt by the Prophet to certain Muslims and non-Muslims for 'reconciliation of their hearts', as prescribed by the Qur'ān (9,60). The Prophet used to give this portion of zakāt to chiefs of certain Arab tribes in order to prevent them from doing harm to the Muslim community; and to attract them into accepting Islam as their religion. The Prophet also gave this share to newly converted Muslims so that they might become active members of the community. Abū Bakr had promised during his caliphate to donate certain lands to some persons on the basis of the above ruling. But ᶜUmar refused to accept the

claim made by the same persons, arguing that the Prophet had given this share in order to strengthen Islam, but that now Islam was strong, there was no need to reconcile these people, therefore, this share must be stopped.(16)

When the caliphate was transformed into a hereditary dynasty, the spirit to serve the Muslim community was allegedly not the same as under the first four Caliphs. However, the Umayyad government contributed to the development of a legal system which according to some was already in existence from the lifetime of the Prophet. Here we would like to mention some of the sources of law on which the Umayyad dynasty relied. The Umayyad rulers, in consultation with the governors of the respective regions, appointed qāḍīs and the decisions made by them were put into practice. For example, one of the qāḍīs of the Umayyad government decided that payment of compensation for physical injury should be paid by the treasury. This decision was put into practice.(17) Muʿāwiya, the founder of the Umayyad dynasty, carried on the practice of ʿUmar, according to which when any state official died, half of his property would be taken by the government and should become part of the treasury.(18) The Umayyad government preserved the spirit of the Qurʾānic religious practices as they thought fit.(19) This can be explained as follows. The case deals with the implications of a general moral injunction of the Qurʾān. Q.2,241 urges husbands to make provision for wives that they have divorced. Ibn Ḥujaira, qāḍī of Egypt (688-702), made this provision obligatory. He fixed the amount at three dīnārs and maintained that in

case of denial, it should be recovered from the husband's stipends. On the contrary, a later qāḍī, Tawba b. Namīr, remarked that the Qur'ānic ruling was not obligatory; it depended upon the husband's discretion. When a husband refused to provide a provision for his repudiated wife, the qāḍī could not do anything, because he did not consider the ruling binding upon the husband. However, when this same husband appeared as a witness in another case, the qāḍī rejected his testimony on the grounds that he was not among the pious ones. Khair b. Nu^{c}aim, Tawbā's successor, once again made the ruling incumbent.[20] The argument centres upon the tafsīr of the verse.

The Umayyad rulers and their governors were alleged to have been little concerned about the religious life of the population, therefore theological differences were thought to have emerged among the Muslims. Mecca, Medina, Baṣra and Kūfa became the scholastic centres. Mecca had little effect on the growth of Islamic Fiqh, because people were more attached to Medina. Here, Mālik established his Fiqh setting it out in his book of Ḥadīth, Muwatta'. In this book the word naskh is mentioned only once.[21] It is held that the Qur'ānic injunction which prescribed the precise shares of the listed relatives of a deceased person (Q.4,11,12) abrogated the Qur'ānic injunction concerning waṣīyya (Q.2,180).[22] Mālik also indicated that the Qur'ān could abrogate the sunna, but in this case he used the word taraka.[23] He agreed with his teacher Zuhrī (d.124/827) on the point that the Qur'ān could abrogate the Qur'ān; the later command abrogated the earlier.[24] In Syria, Auzā^{c}ī (d.157/744) established his Fiqh

which was eventually to be replaced by the Mālikī Fiqh. However, the most vigorous efforts to establish a legal system were made in Iraq. Abū Ḥanīfa (d. 150/767) may here be mentioned as the founder of the system. He acquired much of his knowledge from Ḥammād b. Abī Sulaimān (d. 120/738), who is regarded as the pioneer of the Ḥanafī school. The Fiqh of the Iraqi school was supported and established by two great pupils of Imām Abū Ḥanīfa - Abū Yūsuf (d. 182/798) and Shaibānī (d. 189/804). At the request of Caliph Harūn al-Rashīd, the former compiled his K. al-Kharāj which, however, covers much wider ground than is indicated by its title. For example, he talks about Rajm among other things. Little is learnt about naskh from this book. However, Abū Yūsuf maintains that the sunna can override the Qur'ān. The abrogation of the Qur'ānic injunction of ablution (Q.5,6) by the wiping of the boots is a case in point.[25] Shaibānī, like his companion Abū Yūsuf, did not discuss the theory of naskh in detail although some instances of naskh are discussed in his works. Shaibānī reported that the Prophet launched a campaign against al-Ṭā'if at the beginning of the sacred month of Muḥarram and continued it for forty days until he captured the city in the month of Ṣafar. Shaibānī then produced a report on the authority of Mujāhid in order to demonstrate that the prohibition of fighting during the sacred months was abrogated. According to Mujāhid, the prohibition of fighting during the sacred months as laid down in Q.2,217 was abrogated by God in another verse: "slay the polytheists wherever you may find them." (Q.9,5).[26] When Shaibānī was reminded that fighting during the sacred months,

according to al-Kalbī, was not abrogated, he remarked that al-Kalbī's opinion was not to be followed.(27) This sort of report tells us that there was no agreed theory of naskh. It also informs us that there seems to be no agreement among the Jurists themselves on the incidence of naskh.

The Iraqi school was also supported by the Baṣrī theologian al-Thauri (d. 161/778) whose system for a long time remained authoritative, but like that of the above mentioned Auzāʿī, did not survive. As has been mentioned, the principles of law arose first in Medina and then in Iraq, the object of the pious men who at first worked without theory or method, was to correct and adjust the material of the law they found in existence, according to Muslim religious principles and on the basis of a tradition which they recognised as binding. Later, their attempts resulted in establishing individual views as one finds numerous cases which were settled by the use of ra'y. Although the Mālikī school did not entirely decline the use of ra'y, it made a moderate use of it in comparison with the Iraqi school. As far as the ḥadīth is concerned, the Iraqis had better knowledge of it than the Mālikīs. The study of K. Siyar al-Auzāʿī shows that Abū Yūsuf was acquainted with the knowledge of ḥadīth as well as the sunna (i.e. practice) on many cases of law. There were, however, scholars like Shāfiʿī who never used ra'y or ḥadīth as long as the sunna of the Prophet was available. We shall discuss Shāfiʿī's views in the following pages, but here it should be noted that some of the Muʿtazila argued that because ḥadīth contradicted itself and the Qur'ān, it ought not to be

accepted. Before we mention their arguments against the whole body of the sunna, it would be useful to understand the distinction between the two terms - hadīth and sunna.

The Sunna.

The second source of law in Islamic Fiqh is the Prophet himself. During his lifetime, numerous cases were referred to him. The Qur'ān itself bears testimony that the companions asked him certain important questions and in turn, the answers were provided by God in His book. For example, they asked about spoils of war (الانفال), new moons (الاهلة), what they should spend (ماذا ينفقون), women's courses (المحيض), and many other topics. The answers to all these questions are still preserved in the Qur'ān. Yet there were other problems which were solved by the Prophet himself. These problems will occupy us in the following paragraphs. Further, during his lifetime, he appointed some ambassadors to different places and these were authorised to deal with and solve the issues which they confronted.(28) Even after the death of the Prophet, questions were referred to his close friends and his wives,particularly ʿĀ'isha. It was asserted that these latter authorities were best acquainted with the Prophet's day-to-day behaviour. Thus, by settling problems in this way there came into existence alongside the Book of God another source of law which was later named the sunna.

Generally speaking, the terms hadīth and sunna are identical and convey the same meaning, but in a critical sense their meanings differ from each other. Literally, the word hadīth means oral

communication of any kind, secular or religious, whether of times long past or of more recent events. The Qur'ān has used the word hadīth in this sense.[29] Technically, the term hadīth is now restricted to the Prophet's sayings, whether made on his own initiative or in response to a question.

The term sunna in Arabic means pathway, behaviour, practice, manner of acting or conduct of life. A number of Qur'ānic verses show that the term sunna implied the normative practice or the model behaviour of an individual, sect or community.[30] The concept of sunna was already in vogue in pre-Islamic Arabia. Therefore, it was not new for the Muslims. It had been used for the past customs of Arabs and conduct established by their forefathers. The Arabs strictly followed these customs, because they regarded them as norms for themselves. The Qur'ān draws their picture in the following words, "when one says to them: 'obey the law which God has revealed,' they reply: 'we follow the customs of our ancestors'" (Q.2,170). They also said: "We found that our fathers were on a path, thus we follow their footsteps." (Q.43,22). The Muslims used the term sunna in the sense of normative practice that should be adopted in all aspects of life especially in legal matters. However, they were divided over the precise meaning of this term. According to the early scholars, local practice, consensus and traditions which came down from the Prophet and successors were regarded as sunnas.[31] According to Mālik, the ideal practice was the practice of Medina. Therefore, he restricted the term sunna to the agreed or established practice of Medina, either in his time or before him. Abū

Yūsuf stressed the importance of reviving the sunna of the pious men because, according to him, maintenance of sunna is a virtue which never perishes.(32) It was Shāfiʿī who restricted sunna to the normative practice of the Prophet.

The difference between the two terms which has to be kept in mind, according to Goldziher,(33) is this: "Ḥadīth means an oral communication derived from the Prophet, whereas sunna in the usage prevailing in the old Muslim community, refers to a religious or legal point, without regard to whether or not there exists an oral tradition for it. A norm contained in a ḥadīth is naturally regarded as sunna; but it is not necessary that the sunna should have a corresponding ḥadīth which gives it sanction. It is quite possible that the content of a ḥadīth may contradict the sunna." Further distinction between the two terms may be made by the following example. ʿAbd al-Raḥmān b. Mahdī (d. 198/813) is reported to have said: "Al-Thaurī (d. 161/778) is an Imām in ḥadīth but not in the sunna while Auzāʿī is an Imām in sunna but not in ḥadīth and Mālik is an undisputed master in both the sunna and the ḥadīth.(34) The Fuqahā' also distinguished the terms in their works. Abū Yūsuf urges us to follow the ḥadīth which conforms to the Qur'ān and the sunna.(35) The term ḥadīth, according to him, can also be applied to the statements of the companions. On the problem of allotting a share, from the booty to the horse and its rider, the decision made by the governor of Syria and later approved by ʿUmar, is considered a ḥadīth.(36) Shāfiʿī says that Saʿīd b. al-Musayyab, ʿUrwa, and Qāsim b. Muḥammad narrate aḥādīth from the Prophet, which they accept

as sunnas.[37] Referring to a question by his interlocutor, Shāfi^{c}ī remarks that the basis of a particular doctrine is the sunna which is traced in the ḥadīth reported by Mālik from the Prophet.[38]

As a matter of fact, the sunna, as will be shown, originated in the early tafsīr, from the practice of the early Muslims; it is thus also based on the Qur'ān. Abū Sulaimān al-Juzjānī, the pupil of Shaibānī reported on the authority of al-Aslamī, who said: "Whenever the Prophet sent forth an army, he would say, 'fight in the name of Allāh and in the path of Allāh. Do not cheat or commit treachery, nor mutilate anyone or kill children. Whenever you meet polytheist enemies, invite them first to adopt Islam. If they do so, accept it and let them go.'" This ḥadīth[39] is obviously derived from the Qur'ānic injunction: "We never punished anyone until we first sent them an Apostle." (Q.17,16). Shaibānī reported on the authority of Ḥasan al-Baṣrī and ^{c}Aṭā', both of whom said: "The prisoners of war should not be killed, but they may be ransomed, or set free by grace." This ḥadīth[40] is an exact derivation from the Qur'ānic verse: "Therefore, is the time for either generosity or ransom." (Q.47,4).

The ancient scholars based numerous doctrines on the Qur'ānic exegesis. It is very difficult to determine the starting point of tafsīr, but it is obvious that it emerged in the history of Islamic law before the growth of the ancient schools, as the scholars built their doctrines upon it. Further, it would be justifiable to say that the scholars agreed on the problems where tafsīr was not in contradiction. For example, they agreed that the ^{c}Idda for a pregnant widow should expire

with the birth of a child. The Qur'ān, in fact, does not stipulate this prescription but it is the tafsīr that has settled the matter by Qiyās with the ᶜIdda of divorcees.(41) There are many other injunctions such as prayer, fasting, poor-tax and pilgrimage where the detailed rulings owe their origin to tafsīr. As we have pointed out, the date of the tafsīr is obscure; this led the scholars to attribute their doctrines to early higher authorities until the isnād (chain of transmission), in some cases, arrived at the Prophet. This attitude can be traced in Muwaṭṭa' where Mālik utters expressions like: 'the best that I heard'(42) and 'this is what I heard.'(43) Mālik wanted to support his doctrines by attributing them to higher authorities. This way of attributing the doctrines, according to some, should not be considered. It is the Qur'ān that should be taken as the criterion and ḥadīth which is related to the Qur'ān must be accepted. Putting it in another way, the importance of a ḥadīth lies in its origin and not in the authorities to whom it is ascribed. Further, it is not reasonable to compare two contradictory sources on the strength of the authorities and on a number of reports, as Shāfiᶜī does.(44)

The following example will illustrate the way in which Shāfiᶜī bases his doctrines on a number of reports.(45)

ᶜA'isha reports: "In what was revealed, ten attested sucklings were required to establish the bar. The ten were later replaced by five. The Prophet died and the five were still being recited in the Qur'ān." She used to say: "The Qur'ān was revealed with ten attested sucklings setting up the bar. These later became five."

ᶜUrwa reports: "The Prophet commanded the wife of Abū Ḥudhaifa to nurse Sālim five times to set up the bar. She did so and always considered Sālim a son."

ᶜAbd Allāh b. al-Zubair reports: "The Prophet said, not one and not two sucklings constitute the bar, nor one nor two sucks."

Sālim b. ᶜAbd Allāh reported that ᶜĀ'isha sent him away and refused to see him. He was being suckled by her sister Umm Kulthūm who had fallen ill after suckling him only three times. Sālim said: "I could never visit ᶜĀ'isha since I had not completed the course of ten."(46)

On the basis of the above reports, Shāfiᶜī considered the five sucklings as a Qur'ānic injunction whose tilāwa was withdrawn.(47) Shāfiᶜī's other aim was to refute the doctrine of his opponents - the Mālikīs. Mālik had derived his doctrine direct from the Qur'ān. Although he knew the aḥādīth, he did not rely on them.(48) Shāfiᶜī quoted another report in which another of the Prophet's widow, Ḥafṣa, is involved. She sent ᶜĀṣim b. ᶜAbd Allāh b. Saᶜd to her sister Fāṭima to be breast fed ten times so that he could call upon her. He was only small at that time. She did this and as a result, he did call upon her.(49)

Shāfiᶜī blames the Mālikīs by saying that they transmitted aḥādīth but rejected them in favour of the opinion of a successor. The Mālikīs reported aḥādīth from the Prophet and ᶜĀ'isha; they also reported the Prophet's command to Sahla bt. Suhail to feed Sālim. But they rejected all these reports in favour of the ra'y of Saᶜīd b. al-Musayyab - Saᶜīd had claimed that one suckling by itself could constitute a bar, yet on

another occasion they ignored his view in favour of their own doctrine.(50)

Shāfi^{c}ī's interpretation of Q.4,23 is not straightforward and must be open to question. His arbitrary opinion on the problem in question is not justifiable, because what Sa^{c}īd had said was only the direct tafsīr of Q.4, 23. Shāfi^{c}ī has also tried to harmonise the verse and the aḥādīth. He claims that the verse in question is couched in general terms and that the aḥādīth explain it. He, as a matter of fact, admits that the alleged ^{c}Ā'isha report was the direct tafsīr of Q.4,23 when he says: "Some of the people in the past said the same as ^{c}Ā'isha."(51) Shāfi^{c}ī and his interlocutor were discussing the problem, taking into account the early tafsīr, the origin of which was obscure. One gets the impression that the scholars were not left with any contradiction between the Qur'ān and ḥadīth but that there was contradiction in the tafsīr. It was the task of the uṣūlī to differentiate between correct tafsīr and arbitrary tafsīr.

According to Makkī(52) the ^{c}Ā'isha report is strange in the theory of al-Nāsikh wa-l mansūkh because neither the abrogating nor the abrogated is recited in the Qur'ān. According to Mālik and the Medinese, the ruling and the wording have both been abrogated by Q.4,23. Therefore, one suckling sufficed to set up a marriage bar. Makkī was prompted to say that this doctrine was excellent because the nāsikh was recited in the Qur'ān while the mansūkh was not.

Jaṣṣāṣ(53) has dealt with this problem painstakingly. According to him, one suckling is enough to constitute a bar since this is the

exact meaning conveyed by the Qur'ān (4,23). He points out that in order to determine the number of sucklings we must refer to the Qur'ān and the sunna mutawātira, not to Khabar al-Wāḥid, since the latter is not capable of restricting (takhsīs) the explicit ruling of the Qur'ān. Jaṣṣāṣ rejects the aḥādīth on which Shāfi^{c}ī had based his judgement. He has a number of reports to strengthen his doctrine but we mention only one. He quotes an anecdote in which ibn ^{c}Abbās is asked, "the people say that one or two sucklings do not count (لا تحرم الرضعة و الرضعتان)." Ibn ^{c}Abbās reportedly says: "That was the practice in the past but now one suckling constitutes the bar", i.e. a counter (tafsīr) ḥadīth. Jaṣṣāṣ, after quoting ^{c}Ā'isha's report, remarked: "No Muslim can say that the Qur'ān can be abrogated after the demise of the Prophet. Were the abrogation possible, the tilāwa would have survived. As the tilāwa is not in existence and the abrogation can not possibly be made after the death of the Prophet, the ^{c}Ā'isha ḥadīth must be taken as if it conveyed one of the two possible meanings. Either the ruling of this ḥadīth is not confirmed, or it had been confirmed but was abrogated during the lifetime of the Prophet and what was abrogated could not be practised after his death."

From the above discussion we can safely conclude that the early tafsīr reflected one of the elements of the sunna on which the early schools were founded. In the problem of Riḍā^{c}, the tafsīr made by Sa^{c}īd is more in keeping with the Qur'ān than those of the aḥādīth presented by Shāfi^{c}ī, because one suckling is the minimum on which the implication of the verse can be applied and this is the direct tafsīr of Q.4,23.

Another element of the sunna was the legal or ritualistic practice of the predecessors. The origin of this practice was unknown to the ancient scholars. They could not remember when and on what basis that particular practice was started. However, they accepted the practice and based their doctrines on it. It should be noted when the rival schools demanded documentation, there emerged the tendency to project back the doctrines by producing isnād which in some cases could be traced back to the Prophet. The following is a clear instance in which this has occurred. A widow, during her waiting period, according to practice, was not allowed to leave her matrimonial home. However, widows could visit one another during the day provided they came back and slept in their own homes. This practice must have been based on the hadīth in which permission was granted to the widows of the Muslims who were killed in the battle of Uḥud.[54] According to Abū Ḥanīfa[55] the permission emanated from ibn Masʿūd while Shāfiʿī[56] attributed this doctrine to the Prophet.[57]

Anti Sunna arguments.

Shāfiʿī in his treatise Jimāʿ al-ʿilm clearly indicates that some ahl al-Kalām were among those who rejected aḥādīth altogether. He also acquaints us with another group whom he does not name but through polemics with his opponents, it is clearly understood that the ancient scholars were included among them. This latter group rejected ḥadīth which Shāfiʿī calls Khabar al-Khāss (ḥadīths not universally transmitted).[58] Ibn Qutaiba has mentioned some of the rival factions who were considered among the opponents of the traditionists. He

named them as Khārijītes, Murjī'tes, Qadarītes and Rāfidītes.[59] He also gives some reasons why hadīth was being rejected by the above mentioned groups. He thinks it was because of the mistrust which developed among the Muslims after the death of the Prophet. He further comments that by various political and religious squabbles they were divided into several groups. As a result, various battles took place and they started accusing even the early Caliphs who were the close friends of the Prophet. Because most of the traditions were related by these authorities, they were rejected and discarded. Each group restricted its reception to those aḥādīth which in their isnād bore the names of those who were considered their allies. The Shī^{c}a rejected all those traditions which went back to the authority of the first three Caliphs before ^{c}Alī or at least in which ^{c}Alī appeared as their representative.[60]

The arguments presented by the anti-traditionists against the aḥādīth of the Prophet were as follows. The main argument against the traditions was the acceptance of the absolute authority of the Qur'ān which, according to them, explains everything and is qāṭi^{c} in its meaning and transmission.[61] Therefore, it should be taken, they argued, as the criterion and standard by which traditions are accepted or rejected. Ibn Qutaiba[62] has recorded examples where the ahl al-Kalām claimed that contradiction existed between the sources and hence rejected the hadīth material altogether. The anti-traditionists produced two aḥādīth in favour of their doctrine.

(1) The Prophet said: "Compare what is related on my authority

with the Qur'ān. If it agrees with it, I have said it; if it does not agree I have not said it."(63)

(2) The Prophet said: "People ought not to shelter behind my authority, I allow what Allāh allows and forbid what Allāh forbids."(64)

Shāfi^{c}ī does not accept these reports on the grounds that the isnād is weak.(65) He, in turn, produces a hadīth on the authority of the Prophet and thus refutes his opponent's doctrine. The hadīth runs:

> "Let me find no one of you reclining on his couch, when confronted with an order or a prohibition from me saying: I do not know (whether this is authentic or not), we follow (only) what we find in the Qur'ān."(66)

The traditions reflect the squabbles among the traditionists and the anti-traditionists; these must, therefore, be spurious. The Iraqis abandon hadīth if it contradicts the Qur'ān. Abū Yūsuf clearly says: What contradicts the Qur'ān, is not from the Prophet."(67) Arguing in favour of his doctrine, he relies on the above-mentioned two traditions narrated by the anti-traditionists and produces a further report from ^{c}Umar in which Qurẓa b. Ka^{c}b al-Anṣārī is reported to have said: "I joined a group of Anṣār who were setting out for Kūfa, ^{c}Umar accompanied the group to a particular place and said: 'You are heading towards people who are humming with the Qur'ān like bees, therefore, relate only a little from the Prophet.' "(68) Abū Yūsuf further claimed, ^{c}Alī, the fourth Caliph, made it a habit not to relate aḥādīth from the Prophet.(69)

On the problem of the evidence of one witness together with the oath of a plaintiff, the Iraqis do not accept the relevant hadīth, because, according to them it contradicts the Qur'ān (2,282). Jaṣṣāṣ calls this procedure an addition to the Qur'ān, which if accepted is termed naskh. He remarks that the ruling of the verse in question cannot be combined with the witness and the oath of a plaintiff.(70) According to the verse, the minimum number for the admissibility of evidence is two men or one man and two women. Mālik and Shāfi^{c}ī endorse the procedure. The former(71) supports his doctrine with systematic reasoning and the established practice of Medina. The latter(72) accepts the authenticity of the hadīth and produces the full isnād.

The hadīth narrated by Qurẓa b. Ka^{c}b is tendentious and serves to vindicate the Iraqis' abandoning of the hadīth and resorting to the explicit meaning of the Qur'ān. Shāfi^{c}ī calls this: rejecting the hadīth by comparing it with the Qur'ān (ابطال الحديث وعرضه على القران).(73)

The Medinese also reject a hadīth when it contradicts the Qur'ān. On the issue of whether marriage remains valid when one of a non-Muslim married couple accepts Islam before the other, they reject the mursal hadīth on which Shāfi^{c}ī bases his doctrine. Shāfi^{c}ī blames them by saying: "You are among the people who do not know aḥādīth or else you know them but reject them by interpreting the Qur'ān in your favour."(74)

The anti-traditionists, in order to reject traditions propounded a formula, according to which the Qur'ān could abrogate the sunna.

Shāfi^{c}ī did not consider this formula as appropriate because in this way, he argued, the whole sunna might be abandoned.(75) The followers of ḥadīth, in turn, put forward the counter formula: the sunna prevails over the Qur'ān but the Qur'ān does not prevail over the sunna. Whether these formulae were put into circulation before or after Shāfi^{c}ī is a subject for further debate. According to Goldziher,(76) "the power attributed to the sunna as the normative principle in the Muslim life is as old as Islam. Already at the end of the first century the principle was formed: 'the sunna is the judge of the Qur'ān and not vice versa'." (77) Al-Naḥḥās has also counted one group which in the past (i.e.before fourth Islamic century) held the view that the sunna abrogates the Qur'ān; the Qur'ān does not abrogate the sunna.(78) In connection with this we have already quoted above(79) that Abū Yūsuf admits that the sunna can prevail over the Qur'ān as the wiping of the shoes abrogated the Qur'ānic injunction of ablution (5,6). The Mālikīs allow masḥ ^{c}ala al-Khuffain only to travellers. Shāfi^{c}ī warns them that your Master (Mālik) accepted the practice. Mālik had produced ḥadīth on the authority of Nāfi^{c} and ^{c}Abd Allāh b. Dīnār that ibn ^{c}Umar came to Kūfa and disliked the practice of masḥ approved by the governor Sa^{c}d b. Abī Waqqāṣ. The latter referred the former to his father who declared it valid.(80) The Egyptian Medinese went one step further by saying: "We do not like the masḥ, either for those in residence or for those travelling." (81) Shāfi^{c}ī says: "You neglect the sunna of the Prophet and the practice of his companions, how then can you hold that you follow the sunna and the practice."(82)

Shāfi^{c}ī accepts the practice of mash and refutes the doctrine of those who held that the Qur'ān (5,6) has repealed the sunna (mash ^{c}ala al-Khuffain).[83] According to him the sunna never contradicted the Qur'ān. He claimed that if the sunna was abrogated by the Qur'ān, the Prophet immediately introduced another sunna in order to indicate that the sunna abrogated the sunna.[84] Hence both formulae recorded above reflect the counter attacks made by the rival factions and, therefore, must have started before Shāfi^{c}ī and continued after him. However, the origin of these formulae is obscure.

Another argument used by the anti-traditionists for rejecting the aḥādīth was that they contradicted each other and the Qur'ān. Ibn Qutaiba[85] produced aḥādīth which according to the anti-traditionists were in contradiction. The Iraqis were keen to find contradiction in the traditions and if one disagreed with their doctrine they rejected it. For instance, they rejected the ḥadīth of ^{c}Ā'isha who said: "They, the believing women, were in the habit of performing the Fajar prayer with the Prophet; then they went their way in the half light, wrapped up in their robes and unrecognised by anyone."[86] According to them this ḥadīth was contrary to the ḥadīth in which the Prophet said: "Start your Fajar prayer at day-break, for its performance at this time is the most rewarding to you."[87] They maintained that it was possible to choose one of the two contradictory situations. Shāfi^{c}ī follows the former tradition and gives reasons. He says that if there is a tradition contrary to ^{c}Ā'isha's tradition, we must accept her tradition, for her tradition should be the standard according to which we make our choice.

So, whenever traditions are found to be contradictory, we should choose the one for which there is valid reason which makes us believe that it is more reliable than others. His interlocutor asked him what would that reason be? Shāfi^{c}ī replied:(88) "It is that one of the two traditions should be more consistent with the meaning of the Qur'ān and in case there is no relevant text in the Qur'ān, we shall choose the more reliable of the two aḥādīth, the one related by an authority better known as an expert in transmission and who has a greater reputation for knowledge, or at least better memory. We choose the tradition related by two or more authorities in preference to one related by one authority, or the one which is more consistent with the general meaning of the Book or with the other sunnas of the Prophet."

The Iraqis felt no hesitation in allowing the aḥādīth of the companions to override the aḥādīth that came down from the Prophet.(89) Their argument was that the companions were the people best informed about the sunna of the Prophet. The Medinese adopted the same attitude. Their argument was the same as that of the Iraqis, that the Prophet's companions were more knowledgeable than anyone else. An example is traced on the problem of how many times one has to raise the hands for prayer. The Malīkī representative disputes with Shāfi^{c}ī and eventually rejects the ḥadīth on which Shāfi^{c}ī bases his doctrine.(90) Jaṣṣās solves this problem differently. He says: "If two reports are in contradiction and there is a possibility that one of them is mansūkh and the people of knowledge agree as to which of them is abrogating, their consensus indicates that the reports on which they agree is later

than that on which they disagree." He concludes, the hadīth reported on the authority of ᶜAbd Allāh b. Masᶜūd and Barrā' b. ᶜĀzib was later than the hadīth in which the Prophet is believed to have raised his hands three times in a prayer.(91)

The anti-traditionists rejected a hadīth when it contradicted reason or logical proof. Ibn Qutaiba(92) gives examples where a hadīth was contrary to reason according to ahl al-Kalām. He also acquaints us with the hostile attitude of the traditionists against ahl al-Ra'y. The traditionists main aim was to oppose Abū Ḥanīfa who is believed to have made legal decisions on his own discretion. We found Auzāᶜī saying: "I do not object to Abū Ḥanīfa because he uses ra'y as I use it, but whenever a hadīth is known to him he forsakes it."(93) Isḥāq b. Rāhawiya, a traditionist, claims that ahl al- Ra'y forsake the Qur'ān and the sunna of the Prophet and use Qiyās instead.(94) A clear example of this occurred in the tradition of the Prophet about a slave whose masters are manifold and one of them manumits him. The Iraqis abandon hadīth and use analogy - according to the hadīth the master who frees his slave should pay the total price if he owns property, otherwise the slave would be partially free. The Iraqis do not accept partial freedom and give the slave an opportunity to earn so that he could buy his freedom from the other masters. They base their doctrine on the analogy with the problem of inheritance where the partially free slave is not entitled to inherit nor is he to be inherited.(95) Hadīth was ignored by Abū Ḥanīfa in numerous cases. The following example shows that reason prevailed over the hadīth. According to the tradition

Khums (one-fifth) is imposed on whatever is produced or taken from the sea, like ornaments. Abū Ḥanīfa and ibn Abī Lailā used to say: "Nothing is leviable on the ornaments because they are like fish."(96) (This might be the tafsīr of Q.16,14).

The home of sunna, Medina, was not free from the use of ra'y. Malik narrates aḥadith but judges them from his own personal viewpoint. He narrates aḥādīth in which the Prophet had combined Ẓuhr and ᶜAṣr and likewise, Maghrib and ᶜIshā' without any particular reason. But Mālik reports: "I think it probably happened on a rainy day."(97) The Medinese narrate aḥādīth which describe the way in which the Prophet and the early caliphs used to recite long chapters of the Qur'ān in the Fajar and Maghrib prayers but they do not follow these traditions, because, according to them to do so would cause hardship.(98) The expressions like 'رایت' and 'اری' are easily found in the Muwaṭṭa'. On the problem of destroying property in an enemy's territory, Shāfiᶜī explicitly says that Mālik uses his opinion and abandons ḥadīth.(99)

The opponents of Shāfiᶜī argued that an isolated tradition could not be accepted as authenticated unless it was related by two reliable and trustworthy authorities as was the case with legal evidence. This argument referred to a tradition in which ᶜUmar demanded the testimony of another person to confirm a report of a single individual concerning a decision of the Prophet.(100) Shāfiᶜī's answer to this objection was threefold. Firstly, ᶜUmar wanted to be more careful because the narrative of two makes the case stronger. Secondly, it

was possible that the transmitter was not known to ᶜUmar and he wanted to confirm the report. Thirdly, it was possible that the information related to ᶜUmar was unacceptable and he rejected it so that someone else could verify it.(101) In addition to that, Shāfiᶜī provided some instances where ᶜUmar had accepted isolated traditions.(102) Further, Shāfiᶜī argued that the number of witnesses demanded for legal evidence was not always two. He quoted a tradition in which ᶜUthmān was said to have accepted the evidence of one woman concerning the decision of the Prophet in a legal case.(103) Similarly, he produced a ḥadīth in which Zaid b. Thābit was made to ask ibn ᶜAbbās whether a woman who has begun to menstruate should return from the pilgrimage before visiting the Kaᶜba? Ibn ᶜAbbās referred the former to a woman from the Anṣār and thus the decision was confirmed on the witness of one woman.(104) Shāfiᶜī tried to compel his opponents to recognise the authenticity of Khabar al-Wāḥid, but they did not change their attitude and went one step further by calling ignorant those who accepted the Khabar al-Infirād.(105) Abū Yūsuf(106) warns against isolated traditions, considers them irregular 'شـــاذ' and urges against accepting them. Shaibānī explicitly remarks 'because the majority is not in favour of isolated traditions, we do not accept them.'(107) According to Jaṣṣās Khabar al-Wāḥid as an addition to the Qur'ān cannot be accepted. He maintains that Khabar al-Wāḥid is of three kinds. Firstly, it is narrated by a reliable person and was not disapproved of by any of the predecessors. It is acceptable provided it is not in contradiction to the Qur'ān. Secondly,

it is narrated by a person whose reliability is unknown, but is further narrated by a reliable reporter. This hadīth is accepted provided it is not contrary to Qiyās. Finally, it is narrated by a well-known authority but the authority is accused of committing mistakes. This report is also accepted on the condition that it is not contrary to Qiyās. However, if this report has been accepted by any of the predecessors, it then enjoys priority over Qiyās.[108] Jaṣṣās clearly points out that Khabar al-Wāḥid cannot abrogate the Qur'ān and sunna.[109] The Medinese also reject Khabar al-Wāḥid on the grounds that their consensus takes precedence over it. The Medinese, however, were inconsistent in their arguments. This gave Shāfi^{c}ī an opportunity to accuse them by saying: "If you object that this is an isolated tradition then what do you think of all those cases where you yourself rely upon them? Either the Khabar al-Wāḥid is a reliable argument or it is not; if it is not you must discard all those cases in which you rely on Khabar al-Wāḥid."[110] It is obvious that Shāfi^{c}ī wanted to establish his doctrines on the basis of Khabar al-Wāḥid, therefore, he urged the adherents of the ancient schools to accept it as ḥujja. He did not discard any such ḥadīth, if, according to him, it had come from the Prophet. He accepted aḥādīth when they were narrated by a reliable and trustworthy authority. His only concession was that the isolated tradition was inferior to a unanimously recognised sunna and did not provide absolute knowledge. However, it could be taken as a basis for action.[111]

Shāfi^{c}ī and the sunna.

Before we discuss Shāfi^{c}ī's concept of sunna, it would be very useful to underline the concept of his predecessors regarding it. We have already seen that Shāfi^{c}ī's predecessors felt no hesitation in allowing the traditions of the companions to supersede the traditions of the Prophet. We have put forward their reasons for doing so. Here we are confined to the way in which the sunna was understood by Shāfi^{c}ī's predecessors.

Records indicate that according to the ancient scholars the concept of the sunna was not restricted to the traditions of the Prophet but indeed also the traditions from the companions and, in the case of Mālik, the practice set by the people of Medina. Addressing his Egyptian opponent Shāfi^{c}ī says:(112) "You claim to establish the sunna in two ways, one is to find that the authorities among the companions of the Prophet held an opinion that agrees with the doctrine in question and the other is to find that men did not disagree on it. You reject it (as not being the sunna) if you do not find a corresponding opinion on the part of the authorities or if you find that men disagree." This can be exemplified as follows. On the problem of Shufa^{c} (pre-emption) Mālik produces a hadīth, according to which the Prophet allowed this practice. He then reinforces the hadīth by producing Sa^{c}īd b. al-Musayyab's opinion. Sa^{c}īd was asked, "is there any sunna concerning it?" He replied, "Yes, Shufa^{c} is applicable to houses and lands."(113) Mālik sometimes verifies the sunna by Ijmā^{c}. In the case of the mutalā^{c}inān (husband and wife cursing each other) he gives the verdict

that after Li^{c}ān (sworn allegation of adultery committed by either husband or wife) they should never be re-united. He points out that, "this is the practice about which there is no doubt or disagreement among us."(114) Further, Mālik uses the term 'sunna of all Muslims.' This is an expression which denotes the practice set up by the Muslims but, in fact, it conveys the meaning of that practice which is restricted to the people of Medina. Mālik's use of the term sunna in the sense of the established practice in Medina becomes obvious when we find the following expressions: 'the sunna has established,' 'the agreed practice' and 'our practice.'(115) These expressions are used interchangeably in the Muwatta' in order to indicate that there was an established practice of the people of Medina. Nevertheless, it should be noted that whenever Ijmā^{c} was claimed to have occurred, it owed its origin to the personal opinions of the scholars. In other words, sunna was derived from Ijmā^{c} which in turn was derived from an opinion. The following example serves to clarify this statement. The problem concerns the penalty in the event that a slave who steals something from his master -whether or not his hand should be amputated. The Medinese held that if the ruling authority refuses to cut off his hand, the master is entitled to do so. They base their doctrine on the Ijmā^{c} which owes its origin to the opinions of ibn ^{c}Umar, ^{c}Umar and ^{c}Urwa b. Zubair.(116) The argument in favour of established practice was that it was more reliable than an isolated tradition. It was held that a tradition is narrated by one or two or at the most six persons while the practice was known to

thousands of people. The Medinese opposition to a hadīth in favour of practice is obvious from many cases. Mālik rejects the legal doctrine of Khiyār al-majlis in which the right to repudiate the contract is granted to the contending parties only while they are present at the place of contract. He says:(117) "We have no such practice and specific rule for this",despite the existence of hadīth on the subject. Further, their reliance on practice is understood by the following anecdote. Muḥammad b. Abī Bakr b. Muḥammad b. ᶜAmr b. Ḥazm (d. 132/749), judge of Medina, gave judgement against a tradition. When he came home, his brother ᶜAbd Allāh b. Abī Bakr asked him, 'You have given judgement contrary to the tradition while the tradition was enough upon which to base the verdict.' The former's reply, 'Alas, what of the practice' meant that the agreed practice of Medina was more acceptable than the hadīth.(118) There were numerous cases where Mālik quoted opinions of the companions and the successors but decided in favour of the practice. For example, he rejected the opinion of Saᶜīd b. al-Musayyab that the compensation for causing an injury to some part of the body was one-third of the compensation which would be payable for the whole body. Mālik argued that agreed practice was contrary to Saᶜīd's opinion, therefore, the Imām should decide according to his own discretion.(119)

The term sunna occurs in the sense of religious established practice in the arguments of Iraqis. They accepted the doctrine on which ᶜUmar, ibn ᶜUmar and ibn ᶜAbbās were of one view that one should prostrate when reciting Q.22,18.(120) In another situation

when the defendant refuses to take an oath, the Iraqis give judgement in favour of the plaintiff although the latter does not provide legal proof. They clearly say: "We do so on account of the sunna," i.e. practice.[121] Abū Yūsuf[122] is of the opinion that if a Muslim judge orders the killing of captured children, women and slaves who do not take part in war, his judgement will be wrong and against the practice. Regarding the land of Baṣra and Khurasān, Abū Yūsuf says, "They are like the territory of Sawād." He does not want to differentiate between the two lands but when he finds the practice of the early Caliphs contrary to his own opinion, he suggests that the practice should prevail over his opinion and be followed as a normative precedent.[123]

It could be said that according to the ancient scholars the local community was a source of law because it conveyed and preserved the normative practice (sunna). Therefore, it was easy to set aside a ḥadīth from the Prophet which did not conform to the general practice of the community. However, it should be noted that this sort of attitude was merely a device used to refute the opponent's ideas and to ratify their own ideas. They were inconsistent in their arguments. This gave an opportunity to Shāfiʿī to criticise them. Addressing his Egyptian opponent he states:[124] "You relate an authentic tradition from the Prophet; you relate two traditions from the companions, but reject them because they are not in favour of your practice. Whose practice do you follow when you diverge from the sunna of the Prophet? I have not understood what you really mean by practice." To refute

the idea of practice, he quoted an example of ibn ᶜUmar who gave up the practice of Mukhābara (the lease of agricultural land for a share of its produce) when a hadīth in which the Prophet prohibited this practice reached him. Shāfiᶜī shrewdly pointed out that ibn ᶜUmar neither used his opinion nor said: "nobody has so far reproached us for this and we have been practising it until now."(125)

Shāfiᶜī restricted the term sunna to the usage of the Prophet. To establish the claims of the sunna he argued that acceptance of it was equivalent to belief in the Prophet himself. The ahl al-Kalām had accepted the primacy of the Qur'ān over all traditions. Shāfiᶜī used the Qur'ān as evidence to compel them to accept the claims of the sunna. He quoted several Qur'ānic verses(126) and stated that they impose obedience to the Prophet in all matters. It should be observed, however, that none of these verses referred to an obligation to accept the authenticity of the aḥādīth of the Prophet. Let us examine some of them.

Q.59,7 reads: "Whatsoever God granted (as spoil) to His Prophet from the people of settlements, is to be divided (i.e. to be used for such a purpose allowed by God), the Prophet of God, those near to him, the orphan, the poor and the way-farers; so that it will not come under the control of the wealthy among you. Whatsoever the Prophet gives you, take it; what he prohibits, cease demanding." The verse clearly speaks about the booty and enjoins the Muslims to accept what the Prophet has given them and to desist from asking for more. Shāfiᶜī cleverly quotes the last part of the verse (و ما اتاكم الرسول فخذوه و مـا

نهاكم عنه فانتهوا) and argues that the verse manifestly obliges us to accept the instructions of the Prophet as laid down in the hadīth, i.e. it refers to the obligation to accept his sunna.(127)

The verse is also used by the scholars in their arguments to maintain that the sunna can abrogate the Qur'ān.(128) This sort of trend shows us how the scholars employed the Qur'anic verses in favour of their doctrines.

Shāfi'ī's second argument goes to Q.33,36: "It is not fitting for a believer, man or woman, when God and His Prophet have come to a decision on a matter, to have any choice therein." The verse, if read in context, clearly shows that it has nothing to do with the authenticity of the hadīth or sunna. Vv. 28 and 29 commanded the Prophet to tell his wives that if they wanted a worldly life, it would be granted to them; if they dedicated their lives to God, the Apostle and the Hereafter, their reward would be great. Vv. 30 and 31 informed the consorts of the Prophet that if they were guilty of an abomination, their punishment would be doubled; if they devoted themselves to God and His Prophet, their reward would be granted twice. Vv. 32, 33 and 34 instructed the Prophet's wives that they were not like ordinary women. They were obliged to pray and give something to charity; they should recite what was rehearsed to them in their houses. V.35 informed all Muslim women that if they were good in deeds, they would be rewarded. V.37 described the story of Zaid b. Ḥārith's marriage with the Prophet's cousin Zainab bt. Jaḥsh. It told how Zaid divorced Zainab and she was married to the Prophet by

God's permission. According to the exegetes verse 37 referred to the marriage of Zaid to Zainab. She had opposed the proposals of her marriage to Zaid because according to her Zaid was lower in status than she was, but when God revealed Q.33,36, she accepted the proposal.(129) Shāfi^{c}ī, however, considered that v.36 was non-specific and argued that the sunna of the Prophet embodied in a ḥadīth must be applied. He particularly referred to the ḥadīth in which ibn ^{c}Abbās was asked whether one could pray two Rak^{c}as after the ^{c}Asr prayer to which he replied, 'no' and quoted verse 36.(130)

Shāfi^{c}ī's great achievement was that he systematized the sources of law and laid down the exact limits within which each might be used. He defined the sunna, as we have already pointed out, as a source of law only when it came down from the Prophet. He quoted in this connection the combination of al-Kitāb wa-l ḥikma which appeared in so many passages of the Qur'ān.(131) Shāfi^{c}ī's interlocutor asked him, "We understand by the "Book" that it is the Qur'ān, but what do you mean by al-ḥikma?" Shāfi^{c}ī replied: "It was the sunna of the Prophet."(132) He further asserted that the sunna of the Prophet was Divinely inspired. According to him, apart from the waḥy which Gabriel recited to the Prophet, there existed yet another kind of waḥy which the angel, by God's command, put into the Prophet's heart. This latter type was called the sunna.(133) Shāfi^{c}ī's reference to the sunna, as Divinely inspired clearly demonstrated that he desired to compel his opponents to accept the authenticity of the sunna, but he did not realise that his opponents were not worried about the authenticity

of the sunna, it was the report which embodied ḥadīth, that they were talking about.(134) His interpretation of ḥikma, however, did not pass unnoticed. He was told that the 'Book' and ḥikma were two names for the same thing - the Qur'ān. 'No', Shāfi^{c}ī replied and insisted that they were two separate things - the Qur'ān and the sunna. His reference again went to the Qur'ānic verses which he had already quoted in order to support his doctrine that acceptance of the sunna was the same as belief in the Prophet himself. Moreover, he quoted Q.33,34: "Do repeat (O wives of the Prophet) what has been recited (يتلـــى) in your homes from the verses of God and the ḥikma." When he was reminded that the verb يتلـــى did not normally apply to the sunna, he answered, "يتلـــى means to pronounce (ينطـــق); therefore, it could be applied in the same way."(135) Shāfi^{c}ī's claim that ḥikma was the other name for the sunna might not be convincing, because the Qur'ān itself bore testimony to the fact that the ḥikma was granted to other Prophets(136) and even to the persons other than the Prophets.(137) Shāfi^{c}ī's main quarrel with the Mālikīs was however concentrated on their attitude to the relation between the sunna of the Muslims and the ḥadīths from companions on the one side and ḥadīths from the Prophet on the other.

Concerning the abrogation of the ḥadīth, Shāfi^{c}ī claimed that only a ḥadīth from the Prophet could override another ḥadīth from the Prophet, because a ḥadīth from a companion was not equal in nature to the ḥadīth from the Prophet. His thinking is expressed in the following statement. "Nothing is equal to the sunna except the sunna

of the Prophet, since God has never given to any other human being the power He gave to the Prophet. He commanded men to obey the Prophet and made his orders binding upon them. Thus all men are his followers. He who follows shall never depart from what he was ordered to obey, and he who is under obligation to obey the sunna of the Prophet shall not refuse to obey it, because he is not empowered to abrogate any part of it."(138) Shāfi^{c}ī accepts a ḥadīth when it is handed down from the Prophet. He accepts a ḥadīth of the companion when there is no ḥadīth available from the Prophet, but preference is given to aḥādīth of the first four caliphs. Shāfi^{c}ī's theory of traditions can be understood by this statement. "One authentic ḥadīth overrides another authentic ḥadīth. If there are two authentic traditions and abrogation cannot be applied, the one which is more reliable should be accepted. In the case where both are reliable the one which is closer to the meaning of the Qur'ān enjoys priority."(139)

Shāfi^{c}ī, in fact, does not readily accept the abrogation. He argues both the traditions have come down from the Prophet and are equal in nature. Let us see how Shāfi^{c}ī justifies his theory of abrogation.

CHAPTER FOUR

THE PRINCIPLES OF ABROGATION

Shāfi^{c}ī's principles of abrogation.

Shāfi^{c}ī maintains that some of the rulings of the Qur'ān and of the sunna are abrogated. The rulings are abrogated, because God wanted to bestow mercy upon His creatures, to lighten their burden and to comfort them.(1) He also, as will be shown, discusses the theory of naskh between the Qur'ān and the sunna. He claims that they do not and can not supersede each other. He states that the Qur'ān supersedes only the Qur'ān and the sunna supersedes only the sunna. The function of the sunna, he believes, is to follow what is laid down in the Qur'ān and to explain what is meant by the general communications of the Book.(2) In support of his view Shāfi^{c}ī lists some Qur'ānic verses, which according to him, clearly speak about the abrogation of the Qur'ān by the Qur'ān alone. He refers to Q.10,15 in which God says: "When our clear verses are recited to them, those who do not look forward to meeting us, say: Bring a scripture other than this, or change it. Say (O Muḥammad) it is not for me to alter it of my own accord. I follow only what is revealed to me; verily, I fear, if I disobey my Lord, the punishment of a Great day." According to Shāfi^{c}ī, "It is not for me to alter it of my own accord" clearly indicates that for him nothing can abrogate the Book of God except His Book itself.

It should be noted that scholars could not accept Shāfi^{c}ī's

interpretation of the verse. Ibn Ḥazm[3] said: "We did not say that the Prophet altered the verses of his own accord - a proponent of this belief would be an unbeliever - the Prophet altered the verses by an inspiration (wahy) from God as He commanded the Prophet to say: 'I follow only what is revealed to me.' The verse informed us of the abrogation of the wahy by the wahy. Since the sunna was wahy, it could abrogate the Qur'ān and vice versa." Shāfi^{c}ī himself acknowledged that some scholars have maintained that there was, in this communication, some evidence that God has empowered His Prophet to speak of his own accord, but only by His Divine aid, on the matters where He had not provided Qur'ānic communication.[4]

Shāfi^{c}ī further supports his doctrine by interpreting Q.2,106 in its favour. The verse, according to him, reads: "For whatever we abrogate or defer of the Qur'ānic communication, we bring a better or similar verse to it." Concluding, he remarked that God has made abundantly clear that abrogation or deferment of the Qur'ān cannot be made possible except by another Qur'ānic communication, as He says in Q.16,101: "When we substitute one verse for another, Allāh knows best what He reveals, they say: You (Muḥammad) are but a forger."

Shāfi^{c}ī's opponents interpreted the same verse to indicate that the Qur'ān could be abrogated by the sunna and the sunna could be abrogated by the Qur'ān. When they were reminded that Shāfi^{c}ī insisted that Q.2,106 mentioned only the Qur'ān's abrogation by the Qur'ān, as it said: "We bring better or like thereof," and the sunna could never be considered better than the Qur'ān, they replied, that

the sunna also came down from God; as He said: "He (the Prophet) does not speak on his own account but from what is revealed to him" (Q.53,3-4). Further God did not mean to say that He proposed to bring a second verse superior to the first; no part of the Qur'ān was superior to any other. He meant to state that He would make a ruling superior to the first in the sense of its being easier to perform, or richer in terms of reward.(5) According to Jaṣṣāṣ, Q.2,106 indicated that naskh occurred in the Qur'ān. It did not indicate that the Qur'ānic verse would be abrogated by a better or similar Qur'ānic verse, since nothing prevented us from understanding from the verse that abrogation might be achieved by the sunna which was revealed to the Prophet, and this, he argued, was the precise meaning of the verse: "we bring better or like thereof." Jaṣṣāṣ went one step further by claiming that the ruling of the sunna might be better than the ruling of the Qur'ān.(6)

Shāfi^{c}ī has also exploited the verse in question in order to point out that no companion of the Prophet was similar or superior to the Prophet. Therefore, the traditions of the companions could not override the traditions of the Prophet. Thus, he refuted the idea of his predecessors that the companions aḥādīth, in certain cases, set aside the traditions of the Prophet. These interpretations suggest that Shāfi^{c}ī was compelled by the circumstances prevailing in his time to interpret the verses in this way. His theory of abrogation, therefore, conveys two clear meanings. Firstly, if he accepted that the sunna could abrogate the Qur'ān, the Qur'ān party (ahl al-Kalām) would

certainly reject his view appealing to "na'ti bi khairin minhā aw mithlihā," because, according to them, the sunna was not equal to the Book of God. The Qur'ān had definite superiority over the sunna. Secondly, if he claimed that the Qur'ān could abrogate the sunna, it would mean that contradiction existed between the two sources, while his main aim was to maintain that contradiction never existed between the Qur'ān and sunna.[7]

Shāfi'ī[8] declared that "nothing could abrogate the sunna save another sunna of the Prophet. If God were to address His Prophet on a matter on which the Prophet had provided a sunna different from that which God addressed to him, the Prophet would immediately provide a second sunna in conformity with whatever God had communicated to him. In that way he would make clear to men that he had provided a sunna that abrogated an earlier one being contrary to it." When Shāfi'ī was asked for evidence "Since the Qur'ān could abrogate the Qur'ān because there was nothing at all to match the Qur'ān. Could you possibly provide evidence in the sunna - that the sunna abrogates the sunna?" Shāfi'ī remarked that the evidence lay in his earlier statements, in which he had pointed out that God enjoined upon men to obey the commands of His Prophet, since the sunna emanated from God and whosoever obeyed it, obeyed the Book of God. We did not find, said Shāfi'ī, any other order which God made incumbent upon His creatures, except what was in this Book and in the sunna of the Prophet. If it was considered that nothing else said by a human being was equal to the sunna, nothing could abrogate it but another of equal status.

God did not empower any human being as He empowered His Prophet. Indeed He made it incumbent upon His creatures to follow the Prophet. Therefore, everyone who was a follower of his would never disobey what he had been ordered to obey, and he who was obliged to obey the sunna would not refuse to obey it, because he was not empowered to abrogate any part of it.

Jaṣṣās[9] has vehemently criticised the statement of Shāfi^{c}ī mentioned above. He openly declared that Shāfi^{c}ī's elaboration on this point was full of confusion. According to him, in saying: "nothing can abrogate the sunna of the Prophet except another sunna of the Prophet," Shāfi^{c}ī maintains that the sunna cannot be abrogated except by another sunna, yet in his following statement ("If God were to bring forth to His Prophet a communication on a matter on which the Prophet had provided a sunna different from what God brought forth to him, the Prophet would immediately provide a sunna in order to make it clear that his second sunna abrogated the earlier one or if contrary to it") Shāfi^{c}ī accepts the possibility that God can abrogate the sunna. Thus, according to Jaṣṣās, Shāfi^{c}ī himself has contradicted his own statement that only the sunna abrogates the sunna. Jaṣṣās was questioned by his interlocutor as to whether or not Shāfi^{c}ī did necessarily mean that God would produce a communication through the Qur'ān. He might produce one by way of the sunna (waḥy). Jaṣṣās asked, what was the meaning of this statement: "The Prophet would introduce a (second) sunna?" Moreover, said Jaṣṣās, Shāfi^{c}ī himself has admitted this, when he was asked whether sunna could be abrogated by the Qur'ān?

and replied: "If a sunna were abrogated by the Qur'ān, another sunna must have been laid down by the Prophet in order to make it clear that his earlier sunna was abrogated by his later sunna, so as to demonstrate to men that an act could be abrogated only by a similar act."(10) Shāfi^{c}ī allowed the sunna's abrogation by the Qur'ān because the Prophet made it clear that his earlier sunna was abrogated by the intervening Qur'ān. Further, in the statement: "The Prophet would immediately provide another sunna," there was an acknowledgement that God abrogated the sunna because the first sunna already existed when God revealed His command. If the second sunna, which the Prophet has to introduce in order to make it clear that his later sunna abrogated the earlier one, was considered to have emanated from God, how then could God abrogate the ruling which He had already abrogated (by the Qur'ān)? How would the abrogation of the ruling which was already abrogated be possible?

Shāfi^{c}ī in his doctrine that the Prophet's sunna could be abrogated only by another sunna of the Prophet, has clearly shown his awareness that if he accepted the sunna's abrogation by the Qur'ān, it would mean that every sunna would be argued away. He argued(11) that all kinds of sales which the Prophet has made unlawful, could be considered as lawful according to Q.2,276: "God has permitted selling and forbidden usury." The same might be held true about the stoning of adulterers - that this was abrogated by God: "The fornicatress and the fornicator, scourge each of them with a hundred stripes" (Q.24,2). The tradition concerning the wiping of the shoes might be

abrogated by the instruction on ablution (Q.5,6):-"O you who believe! When you rise up for prayer, wash your faces, and your hands up to the elbows, and rub your heads and (wash) your feet up to the ankles." - Similarly, he concluded that a quarter of a dīnār as the minimum value of stolen goods required for amputating the hand of a thief would be considered as abrogated by Q.5,42: "the thief, male and female, cut off their hands."

Shāfi^{c}ī was always of the view that the sunna never contradicted the Qur'ān. The role of the sunna was merely to state which of the Qur'ānic rulings were abrogated and which were the abrogating. This could be explained as follows. God had imposed a certain duty for prayer before the obligation of the five prayers. The duty was introduced in Q.73,1-4: "O you wrapped up in your raiment! Keep vigil the night long, save a little, a half thereof, or abate a little thereof, or add a little thereto and chant the Qur'ān in measure." God, according to Shāfi^{c}ī, abrogated this duty by the following v.20: "Your Lord knows how you keep vigil sometimes nearly two-thirds of the night, or a half or a third thereof, as do a party of those with you. Allāh measures the night and the day. He knows that you are unable to count it so He has turned to you with mercy. Recite, then, from the Qur'ān that which is easy for you. He knows that there are sick folk among you, while others travel in the land in search of Allāh's bounty, and others are fighting for the cause of Allāh. So recite what is convenient of it and establish regular prayer and pay the poor what is due, and so lend to Allāh a goodly loan." According to Shāfi^{c}ī,

the ruling: "You stand up nearly two-thirds of the night ..." is clearly abrogated by: "So, recite what is convenient of it."[12] Shāfi^{c}ī, after concluding this, was not sure whether the latter ruling was still applicable. If the latter ruling was in turn abrogated, then the abrogating ruling must be: "And some part of the night awake for it, as a work of supererogation for you; it may be that your Lord will raise you up to a laudable position" (Q.17,79). He further said: "This duty might be similar to the duty: 'to recite what is convenient of it.' " However, he has to find proof from the sunna in order to make sure that the ruling was abrogated. Luckily, he was able to trace a ḥadīth which runs:[13] "A tribesman from Najd, excited and crying, whose voice was hardly intelligible until he came to the Prophet's company, was really inquiring about Islam. The Prophet said: 'Five prayers were prescribed every day and night.' He asked if there was any other obligation upon him. The Prophet said: 'No, not unless you volunteer and then mentioned the fasting during the month of Ramaḍān.' He enquired if there was any other obligation upon him and the Prophet repeated the same answer. The man went away saying: 'I shall neither add to nor lessen any of these obligations.' Thereupon, the Prophet remarked that he would be successful if he kept his promise." Shāfi^{c}ī concluded that only the duty of five prayers was obligatory and that any earlier obligatory prayers were abrogated including 'what is convenient of the Book.' It must be observed that this way of strengthening the claim of abrogation by use of the sunna was an attempt to demonstrate that the sunna always distinguishes the

nāsikh from the mansūkh. This method was not acceptable to Jaṣṣās. He criticised Shāfi^{c}ī saying:(14) "If we accepted that the sunna always indicated the abrogation, then there would be no naskh in the Qur'ān unless there was a sunna to indicate so. This would be impractical because there were numerous cases in the Qur'ān where there was no sunna to so indicate." However, Jaṣṣās did not provide any examples in illustration.

Shāfi^{c}ī, according to Hamadhānī,(15) was the first scholar who systematized the principles of naskh. This reveals that the principles of naskh were already in operation. These principles were indispensable for the scholars, because, in this way, they could easily set aside the sources which did not agree with their doctrines, and at the same time they could adopt the sources which supported them. Shāfi^{c}ī, as an uṣūlī, therefore, could not ignore them. He accepted, refined and justified them on the basis of certain Qur'ānic communications which we have mentioned above.(16) Shāfi^{c}ī always stressed to the scholars that they should find evidence which enabled them to judge which of the two contradictory sources was abrogated; otherwise, they would remain confused about the meaning of the Qur'ān. Mentioning Q.2,180 and 240 which impose bequests in favour of parents, relatives and wives, Shāfi^{c}ī says:(17) "Then God provided legislation for the inheritance of parents as well as for near relatives and for the inheritance of the husband from his wife and wife from the husband." The verses, according to Shāfi^{c}ī, convey one of two possible meanings: Either the parents, relatives and wives

benefit from the estate by means of bequest and inheritance together, or inheritance abrogates bequests.(18) Since both interpretations are possible, scholars must seek evidence first in the Qur'ān, as to which of the two is valid; if they cannot find this in the Qur'ān, they should search in the sunna. If such evidence is found, it should be accepted. In other words, the principle of naskh must be consulted.

There is no doubt that Shāfi^{c}ī inherited the principle of naskh from his predecessors, but his main aim was to establish the universal authority of the sunna. In order to maintain this standard, he simply could not reconcile himself with the procedures of his predecessors, i.e. he could not accept their doctrine that the Qur'ān abrogated the sunna and the sunna abrogated the Qur'ān. He strongly emphasized that naskh operated within the sunna and within the Qur'ān. The verses he quoted in this connection meant that only God (not the Prophet) abrogated His commands. The clear meaning of his discussions is that he wanted to maintain that only the sunna of the Prophet abrogated the sunna of the Prophet. Neither the Qur'ān nor the reports from the companions abrogated the sunna.

Shāfi^{c}ī, as a traditionist, was not worried about the abrogation of the Qur'ān by the Qur'ān. His principal concern was with the abrogation of the sunna. He was afraid of the ahl al-Kalām who were ready to establish contradiction between the Qur'ān and the sunna, so that they could easily reject the whole body of the sunna on the grounds that it contradicted the Qur'ān. The theory of the traditionists was that every case of law should be referred to the sunna of the Prophet.

This also led the early scholars to trace their doctrines from the authority of the Prophet, but they could not do so in every point of law. Therefore, they had to accept the authority of the companions and the successors. But in cases where hadīths from the companions and hadīths from the Prophet were also found, they openly argued the abrogation of the hadīths of the Prophet by the hadīths of the companions. Shāfi^{c}ī, in his time, found a mass of contradictions, between those of a single companion, between the hadīths of the companions and the Prophet and between the hadīths of the Prophet himself. He accepted the theory of the traditionists that the hadīths from the Prophet, which he called sunna, enjoyed priority over all the traditions of the companions. If any hadīth from the companion was contrary to the sunna, it must be rejected. In this way, Shāfi^{c}ī was able to solve the conflict referring every case of law to the sunna. Consequently, the theory of the traditionists helped Shāfi^{c}ī to remove the contradictions between the hadīths of the companions, and between the hadīths of the companions and the Prophet. However, contradictions remained within the body of the traditions of the Prophet. This was the problem which Shāfi^{c}ī still had to face. In order to achieve his goal, he employed three methods. Firstly, he interpreted the sunna in such a way that both the contradictory sunnas would be accepted and practised.[19] Secondly, considering both the sunnas genuine, he rejected one on the grounds that it was the earlier of the two.[20] Finally, he rejected one of the two contradictory sunnas on the grounds that one of them was weaker in isnād.[21]

In the second Islamic century, scholars held different views regarding the sunna of the Prophet. One group accepted the claims made for the sunna on matters where the Qur'ān was silent. This group could be named ahl al-Ḥadīth. The second group was not ready to accept any argument from the sunna unless it was based on the Qur'ān, i.e. tafsīr ḥadīth. This group might be called ahl al-Ra'y. The third group was more rigorous, and rejected the sunna outright. The attitude of this last group, the ahl al-Kalām, was destructive for the whole fabric of the sunna. Shāfi^{c}ī, therefore, put forward a harmonious system mid-way between the Qur'ān and the sunna. In this respect he presented his theory of Bayān and Takhṣīṣ. The function of these two theories was to support and preserve the sunna, so that it should be made abundantly clear that the sunna always explained the Qur'ān. Shāfi^{c}ī never accepted the view that the sunna contradicted the Qur'ān. He repeatedly told the Fuqahā' that if one accepted the abrogation of the sunna by the Qur'ān, it would mean that many sunna-based rules would be abandoned. His Bayān and Takhṣīṣ theory was an attempt to reconcile the two contradictory sources. This theory of reconciliation together with his harmonious system within the sunna, was his great contribution to the systematization of sources in Islamic jurisprudence.

His argument that the Qur'ān abrogates only the Qur'ān was also an attempt to safeguard the sunna from its rejection by the Qur'ān. He stressed the claim that there is no conflict between the Qur'ān and the sunna, because it is obvious that if there is no conflict then

there is no question of abrogation. However, if there was seeming contradiction, it was solved by his theory of Bayān and Takhsīs.

Naskh implied suppression. The ahl al-Kalām were keen to suppress the sunna by alleging its contradiction with the Book of God. His other opponents could suppress the sunna by means of the Qur'ān and the traditions of the companions and the successors. But Shāfi^{c}ī could suppress the sunna only by the sunna. He could not suppress the sunna by the Qur'ān or by any other hadīth from the companions. To maintain this he introduced his special rule that the sunna is suppressed only by the sunna and not by the Qur'ān. If God were to intervene on a matter on which the Prophet had provided a sunna different from that which God addressed to him, the Prophet provided a second sunna, so that it would become clear to men that his second sunna abrogated the earlier sunna. The scholars should accept this rule, argues Shāfi^{c}ī, or else the whole sunna will disappear. In the light of his Bayān and Takhsīs theory he cannot see any contradiction between the two basic sources of Islamic law. These were the methods applied by Shāfi^{c}ī in order to prevent the suppression of the sunna by the Qur'ān and by the aḥādīth of the companions and the successors.

The general principles of abrogation.

Shāfi^{c}ī's claims that the Qur'ān abrogates the Qur'ān and that the sunna abrogates the sunna strongly suggest that principles of naskh existed in Islamic jurisprudence before the emergence of Shāfi^{c}ī. Generally, the scholars considered that the term naskh

implied that the later command abrogated the earlier.[22] If this definition is accepted then naskh in the early period expressed supersession. Whenever contradiction was apparent the phenomenon of naskh operated to suppress the inconsistency and thus ensure that a single operative ruling applied in the interpretation of the Qur'ān as well as in the sunna. In every alleged instance of naskh two elements were required:- Firstly, conflict of pronouncement between two or more texts. Secondly, knowledge of the relative dates of the conflicting sources. It is interesting to note that it was entirely up to the Fuqahā' to decide which text was the more recent and therefore of greater validity. Since it is evident that the jurists did not agree on the Fiqh , we are left with the situation that their decisions were contradictory. The concept of date was thus crucial to the principle of naskh and therefore gained a prominent position during discussions on particular topics between scholars. In order to ascertain the dates of the texts under scrutiny, very often scholars would cite the names of persons witnessing a revelation who were known to have lived at a particular time. Ibn ᶜAbbās' name was used frequently to this effect.[23]

Sarakhsī[24] maintains that contradiction between the sources is impossible, since this would mean Divine fallibility; in actuality the contradiction is created by our very human inability to estimate correctly the date of the texts. Once this has been done, however, the later text abrogates the earlier. The process of dating is thus very significant in Islamic jurisprudence. One of two conflicting sources could not be suppressed until the jurists had found ample

evidence of its abrogation. The conflict over the possibility of the testimony of the ahl al-Kitāb exemplifies this. Those arguing against its acceptability produce Q.65,2: "And call to witness two just men among you." Ibrāhīm al-Nakha^{c}ī was the exponent of the idea that the verse refers only to Muslims.(25) Those arguing in favour of the doctrine consider Q.5,106 applicable, i.e. not abrogated. The verse reads: "You who believe let there be witnesses between you, when death draws nigh to one of you, at the time of bequest - two witnesses just men from among you, or two others from other than you." It was argued that at the time of bequests members of the ahl al-Kitāb could act as witnesses. The doctrine was supported by producing the authority of the Prophet who was believed to have said: "Al-Mā'ida (Q.5) is among the parts of the Qur'ān, which were revealed at a late period. Regard as ḥalāl what is ḥalāl in it and regard as ḥarām what is ḥarām in it."(26) Also ^{c}A'isha and Ḥasan were of the view that nothing had been abrogated from al-Mā'ida.(27)

Although Jaṣṣāṣ(28) mentions that a nāsikh ḥadīth or verse is not difficult to recognise once a date has been established, he further observes that often which is the nāsikh verse is self-evident as it will contain within itself an indication of its abrogating nature. He also maintains that the reports of the companions and the successors can be decisive in the process of distinguishing the nāsikh and the mansūkh. This indicates two further elements in the history of abrogation. Firstly, that any doctrine supported by a scholar carries the approval of a companion or a successor. Secondly, that naskh as a principle

was alleged to have been accepted during the lifetime of the companions. Jaṣṣāṣ' final criterion for determining the nāsikh from the mansūkh is that of Ijmā^{c}. However, Ijmā^{c} itself cannot abrogate the ruling from the Qur'ān and the sunna since it came into being after the Prophet expired. During his lifetime any disputed case would simply have been referred to the Prophet himself.

Hamadhānī[29] also mentions that the agreement of the scholars indicates whether or not a certain ruling is abrogated. Makkī[30] believes that only persons of sufficient knowledge can distinguish the abrogating from the abrogated.

Ibn Ḥazm[31] warns that it is not lawful for any Muslim, who believes in Allāh and the Day of Judgement, to say that a certain ruling is abrogated unless he is sure of it. He cites four criteria to be utilized to distinguish nāsikh verse. Like Jaṣṣāṣ and Ḥamadhānī, he asserts that agreement of scholars can indicate that a certain verse is abrogated. Secondly, the later abrogates the earlier when the scholars cannot agree and where the two conflicting doctrines cannot apply together. Thirdly, it can be the case that an explicit text showing that one of these three exists: either that a prohibition has been issued after a command, or vice versa, or that a ruling has been transferred from one category to another.[32] Finally, where a third text refers to an abrogated ruling and its age in relation to the abrogating text is unclear; the abrogating text should not be abandoned, since we are already sure of its abrogating nature. Ibn Ḥazm uses an example to clarify this last observation. Originally, it was held that

during Ramaḍān a person who had slept and rewoken could not eat, drink or have sexual intercourse with his wife for the rest of the night. This ruling was abrogated when God revealed Q.2,187: "It is made lawful for you to go to your wives on the night of the fast. They are a raiment for you and you are a raiment for them. Allāh is aware that you were deceiving yourselves in this respect and He has turned in mercy toward you and relieved you. So hold intercourse with them and seek that which Allāh has ordained for you, and eat and drink until the white thread becomes distinct to you from the black thread of the dawn." However, Abū Huraira reported that the Prophet said that if some one found himself in a state of impurity, when he arose in the morning, his fast was invalidated. According to ibn Ḥazm, this ḥadīth corresponded to the abrogated situation, since verse 187 had already permitted sexual intercourse until morning. He remarked that the ḥadīth must have been abrogated at least by inference, since the Qur'ān specifically abrogates the original ruling to which Abū Huraira says the Prophet was referring. It is clear that ibn Ḥazm's principal intention was to abrogate Abū Huraira's tradition since it was in conflict with the Qur'ān which had already abrogated a practice outwith its delineation.

For the implication of Ijtihād, knowledge of al-Nāsikh wa-l mansūkh was considered very important. Qiyās, the kind of Ijtihād recognised by Shāfi^{c}ī, cannot be exercised by a person unless he is competent to do so through his knowledge of the commands of the Book of God: its prescribed duties and its ethical discipline, its abrogated

and abrogating communications, its general and particular rules and its right guidance.(33)

According to Abū ᶜAbd Allāh Muḥammad b. Ḥazm,(34) this branch of science is one of the necessary requirements of Ijtihād since the main basis of Ijtihād is the knowledge of what has been handed down to us; an important part of this knowledge is knowledge of the nāsikh and the mansūkh; to deal with the reports as they stand is easy and to carry their burden is not difficult. The difficulty lies only in the techniques of deducing legal doctrine from the documents. Part of the investigation in this matter involves the determination of the earlier and the later of two situations. This report conveys twofold meaning: Firstly, the knowledge of the nāsikh and mansūkh is a necessary element for Ijtihād. Secondly, knowledge of the Divine revelation, in its final form, depends only on knowledge of the documents which have been handed down and on the discrimination between the later and the earlier statements, i.e. the nāsikh and the mansūkh. What has been handed down comprehends both the Qur'ān and the sunna.(35) In simple terms, the naskh operates in the Book of Allāh and the sunna of the Prophet.

The general theory of naskh meant that if scholars were confronted with two seemingly contradictory statements, on one and the same topic of legal or ritual regulation, their first concern was to enquire closely into the meaning of each statement. If they were clever enough in their exegetical techniques they could remove the contradiction. They had to try their best in order to solve the

contradiction but only if they did not succeed in the attempt to reconcile the two statements could the principle of naskh be applied because al-jama^{c} yamna^{c} al-naskh.[36] If the scholars despaired of reconciliation they should search for information on the circumstances in which the particular verse was revealed. This demand was met by introducing another science which was named asbāb al-nuzūl,[37] and producing the isnād which went back to the companions and even to the Prophet himself. Shāfi^{c}ī has used this method in his discussion of al-nāsikh and mansūkh.

Q.8,65 reads: "O Prophet, exhort the believers to fight; if there be of you twenty steadfast they shall overcome two hundred and if there be of you a hundred steadfast, they shall overcome a thousand of those who disbelieve, because they are a people without intelligence." The following verse 66 reads: "Now Allāh has lightened your burden, for He knows that there is weakness in you. So, if there be of you a hundred steadfast, they shall overcome two hundred, and if there be of you a thousand steadfast they shall overcome two thousand by permission of Allāh. Allāh is with the steadfast."

After producing these two verses, Shāfi^{c}ī supported his doctrine by the statement which is credited to ibn ^{c}Abbās who said, "When the Divine communication: 'If there be of you twenty steadfast they shall overcome two hundred' was revealed, it became obligatory for twenty believers not to flee from two hundred unbelievers. When God revealed: 'Now Allāh has lightened your burden, for He knows that there is

weakness in you ...,' it became obligatory for a hundred believers not to flee from two hundred." Shāfi^{c}ī claimed that God has made this so clear in His communication that it does not require explanation.[38] His main aim, by producing this example, was twofold. Firstly, He wanted to show that naskh occurred in the Islamic Shari^{c}a. Secondly, when there are two contradictory statements the later abrogates the earlier.

Jaṣṣās[39] has produced the verse in question to reject the view of his opponents who dismiss the belief that naskh occurred in the Qur'ān. He further claimed that Q. 8,65 and 66 cannot be combined in one situation. Therefore, the latter abrogated the former. It is clear that Jaṣṣās could not reconcile the verses, therefore, he applied the principle of naskh. However, there were scholars who could not understand the abrogating nature of the second verse. They argued that there was no commandment in this verse; it conveyed only that God had promised victory over polytheists provided the Muslims would be steadfast. If the Muslims fulfilled this condition the promise made by God would be carried out. Ibn Ḥazm[40] argued: "whosoever accepted the abrogation of the first verse, made a mistake because there was neither Ijmā^{c} nor was there any indication of abrogation. The verses describe the rivalry with the polytheists. When the two forces met, it was not allowed for anyone to turn his back upon the whole population of the polytheists. The verses talk only of victory over the polytheists if the Muslims remained steadfast."

Before we further discuss the problem in question, let us

examine Shāfi^{c}ī's claim of naskh within the sunna.(41) Mālik - ^{c}Abd Allāh b. Abī Bakr b. Muḥammad b. ^{c}Amr b. Ḥazm - ^{c}Abd Allāh b. Wāqid - ^{c}Abd Allāh b. ^{c}Umar who said: "The Prophet prohibited the eating of sacrificial meat after three days." ^{c}Abd Allāh b. Abī Bakr said that he mentioned this ḥadīth to ^{c}Amra', daughter of ^{c}Abd al-Raḥmān, who confirmed it saying: "I have heard ^{c}Ā'isha saying: 'Some Bedouin came to Mecca during the day of Adhā in the time of the Apostle, who said, 'preserve the meat of sacrifice for three days and give the rest to the poor.' She said later the Prophet was told men used to utilize their sacrifices. They took the fat and used the skins to carry water; the Prophet asked, 'why not now?' She replied, 'You have ordered us not to keep the meat more than three days.' The Prophet said: 'I have prohibited that only for the sake of those who came to Mecca during the day of Adhā. Indeed you can eat, give it as alms and preserve it'."

Shāfi^{c}ī narrates another version, contrary to the first, from Ibrāhīm b. Maisara who heard from Anas b. Mālik: "We used to sacrifice the animals and preserve the remaining portion so that we could take it with us when we travelled to Baṣra." Shāfi^{c}ī has another version in which ^{c}Alī says: "Nobody should eat the sacrificial meat after three days."

The contradiction among the above mentioned aḥādīth is obvious. Shāfi^{c}ī adopts a reconciliatory method. He argues that ^{c}Alī's ḥadīth agrees with that of ibn Wāqid regarding the Prophet's prohibition against keeping the meat after three days. He further says that there

is an indication that both ᶜAlī and ibn Wāqid heard the order of prohibition from the Prophet. The Prophet's permission for keeping meat more than three days failed to reach both ᶜAlī and ibn Wāqid, for had it reached them they would not have related the order of prohibition which was abrogated, and would have followed the order of permission which had become the abrogating one. The opinion of Anas that they used to preserve the meat more than three days may mean that Anas had heard the order of permission but not the order of prohibition or he may have heard both but did not mention the order of prohibition because it was abrogated. After examining the ahādīth, Shāfiᶜī proposes that it is one of the clearest examples of the abrogating and abrogated sunnas, since ᶜĀ'isha narrated both the order of prohibition and permission from the Prophet and she narrated the Prophet's reason for giving the order of prohibition.

According to Jaṣṣāṣ,[42] this was a case of abrogation in the Prophet's sayings, where both the nāsikh and the mansūkh were mentioned together. Hamadhānī,[43] however, does not allow the storage of meat, if the same situation appears which had arisen in the Prophet's time.

The above examples from the Qur'ān and the sunna were exploited by Shāfiᶜī and Jaṣṣāṣ in order to establish the fact that naskh has affected the rulings of the Qur'ān and the sunna. Certain verses of the Qur'ān were considered to be in conflict and there was some evidence of one being later than the other. The later date of v.66 was confirmed by the words: 'now God has alleviated your burden.' The scholars

were thus bound to choose the later one, as Shāfi^{c}ī has done, declaring it the nāsikh of the earlier. Both Jaṣṣāṣ and Shāfi^{c}ī were misled by the word 'alleviation' which was considered synonymous with the term naskh.(44) The word 'now', if we believe it introduces the second regulation, would certainly lead to the belief that God has now realised that which He had not realised beforehand when He revealed v.65. This would be tantamount to the theory of Badā' which is not accepted by the sunnī Muslim scholars.(45) As a matter of fact, the word 'alleviation' was used as the equivalent of naskh in order to show that whenever it came after a ruling which was more demanding, this became the nāsikh of the more demanding. This was openly acknowledged by Jaṣṣāṣ.(46) Similarly were the word interpreted in this way, the scholars would have no choice but to accept that God Himself declared the occurrence of naskh in Q.8,65-66.

One can safely conclude that the examples provided by Shāfi^{c}ī and Jaṣṣāṣ, in order to show the occurrence of naskh, are not appropriate. However, there was no choice for both eminent scholars but to produce Qur'ānic examples in order to indicate that naskh had affected the rulings of the Qur'ān. Otherwise the contradictory nature of the documents would be evident and the Divine will would be unknown. The result would be that we shall be left in confusion and that would be contrary to God's expression that He had not left mankind without guidance.(47) But, it must be noted, the interpretation by ibn Ḥazm suggests that every instance of naskh was merely a device to rationalize the conflict between and within sources, otherwise he would

also have accepted the operation of naskh in Q.8,65-66, because he was an exponent of the theory of naskh. The following instance would further indicate that decisions made by the scholars for the cases of abrogation were contradictory and thus not convincing.

The change of qibla.

Shāfi^{c}ī, as we have seen, was the first person to systematize the principles of abrogation. We have also seen that he was the first person to propound the principle that naskh operated exclusively within the Qur'ān and the sunna. In addition to that, we have pointed out that sunna has always been the focal point of his discussions. In order to formulate the detailed principles, he presented some examples which, according to him, dealt with the occurrence of naskh within Islam. We have already examined one of these examples and showed that he failed to provide an appropriate illustration of the principle. In the following paragraphs we shall investigate how Islamic scholarship, before, during and after Shāfi^{c}ī's time was active in establishing the fact that naskh operated within Islam. The case deals with the change of qibla.

"God had commanded His Prophet to turn his face towards Jerusalem in prayer. This was the only recognised qibla until it was abrogated. Then God abrogated the Jerusalem qibla and ordered Muhammad to turn his face towards the sacred house. Now no Muslim is ever allowed to face the Jerusalem qibla in any obligatory prayer. He is not entitled to face towards any direction but the Ka^{c}ba."

"Every ruling was sound in its prescribed time limit. The

turning towards Jerusalem was obligatory in the days when God ordered His Prophet to face it. Later, God abrogated it and it became obligatory to face towards the Sacred House for ever. No other direction is allowed to be faced except the Ka^{c}ba in an obligatory prayer save in the event of fear of danger or in a supererogatory prayer while travelling. This is indicated in the Book and the sunna."

Shāfi^{c}ī, (48) after the above two statements, concluded: "This applies to all the rulings which God had abrogated, since the word naskh means to abandon His command. It was obligatory to abandon the qibla because God had abrogated it. Everyone who had observed the abrogated imposition was considered obedient because of his following it (before it had been abrogated) and of his abandoning it (after it had been abrogated), but he who had not perceived the abrogated imposition was considered obedient if he followed only the imposition which had abrogated it."

The above discussion of Shāfi^{c}ī conveyed two meanings. Firstly, both impositions emanated from God. Secondly, the phenomenon of naskh must operate because one ruling was later than the other and conflicted with it. One can judge that Shāfi^{c}ī's main concern was with the nāsikh ruling, because he stated: "He who has not perceived the abrogated imposition, was considered obedient if he followed only the imposition which has abrogated it." Therefore, a person is not required to know the abrogated ruling. His use of the word 'فرضه' (His command) hints at the reality that naskh is confined to the field of Fiqh. (49)

Scholars have used the instance of the change of qibla to support their views that naskh has occurred in the Islamic Sharī^{c}a. When Jaṣṣās was required to produce an example which would demonstrate the existence of naskh, he said:(50) "The Prophet used to pray facing Jerusalem until God by Q.2,144 ordered him to turn his face towards the Ka^{c}ba. Then God revealed Q.2,142 and showed that the Muslims were facing towards the Jerusalem qibla rather than the Ka^{c}ba but later they were turned from it." According to this statement of Jaṣṣās Q.2,142 was revealed after Q.2,144. In the following quotation he contradicted his own statement and placed Q.2,142 before Q.2,144. The quotation runs:(51) "Naskh is recognised in various ways. One of them is that words contain the abrogating and abrogated situation together with their dates. Anyone who hears them can easily comprehend from the date that the second of them is the abrogand of the first. As God said: 'And now verily we shall make you turn towards a qibla that will please you. So turn your face towards the Sacred Mosque' (Q.2,144). Before this God had said: 'The fools among the people will say: What has turned them from the qibla which they have been observing' (Q.2,142). In the former statement the word 'then' (ثـــم) and in the latter statement the words 'before this God had said' (قد قـــال تعالى قبـــل ذلك) explicitly indicate that Jaṣṣās shows himself confused over the precise relative dating.

Showing the change of qibla as an instance of naskh was further supported by an anecdote, according to which ibn ^{c}Abbās is believed to have said:(52) "The first thing that God abrogated in the Qur'ān was

the qibla; when the Prophet migrated from Mecca to Medina, the majority there was Jewish. God ordered His Prophet to face towards Bait al-Maqdis. As a result the Jews were pleased. The Prophet faced towards it for more than ten months. The Prophet used to love the qibla of Ibrāhīm (the Prophet); Muḥammad requested of God the change of qibla and looked up at the sky, and God revealed Q.2,144. The Jews were much concerned with this change and said 'What has made them turn their faces.' Then God revealed Q.2,115 and Q.2,143."

This anecdote reveals the following results: (a) God Himself changed the qibla. It was not therefore the sunna which effected the change. (b) Q.2,115 was revealed after Q.2,144, therefore, cannot be considered abrogated by Q.2,144. (c) God changed the qibla because the Prophet has requested it of Him. (d) The Prophet used to face the Jewish qibla by God's order. The last result obviously throws light upon the view that Qur'ānic law abrogated the Jewish law, but the scholars do not emphasise this in this instance. Further, in order to remove the possibility of Jewish influence, scholars propounded another anecdote which reads:(53) "The Prophet prayed at Mecca facing towards Bait al-Maqdis, with the Ka^{c}ba in front of him. Sixteen months after he had migrated to Medina from Mecca, he was turned to the Ka^{c}ba." According to Ma^{c}qib b. Yasār and Barrā' b. ^{c}Āzib the change occurred after seventeen months. Qatāda was of the opinion that the change of qibla from the Sakhra to the Ka^{c}ba occurred after eighteen months.(54) Thus, Islamic scholarship was not unanimous about the precise date of the change of the qibla. It

certainly, they thought, occurred at Medina. The above mentioned anecdote was put forward to indicate that the practice of facing the qibla started in Mecca, and it must be abandoned because it was the earlier of the two situations.

Q.2,144 reads: "We have seen the turning of your (Muḥammad) face towards the Heaven. And verily we shall make you turn (in prayer) towards a qibla which will please you. So turn your face in the direction of the Ka^{c}ba. Wherever you (Muslims) may be, turn your faces (when you pray) in that direction. Verily the people of the Book know that this is the truth from their Lord, and He is not unmindful of what they do." The words: "We have seen the turning of your face" were thought to provide evidence that the Prophet made it his habit to request God to change the direction of his prayer. As a result God ordered him to turn his face in prayer towards the Ka^{c}ba. Thus, it was argued that the behaviour of the Prophet became the cause of revelation of this verse. This view was supported by the following anecdote:(55) "The Prophet, whenever he stood up for a prayer, after the migration, in Medina, looked up at the sky waiting for a wahy. The Prophet would say to Gabriel, 'O my brother, until when shall I pray facing the qibla of the Jews?' Gabriel would answer him: 'Verily, I am only a servant to be commanded, therefore ask your Lord!' The Prophet kept asking until Gabriel came down to him, one day, and said: 'O Muḥammad, read, 'We have seen the turning of your face ...' Thus, the qibla was changed to the Ka^{c}ba from the Ṣakhra.' " That Muḥammad had sought from God to change his direction from Jerusalem to Mecca, was

thought to provide enough evidence that the Muslims of Medina had been in great anxiety and discomfort. This discomfort was because of the Jews' annoyance at the Muslims. This is shown by a report recorded by Naḥḥās.(56) "The Jews said: 'The Prophet did not discover the qibla until we guided him.' The Prophet disliked their claim and looked up at the sky and God revealed Q.2,144." The verse in question was thought to have been revealed because of the Jews' annoyance. It was further confirmed from the content of the verse because all the surrounding verses talk about the Jews. For example, v.135 reads: "And they say: Be Jews or Christians, then you will be rightly guided. Say (O Muḥammad): Nay, but we follow the religion of Ibrāhīm, the upright, and he was not of the idolaters." V.142 reads: "The fools among the people will say: What has turned them from the qibla which they have been following." ('Fools' in the tafsīr is said to refer to the Jews). The final v.145 reads: "Even if you were to bring to the people of the Book all kinds of signs, they would not follow the qibla."

The Qur'ān does not, in fact, impose verbally the original qibla. But that there is change is certain. The Qur'ān implies an earlier qibla: وما جعلنا القبلة التي كنت عليها الا (الاية Q.2,143); ما ولاهم عن قبلتهم التي كانوا عليها (Q.2,142). Now the question arises: on what basis the Prophet and the Muslims faced the earlier qibla? The answer to this question will solve the problem regarding the change of qibla and sort out which ruling was the abrogating one and which the abrogated.

As regards the nāsikh verse, the majority argued that it was Q.2,144. As far as the mansūkh is concerned, the scholars could not reach an agreement as to whether the Prophet followed the order of God when he faced the Jerusalem qibla (before it was abrogated) or whether it was up to him and as a result he chose the Jerusalem qibla, i.e. was it or was it not a sunna.

Those who wanted to prove that the mansūkh was imposed by God appealed to Q.2,143. وما جعلنا القبلـــة التي كنت عليها الا (الاية) . According to them the word qibla referred to Bait al-Maqdis. Although Makkī[57] accepts that it was an instance of the Qur'ān's abrogation by the Qur'ān, he provides an exegetical debate which rejected the claim that the word qibla in Q.2,143 referred to Jerusalem. Rather it referred to the Ka^{c}ba. The verb كنت in this verse was considered as equal to انت and was argued to have applied to a state which referred to the present and not to the past. It was further argued that the same verb كنتـــم appeared in Q.3,110 (كنتم خيـــر امـــة) and denoted the state of present which means (انتم خيـــر امـــة). The verse, according to this explanation, reads: "We did not appoint the qibla which you are now facing except ... ." It can be assumed that this interpretation was yet another attempt to show that naskh, in this case, did not affect Qur'ān rulings.

Among the Muslims, there were some scholars who were not worried about the sunna's abrogation by the Qur'ān. They claimed that God did not order the Prophet to face Jerusalem, it was the Prophet who himself followed the Jewish qibla, in order to console them. Thus,

the practice of the Prophet was based on his own discretion. When God revealed Q.2,144, it abrogated the sunna.[58] Shāfi^{c}ī and his followers could not accept this view and claimed that only the Qur'ān could abrogate the Qur'ān. In order to reject their opponent's claim they had to find evidence in the Qur'ān. Shāfi^{c}ī said:[59] "God directed His Prophet to face the Jerusalem qibla in prayer." Shāfi^{c}ī did not clarify whether or not God had communicated this to His Prophet by the Qur'ān or by the sunna. His opponent demanded clear proof. Shāfi^{c}ī referred to Q.2,142. This verse, as a matter of fact, speaks about the query about the change of the qibla. It is obvious that the Jews could not ask about a thing unless it had happened, i.e. the change of the qibla. Thus, it would not be appropriate to consider Q.2,142 as the mansūkh because it merely explained the nāsikh verse. If Jaṣṣāṣ' first statement, mentioned above, is considered correct, it supported the claim.

An attempt was also made to consider Q.2,115 as the mānsukh. Hibat Allāh[60] was an exponent of this idea. He tells us a story as to how Q.2,115 was abrogated. He says: "The Jews were of the view that either Muḥammad was on the right direction but he turned his heels, or that he was on the wrong direction which is unlawful to believe. To clarify this situation God revealed Q.2,115: 'East and west belong to Allāh.' And later God abrogated this verse by means of Q.2,144." This view was further projected back on the authorities of ibn Zaid and Qatāda.[61] Naḥḥās[62] rejected this claim and mentioned that, "It is more appropriate to say that v.115 is neither abrogated nor abrogating,

because the scholars differ as to its abrogating and abrogated nature. The verse is likely not to be abrogated and one should not say that there is nāsikh and mansūkh except when there is a sound proof of abrogation." It must be observed that if this statement be followed, then, in the Qur'ān, there would be no case of abrogation. The question of naskh would not arise at all, because there is no single alleged verse on which scholars would agree that it was abrogated. It is worth mentioning that the words, 'East and West belong to Allāh', which are believed to have been abrogated again appear in v.142.

According to the anecdote which we have mentioned above concerning the cause of revelation, the mansūkh was the Jewish qibla which of course was regulated in the Jewish law. This anecdote if considered correct weakens the claims of the scholars who argued that the change of the qibla was an instance of abrogation within Islam. Hence, on the analysis of the above discussion one can judge that Shāfi^{c}ī and the rest of the scholars failed to identify the origin of the qibla before v.144. Therefore, this instance of naskh may represent external naskh and not internal (i.e. an Islamic imposition abrogated the Jewish imposition which the Prophet and his followers had been following for a certain period). This view was strengthened by the fact that the Muslims agreed that Islamic law has abrogated the Shari^{c}a's of the early prophets.(63) However, they were divided over this issue. Some said the Shari^{c}a of Muḥammad totally repealed the Shari^{c}a of the previous prophets; others said that it repealed only the communications which were in contradiction with the Qur'ān.(64)

They were also of the view that some enactments of the previous Shari^{c}a's were imposed for a certain period and were later repealed, as in the case of qibla; and some were imposed upon the Muslims for ever.(65) This can be explained by the following example. Q.5,5 reads: "This day good things are made lawful for you. The food of those who have received the scripture is lawful for you, and your food is lawful for them." According to this verse, it has been made lawful for the Muslims to eat the food of the people of the Book. The food in this verse, according to the Fuqahā', is animal meat because there is no question of prohibiting the ordinary food of the people of the Book. The lawfulness of food like bread, cheese and fruit has nothing to do with religion.(66) Further, this verse can be compared with Q.6,121 which informs us not to eat (the meat) on which God's name has not been pronounced. The scholars who argue that Islam totally abrogated the practices of the previous prophets would tend to believe that Q.6,121 abrogated Q.5,5. On the other hand, the scholars who counter this belief would confine Q.6,121 to Magis and allow the Muslims to eat the animals slaughtered by the people of the Book.

The significance of naskh.

We have already pointed out that Shāfi^{c}ī inherited the principles of naskh from his predecessors. We have also mentioned that because these principles were indispensable for him, he altered and justified them on the basis of Qur'ānic references and logical arguments. His use of these arguments strongly suggests that there was some resistance

to these principles both prior to and during his own period. This resistance even continued after his own time, since we find much emphasis on the acceptance of the theory of naskh. Jaṣṣāṣ[67] clearly indicates that there were two opposing groups. Firstly, the Jews and secondly, a group among the Muslims. He further divided the Jews into two groups. He maintained that among the Jews some refused to accept these principles on logical grounds and others argued on tradition that Moses had informed them that the Sharīᶜa of the Torah and the day of Sabbath would never be abrogated. According to Jaṣṣāṣ, the main argument of the opposing group was that naskh implied Badā' and it could thus not be ascribed to God. Jaṣṣāṣ' interpretation of the word naskh indicated that it was adopted in order to oppose the doctrine of Badā'. He maintained[68] that: "Naskh in the Sharīᶜa was the declaration of the time of the particular ruling which we thought would remain for ever but the second ruling made it clear that the time of the first ruling was for a certain period only and it was no longer valid." He warned the scholars that no ruling could be held to be abrogated except on the basis of his definition of naskh. He argued that the first ruling was not required in the second situation in which naskh had occurred and nullified the first ruling. He was of the view that whatever the meaning of naskh might be in the Arabic language, it could not be strictly applied in the Sharīᶜa. He justified his restriction of the word naskh in the Sharīᶜa by Q.2,106. In this verse, he maintained, God Himself used the word naskh. He further said that naskh did not mean the lifting of the ruling, because the ruling which was once

confirmed could not be lifted. Naskh indicated only that the abrogated ruling was no longer valid.

The resistance to the principle of naskh is further obvious from Naḥḥās'[69] statement: "Scholars among the companions and the successors talked about the subject of al-Nāsikh wa-l mansūkh. Then later writers differed in their opinions, some of them followed the course of the earlier scholars and were right but others diverged from them and were wrong. There were others who said there was neither nāsikh nor mansūkh in the Qur'ān. They ignored the reality and followed no Muslim way."

The writers on al-Nāsikh wa-l mansūkh produced a series of aḥādīth, which are normally recorded at the forefront of the most of the books, in order to establish the authenticity and antiquity of the principle by projecting it back to the earlier authorities. In the following paragraphs we shall examine these aḥādīth. Naḥḥās[70] devotes one chapter of his book to such traditions. The title of this chapter is 'encouragement to acquire knowledge of the nāsikh and the mansūkh.' In one version of these traditions, " ᶜAlī, entered the mosque and saw a preacher who was frightening the people. ᶜAlī asked the people who were gathered around the preacher, 'who is this man?' They replied: 'A man who is preaching to the people.' ᶜAlī, thereupon, said: 'He is not preaching but is saying, I am so and so, the son of so and so and you must know me.' ᶜAlī sent for him and when the preacher came, ᶜAlī asked him whether he knew the nāsikh and the mansūkh. The preacher shook his head. ᶜAlī expelled him from the

mosque and forbade him to preach there again." Hibat Allāh's[71] version tells us that the name of the preacher was ᶜAbd al-Raḥmān b. Dā'b who was a companion of Abū Musā al-Ashaᶜrī. In Isfarāīnī's[72] version when ᶜAlī asked his name, the preacher replied that his name was Abū Yaḥyā. ᶜAlī answered, 'no', you are Abū ᶜUzzā (a goddess of pagan Arabs). According to Isfarāi'nī's version the man was interpreting the Qur'ān while Hibat Allāh mentions that the man confused commanded with prohibited, and permissible with forbidden. According to these versions when the man acknowledged that he did not know the nāsikh from the mansūkh, ᶜAlī said: 'You have lost your soul and caused others to lose theirs.' ᶜAlī then twisted the man's ear and forbade him to preach in the mosque again.[73] Hibat Allāh and Isfarāi'nī claim that same story was ascribed to ibn ᶜAbbās.

In another version produced by Naḥḥās[74] Abū ᶜAbd al-Raḥmān reported that ᶜAlī stopped a man who was preaching to the masses and asked him, 'Do you know the nāsikh and the mansūkh?' The man answered in the negative. ᶜAlī stated: "You have lost your soul and caused others to lose theirs." The same report is preserved by Hamadhānī, but instead of 'رجـــل' the word 'قـاص' (a narrator) is used.[75] Hamadhānī also preserves a story in which Abū Yaḥyā himself says: "ᶜAlī passed near to me while I was preaching at Kūfa. He asked me who I was and I told him, my name was Abū Yaḥyā. ᶜAlī said you are not Abū Yaḥyā. You are saying,'know me! know me!' Then ᶜAlī asked me whether I could distinguish the nāsikh from the mansūkh. To which I replied, 'no.' ᶜAlī remarked: 'You have lost

your soul and caused others to lose theirs.' "

Nahḥās[76] has another version to quote. Ibn ᶜAbbās passed by a qāss who was preaching to the people. Ibn ᶜAbbās kicked his foot and said; 'Do you know what the nāsikh and the mansūkh are?' The qāss replied in the negative. Thereupon, ibn ᶜAbbās claimed: "You have lost your soul and caused others to lose theirs." In another version ibn ᶜAbbās is reported to have commented on Q.2,269 (He who is given wisdom is verily given great riches), that is knowledge of the Qur'ān concerning its abrogating and abrogated verses, its clear and unclear verses, and its prohibitions and permissions. Hibat Allāh records yet another version in which neither ᶜAlī nor ibn ᶜAbbās is mentioned. The name mentioned in this version is that of ibn ᶜUmar.

Ibn Khuzaima[77] has an alternative version of this story. ᶜAlī passed by Kaᶜb al-Aḥbār who was exhorting the people. He was sitting on the seat where usually the preacher would sit. ᶜAlī told him no one could sit on that seat except an Amīr or someone who was commanded by the Amīr. After some days elapsed ᶜAlī came back and saw Kaᶜb again sitting on the seat and preaching to the people. ᶜAlī asked, "O Abū Isḥāq, did not I prevent you from sitting on this seat?; Do you know what is al-Nāsikh wa-l mansūkh?" He replied: "God knows better." ᶜAlī repeated the same sentence: "You have lost your soul and caused others to lose theirs."

From the above reports one may conclude that in order to vindicate the theory, its exponents invoked the names of the different scholars. It should be noted that the uncertainty of the central

character in these aḥādīth suggests that we have to be very careful about the reports they convey. The name of ibn ᶜAbbās was chosen because he was considered a remarkable authority on the Qur'ānic exegesis. Further, the Prophet is believed to have said: "May Allāh give him the understanding of the Qur'ān." The name of ᶜAlī was suggested because he was believed to be an expert in legal matters.(78) Further, ᶜAlī, like ibn Masᶜūd, was regarded as an authority on the Iraqi legal doctrines and was the last of the orthodox caliphs. His twisting of the man's ears confirms that he was accepted as a ruling authority. The choice of ibn ᶜUmar's name is obvious because he was one of the main authorities for the Medinese. In this way the followers of this school could easily accept the theory of naskh. However, it is extremely interesting to note that the name of Ubayy b. Kaᶜb was not selected. The reason was that he did not believe in the theory of naskh operating in the Qur'ān. ᶜUmār is reported to have said:(79) "The Qur'ān expert among us is Ubayy and the legal expert among us is ᶜAlī but we have abandoned elements in Ubayy's doctrine, since he maintains that he will not give up anything heard direct from the Prophet although God himself has said: 'Whatever verse we abrogate or cause to be forgotten we shall bring one better than it, or one similar to it' (Q.2,106)." Ubayy's name appears in the aḥādīth in which it is assumed that some of the verses of the Qur'ān were withdrawn.(80)

These aḥādīth clearly demonstrate that knowledge of the nāsikh and the mansūkh was very important to our knowledge of God's will. By applying this method scholars could easily reject or accept the rulings

of the Qur'ān. This was the main reason that higher authorities were involved to speak about the abrogation of the rulings since it was believed that they had acquired the knowledge of the nāsikh and the mansūkh. The knowledge of the Qur'ān alone did not suffice, the scholars must know which ruling of the Qur'ān was abrogated. That this was the obvious reasoning behind these aḥādīth was shown by Hibat Allāh and Isfarāi'nī. ᶜAlī rebuked the man because he had confused Divine commands with the Divine prohibitions. Isfarā'ī nī openly says (81) that, "whosoever wants to speak about the meaning of the Qur'ān, it is incumbent upon him to know the science of the mansūkh verses following the examples of the predecessors, because when he interpreted the Qur'ān without knowledge of the nāsikh and the mansūkh, he might order people to accept some rulings which, in fact, were abrogated." Ibn Khuzaima (82) went one step further and declared that no one was allowed to recite the Qur'ān unless he had acquired the knowledge of the abrogating and abrogated verses.

The significance of naskh may be estimated by the following report. Ḥudhaifa was approached for a fatwā on some matter. In answer he replied, "Only three kinds of men can do this: firstly, he who is expert in the nāsikh and the mansūkh (when he was asked who was expert, he replied ᶜUmar), secondly, a Sulṭān who in order to execute his duties is obliged to make a decision, thirdly, an officious pedant." (83) In Hibat Allāh's (84) version the categories are four: an Amīr, a person commanded by the Amīr, he who knows the nāsikh and the mansūkh and a brainless officious pedant. Naḥḥās (85) also records

this version and concludes that only an expert in the abrogated verses of the Qur'ān can give a decree and such a one he says is ᶜUmar; a qāḍī can do so because he is entitled to make a decision. He also includes an officious pedant in this category. Ḥudhaifa, then said: "I am not included in the first two categories and I would not wish to be the third." The version recorded by Naḥḥās did not throw light on the source of the nāsikh: whether it was the Qur'ān or the sunna. It suggested that according to Naḥḥās naskh could operate between the Qur'ān and the sunna. This was the theory of Shāfiᶜī's predecessors who did not make any sharp distinction between the sources. This theory was accepted in the post-Shāfiᶜī period as it is obvious from numerous works of later scholars. For example, Jaṣṣāṣ clearly maintains that the Qur'ān can abrogate the sunna and the sunna the Qur'ān.(86) Traditionists wanted to establish the authority of the sunna so that it could participate in the establishment of the doctrines where the Qur'ān was silent, or at least where both the sources were in agreement. However, the scholars were divided over the issue where the sunna was in contradiction to the Qur'ān. We have already pointed out that in such conflict the ahl al-Kalām and the adherents of the ancient schools were inclined to accept the authority of the Qur'an. Therefore, they could easily abrogate the sunna by reasons of its contradiction with the Qur'ān. Shāfiᶜī opposed their view and propounded his special theory of abrogation, i.e. only the Qur'ān could abrogate the Qur'ān; only the sunna could abrogate the sunna. Shāfiᶜī was certain that if he accepted the abrogation of

the sunna by the Qur'ān, it would be a disaster for the sunna and eventually for the Fiqh itself. Therefore, he made a sharp distinction between the well-known and respected sources. To this end he embraced the Qur'ānic prop ' مثل ' (like) which appears in Q.2,106: na'ti bi Khairin minhā aw mithlihā. Shāfi^{c}ī used this word consistently in his discussions of al-Nāsikh wa-l mansūkh. For instance, there is nothing similar to the Qur'ān, a source is abrogated by another source similar to it, nothing is similar to the sunna except the other sunna of the Prophet.(87) These slogans defend his theory of abrogation.

The word mithl which was a main buttress for Shāfi^{c}ī's theory of naskh, is further traced in a series of aḥādīth which are preserved in the armoury of Hamadhānī.(88) "The ḥadīth of the Prophet is like the Qur'ān, therefore, one part abrogates the other." It should be pointed out that scholars could interpret this ḥadīth the other way round -"the ḥadīth of the Prophet is like the Qur'ān, and the one may abrogate the other." This interpretation, in any case, was not sought by Hamadhānī, because he placed this ḥadīth together with the following ḥadīth. "Part of the ḥadīth of the Prophet abrogates another part of the ḥadīth as part of the Qur'ān abrogates another part of the Qur'ān." This ḥadīth is further supported by a statement which bears the name of ^{c}Urwa b. Zubair: "I testify that my father told me that the Prophet would make a statement and after a while, he would abrogate it by means of another statement just as the Qur'ān abrogates other parts of the Qur'ān." This doctrine was traced back by involving the Prophet himself. Ibn al-Bailamānī reported on the authority of his father that

ibn ᶜUmar heard from the Prophet who had said: "Some parts of my aḥādīth abrogate other parts of my aḥādīth."

These aḥādīth emphasized that naskh operated exclusively within the Qur'ān and the sunna. Hamadhānī does not accept ibn al-Bailamānī's report and argued that no one except ibn al-Bailamānī has narrated this ḥadīth. Further, he said: "Ibn al-Bailamānī was not a reliable person and his ḥadīth must not be accepted." These aḥādīth were not known to Shāfiᶜī because he did not refer to them whenever he discussed the principle of naskh. These aḥādīth emerged only in the post-Shāfiᶜī period.(89) The allegation that the sunna abrogates the sunna was justified by the scholars who argued from the agreed position that the Qur'ān abrogates the Qur'ān. It is interesting, however, that according to the majority Q.2,106, 16,101 and 13,39 clearly speak about the abrogation of the Qur'ān by the Qur'ān. This led ibn al-Bailamānī to report from the Prophet that, "some parts of the aḥādīth abrogate other parts of the aḥādīth." In this way both sources could be supported by God and His Prophet respectively. If the Muslims had accepted that abrogation indeed had occurred in the Qur'ān, it would be easy to believe that the abrogation had affected the rulings of the sunna. A similar sort of argument was that of Jaṣṣāṣ:(90) "If the sunna could be abrogated by the sunna why should it not be abrogated by the Qur'ān?" Indeed the operation of naskh in the sunna was inevitable because there was a mass of contradiction within the sunna. This was the reason which encouraged the ahl al-Kalām to reject the whole body of the sunna. They held that there was not only contradiction

within the sunna but even between the Qur'ān and the sunna.(91) It has become clear that the traditionists badly felt the need of abrogation within the sunna so that it could not be rejected on the grounds that it not only contradicted itself but also the Qur'ān. Shāfi^{c}ī was a member of the traditionists. He propounded his special theory of abrogation and justified it, using certain verses of the Qur'ān. To help him, the traditionists put forward these aḥādīth which are mentioned above.

The literature on the subject of al-Nāsikh wa-l mansūkh helps us to understand that scholars were preoccupied with whether or not the Qur'ān and the sunna could abrogate each other. Further, it tells us that unanimity never existed among the Muslims. Naḥḥās(92) records five views to this effect.

(1) The Qur'ān can abrogate the Qur'ān and the sunna. This is the theory of Kūfans (i.e. Iraqis).

(2) The Qur'ān can abrogate the Qur'ān but the sunna cannot abrogate the Qur'ān. This is the theory of Shāfi^{c}ī and a group who follow him.

(3) The sunna can abrogate the sunna and the Qur'ān.

(4) The sunna can abrogate the sunna; the Qur'ān cannot abrogate the sunna.

(5) The fifth view was ascribed to Muḥammad b. Shujā^{c} who said: "Doctrines have clashed, therefore, I do not judge one of them by means of the other."

This gives us a clue that he did not want to stress any of the above mentioned views. He suggested that scholars could adopt any one of these theories when they wanted to document their Fiqh. Naḥḥās did not mention the exponents of the third and the fourth view, but it is obvious that the third view was also that of the ancient scholars - the upholders of the first theory. Likewise, the fourth view was accepted by Shāfiʿī. The difference in these theories, pointed out by Naḥḥās, is very important. It tells us how Islamic scholarship was working in the early period of Islam when the status of the Qurʾān and the sunna was being discussed. It should be kept in mind that in the beginning of the age of scholarship very little attention was paid to the field in which naskh operates and the reasons for its occurrence. This suggests that the theory of naskh was accepted without its details prior to the emergence of Uṣūl al-fiqh literature.

Naskh is a speciality of the Fuqahāʾ.

The literature on al-Nāsikh wa-l mansūkh reveals that naskh is restricted to the field of Fiqh. This can be supported by the fact that the majority agreed that naskh affected the rulings, and not the narrative statements. Naḥḥās (93) condemned the scholars if they attempted to expand the field of naskh into the narrative statements.

According to Makkī, (94) the main theme of his chapter (what can be abrogated and what cannot) is that God removes His ruling and substitutes for it another ruling. Both the abrogating and abrogated rulings are recited but the abrogated one is not practised (naskh al-ḥukm dūna al-tilāwa). God also removes His ruling as well as wording and

puts in its place another ruling. In this case, only the ruling of the abrogating verse is accessible to the Muslims. All this is possible in the field of rulings, duties, commands, prohibitions, restrictions that God has placed on man's freedom of actions and un-prescribed penalties which are enforced in the law of this world. Makkī claimed that this view was adopted by the majority of ᶜUlamā' and Fuqahā'. In addition, he said, no view other than this was accepted. All that God has informed us that would happen or that had happened, all that He has told us about the people who passed away, about Heaven, Hell, judgement, punishment, resurrection, the creation of the Heavens and the earth, the abode of the unbelievers in Hell, the abode of the believers in Heaven, are the categories in which abrogation cannot play any role. (akhbār, i.e. statements).

According to Jaṣṣāṣ,[95] the rulings governing the deeds of the devotees, when they become incumbent upon them, are of three kinds. Firstly, some rulings are binding forever and cannot be changed such as to believe in the unity of God and in the Prophets, to be grateful for the bounties of God and to avoid disgusting deeds. Secondly, some rulings are forbidden to be acted upon such as not to be grateful for the bounties of God, to tell lies, to disbelieve in the Prophets and to commit disgraceful acts. These two categories are related to reason, therefore, they cannot be changed. No text can be found to contradict what reason has confirmed because reason is an authoritative source for understanding the will of God. Whatever He declares good, is good and whatever He declares shameful, is shameful.

The text which embodies the ruling is also an authoritative source for knowing the will of God. Hence, it is impossible for these two sources to contradict each other. Therefore, no text can lift the obligation which reason has accepted as obligatory; nor can it prescribe what reason has prohibited. On the above mentioned argument, Jaṣṣās concludes, that naskh cannot operate in those two fields. As regards the third category, reason can allow any act to be carried out after it has been prohibited. The reason Jaṣṣās puts forward is this: "The source of every ruling is God Himself and it is expedience which works behind these rules. If He knows that the welfare of the people is in prescribing something, He does so. On the other hand, if He knows that the welfare of the people is in prohibiting something, He follows that course. This is the exact reason why He prescribed fasting in the month of Ramaḍān, but forbade fasting on the day of Fitr. Likewise, He prescribed the prayer at its fixed times, but did not allow prayer as the sun is rising and setting. Further, it is lawful to lay the duty of fasting and prayers on the clean and purified believers, but the menstruating women are not allowed to do so. This can be applied to all His commands which He orders us to follow." It is really up to God, says Jaṣṣāṣ, "To make men poor or rich, to make them healthy or unhealthy. He can also create warm and cold weather. God has knowledge of all these things and He keeps making decisions according to the welfare of the people." Jaṣṣās again stresses the point that in the first and second categories different rulings cannot run simultaneously. For example, it is unlawful to order

someone to believe in the unity of God and at the same time to give someone else the opposite command. Similarly, it is impossible to order one person to believe in the prophets and to ask another not to believe in the prophets. Moreover, it is not appropriate to tell the people not to commit disgraceful acts, but to order others to do so. In making the above statement, Jaṣṣāṣ concludes that the rulings concerning prayer, fasting, Hajj and sacrificing the animals can be abrogated. Thus, he openly confined the scope of naskh to the Fiqh rulings.

We see that the definition of naskh, propounded by the Usūlīs, mainly covers the legal texts. Thus it would be appropriate to say that scholars were concerned with the texts of the Qur'ān and the sunna. Ghazzālī[96] defines naskh as a text which indicates the lifting of a ruling which has been confirmed by an earlier text, and that the abrogating text always succeeds the abrogated one. Ṭabarī[97] also confines naskh to the rulings of the Qur'ān. Interpreting Q.2,106 he says the verse means: "Whatever ruling of the Qur'ān we transfer to a different legal category, God changes what was lawful into unlawful, or vice versa; He changes what was not prohibited into what was prohibited, or vice versa. Naskh can affect only commands and prohibitions. It cannot affect the narrative statements from God. The term naskh is derived from naskh al-Kitāb. It is transferred from one exemplar to another, different, exemplar. The naskh of a ruling means its changing from one category to another by transferring what God had said about the ruling in His earlier utterance, to a later

different utterance, (touching on the same topic and ruling)." Ibn Fāris[98] defines naskh as repealing a command which has been acted upon until it was replaced by a second command. According to him anything which is subsequent to another, takes the place of it.

These definitions suggest that naskh is a speciality of the Fuqahā'. However, the first task of the scholars was to reconcile the sources which were in conflict. Ṭabarī[99] clearly remarked: "No ruling of either the Qur'ān or the sunna can be said to have abrogated another ruling unless the two contradictory sources are impossible to apply together, and there is an abundant proof that one of them is abrogating and the other is abrogated." Jaṣṣās[100] maintains that the abrogating ruling always occurs after the previous ruling has been confirmed and there is no possibility of combining them for one situation and for one person. The concept of an abrogating ruling - that it should always occur after the mansūkh has been confirmed - was traced back to the authority of ibn ᶜAbbās who is believed to have said, "the companions of the Prophet would follow the later and the later from his commands."[101] It must be noted that when Fiqh doctrines clashed with the usūl of Fiqh, new rules emerged in order to remove the incompatibility. This is explained as follows:

Q.4,15-16 read: "Those of your women who commit indecency, seek four witnesses against them, and if they testify, confine them to their houses until death takes them, or God appoints a way out for them. And when two of you commit indecency, punish them both, but if they repent and reform, then desist from them, verily God always has

been relenting, compassionate." The verse is believed to have prescribed the penalty for adultery for the first time in Islam. Later, according to some,[102] it was abrogated by Q.24,2, "the fornicator and the fornicatress scourge each of them with a hundred stripes." In these verses, three penalties are mentioned - habs, adhā and jald. Jaṣṣāṣ can combine these three penalties regarding one person in one situation. According to him,[103] applying the jald for an unmarried couple would not prevent the continuing validity of the habs and adhā, and would not cause the latter penalties to be eliminated. In other words the rulings of Q.4,15-16 and Q.24,2 can be combined, but Jaṣṣāṣ is not ready to do so because this would be an addition to the previous ruling which, if accepted, is termed naskh. It is obvious, that Jaṣṣāṣ knows that the combination of the two rulings is possible, yet he ignores the fact because it would break down his whole theory on adultery.[104] The penalty for fornication, concerning a married couple, according to Jaṣṣāṣ, is Rajm (stoning to death). Rajm cannot be combined with habs and adhā, argues Jaṣṣāṣ, because their combination is not feasible. His interlocutor was not convinced and pointed out that there was no harm in combining habs, adhā and Rajm. The Rajm would be carried out after applying habs and adhā. This objection reveals that there was resistance, in Jaṣṣaṣ' time, against the theory of naskh. Because if his interlocutor's idea is accepted, i.e. the penalties are combined, then, on this point there is no question of naskh. However, Jaṣṣāṣ' answer to this question is this: Q.4,15 "until death approaches them or God appoints a way out for them" means:

habs and adhā are the penalties until the woman dies a natural death or God appoints her a way. By Rajm God appointed her a way out, therefore, these penalties cannot be combined in any case. He further argues that Rajm, by itself, is a penalty for adultery. In the past habs and adhā were the penalties. Rajm has replaced habs and adhā, therefore, there is no question of combination. In other words the later has abrogated the earlier. Similarly, Jaṣṣās admits that bequests (Q.2,180 and 240) and inheritance verses (Q.4,11-12) can be reconciled, but he does not show himself ready to accept this idea.(105)

According to Jaṣṣās when one ruling is confirmed, then nothing should be added to it because that would be equivalent to naskh. The very nature of this rule shows that it was generated by the Ḥanafīs in order to oppose the doctrines of their opponents. The following example serves to clarify this statement. Q.5,6 reads: "O you who believe when you rise up for prayer, wash your faces and your hands up to the elbows ..." The explicit meanings require that before prayer washing of these parts of the body is necessary.(106) Shāfi'ī(107) remarks that nīyya must be made for purification whether it is in the form of ghusl, wudū' or tayammum. He refers to the Prophet's ḥadīth in which he is believed to have said: "Every practice is based on nīyya." Jaṣṣās rejects this claim and argues:(108) "Prayer will be valid after washing hands and face. Nīyya must not be involved, because ghusl has a legal name and its meaning is understood, i.e. passing water over the body. It has nothing to do with nīyya, and

whosoever attached nīyya to ghusl, added to the explicit text. This is invalid for two reasons. Firstly, an addition to the text is naskh. Secondly, the text has its own ruling, therefore nothing should be added to it, which was not part of it: it is also unlawful to drop something which is related to it."

CHAPTER FIVE

THE ABROGATION OF THE RULING BUT NOT OF THE WORDING

Dr. Burton states:[1] "The term naskh or al-Nāsikh wa-l mansūkh, despite the usūlī's habit of treating them in a single chapter, refer not to one but to three methodological principles. They are quite unconnected with each other, and each has evolved from its evidentiary base to supply three distinct needs in separate Islamic sciences." These three methodological principles, according to the usūlīs are:

(1) Naskh al-ḥukm dūna al-tilāwa (the abrogation of the ruling but not of the wording).

(2) Naskh al-tilāwa dūna al-ḥukm (the abrogation of the wording but not of the ruling).

(3) Naskh al-ḥukm wa al-tilāwa (the abrogation of both the ruling and the wording).

In this chapter we shall examine the first mode of naskh which is widely accepted by the exponents of the theory of naskh. According to the writers on the subject of al-Nāsikh wa-l mansūkh this mode deals with numerous verses of the Qur'ān, but the standard verses provided by the usūlīs (in order to establish the fact that some rulings of the Qur'ān were abrogated while the wording remained valid) are concerned with the problems of waṣiyya and ᶜIdda.

a) Waṣiyya (bequest).

There are three verses involved in this connection.

(1) Q.2,180: "It is prescribed for you, when death draws nigh to one of you and he leaves property, that he make bequest to both parents and the near relatives."

(2) Q.2,240: "And those of you who die and leave behind wives, they should bequeath in favour of their wives a provision (maintenance and accommodation) for the year without turning them out."

(3) Q.4,11-12: This verse prescribes the precise shares for the heirs of a deceased person.

Q.2,180 and 240 clearly prescribe the making of a bequest in favour of parents, relatives and wives. Simultaneously, by Q.4,11-12 parents and wives can get their shares from the estate of a deceased man. Scholars have admitted the fact that both the rulings can be applied together. Shāfi^{c}ī after quoting Q.2,180 and 240, says:[2] "Then God provided legislation for the inheritance of the parents and those who inherited with them or after them among the near relatives. He provided legislation for the inheritance of the husband from his wife and vice versa." Shāfi^{c}ī continued to say that the foregoing verses could be interpreted in this way, that the bequest in favour of the parents, near relatives and wives was allowed together with the inheritance, so that they enjoyed their share of inheritance with the bequest. These Q.4 verses can also be interpreted as abrogating the verses concerning bequests. Jaṣṣāṣ[3] said: "The inheritance verses did not abrogate the wasiyya because the inheritance and bequest verses could be combined in one situation for one person." However,

the doctrine accepted by the majority was that the parents and wives were not entitled to inheritance together with the bequests.(4) They could get only a share from the inheritance of a deceased man because the making of a bequest in their favour was abrogated. The doctrine was ascribed to ibn Zaid, ᶜIkrima, Qatāda, Mujāhid and Suddī. The doctrine was further strengthened on the authority of ibn ᶜAbbās who once delivered a speech in order to clarify the meaning of the sūrat al-Baqara; when he reached Q.2,180, he said, it was abrogated.(5) According to Ḍaḥḥāk, Ḥasan and Ṭāwūs, the making of a waṣiyya, in favour of the parents and near relatives who do not inherit for some particular reasons,(6) is obligatory. This doctrine was also referred to ibn ᶜAbbās who said: "Q.2,180 was not abrogated in the cases of those who do not inherit." To this effect Jaṣṣāṣ remarked that two contradictory reports were ascribed to ibn ᶜAbbās. According to the former report, the verse was totally abrogated and according to the latter it was partly abrogated.

Jaṣṣāṣ(7) informs us that according to some scholars the bequest was obligatory in favour of relatives, but it was not the case that a testator should make the bequest in favour of all the relatives. He had to make the will in favour of only those who were close relatives. Therefore, he was not obliged to make the wasiyya for remote relatives. Later the bequest in favour of those who were close relatives was abrogated; the remote relatives remained in the same state as they were before, because, although a man could make the bequest to them, he did not have to.

The above mentioned views reflect the majority's attitude towards the abrogation of the wasiyya. However, scholars were divided on what had abrogated it. Some said the hadīth of the Prophet: "lā wasiyya li wārith" abrogated the obligatory nature of the wasiyya. Those who did not accept the Qur'ān's abrogation by the hadīth were inclined to argue that Q.4,11-12 abrogated the bequests. Thus, the doctrines upheld by the majority, that the wasiyya was abrogated, made Q.2,180 clash here with the sunna and there with the Qur'ān. In both cases naskh was asserted. Let us first examine the views of those who claimed that Q.2,180 was abrogated by Q.4,11-12.

Ibn ᶜAbbās[8] is believed to have said: "Inheritance verses abrogated the wasiyya." Mālik[9] followed this view, but did not provide details. Yaḥyā narrated, "I have heard Mālik saying: 'Q.2,180 was abrogated by what God revealed in His Book concerning the precise shares in the inheritance.' " He further said that, according to Mālik no bequest is valid in favour of legal heirs because this is an agreed practice concerning which the Medinese have no dispute. This was why, perhaps, some scholars were tempted to say that the wasiyya was abrogated by the Ijmāᶜ. Rāzī[10] tells them that their doctrine is nullified for two reasons. Firstly, Ijmāᶜ cannot abrogate the Qur'ān. Secondly, some scholars were of the view that this was not a case of abrogation, therefore, Ijmāᶜ could not be claimed to have occurred.

Shāfiᶜī's[11] argument concerning the problem in question was somewhat complicated. His main aim in producing this example was

to show that both the sunna and Ijmā^{c} indicated that some of the rulings of the Qur'ān were abrogated. Shāfi^{c}ī's argument starts: God said: "Enjoined upon you when death comes to one of you and he leaves property is the making of a bequest to both parents and the nearest of kin (Q.2,180)." God further said: "And those of you who die and leave behind wives, shall bequeath in favour of their wives a provision for the year without turning them out (Q.2,240)." God also said: "And to the deceased's parents one-sixth of the inheritance, if he has a child; if he has no child and his parents are his heirs one-third is for his mother(Q.4,11)." Thus God provided two legislations. According to the first two verses the bequest is obligatory in favour of the parents, near relatives and wives. According to the second legislation God fixed the shares of the persons who inherit from the estate. Shāfi^{c}ī holds that the verses contain two possible meanings. a) the parents, next of kin and widows benefit from the bequest together with the inheritance. b) the verses containing the ruling on bequests had been abrogated and therefore no such bequest is valid. Since both interpretations are possible, it is the duty of the scholars to find evidence from the Book of God (as to which of the two is valid). If the scholars cannot trace it in the Book of God, they should try the sunna of His Prophet. If they found evidence in the sunna, it should be accepted, because God ordered mankind to obey His Prophet. After making this statement Shāfi^{c}ī said, "we have found the Maghāzī scholars were not in disagreement over what the Prophet said:[12] 'There is no bequest in favour of an heir; no believer should

be slain for the blood of an unbeliever!" Shāfi^{c}ī said:[13] "This is a ḥadīth which is transmitted by the public from the public. It is, therefore, of greater validity than the report of one individual from another." He further said:[14] "I do not know any scholar who disagrees that the waṣiyya to parents is abrogated by the inheritance verses. The sunna indicates that the waṣiyya is invalidated in favour of heirs whether parents or otherwise. The sunna indicates that the bequest in favour of those who are not relatives is valid. It also displays that the waṣiyya in favour of the parents and others who inherit is totally abrogated. However, if they are not heirs, the bequest is still valid. When a bequest is prepared with regard to the parents and other heirs do not mind, the parents merely take it as a gift from the heirs and not as a property that was bequeathed to them."

We have already pointed out that Ṭāwūs was of the opinion that the waṣiyya in favour of those who do not inherit is valid. He further held that if someone made a waṣiyya for other than his relatives, it would be taken back from them and returned to the relatives.[15] Shāfi^{c}ī said what Ṭāwūs mentioned was possible because the Prophet had merely said: "No bequest for an heir was valid." Yet it was obligatory upon the scholars to seek evidence either in favour of Ṭāwūs or against him. Shāfi^{c}ī found a decision of the Prophet concerning six slaves who were owned by an Arab. This was the only property possessed by the man. He set them free at the time of his death. The Prophet divided them into three groups and freed one group of them. Thus four slaves were left in slavery. The Prophet's decision to free

the two slaves at the time of Arab's death, said Shāfi^{c}ī, constitutes a wasiyya. The man was an Arab, said Shāfi^{c}ī, and the Arabs owned only those who were non-kin. From this precedent Shāfi^{c}ī draws numerous conclusions.(16) Two of them are related to our discussion. Firstly, the making of a bequest in favour of those who are not relatives is valid because, if it were invalid, it would have been void concerning the freed slaves. Thus he refutes the doctrine of Ṭāwūs. Secondly, the bequest of a deceased person cannot exceed more than one-third of his estate. Thus he confirms on these points the view of Mālik.

Jaṣṣās(17) disagreed, suggesting that the slaves owned by the Arab who set them free might be his relatives, because it was possible that the man's mother could be a non-Arab. Therefore, the slaves could be his maternal relatives. The bequest made in this connection was for his relatives and not for other than his relatives. Jaṣṣās also showed another inconsistency in Shāfi^{c}ī's arguments. In his opinion, Shāfi^{c}ī held that making of the wasiyya in favour of the near relatives was abrogated by the decision of the Prophet; while Shāfi^{c}ī's principle was that the Qur'ān was never abrogated by the sunna. The following is the clear illustration provided by Jaṣṣāṣ.

"Shāfi^{c}ī stated that it was possible that the inheritance verses abrogated the bequest; or that the bequest was a confirmed obligation. When a ḥadīth (lā wasiyya li wārith) from the Prophet, narrated by Mujāhid, reached us, we concluded that this indicated that the inheritance verses abrogated the bequest in favour of the parents and

next of kin (although the hadīth was interrupted)." Jaṣṣās, in reference to this, remarked that "Shāfi^{c}ī admitted that the two verses (Q.2,180; Q.4,11-12) could be combined; he also admitted that the report was interrupted, but Shāfi^{c}ī accepted it while in principle he did not accept this, even if it came down by the way of tawātur. Using this report he decided on the ruling of the verse while he did not allow the abrogation of the Qur'ān by the sunna."

The hadīth 'lā waṣiyya li wārith' indicates, according to Shāfi^{c}ī, the abrogation of the waṣiyya legislation. The report, weaker in isnād, as is admitted by Shāfi^{c}ī, was strengthened by the authority of Ijmā^{c}. This sort of judgement gave rise to doubts about the validity of the report. One may argue that the hadīth was a legal maxim which was widely accepted by the Fuqahā', in the form of Ijmā^{c} and was later ascribed to the Prophet.(18) Before we record the further variations of this hadīth, let us examine the views of those who accept that the waṣiyya was directly abrogated by this hadīth. The argument of the exponents of this theory was that, "when God prescribed the shares of the parents He said, they are to be deducted after any bequest that has been made. Therefore, by the explicit text of the Qur'ān the parents, relatives and widows could get their shares after the waṣiyya had been made in favour of them. The abrogation of the waṣiyya by Q.4, 11-12 creates ambiguity because in these verses the obligation of waṣiyya re-appears; if the abrogation of the verse (Q.2,180) is claimed to be by the sunna, no ambiguity arises."(19) The Ḥanafīs clearly say that the waṣiyya was abrogated by the sunna. Rāzī(20) favours

this doctrine saying that, "it is more likely that the Qur'ānic injunction is abrogated by the sunna, but this is difficult to believe since the report is Khabr al-Wāḥid which in any case cannot supersede the Qur'ān. However, I maintain that this ḥadīth was accepted by the scholars of all ages, therefore, it becomes like a Khabr al-mutawātir." Qurṭubī[21] also accepts this doctrine and gives reasons.

These arguments clearly indicate that the Fuqahā' had definitely decided to abrogate the legislation of waṣiyya. Now they were preparing their arguments to escape from the problems which had arisen after their discussions. The question arises as to why scholars were so anxious to abrogate the ruling of Q.2,180 and 240. The reason for this decision seems to be material interest and a desire to avoid creating two legal categories of claimants, i.e. those who benefited by way of waṣiyya and mīrāth; and those who benefited by mīrāth alone. Shāfi'ī[22] openly acknowledges this by saying that they (the parents, near relatives and wives) might not benefit from the estate in these two ways." The doctrine was expressed in a form of ḥadīth ("there is to be no bequest in favour of an heir"). " لا وصيـــة لـــوارث ". This expression was developed in another form which reads: " لا تجوز وصية لوارث " ("it is not allowed to bequeath in favour of an heir "). In Jaṣṣāṣ' version the word " تجوز " is replaced by " يجوز ". These words fully supported the Fiqh doctrines because the answer to the problems was provided directly. Jaṣṣāṣ records another version which is narrated by Abū Umāma who said:[23] "I have heard the Prophet declaring during his last pilgrimage: "Behold, God has granted to every legal heir his

share, therefore no bequest is valid in favour of an heir"). "ألا ان الله قد اعطى كل ذى حق حقه فلا وصيـــة لوارث ". It should be noted that in Aḥkām this ḥadīth was put forward by Jaṣṣāṣ in favour of those who argued that the Qur'ān was abrogated by the sunna. But in his uṣūl this ḥadīth was explained away because it was accepted by his opponents who maintained that the ḥadīth indicated the abrogation of the waṣiyya by the mīrāth. Jaṣṣāṣ[24] said that the ḥadīth did not mean that the bequest was abrogated by the āyat al-mawārīth as an instance of abrogation of the Qur'ān by the Qur'ān, but it was abrogated by waḥy (By waḥy Jaṣṣāṣ means : من بعد وصية يوصى بها او دين). The Prophet's mentioning of the word mīrāth in the ḥadīth, with the abrogation of the waṣiyya, meant only that he had explained the verse (Q.2,180) and declared that man's share of the previous waṣiyya was abrogated, because God himself had provided him with a new share by way of the mīrāth. This share might be better, however, than the share of the waṣiyya. The Prophet made it clear that a man would not be left without his share from the estate whether before the abrogation of the waṣiyya or after the abrogation of the waṣiyya. (That is, the sunna provided here, not the nāsikh of the Qur'ān, but its Bayān).

The ḥadīth was certainly propounded by the scholars who were familiar with the arguments of Shāfi^{c}ī, that the sunna's function was to elucidate the Qur'ān and to distinguish the nāsikh from the mansūkh. It was declared that God Himself had abrogated the Qur'ān (2,180) by the Qur'ān (4,11-12). This form of the ḥadīth as is obvious, was not known to Shāfi^{c}ī. However, it represents the central point of his discussions.

Jaṣṣās' treatment of the verse (2,180) was totally different from that of his fellow Ḥanafīs who argued that the verse in question was abrogated by the sunna, and from the rest of the scholars who maintained that it was abrogated by āyat al-mīrāth. He did not accept the idea that the alleged ḥadīth abrogated Q.2,180 because he knew it was munqaṭi^{c}. He also did not consider the inheritance verses as the nāsikh, because both mīrāth and the waṣiyya could be applied together. He says: "Do you not think that the Prophet would have allowed the bequest in favour of an heir if the other heirs consented. It is not absurd to combine them for one person." He declares that the obligatory nature of the waṣiyya, in favour of the parents and the near relatives, was abrogated by - God's saying - "after any legacy he may have bequeathed (has been given) or any debt (has been paid, the shares are distributed)." According to Jaṣṣās, the word waṣiyya in this verse was expressed as an indefinite noun. Therefore, one could make a waṣiyya to anybody that he wanted (excluding the parents and relatives). After doing so, the rest of the property was divided among legal heirs according to their shares. After making this waṣīyya and giving the heirs their shares, nothing remains to be bequeathed to the parents and the relatives.

Jaṣṣās' interlocutor remarked that as the word waṣiyya was indefinite, it was not restricted and could be applied to everyone including the parents. Waṣiyya was more likely to be made in favour of the man's heirs. By accepting this argument, maintained his opponent, the permissibility of making a waṣiyya remained valid.

Jaṣṣāṣ answered: "By Q.2,180 waṣiyya was made obligatory. There was no mention of its permissibility, because the word waṣiyya mentioned in the āyat al-mīrāth with regard to its indefinite nature abrogated the obligatory nature of v.180." Jaṣṣāṣ' interlocutor was not convinced and stated that the waṣiyya mentioned in Q.4,11-12 could be referred to the waṣiyya of Q.2,180. In this way the parents fell in the same category. Jaṣṣāṣ answered:(25) "Were that intended God would have said al-waṣiyya in Q.4,11-12, so that the article (ال) would have referred to the same definite noun which was mentioned in Q.2,180." He concluded that, "the obligation to make waṣiyya in favour of the parents and the near relatives, even if they were not heirs (for some reason), was abrogated. This was because the wording " من بعد وصيـــة يوصى بهـــا او ديـــن " necessitated that the waṣiyya was permissible only in favour of the rest of the people." It should be noted that, like Shāfiʿī, Jaṣṣāṣ' main aim in putting forward this argument was to reject the doctrine of Ṭāwūs. He himself acknowledged this by saying:(26) "Through this doctrine, I have invalidated the views of Ṭāwūs, Masrūq and Muslim b. Yasār who confirmed the waṣiyya in favour of the parents provided they were not heirs." Ṭāwūs did not allow waṣiyya in favour of outsiders as long as the parents and relatives were alive.

Sarakhsī(27) argued: "In this legislation (Q.2,180) there is a textual provision that waṣiyya in favour of both the parents and relatives is obligatory. This was abrogated by the ḥadīth 'lā waṣiyya li wārith'. This is a well-known sunna. It is not proper to say that

this Qur'ānic legislation was abrogated by the āyat al-mawārīth, because Q.4 imposes a second right which is not in contradiction to the right imposed by Q.2,180. If there is no conflict, the question of naskh does not arise. It is also not proper to assert that one right (Q.2,180) was abrogated by what was revealed in the Qur'ān, whose wording because of its abrogation did not reach us, while the ruling remained valid. For, to open this door would certainly lead one to say concerning all the rulings of the Sharī'a, that there is no rule but it might have been abrogated by a revelation whose wording has not reached us. The inheritance verses manifestly mention an indefinite noun (waṣiyya) because it is said "after any waṣiyya he may have bequeathed or debt (he owed) has been paid." The obligatory waṣiyya of Q.2,180 was introduced by alif-lām. If this waṣiyya had still been in operation when the inheritance verses were revealed the word waṣiyya would have been expressed in Q.4 by the article (ال). The lack of this article suggests that the earlier waṣīyya was abrogated."

From the above arguments, it is confirmed that both Jaṣṣās' and Shāfi'ī's primary purpose was to confront the view of Ṭāwūs, because it was accepted by a minority. Further, both scholars were of the view that this was an instance of the Qur'ān's abrogation by the Qur'ān. However, their instances differed from each other regarding the nāsikh. Jaṣṣās although an exponent of the Ḥanafī school, did not follow their doctrine that the waṣiyya was abrogated by the alleged ḥadīth. His argument, that the waṣiyya was abrogated by "after any legacy he may have bequeathed or debt (has been paid)" strongly suggests that an

atmosphere in favour of Shāfi^{c}ī's doctrine - the Qur'ān is abrogated only by the Qur'ān - still prevailed and it partly affected Jaṣṣāṣ. However, the example provided by Jaṣṣāṣ in order to refute all the theories regarding the nāsikh gives us the impression that he was far cleverer than Shāfi^{c}ī. The reason which may be put forward is that Shāfi^{c}ī had supported his doctrine by an interrupted ḥadīth and by so-called Ijmā^{c}. Jaṣṣāṣ was aware of this problem. Therefore, he relied on neither ḥadīth nor on Ijmā^{c}. He created contradiction within the Qur'ān and argued in favour of the existing doctrine that "waṣiyya should not be made in favour of the parents and next of kin."

Without looking at the Fiqh, if one pays attention solely to the Qur'ān, it becomes clear that there is no contradiction between the Qur'ānic verses. Q.2,180 and Q.2,240 clearly speak about the shares of the parents, near relatives and widows out of the deceased's property. The verses required that the waṣiyya was made in favour of the above mentioned categories of people. It is the right of a man, granted by God, to dispose of his property in the way that he desires. It is by no means illogical. However, illogicality is caused by the Fiqh which tried to distribute the property to outsiders. The Fiqh doctrine based on the ḥadīth (concerning six slaves) is irrational and arbitrary. Further, the legal maxim "lā waṣiyya li wārith" must have originated in the tafsīr of the early scholars and it eventually became a ḥadīth which was later ascribed to the Prophet.

As there is no positive indication, Q.4,11-12 does not contradict vv. 180 and 240, but rather confirms them. One finds

repeated indication in Q.4 that shares are allotted only after the bequest has been made and the debts paid. This doctrine was not acceptable to scholars because they were simply under the influence of the Fiqh doctrine which did not allow the wasiyya to be made in favour of the heirs.

b) ᶜIdda (waiting period).

Q.2,180 reads: "It is prescribed for you, when death draws nigh to one of you and he leaves property, that he make a bequest to both parents and the near relatives."

Q.2,240 reads: "And those of you who die and leave behind wives, should bequeath in favour of their wives a provision (maintenance and accommodation) for the year without turning them out."

Both the above mentioned verses contain the word wasiyya. The first step, in order to consider the abrogation of v.240, was taken to prove that both verses spoke about one and the same topic. As it was upheld by the Fuqahā' that the wasiyya mentioned in Q.2,180 was abrogated, the wasiyya mentioned in Q.2,240 was also thought to have been abrogated. This was because it was easier to claim that all bequests were abrogated by the detailed inheritance regulations of Q.4,11-12.[28] This view was expressed in the words of Qatāda.[29] "Q.2,240 prescribed bequests before the inheritance verses were revealed. A man used to make a wasiyya in favour of his wife and whomsoever he wanted, but later this was abrogated. God fixed the

shares of each heir from the inheritance. If a woman had a child, He gave her one-eighth of the inheritance and if she had no child, her share was one-fourth of the whole estate. From the property of her husband, a widow was entitled to get maintenance for a year and then she was allowed to move from the husband's house. The ruling regarding the period of four months and ten nights (ᶜIdda) abrogated this. The obligation of one-fourth or one-eighth abrogated the bequest (originally made in favour of her). The wasiyya, however, remained valid in favour of those relatives who did not inherit."

Jaṣṣās[30] ascribed this view to ibn ᶜAbbās. Mentioning Q.2,240, the latter said: "A widow used to get maintenance and residence for a year. Āyat al-mīrāth abrogated this and fixed for her one-fourth (if she had no child) or one-eighth (if she was left with children). The Prophet made it clear that no wasiyya was valid in favour of heirs except with the other heirs' consent." According to Jaṣṣās Q.2, 240 embraced four rulings. "Firstly, the waiting period for a widow was one year; later, what was more than four months and ten nights was withdrawn. Secondly, she was entitled to maintenance and residence from the property of her deceased husband. This was abrogated by the āyat al-mīrāth as was narrated from ibn ᶜAbbās and others (Qatāda). God had imposed upon the husbands that they should provide maintenance and accommodation for their wives. This was abrogated as the wasiyya for the parents and next of kin was abrogated by the inheritance verses and by the Prophet's ḥadīth: 'lā waṣiyya li wārith.' Thirdly, the ruling of this verse indicated that mourning was

obligatory. This ruling was still applicable as was indicated by the sunna of the Prophet. Finally, the ruling was concerned with the wife's departing from the house of her husband. This ruling was also valid. This was the only verse in the Qur'ān which contained four rulings. Among these, two were abrogated and two were not."

The assimilation of Q.2,240 and Q.2,180 and their subsequent suppression by Q.4,11-12 was clearly argued by Shāfi^{c}ī. We have pointed out[31] that he put v.180 with v.240 and abrogated them by Q.4,11-12 relying on an interrupted ḥadīth and so-called Ijmā^{c}. He claimed,[32] there was no disagreement among the scholars that the maintenance and residence rights of a widow for a complete year were abrogated by the mīrāth. Because the report was weaker in isnād, the Ijmā^{c} emerged in order to support the doctrine of the majority. However, Shāfi^{c}ī rejected the doctrine of the Ḥanafīs who argued that the sunna had abrogated the Qur'ān. Shāfi^{c}ī's argument was that the sunna merely explained the abrogation of the wasiyya. One group obviously argued that the sunna abrogated the Qur'ān and the other held that the sunna explained the Qur'ān, while both groups relied on the same ḥadīth. These squabbles suggest that their discussions were purely academic.[33]

Q.2,234 reads: "And those who die and leave behind wives, they (the wives) shall wait, keeping themselves apart, for four months and ten nights." This verse was considered to be in conflict with v.240. But what has made them appear to be in conflict is a matter of further inquiry. Q.2,240 does not stipulate that the ^{c}Idda for a woman whose husband died should be one year. It was the Fiqh that formulated the

ruling that the ᶜIdda of a widow in the past had been for one year. The majority of the scholars were of the opinion that Q.2,234 abrogated Q.2,240; on the grounds that for a short period in Islam when a man died leaving behind a widow, he would make a wasiyya for his wife, in order to accommodate her for a year - provided she would neither leave the house nor re-marry. This situation was abrogated by the ᶜIdda of four months and ten nights and by the inheritance legislation.(34) The view that v.234 abrogated v.240 was outlined in a hadīth(35) in which ᶜAbd Allāh b. Zubair was made to ask ᶜUthmān the reason why he had recorded v.2,240 in the Qur'ān, since it was abrogated. ᶜUthmān replied that he was not supposed to withdraw any part of the Qur'ān which he had directly learned from the Prophet.

The idea that v.234 abrogated v.240 was questioned by the authorities who claimed that v.234 was earlier in revelation than v.240. This question was simply discarded by arguing that the order of the verses in the Qur'ān was not the same as that in which they had been revealed.(36) Thus the protest against the doctrine was extinguished. However, according to some this was a case of reduction from one year to four months and ten nights. Their argument was that the prayer for travellers was originally of four Rakᶜas but was later reduced to two Rakᶜas.(37) This doctrine was rejected by Naḥḥās(38) on the grounds that the ruling prescribed for a widow was to observe ᶜIdda for a year provided she did not leave the house of her husband. If she did leave, she observed the ᶜIdda of four months and ten nights. This, he argued, was a case of abrogation. He continued: "The

traveller's prayer has nothing to do with the ᶜIdda." In support of his view Naḥḥās produced a ḥadīth from ᶜĀ'isha who said: "The prayer was originally prescribed as two Rakᶜas which was later increased to four Rakᶜas for a non-traveller while the prayer for the travellers remained in its original form. Naḥḥās claimed that this doctrine was held by the majority but was rejected by some on the grounds that ᶜĀ'isha was never seen shortening the prayer when she travelled. Hence contradiction was claimed by Naḥḥās' opponents suggesting that if ᶜĀ'isha had narrated this ḥadīth, she would have acted upon it. According to Naḥḥās the Fuqahā' had answered this question, maintaining: "There was no contradiction, since ᶜĀ'isha was the mother of all the believers: wherever she might alight she was always with them. For this reason she has never been a traveller. Her ruling concerning the traveller's prayer, therefore, did not affect her."(39) The idea that Q.2,240 was abrogated is further expressed in a ḥadīth series.

Zainab said: 'I visited Umm Ḥabība, the Prophet's widow, when her father Abū Sufyān b. Ḥarb died. Umm Ḥabība asked for some perfume and smeared herself. After applying it to her cheeks, she said: "I do not really need perfume, only I heard the Prophet say: 'it is not lawful, to mourn a dead man for more than three nights except for the husband, for whom the widow should mourn for four months and ten nights'." '

Zainab said: My mother heard Umm Salama saying, A woman came to the Prophet and said: "O Prophet, my daughter's husband

recently died; her eyes are troubling her, may I treat them with kohl?" The Prophet answered, 'No', twice or thrice and said, "It is only four months and ten nights and one of you women in the Jāhilīya used to throw a handful of dung at the beginning of the new year."

Ḥumaid from Nāfi^{c} reported that he had heard from Zainab bt. Abī Salama from Umm Salama or Umm Ḥabība: "A woman came to the Prophet and said that her daughter's husband had died. Her eyes were sore and she wished to treat them with kohl. The Prophet said: 'One of you women used to throw a handful of dung at the beginning of the new year; it is only four months and ten nights.' "

Ṭabarī[(40)] records these aḥādīth involving the Prophet's other widows Ḥafṣa and ^{c}Ā'isha. Shāfi^{c}ī[(41)] and Jaṣṣās[(42)] mention these aḥādīth under the title of mourning and argue that mourning is an additional duty for the widows. That the Qur'ān is silent concerning the period of one year as an ^{c}Idda for a widow, was compensated for by these aḥādīth. The Prophet himself had declared, it was argued, that the ^{c}Idda once had been one year but it was now four months and ten nights. Thus the view that Q.2,240 was in contradiction to Q.2,234 was confirmed. It should be noted that mourning is nowhere mentioned in the Qur'ān.[(43)] Shāfi^{c}ī[(44)] says: "The mourning is not mentioned in the Qur'ān, we have accepted it from the Prophet and the Prophet's command is like the command of God." Jaṣṣās[(45)] says: "Although there is an indication in the āya (Q.2,240) concerning mourning, we confirm it by the sunna."

The artificiality of their claims is obvious from the discussions of the question concerning how a widow who does not know about the death of her husband should observe ᶜIdda? Ibn Masᶜūd, ibn ᶜAbbās, ibn ᶜUmar, ᶜAṭā' and Jābir b. Zaid said: "Her ᶜIdda commences from the day her husband dies, whether she knew or not." ᶜAlī, Ḥasan and Jallās b. ᶜUmar held that, "Her ᶜIdda starts from the day the news of her husband's death reaches her." There was a third view attributed to Shaᶜbī and Saᶜīd b. al-Musayyab who claimed: "If evidence of his death is established, the ᶜIdda starts from the day he dies; and if evidence does not stand, the ᶜIdda commences from the day the news of his death reaches her." ᶜAlī argued[46] that the widow is required to mourn during her ᶜIdda and she cannot do so until she knows that her husband is dead. Further the ᶜIdda is a religious duty which she cannot perform unless she is sure that it is due. Jaṣṣās[47] said that ᶜAlī was right in taking care, but the ᶜIdda is merely a passing of time. There is no difference, whether she is aware of her husband's death or not. Jaṣṣās also compares this problem with the mīrāth which is due from the day the man dies and not from the day the news of his death is established. He further argues that the only possibility is that she omits mourning when she does not know about her husband's death, and it has no affect on the validity of ᶜIdda which goes by as the time passes. If a widow knew that her husband had died, and did not mourn, the ᶜIdda would not be affected. Shāfiᶜī's[48] argument is that if a widow is unaware of her husband's death, she will start reckoning her ᶜIdda only when she becomes aware of it. However, if

she cannot get the news of her husband's death before the period of her ᶜIdda elapses from the actual time of her husband's death, she observes no ᶜIdda.

Scholars also disagreed concerning the ᶜIdda of a pregnant woman whose husband had died. Q.65,4 : "For those who are pregnant, their period is until they deliver their burdens" speaks about the pregnant divorcees, but it was held that this verse was general and included all pregnant women including women whose husbands had died. Jaṣṣās[49] suggested that they have observed this view because there was no indication to restrict this verse to divorcees only. In order to make Q.2,234 agree with Q.65,4, it was also held that the former verse was general in its terms, including pregnant and non-pregnant women, but its restriction to pregnant widows was abrogated by Q.65,4.[50] There were three standpoints regarding this issue. Firstly, the ᶜIdda expires as soon as she delivers her burden, i.e. gives birth. This view was claimed to be the doctrine of ᶜUmar, ibn ᶜUmar, ibn Masᶜūd and Zaid b. Thābit. Secondly, ᶜAlī and ibn ᶜAbbās held that she was required to observe as ᶜIdda whichever of the two periods - either Q.2,234 or Q.65,4 - was longer. The third view was attributed to Ḥasan who said: "She should not re-marry until the child is produced and she is purified after the delivery."[51]

According to Jaṣṣās[52] ᶜAlī's view was that Q.2,234 prescribed ᶜIdda by months and Q.65,4 required the completion of ᶜIdda by giving birth. In order to confirm the ruling of both verses he combined them and observed that the ᶜIdda of the pregnant woman is

the longer of the two periods. While ibn Masᶜūd said: "Whosoever wishes I challenge him to engage in mutual oath-taking, that Q.65,4 was revealed later than Q.2,234." Therefore, we get the impression, said Jaṣṣās, that Q.65,4 was general in applying both to the divorcees and the widows (pregnant). It does not matter that the verse was mentioned after the talāq legislation, since all agreed that after the expiration of four months and ten nights she would not be permitted to re-marry until she had given birth. The idea that a widow was free to re-marry after the production of a child was propounded by the following aḥādīth.(53)

Umm Salama said that Subaiᶜa bt. Ḥārith gave birth forty nights after the death of her husband. The Prophet allowed her to re-marry.

Abū Sanābil b. Baᶜkak said that Subaiᶜa was relieved from her burden twenty nights after the death of her husband. The Prophet ordered her to re-marry.

Sulaimān b. Yasār reported that ibn ᶜAbbās and Abū Salama were asked to give fatwā on the problem in question. Ibn ᶜAbbās said: "It is the longer of the two periods." Abū Salama said: "When she gives birth she can re-marry." Abū Huraira was there and said: "I follow Abū Salama's view." They all sent Kuraib, ibn ᶜAbbās' freed man, to Umm Salama, the Prophet's widow, who declared that Subaiᶜa had given birth only nights after her husband's death and was allowed to re-marry.

Ibn ᶜAbbās and ᶜAlī, in fact, wanted to preserve the rulings of both verses and considered that Q.2,234 had not been repealed. Yet

they adopted the rule, as did the others, that if a widow were pregnant after the expiration of four months and ten nights, she could not re-marry until she had given birth. In either of the above mentioned reports the number of the nights is not confirmed. One gets the impression that scholars were engaged in tafsīr in order to settle the disputes which had arisen among themselves. The reports merely tell us that the application of Q.2,234 was unstable.(54)

There was further division of opinion concerning a widow's going out during her ᶜIdda. On this point, Q.2,240 and Q.65,1 were confounded with each other. In the former verse the phrase "غير اخراج" ('They shall not be evicted') occurs. The latter verse reads: "You shall not evict them from their matrimonial houses, nor shall they go out." Interpreting this last verse Jaṣṣāṣ(55) says: "A husband was forbidden to remove her from his house during the ᶜIdda; she was not allowed to leave her husband's house." The concept that divorcees were not allowed to go out was then extended to widows. Shāfiᶜī(56) says: Q.65,1 is concerned with the divorcees. The widow has to observe ᶜIdda in the same way as the divorcee. Therefore, it was possible that the obligation to provide accommodation for the divorcees, and prohibition of their eviction was applicable to the widows. The sunna indicated that the widow should stay in her matrimonial house "until the book expired" (Q.2,235). It was also possible that the ruling was concerned only with the divorcees, and not the widows. It was the duty of the husband to accommodate a divorcee because he owned his property but the dead husband was not obliged to accommodate

the widow, since the property was now owned by his heirs.

Shāfi^{c}ī then produces a ḥadīth to show that the widow was obliged to stay in her husband's house until she completed her ^{c}Idda. Furai^{c}a bt. Mālik b. Sinān, the sister of Abū Sa^{c}īd al-Khudrī, reported that she came to the Prophet and asked for his permission to return to her family tribe of Khudra, - when her husband went forth to capture his runaway slaves, they had killed him. She said, "I asked the Prophet to return me to my family because my husband had left nothing for me. The Prophet answered in the affirmative. As soon as I departed from him and was near to the door of the Mosque, he called me back and asked me to repeat the story. After I had told him the story he said: 'Stay in your house until the book expires.' She said: 'I completed four months and ten nights ^{c}Idda at my matrimonial home. ^{c}Uthmān, during his caliphate called me and asked about the matter. I told him the ruling, he accepted it and judged accordingly.' "

The wording of this ḥadīth "until the book expires" is borrowed from Q.2,235: " و لا تعزموا عقدة النكاح حتى يبلغ الكتاب اجله ". This gives rise to the suspicion that the authenticity of the ḥadīth is doubtful. Further, the judgement "stay in your house until the book expires" was interpreted in two ways.(57) Firstly, scholars held that the wording "stay in your house ..." implies that the widows are entitled to stay in their husband's house as long as they are in their ^{c}Idda. Secondly, the wording means: stay in your house so long as you are not evicted. The argument of the scholars who held this last view was that it was up to the heirs to accommodate her. If they did not accommodate her,

it was their right not to do so, because they owned the property after the husband's death. She was not entitled to maintenance and accommodation, because the moment her husband died the property ceased to be owned by him.

Mālik allows widows to pay calls after the night prayer. According to the Ḥanafīs the widow can go out during the day but she has to spend the night in her home. The idea behind this rule was that not being entitled to maintenance during her ᶜIdda, she had to earn some money in order to meet her demands. The logic of this rule is a subject of interest. The words " غير اخـــراج " mean, 'The widows should not be evicted.' This subsequently means that the widows have the right to accommodation. It would certainly provide the widows with an extra share from the property which would be against the doctrine. This led the scholars to allow the widows to go from their houses during the day and earn some money for themselves. The idea was strengthened on the authority of ibn Masᶜūd who had allowed the widows to go out and exchange visits. However, they had to come back to spend the night at their homes.(58) Shāfiᶜī(59) extended the isnād to the Prophet: "The widows whose husbands were lost at the battle of Uḥud complained of loneliness to the Prophet and he allowed them to visit each other during the day."

Jaṣṣāṣ'(60) interpretation of the words " غير اخـــراج " is no less than confused. This tells us that he was also confronted with the settled doctrine, i.e. the widow should stay in the house during her ᶜIdda, but was not entitled to maintenance allowance. Interpreting

v.240 he says: "Her maintenance and accommodation rights were abrogated." He further says: "The ruling not to remove her from the matrimonial house was still applicable." These two statements obviously contradict each other. In order to avoid inconsistency arising from his own interpretations, he remarks, "There is a possibility that the phrase "غير اخـــراج" was abrogated, because it means that the widow was entitled to accommodation from the property of her husband. Since the right was abrogated, the prohibition of her going out was also abrogated. However, "غير اخـــراج" has two meanings. Firstly, the obligation of accommodation from the husband's property; and secondly, the prohibition of both moving out " خـــروج " and eviction " اخـــراج ". " Because the widows were not allowed to be evicted, he says, they were certainly commanded to stay " اللبـــث " at their homes. Although the obligation to provide her accommodation was abrogated, she was obliged to stay in her husband's house during her ᶜIdda.

The divorcees in any case were not allowed to leave their matrimonial homes during their ᶜIdda, because the Qur'ān had stipulated this. But the reason the widows were involved was clearly outlined by Jaṣṣāṣ.[61] The idea, in fact, was to refute the doctrine of ibn ᶜAbbās and ᶜAtā' who held that a widow was entitled to complete her ᶜIdda wherever she wanted. God Himself had said: "If they leave (the residence) there is no blame on you." ᶜĀṭa' said: "When God revealed Q.4,11-12, her right to maintenance was abrogated. Therefore, she could spend her ᶜIdda wherever she wanted." Jaṣṣāṣ argued that

her staying in the home did not contradict the obligation of mīrāth. The Furai^{c}a hadīth conveyed two meanings. Firstly, the ruling for a widow to stay in the house in which her husband died, was obligatory. Secondly, the widows had the possibility of going out because Furai^{c}a had gone out to ask her question. Had her going out been objectionable, the Prophet would have scolded her. According to Naḥḥās,(62) this hadīth is clearly against the doctrine held by ibn ^{c}Abbās. The scholars who allowed the widow to spend her ^{c}Idda wherever she wanted included ^{c}Alī, ibn ^{c}Abbās, ^{c}Aṭā', Jābir b. ^{c}Abd Allāh and ^{c}Ā'isha. They appealed to the Qur'ān: "But if they leave (the residence) there is no blame on you." It was now up to the scholars to choose how they interpreted the verse. Jaṣṣāṣ said: " فان خرجن " implies after she has completed her ^{c}Idda. Naḥḥās quotes different wordings in order to refute the above mentioned five scholars. He says: "the words " يتربصن بانفسهن " in v.234 mean, they must shut themselves away from all things including going out. According to Ṭabari(63) these words mean to refrain from re-marriage, beautification, adornment and retiring from the husband's house. Ibn al ^{c}Arabi(64) says: " تربصن " means waiting and it involves marriage, perfumes, beautification and going out. He further says that the Furai^{c}a hadīth shows that the widow's choice of removing or remaining was abrogated. On the basis of this hadīth, he entitles the widows to accommodation.

Taking a neutral look at the above mentioned verses, we come to the conclusion that there is no contradiction between v.234 and 240.

Both verses treat different topics in their entirety. V.234 prescribes four months and ten nights ᶜIdda for a widow and obliges her to keep herself in waiting during this period for re-marriage. V.240 provides maintenance and accommodation for a widow for the whole year from the property of her deceased husband. These two rulings are easily reconcilable. The widow would not re-marry for four months and ten nights and she would continue to get maintenance and accommodation for another seven months and twenty nights (provided she did not leave her matrimonial home). However, if she chose to leave her home after the completion of her ᶜIdda, neither she nor her husband's heirs would be blamed for her so doing.

The Qur'ānic right which gives a widow maintenance and accommodation was connected with the wasiyya prescribed by Q.2,180: Thus, it was argued that all the bequests were abrogated by Q.4,11-12 (in order to avoid setting up two classes of beneficiary). The scholars ignored the fact, as we have already mentioned, that the verse by which they claimed the abrogation had occurred had itself repeated four times that the shares were allotted after such bequests had been made.

If we take it for granted that the word "يتربصن" means, they must shut themselves away from all the things including moving out, then vv.234 and 240 still individually carry weight. The widow will remain in the house for four months and ten nights as Q.2,234 prescribes but during the remaining seven months and twenty nights she will be free to go out as v.240 reads: "If they go forth, then there is no blame upon you." However, they shall not be forced to go out as the wording

" غير اخراج " suggests. Interpreting v.234, Mujāhid[65] asserted that, "the ᶜIdda of four months and ten nights was a starting point. Then God revealed Q.2,240 and extended the period of ᶜIdda from four months and ten nights to one year. If the widow wanted she could stay in her waṣiyya for a year and if she wanted she could go out after the completion of four months and ten nights. This is what God said: Without eviction, if they go out then there is no blame on you."

This report[66] rejects all the claims that v.240 was revealed earlier than v.234 and hence breaks down the theory of certain scholars that the ᶜIdda for a widow had ever been for a complete year in Islam. The view that the ᶜIdda had been one year was propounded to break down the harmony of vv.234 and 240, and, thus, to ensure that the widows were not entitled to accommodation and maintenance for a full year. Once it was believed that v.240 was abrogated, no widow was able to claim her double share from the property of her deceased husband. Fantastic links were made between the different Qur'ānic verses in order to justify the Fiqh doctrines. To make this effective, external elements (tafsīr, ḥadīth or sunna) were involved. V.2,180 was connected with v.240. V.240 was connected with v.234. Similarly, unnecessary links were set up between the verses concerning divorcees and those concerning widows. If the scholars had taken the Qur'ān as the direct source of law, without involving the tafsīr of their predecessors, no difficulties and confusions would have resulted.

A modern scholar[67] argues: "Q.2,240 provides wasiyya for

a whole year and during this period widows are not allowed to go out. However, if they desire to leave their matrimonial homes there is no blame upon the heirs because they have no power to shut the widows away. How could the scholars bar the widow from getting her share from the deceased's property since the wasiyya is known to be repeated four times in Q.4,11-12?"

CHAPTER SIX

THE ABROGATION OF THE WORDING BUT NOT OF THE RULING

According to this mode of naskh, the wording of a particular verse does not exist in the present mushaf while the ruling remains valid for the Fiqh. In the history of al-Nasikh wa-l mansukh three instances of naskh al-tilāwa dūna al-hukm have been discussed so far. They are: āyat al-Rajm, āyat al-Ridā^{c} and Kaffārat al-Yamīn. The first of these is embraced by Shāfi^{c}ī's followers, for technical reasons. The second of these is accepted by Shāfi^{c}ī himself. Therefore, one would be justified to say that he was the first person to invent this mode of naskh. The third instance is a peculiarity of the Ḥanafīs.

a) Kaffārat al-Yamīn.

Literally, Kaffāra means "what covers the sin." God speaks about some definite Kaffāras in the Qur'ān, and one of them is Kaffārat al-Yamīn which is imposed upon a Muslim who fails to fulfil his deliberate oath. The verse involved in this connection reads: "God will not call you to account for what is futile in your oaths, but He will call you to account for your deliberate oaths. For expiation (of breaking an oath) feed ten indigent persons on a scale of the average intake of food for your families, or clothe them, or give a slave his freedom. If this is beyond your means, fast for three days ..." (1)

The Ḥanafīs (2) argued that these three days should be consecutive, because the wording 'mutatābi^{c}āt' had existed in ^{c}Abd Allāh b. Mas^{c}ūd's

mushaf. It was also held that Ubayy b. Ka^{c}b used to recite "fast for three consecutive days (فصيام ثلاثة ايام متتابعات)."[3] According to one report Qatāda[4] had also accepted this reading.

Arguing in favour of his companions Jaṣṣāṣ[5] says: "It is known that the wording 'mutatābi^{c}āt' does not exist in the mushaf. Therefore, its recitation is not permissible. However, the wording of ^{c}Abd Allāh b. Mas^{c}ūd was widespread in the time of the companions of the Prophet. We know that abrogation is not possible after the demise of the Prophet. Were it possible, we could not feel safe from (the belief) that the Shari^{c}a at the time of the Prophet's death would have been double that which is now in our hands. Were that possible, we would have nothing left from what we had in the lifetime of the Prophet. It would not be held true that God Himself had caused the people to forget or had withdrawn the wording from their minds, but later had inspired and composed (the Shari^{c}a) in the hearts of the people. One who held this view would be excluded from the number of the Muslims. Thus, it is certain that the expiation for breaking an oath is three consecutive days because the wording of ^{c}Abd Allāh b. Mas^{c}ūd's mushaf was abrogated in the lifetime of the Prophet. The Muslims were commanded not to read this wording as being of the Qur'ān and not to recite it in the salāt as being Qur'ānic. That was the reason why the wording could not reach us as the rest of the Qur'ān had reached us. The wording was withdrawn while its ruling remained valid. Had it been possible to accept that the wording existed after the demise of the Prophet, it would have reached us in the same way

as the rest of the Qur'an had reached us. Since the wording did not reach us, this indicates that it was abrogated before the Prophet expired. If someone were to argue that the ruling has not reached us except by Khabar al-wāḥid and Khabar al-wāḥid cannot decide the content of the Qur'ān, he would be answered by our saying that the ruling had been widespread and the wording of the ruling recited. Thus, the ruling was confirmed. As far as the wording was concerned, it did not reach us in the same way as the ruling had reached us. Further, it was possible that the wording could have disappeared while the ruling did not." This argument was not satisfactory to Jaṣṣās' opponent who asked why the wording had not reached us since the mode of arrival for both the ruling and the wording was the same? Jaṣṣās remarked: "It was not necessary that the ruling should be abandoned when the wording had been abandoned, because the abrogation of one without the other was possible. Moreover, the ruling was confirmed by tawātur while the wording was not."

Sarakhsī[6] also claimed that the fasting in expiation of breaking an oath according to ᶜAbd Allāh b. Masᶜūd's mushaf was three consecutive days. He argued: "This reading was well-known until the time of Abū Ḥanīfa but its wording was not widespread as was the rest of the Qur'ān. There was no doubting ibn Masᶜūd's honesty. There was no alternative but to say that it was recited in the Qur'ān - as ibn Masᶜūd had remembered it - but its recitation was abrogated in the lifetime of the Prophet. God turned it away from the hearts of the people but did not turn it away from the heart of ibn Masᶜūd, so that the ruling should

continue to be transmitted. The ruling of Khabar al-wāḥid must be implemented. The recitation is not binding except when it is transmitted by many to many. The continuation of the ruling is not dependent upon the continuation of the reason which had first made it obligatory. Therefore, it is argued that the abrogation of the wording does not affect the continuing validity of the ruling."

According to Ṭabarī,(7) if feeding ten indigent persons, or clothing them, or freeing a slave is beyond the means of the one who has to expiate for breaking an oath, then the three days' fasting would suffice, whether the days were consecutive or otherwise (because God obliged him to fast only for three days). In whatever way he fasted, it would suffice. As far as Ubayy b. Kaʿb and ibn Masʿūd's readings are concerned, that it was for three consecutive days, this is contradictory to what is in our maṣāḥif. It is not permissible to accept any view which is not in our maṣāḥif. 'However', I maintain, said Ṭabarī, 'that the faster who has to expiate for the breaking of an oath should fast for three continuous days. There is no disagreement among the scholars that this will suffice; others disagree as to whether fasting on non-consecutive days will suffice, as expiation. It is preferable to implement the practice concerning which there is no disagreement, even if the other practice is considered lawful.'

According to one report, Shāfiʿī(8) said: The expiation for breaking an oath is three consecutive days of fasting. In another report Shāfiʿī(9) said: "For all those for whom fasting is obligatory, when there is no condition laid down in the Book of God that the three

days should be consecutive, it will suffice if the fasting is distributed."

Muzanī[10] argued that God made the condition that for the expiation of zihār[11] (form of divorce) fasting should be consecutive, and the fasting for expiation of an oath was similar. Shāfiʿī had specified that the expiation of zihār should be by the freeing of a Muslim slave relating it to the expiation of killing.[12] It is the more necessary for him to accept tatābuʿ in the case of the expiation of an oath because it is similar to the atonement of zihār.

b) Āyat al-Ridāʿ

We have already recorded[13] the aḥādīth concerning āyat al-Ridāʿ on which Shāfiʿī had based his judgement. We have also pointed out that Shāfiʿī's main aim in producing these aḥādīth was twofold. Firstly, to base his judgement on the verses which do not exist in the present muṣḥaf and thus to document naskh al-tilāwa dūna al-ḥukm. Secondly, to refute the doctrine of the Mālikīs who had based their judgement directly on the Qurʾān. Mālik had known these aḥādīth but did not rely on them. Mālik followed the opinion of Saʿīd b. al-Musayyab who had claimed that one suckling by itself constitutes a bar. After quoting Makkī's view we produced Jaṣṣāṣ' criticism. Here we shall enhance the arguments which he has discussed in his uṣūl.

According to Jaṣṣāṣ,[14] Shāfiʿī had argued that five sucklings constituted the bar; he based his judgement on what was related on the authority of ʿĀʾisha: "In what was revealed in the Qurʾān, ten attested

sucklings ...", and on the report of other hadīth in which it was held that the wordings were written on a sheet which was placed under ᶜĀ'isha's bedding. "When the Prophet became sick we were busy because of his ailment, and a domestic goat entered and swallowed it up." The one who accepts these aḥādīth may mean that naskh of the wording of the Qur'ān was possible after the death of the Prophet or that it was not possible. If he accepted the first view, he certainly committed an abominable and disgusting act and followed the way of the heretic who argued that the greater part of the Qur'ān had not reached us and that much of it was lost. If he declared impossible the abrogation of the wording after the demise of the Prophet, his own argument would be nullified because the hadīth reads that the Prophet died and the wording of the verse was still recited in the Qur'ān. ᶜĀ'isha had said: "The Prophet died and the verses were recited in the Qur'ān." Were the report confirmed by Shāfiᶜī, he should have proved it, yet he confessed that abrogation was not possible after the demise of the Prophet.

Jaṣṣās' opponent told him: "We confirm only the ruling but not the wording in the same way as you confirm the ruling for the āyat al-tatābuᶜ but not the wording." He answered: "The wording of ibn Masᶜūd did not record the following: 'the Prophet died and it was written in the Qur'ān'; its recitation for a short time did not mean that it should be found for ever in the Qur'ān. As the wording of ibn Masᶜūd had not reached people by way of tawātur, one should not consider it Qur'ānic after the demise of the Prophet. While the report of ᶜĀ'isha clearly says that it was in the Qur'ān before the Prophet expired. If that were

to be confirmed by Shāfi^{c}ī, then its abrogation was impossible. Moreover, it was mentioned that the goat had eaten up the sheet of paper. It is not sound to hold such a view of the Book of God because "falsehood cannot come at it from before it nor behind it" (Q.41-42). It was said that the goat had eaten it up and this wording disappeared after the death of the Prophet."

Jaṣṣāṣ required to show what the ḥadīth meant to him. In answer to this he replied: It is probable that the wording has been altered from what was originally narrated in the ḥadīth. ^{c}Ā'isha might have said that it was what God revealed or that it was in the Book of God or some similar words. She might have said that the wording was in the Qur'ān or that it was a wahy other than Qur'ān. The narrator thought that the meaning of all the wordings was the same. It might be that the wording of the ^{c}Ā'isha ḥadīth meant that it was in the Qur'ān until the Prophet died. When all these interpretations were possible, the argument could not be advanced particularly when the Qur'ān and the consensus of the umma rejected this possibility. God said: "We revealed the Reminder (the Qur'ān) and We verily are its guardian (Q.15,9); It is for Us to collect it and to promulgate it but when We have promulgated it, follow its recital (as promulgated). More, it is for Us to explain it (Q.75,17)."

It was insisted that Jaṣṣāṣ should accept the ruling, even if he did not consider the wording obligatory (as he had accepted the ruling of āyat al-tatābu^{c}). To explain the difference between the two verses, he pointed out: the ^{c}Ā'isha ḥadīth was very weak and faulty

and because of its unsoundness, no argument could be based on it. Since the wording of the hadīth was not confirmed and there was no way of judging the exact condition of the original wording, it was not possible to confirm its ruling. It was possible that the narrator might have omitted some of the wording. It was also possible that the wording was concerned only with the suckling of adults. As we could not recover the exact meaning of its wording and content, the protest should be withdrawn. As far as the wording of ibn Mas^{c}ūd regarding tatābu^{c} was concerned, there was nothing by which it could be repudiated. Moreover, it was held that the wording was in the Qur'ān. This meaning was believable and not to be rejected. Having once been in the Qur'ān before the death of the Prophet should not mean it should remain there after the death of the Prophet.

c) The background to the stoning penalty for adultery.

Q.5,42-44 read: "They (certain Jews) are fond of listening to falsehood, of devouring anything forbidden. If however they come to you judge between them or refuse to hear them. If you refuse to hear them, they will not harm you. If you judge, judge between them equitably. For God loves those who judge in equity." "But why should they come to you for judgement while they have the Torah in which is God's verdict? Yet even after that they turn their backs ..." "We revealed the Torah in which is guidance and a light, by which the Prophets who surrendered to God's will judged the Jews; the Rabbis and the Doctors of Law also (judged) by God's Book, which they have preserved, and they are witnesses thereto ... whoso does not judge

by what God has revealed; they are unbelievers."

Q.5,48 and 49 state: "We revealed to you the Book in truth, confirming and verifying the scripture that came before it. Therefore, judge between them by what God has revealed ..." "So judge between them by what God has revealed..."

Scholars differed as to the reasons for the revelation of these verses. A minority of the exegetes argued that the verses were revealed to regulate the rules regarding the talion. The majority, however, argued that the verses referred to the penalties for adultery.

According to some[15] the tafsīr of vv.42-49 displayed that the Jews had the habit of kitmān (concealment). The idea in fact was borrowed from some verses of the Qur'ān. For example, Q.2,75-76 advised Muḥammad and the Muslims not to expect the Jews to believe in Muḥammad's message, because a group of them after hearing the word of God had perverted it. Q.2,59 and Q.7,161 read that the Jews had changed the word from that which had been given to them. Q.2,146 stated that the Jews were aware that the Ka^{c}ba was the qibla as they were aware of their own sons; but also stated that some of them concealed the truth about it. The tafsīr of vv.41-49, it was argued, clearly stated that the Jews continued their habit of concealment in the lifetime of the Prophet. Muslim scholars preserved this attitude in their discussion and interpretation of Qur'ānic verses which they thought had some connection with the Jews. The Jewish attitude is preserved in the form of anecdotes which were regarded as causes for the revelations for the above mentioned verses. These anecdotes, which

we shall record later, according to some, suggest that the origin of the stoning penalty was the Torah. Others maintained that it had originated within Islam. They were further divided in their attempts to solve this issue: whether it was based on the Qur'ān, or whether it was established by the sunna of the Prophet. The expression 'Kitāb Allāh' contained in the following aḥādīth, was the common clue for the supporters whose theory was that the origin of the 'stoning' was the Torah and also for the supporters who claimed that it was the Qur'ān.

Abū Huraira and Zaid b. Khālid al-Juhanī reported[16] that two men brought a dispute before the Prophet. One of them said: "Oh, messenger of God, judge between us according to the 'Book of God'." The one who was more knowledgeable than the other in legal matters said: "Yes, oh messenger of God, judge between us according to the 'Book of God', and permit me to speak first." After getting the Prophet's permission, he said: "My son was a labourer under this fellow and fornicated with the man's wife. He told me that my son was liable to 'stoning' but I ransomed my son with one hundred sheep and a slave girl of mine. Then I asked the learned men who informed me that the stoning penalty was to be exercised on the man's wife." Thereupon the Prophet said: "By Him who holds my soul in His hand, I will judge between you according to the 'Book of God'. As far as your sheep and slave girl are concerned, they are to be restored to you." Then the Prophet flogged the son with one hundred strokes and banished him for a year. The Prophet ordered Unais al-Aslamī to go to the man's wife and in the event that she confessed, to carry out the stoning penalty.

She confessed and he stoned her.

This hadīth supports several claims: that the penalty for the married fornicator is stoning; that the penalty for the unmarried fornicator is one hundred strokes and a year's banishment and that guilt can be ascertained by confession.

The second hadīth[17] which bears the expression 'Kitāb Allāh' is reported by ibn ᶜAbbās who said: "I heard ᶜUmar saying: 'Stoning in the 'Book of God' is due against those men or women who commit adultery after becoming muḥsan, when valid proof is established, pregnancy occurs, or confession is made.' "

This hadīth extends the penalty to those who are ready to confess their crime, when valid proof is provided or when pregnancy shows the guilt.

There was further development of the view concerning the validity of v.42. Ibrāhīm, Shaᶜbī, ᶜAṭā' and Qatāda[18] were of the opinion that v.42 was confirmed and a Muslim judge had a choice either to judge the Jews or to ignore them. Ṭabarī[19] accepted this view and argued that naskh could not play any role unless the second ruling totally conflicted with the first; and unless it was impossible to apply the two rulings together. It is absurd to say that v.49 has abrogated v.42. In the explicit meaning of the revelation there is no indication that one of them has abrogated the other; one ruling has not contradicted the other. There is no report from the Prophet that one of them is the abrogand of the other; there is no consensus of opinion concerning the

abrogation of either verse. It is feasible from what we have said that one ruling verifies the other. There is no abrogation of one ruling by the other.

The contrary view was ascribed to ᶜIkrima, Ḥasan, Suddī, Mujāhid and ᶜUmar b. ᶜAbd al-ᶜAzīz.(20) According to their view, a Muslim judge was obliged to hear such a case. It was argued that the freedom of choice - to hear or to refuse - had been abrogated by vv.48-49. Jaṣṣāṣ(21) favoured this doctrine. His criterion in judging these verses was based on a report from the companions and the successors. If that sort of report, concerning the date of the rulings was found, it indicated that naskh had occurred. He reported that, according to Mujāhid and ᶜIkrima, v.49 was revealed later than v.42. Therefore, it was the abrogand of the earlier. He further argued that these two situations could not be combined together concerning one person in one situation. According to Jaṣṣāṣ, v.42 was valid and its ruling was established for the time being; but later God revealed v.49 and it indicated that the choice mentioned in v.42 was abrogated.

Reports also conflicted over the problem of the basis of judgement. Zuhrī argued that a Muslim judge should base his judgement on the 'Kitāb Allāh'. Qatāda said the basis of judgement should be what God had revealed. These scholars leave the expression 'Kitāb Allāh' ambiguous and thus represent possibly one tendency according to which judgement might be based outside the Islamic source, i.e. the Torah. Mujāhid, however, clearly says that 'Kitāb Allāh' implies

(كتابنـــا) ("our Book"). The same idea was reported from the authorities ᶜAṭā' and ᶜAmr b. Shuᶜaib.(22) The expression 'Kitāb Allāh' found in the above mentioned aḥādīth was not clear. It helped to generate two clear elements in Islamic scholarship. According to one 'Kitāb Allāh' meant the Qur'ān and according to the other it meant the Torah. Both views are preserved in the form of aḥādīth.

(i) The Torah-source theory.

ᶜAbd Allāh b. ᶜUmar reported:(23) "The Jews came to the Prophet and mentioned that a man and woman from among them had fornicated. The Prophet said to them: 'What do you find in the Torah concerning Rajm?' They replied: 'We dishonour them and they are flogged.' ᶜAbd Allāh b. Sallām said: 'You are lying; it contains the stoning verse.' They brought the Torah and spread it out. One of them put his hand over the āyat al-Rajm and recited the verses before and after it. ᶜAbd Allāh b. Sallām said to him: 'Lift your hand.' The man lifted his hand and there was the verse referring to stoning. The Jews said: 'Oh Muḥammad, he spoke the truth; the 'stoning verse' is in the Torah.' Thereupon, the Prophet gave his order and the couple were stoned."

In this version the Kitab Allah was alleged to be the Torah. Most probably, the story was designed to show the occurrence of Jewish Kitmān, especially their concealment of the stoning penalty for adultery. The story lacks information as to whether the couple stoned were muhsan or otherwise. However, it clearly responds to the question that the penalty was exercised by Muḥammad on the basis of the Mosaic enactment.

Q.5,43: "But why should they ask you to judge them while they have the Torah, in which is the verdict of God" was interpreted by ibn Zaid:[24] "When a nobleman fornicated with a woman of a lower class, the Jews would stone her and blacken the face of the nobleman and put him up on a camel, facing the rear. When a low caste man fornicated with a noblewoman, they would stone him and put her up on the camel. The Jews brought the latter case to the Prophet and he stoned the noblewoman. The Prophet, however, asked the Jews "Who is the most learned among you in the Torah?" They said: ''So and so', the one-eyed.' The Prophet sent for him and when he approached, the Prophet questioned him: 'Are you the most learned in the Torah?' He answered: 'The Jews say so.' The Prophet said to him: 'I adjure you by Allāh and by the Torah which He revealed to Moses at Mt. Sinai , what do you find in the Torah concerning fornicators? The man replied: 'Oh, Abū al-Qāsim, they stone the common woman and put the nobleman up on a camel; they blacken his face and they make him face towards the rear. They stone the common man when he fornicated with the noblewoman and do to her as they do to the nobleman.' The Prophet again said: 'I adjure you by Allāh and by the Torah which He revealed to Moses at Mt. Sinai. What do you find in the Torah?' The man showed hesitation. The Prophet started adjuring him until the learned man said: 'Oh, Abū al-Qāsim, I find in the Torah the words: al-Shaikh wa al-Shaikha idhā zanayā farjumū humā al-battata'. The Prophet said: 'That is it. Take them and stone them.' "

The version ends with ibn ᶜUmar's words: "I was among those who stoned them. The man was leaning over her and protecting her from stones until he died." This ḥadīth quotes the wording of the Torah concerning the stoning penalty, and it elaborates the previous version. It further displays that it was influenced by the Muslim doctrine on the Jewish Kitmān.

Abū Huraira said:(25) "The Jewish scholars assembled at the synagogue when Muḥammad first arrived at Medina. One of the Jews had fornicated, after Iḥsān,(26) with a Jewish woman, after her Iḥsān. The Jewish scholars said: 'Take them to Muḥammad and ask him what rule should be applied? Let him judge this couple. If he treats them according to your practice, follow him, for he is a king. But if he orders them to be stoned, beware of him lest he might deprive you of what you have in your hands (i.e. religious leadership).' They came to the Prophet and after telling him the story promised to apply his judgement. The Prophet walked until he reached the synagogue. Thereupon the Prophet said: 'Bring me the most learned among you.' Among the most learned were ᶜAbd Allāh b. Sūrīyā 'the one-eyed', Abū Yāsir b. Akhtāb and Wahb b. Yahūdhā. They agreed upon Abū Sūrīyā's scholarship and when he came forward the Prophet said: 'I adjure you by Allāh, and by His bounties which He had bestowed upon Banī Isrā'īl. Do you not know that God, in the Torah, had decreed the stoning penalty for one who committed zinā after iḥsān?' He replied: 'By God, yes, oh Abū al-Qāsim. The Jews know that you are a genuine Prophet but they are jealous of you.' The Prophet ordered

them and the couple were stoned at the door of his mosque.

The Prophet in this version is made to inform the Jews that the penalty for adultery decreed in the Torah was stoning. The Jews were made to admit in their own words the genuineness of the Prophet and their distortion of the words of the Torah. This hadīth mentions that the penalty exercised was on the muhsan couple.

Suddī[27] remarked: "God revealed to Banū Isrā'īl 'when one of you fornicates stone him "اذا زنى منكم احد فارجموه." The Jews had been observing this penalty until one of their aristocrats fornicated. When Banū Isrā'īl agreed to exercise this penalty on the aristocratic man, some of their noblemen objected and the stoning was abandoned. Later a man of their lower classes fornicated and they agreed to apply this penalty to him. But the folk of the lower class objected by saying: 'Do not stone him until you bring your (aristocratic) fellow and stone them together.' Thereupon, all agreed to suppress stoning and replaced it with forty strokes and blackening the face. This practice continued until the Prophet came to Medina. Then a high class Jewess, named Busra, fornicated. Her father sent some of his companions to ask the Prophet about the penalty which God had revealed to him. The Prophet declared that it was the Rajm."

This story also mentions the 'stoning verse.' Thus, one finds two wordings of the alleged 'stoning verse' in the Torah: 'When one of you fornicates, stone him'; 'the elderly man and the elderly woman, if they fornicate stone them outright.' This story does not help one to understand whether the penalty mentioned was for the non-virgin only.

However, the point which should be noted is that the Jews approached to ask Muḥammad what had been revealed to him - the Qur'ān. This story might then be taken as an attempt to show that both the Torah and the Qur'ān were the sources of the 'stoning' penalty and in both, the 'stoning penalty' was prescribed.

> Barrā' b. ʿĀzib[28] said: "The Prophet passed by a Jew who had been flogged and had his face blackened. The Prophet called for their most learned man and said: 'Do you find this penalty (flogging and blackening of the face) concerning fornication decreed in the Torah?' He replied: 'Yes.' The Prophet said: 'I adjure you by Him who revealed the Torah to Moses. Do you find this penalty in this Torah?' The learned man replied: 'No,' had you not adjured me I would not have told the truth. We found stoning was inflicted for such a crime, but when fornication became widespread[29] among the Jewish upper classes we abandoned it. If someone of the lower class fornicated, we exercised the stoning penalty on him. Later, we all agreed to replace it with flogging and blackening of the face.' The Prophet declared: 'I am the first to revive your commandment, oh God, after they had suppressed it.' "

The Prophet, in this version, is made to show that the Jews had distorted the real penalty and had replaced it with a lighter penalty. Further, the version was meant to state that the Prophet had already known the 'stoning penalty' as described in the Torah.

All the above mentioned tafsīr aḥādīth were propounded to show that the origin of the Islamic stoning penalty was a revealed source -

the Torah, and subsequently the practice was based upon this act of the Prophet. The second aim of these aḥādīth was perhaps to counter-act the Jews' objection: that the Prophet was a liar and, therefore, not to be believed.(30) The Jewish distortion and concealment of the stoning penalty were considered as the causes of the revelation for vv.41-44. v.41 speaks of taḥrīf al-Kalim which is understood by Ṭabarī as the ḥukm of the verses. According to Zuhrī, the word bil Qist referred to the stoning penalty.(31) There was a further view, as we have pointed out earlier, which showed that the reason for the revelation of these verses was not the matter of stoning but the laws governing blood-money and retaliation. This view was also developed as anti-Jewish propaganda. However, both reflect views that the Kitab Allāh means the Torah.

(ii) The Qur'ān-source theory.

Some scholars held that the source of the stoning penalty was the Qur'ān, not the Torah. Their argument also referred to Kitāb Allāh, which they understood as the Qur'ān. It might be argued that this view was developed by certain scholars as a reaction against the Torah-source theory, for they wanted to keep the origin of the stoning penalty within Islam.

Mālik(32) records a ḥadīth in which the very wording of the 'stoning verse' is claimed to be part of the Qur'ān. When ᶜUmar b. al-Khaṭṭāb returned to Medina from the pilgrimage, he addressed the people, saying: "Oh people, the norms have been established for you; the duties have been laid out for you and you have been left

clear signs, unless you lose your way with the people to the left or right." He struck one of his hands against the other, saying: "Beware lest you suppress the āyat al-Rajm by saying, we do not find two penalties in the Book of God. The Prophet stoned and we have stoned. By Him in whose hands is my soul: if it were not that the people might say that ᶜUmar had added something to the Book of God, I would have written: al-Shaikh wa al-Shaikha farjumūhumā al-battata - for we recited it."

The wording "the Prophet stoned" manifests that the stoning was a sunna, but the wording "we recited it" clearly suggests that ᶜUmar was made to confirm the notion that the stoning penalty was Qur'ānic. Further, the fear of the people who might say: 'We do not find two penalties in the Book of God,' reflects the dispute between the scholars who held that stoning was a Qur'ānic hukm and those who maintained that the penalty for fornication was only flogging (Q.24.2).

Zirr b. Ḥubaish[33] said: 'Ubayy b. Kaᶜb, the Qur'ānic scholar, asked me, 'How many verses do you count or recite in the Sūrat al-Aḥzāb (Q.33)?' I said, 'seventy-three.' Ubayy replied, Is that all. I have seen it when it was equal (in length) to Surāt al-Baqara and it contained the verse: الشيخ و الشيخة اذا زنيا فارجموهما البتة نكالا من الله والله عزيز حكيم

This version is a clear imitation of the Qur'ānic style. The phrase " نكالا من الله " is borrowed from the wording of Q.5,38. It was perhaps designed to counter the claims of those who argued that the verse originally had been revealed in the Torah.

Kathīr b. Ṣalt [34] reported that they would copy the mushaf in the company of Zaid b. Thābit and when they came to this verse, Zaid said: I heard the Prophet say: الشيخ و الشيخة فارجموهما البتة نكالا من الله و رسوله

According to the other version of this report Zaid said: "We used to recite 'al-Shaikh wa al-Shaikha idhā Zanayā f-arjumūhumā al-battata.' Marwān asked Zaid: "Shall we not record it in the mushaf?" Zaid replied: "Do not you see that the youth, if married, would be stoned." ᶜUmar added, "I shall solve this problem." We asked him, "How," and he replied: "I shall go to the Prophet and speak about different things and when he mentions 'stoning', I shall say: 'Oh Prophet, let me write the stoning verse.' " ᶜUmar did this, but the Prophet replied: "I cannot let you write it."

This report clearly favours the doctrine of naskh al-tilāwa dūna al-hukm. This and the rest of the versions were clearly designed to show that stoning was a Qur'ānic regulation. The Torah source theory emerged when scholars were making their tafsīr of Q.5,41-44 and, in reaction to this, as we have seen, emerged the Qur'ān-source theory. It is possible to hold that the stoning penalty originated in the tafsīr of early scholars, the origin of which was obscure, and that it originated indirectly in the Qur'ān. Let us see how the usūlīs document it.

Jaṣṣās' discussion of the penalty.

According to Jaṣṣāṣ, the 'stoning penalty' for adultery emanated

from the sunna of the Prophet. It was by no means based on the ruling of the Torah. He argued:(35) "The Prophet's stoning of the Jews was either based on the Torah ruling or it was based on the Prophet's own judgement. If it was based on the Torah ruling, it became the sunna of the Prophet, because what remained from the previous Sharī^{c}a's of the Prophets by Muḥammad's time, should be considered as the sunna of the Prophet, unless the rulings were abrogated. If the ruling was based on the Prophet's judgement, then it is confirmed that it was the Prophet's own practice, because nothing has come to abrogate it. The sound view, however, according to us, is that the ruling emanated from the Prophet, and was not a practice originating from the Torah ruling. The proof of this view is that the first penalty for adultery in Islam was introduced by God in Q.4,15-16. This indicated that the stoning penalty introduced by God in the Torah was abrogated."

Jaṣṣās' second argument was based on ^{c}Umar's ḥadīth in which he was believed to have said: 'I fear that with the passage of time some will say: "We do not find the 'stoning penalty' in the Book of God, and will thus go astray by abandoning an obligation of God which He has revealed." For we recited: "al-Shaikh wa al-Shaikha f-arjumūhumā al-battata." The Prophet stoned and we have stoned after him.'

This ḥadīth serves two purposes. Firstly, the penalty was based on the sunna. Secondly, the flogging, in addition to the stoning, was not obligatory for the muḥṣan. Had it been obligatory, argued Jaṣṣās, ^{c}Umar would have mentioned it.

Jaṣṣāṣ, a scholar one and a half centuries later than Shāfi^{c}ī, vehemently objected to the 'āyat al-Rajm' considered as part of the Qur'ān. This reveals that the theory naskh al-tilāwa dūna al-ḥukm concerning the stoning verse had become widespread by Jaṣṣāṣ' time. The ^{c}Ubāda ḥadīth,(36) according to Jaṣṣāṣ, was a starting point for the 'stoning penalty.' Therefore, it was not based on the Qur'ānic verse whose tilāwa was thought to have been withdrawn. He argued:(37) "^{c}Umar's ḥadīth concerning 'āyat al-Rajm' was Khabar al-wāḥid and a Qur'ānic wording could not be established by Khabar al-wāḥid." Further, the verse in question has two possible meanings: a) It was part of the Qur'ān. b) It was not part of the Qur'ān. If it were part of the Qur'ān, its wording and ruling were both abrogated in the lifetime of the Prophet. Moreover, it was either āya of the Qur'ān or it was a ruling of the Qur'ān. Āya can be applied to anything; it is not used only of the Qur'ānic verse. God said: "And of his signs (āyāt) is the creation of the Heavens and the Earth" (Q.30,32); God also said: "In these things there are signs (āyāt)" (Q.13,3). ^{c}Umar mentioned the 'āyat al-Rajm', but he meant: 'What God had revealed to His Prophet through the waḥy.' The original report, in which it was said that God revealed it, was misunderstood by the narrators. Some of the narrators understood just the superficial meaning without comprehending the wording. Some of them understood that it was part of the Qur'ān and, therefore, they interpreted it like that.

Someone questioned: If the 'stoning verse' was not part of the Qur'ān why was ^{c}Umar prepared to write it down in the mushaf.

How was it possible to write in the mushaf something that was not part of it?

Jassās answered:(38) "ᶜUmar might have thought of writing it on the margin of the mushaf. Moreover, it is clear that the verse was not part of the Qur'ān because it did not reach us as the rest of the Qur'ān reached us." Further, ᶜUmar said: 'Verily, the Rajm is in the Book of God, for we have recited it and remembered it.' It is possible that ᶜUmar meant that it was prescribed upon the people by God. If it were so, it indicated that he did not mean that it was in the Qur'ān and its tilāwa was withdrawn. He further said: 'Were the Rajm considered a verse of the Qur'ān, ᶜUmar would have written it, whether people blamed him or otherwise. In addition to that, ᶜUmar's wording: "that the Rajm is what God revealed and people will come who, not finding it in the Qur'ān, will reject it," suggests that it was not part of the Qur'ān. (Because what God has revealed includes both the Qur'ān and the wahy). As God Himself has said: "He (the Prophet) does not speak from his own accord but from what is revealed to him" (Q.53,3-4).

Finally, the wording: "People will come and reject the stoning penalty," was not ᶜUmar's own wording. It was the wording of the Prophet, because the knowledge of its rejection was not known except by way of wahy (and wahy used to descend upon the Prophet). It is said that ᶜUmar merely wanted to publicize the penalty and make it known so that his report would be widespread. He did not mean to say that the verse in question was part of the Qur'ān, since he had

directly heard from the Prophet who said: "People will come and reject the stoning penalty."

All the above mentioned arguments of Jaṣṣās reveal that he wanted to keep the origin of 'stoning penalty' in the sunna. It is obvious that scholars, like Jaṣṣās, who argue that the sunna can abrogate the Qur'an and vice versa, do not need to rely on the 'stoning verse.'

According to Jaṣṣās and the majority of exegetes the first Qur'ānic provision in relation to the punishment for fornication was introduced in Q.4,15-16.(39) He maintains(40) if both the verses (15 and 16) are taken together, they indicate that the penalty for a woman was ḥabs and adhā until she dies a natural death (provided she was included in v.16). The penalty for a man was insulting and striking. The second possibility was that the ḥabs was prescribed for a woman who fornicated, then, in this punishment, adhā was added. If it were so, the penalty of ḥabs was abrogated by adhā because an addition to a previous ruling is termed naskh. In other words ḥabs had been the complete ḥadd; when adhā was added to this, it became part of the ḥadd. This implies that the confining of the woman to the house was abrogated. The final possibility was that adhā was the penalty for both women and men. Later, ḥabs was added for a woman until she died a natural death or God appointed a way out for her. According to this interpretation ḥabs abrogated adhā. Jaṣṣās stated that all these interpretations were possible. These interpretations suggest that Jaṣṣās was engaged in tafsīr of the verses and was not sure what

the penalty was from the outset.

Scholars differed in their views on the question of abrogation of these verses (Q.4,15-16). Some said the verses were abrogated by Q.24,2. Others held that the verses were abrogated by the ᶜUbāda ḥadīth: "The Prophet said: Take it from me (repeated twice) God had appointed for them (women) a punishment; the virgin with the virgin are liable to one hundred strokes and banishment for one year, and the non-virgin with the non-virgin should be punished with one hundred strokes and stoning."(41)

Jaṣṣās accepts the second argument, because the wording "خذوا عنـــی" indicated that this was the explanation of Sabīl mentioned in v.15. According to him, there was no ruling involved between Q.4,15-16 and the ᶜUbāda ḥadīth, since Q.24,2 had not yet been revealed. This was a clear case of the Qur'ān's abrogation by the sunna.(42) However, it should be noted that the ᶜUbāda ḥadīth, according to Jaṣṣās, abrogated only the penalty concerning the non-virgins. The penalty regarding the virgins was directly abrogated by Q.24,2.(43) We have pointed out earlier(44) that Jaṣṣās knew that the combination of ḥabs, adhā and jald was perfectly all right. Yet, he argued that it would be an addition to the previous ruling, which if accepted would be termed naskh. Therefore, he preferred to abrogate Q.4,16 by Q.24,2, because, the penalty for a virgin offender, according to him, was only flogging. He had to abrogate Q.4,15 by the ᶜUbāda ḥadīth, because he had no difficulty in arguing that the Qur'ān could be abrogated by the sunna. Howbeit, it is of the highest interest to

note that his discussion on the abrogation of the Qur'ān by the sunna, was maintained in order to justify that the ᶜUbāda ḥadīth abrogated the Qur'ān (4,15). If he had accepted on the contrary the view that the ᶜUbāda ḥadīth was later than Q.24,2, then there was no convincing argument for Jaṣṣāṣ that the sunna could abrogate the Qur'ān.

In order to refute Jaṣṣāṣ' idea, some of his opponents suggested that ḥabs and adhā were the penalties concerning virgins and were abrogated by the flogging of Q.24,2. As far as the non-virgins were concerned, Rajm was prescribed as a penalty at the outset.

Jaṣṣāṣ answered[45] that this interpretation of Q.4,15-16 had not been asserted by any of his predecessors. Whoever interpreted the verse, maintained that Q.4 prescribed a penalty for both muḥṣan and non-muḥṣan. Had they known that it was prescribed for only one of these two categories, they would have reported it. It was inconceivable that they knew that the penalty was for one of the two categories, but they had applied it to both of them. Further, in the ᶜUbāda ḥadīth, the Prophet had combined the two groups when he said: "virgin with virgin one hundred strokes and a year's banishment; non-virgin with non-virgin, one hundred strokes and stoning."

Rāzī[46] informs us that Jaṣṣāṣ had a strong wish to attack Shāfiᶜī. Therefore, he accepted the view that vv.15-16 were abrogated by the ᶜUbāda ḥadīth, arguing that "were the āyat al-Jald revealed before the ᶜUbāda ḥadīth, there would not have been any sense in the Prophet's wording: "خذوا عنى". Thus, he proved that the Qur'ān and the sunna

could abrogate each other, contrary to Shāfi^{c}ī who had held that neither of those could abrogate each other." Rāzī, after quoting the above statement refuted Jaṣṣās' idea, maintaining that "the Sabīl mentioned in v.15 indicated a time-limit, until God appointed a way out for them." Further, the Sabīl was general. Later, the Prophet explained it. Hence, the ^{c}Ubāda ḥadīth explained Q.4,15 and did not abrogate it. With reference to Jaṣṣās he further argued: "You established that it was not possible to argue that the āyat al-Jald preceded the ^{c}Ubāda ḥadīth. Why would you not say that when Q.24,2 was revealed, the Prophet mentioned his wording: "خذوا عنـــى"? To this effect, Q.24,2 and the ^{c}Ubāda ḥadīth were introduced respectively and this nullified your claim that the ḥadīth preceded Q.24,2."

Sarakhsī[47] stated: "Whoever mentioned that habs and adhā were abrogated by the ^{c}Ubāda ḥadīth did not hold strong views. It was confirmed that according to ^{c}Umar, the 'stoning verse' was recited in the Qur'ān. This was a case of the Qur'ān's abrogation by the Qur'ān. Furthermore, the Sabīl mentioned in Q.4,15 prescribed a time-limit and its ruling was general. Later, the Prophet explained the meaning of Sabīl. There is no disagreement among the scholars, that the general intention of the Qur'ān can be clarified by the sunna."

Jaṣṣās[48], in answer to those who maintained that the Prophet had explained the Sabīl and that it indicated a time-limit, had already argued that, "the Sabīl did not show a time-limit, since it was possible to argue that God would not appoint a way out for them (women); habs and adhā would always be exercised as penalties. The mention of a

Sabīl was a confirmation of the view that the ruling would remain until it was abrogated. However, if that view is accepted, that Sabīl was for a time-limit, our view is still valid, because the Sabīl was related specifically to women. It was not related to men, because their punishment was adhā until they repented. The penalty of Q.4,15-16 was abrogated by the stoning of the non-virgins and by the flogging of virgins. Jaṣṣās made it clear that 'stoning' abrogated the verse (15). It was a confirmed instance of the Qur'ān's abrogation by the sunna."

The 'Ubāda ḥadīth informs us of two classes of offenders and prescribes two different penalties. In the case of the virgins, the penalty was flogging and banishment for one year. In the case of the non-virgins the penalty was one hundred strokes and stoning to death. In the former case, banishment was abandoned and in the latter case flogging was dropped. These procedures were developed by the Ḥanafīs. This can be summarised in Jaṣṣās' words:[49] "The flogging (mentioned in Q.24,2) is a complete ḥadd. If banishment is added to this, the flogging becomes part of the ḥadd and this leads to the abrogation of the verse (Q.24,2). Had banishment been part of Jald, the Prophet would have mentioned it when he recited Q.24,2 so that the companions would have understood that the banishment was a part of the Jald. Moreover, banishment came down to us by Khabr al-wāḥid, therefore, it could not be considered a ḥadd."

This argument goes against Jaṣṣās, because the banishment, as he says, was introduced for the first time in the ᶜUbāda ḥadīth and

by this hadīth he held that Q.4,15 was abrogated. If this hadīth came down as Khabr al-wāḥid why did he abrogate the Qur'ān by it, while according to him Khabr al-wāḥid could not abrogate the Qur'ān.(50) Jaṣṣāṣ did not consider banishment as a hadd, because he wanted to refute the idea of certain scholars who endorsed this penalty together with flogging. In order to make his argument compelling he had to admit,(51) at this point, that Q.24,2 abrogated the ᶜUbāda hadīth concerning the virgins, because banishment was mentioned in this hadīth. Thus, we find a two-sided argument. Firstly, Q.4,16 was directly abrogated by Q.24,2. Secondly, Q.4,16 was abrogated by the ᶜUbāda hadīth and then by Q.24,2.

Concerning non-virgins, Jaṣṣāṣ argued that flogging (mentioned in the ᶜUbāda hadīth and Q.24,2) was no longer applicable, because the ᶜAsīf hadīth(52) did not contain it. The Prophet ordered Unais to proceed against a woman who had committed adultery and in the event that she confessed, stone her. The Prophet did not say flog her. Had the flogging been applicable, he would have mentioned it. The same was true in the story of Māᶜiz.(53) When he confessed his crime the Prophet ordered that he should be stoned. On the basis of the above discussion, the chronological order for the penalty, according to Jaṣṣāṣ could be read: Q.4,15-16, ᶜUbāda hadīth, Q.24,2, ᶜAsīf hadīth and Māᶜiz hadīth. In order to abrogate the contents of the ᶜUbāda hadīth by the ᶜAsīf hadīth, he clearly corresponds with the views of Shāfiᶜī.

Shāfiᶜī's discussion of the penalty.

"God revealed Q.4,15-16, and later abrogated both habs and

adhā mentioned in the verses, by Q.24,2. The sunna indicated that flogging with one hundred strokes was confirmed in respect of free virgins, but abrogated in respect of non-virgins. It also indicated that stoning was endorsed for the free non-virgins. The Prophet's wording: "take it from me, God has appointed for them a way out ..." indicated the first penalty to be revealed and by it were abrogated habs and adhā from the fornicators. When the Prophet stoned Mā^{c}iz and did not flog him, and also when he ordered Unais to go to the wife of al-Aslamī and in the event that she confessed to stone her, he indicated the abrogation of flogging concerning free non-virgins. The Book of God and the sunna of the Prophet displayed that the slaves were excluded from these provisions. God said regarding the slaves: 'And when they come under ihsān, and commit abomination, their penalty shall be half that for the muhsan women (Q.4,25).' This can refer only to flogging, since it alone is divisible while 'stoning' which is a capital punishment is indivisible. The Prophet said: 'If one of your slave-girls fornicates and her fornication is confirmed, flog her.' The Prophet did not say: 'stone her.' The Muslims are unanimous that a slave-girl should not be stoned."(54)

From the above discussion of Shāfi^{c}ī, it was possible to argue that for him, the sunna (the ^{c}Ubāda hadīth), in this particular case has abrogated the Qur'ān (4,15-16). This conclusion is obvious from his reasoning as he places the ^{c}Ubāda hadīth just after Q.4,15-16. But, this interpretation of the ^{c}Ubāda hadīth was not intended by Shāfi^{c}ī, since his main argument was that the sunna never abrogated the Qur'ān.

In order to escape from the problems which definitely would have arisen from his discussion he relied on his theory of takhsīs and Bayān. The theory of takhsīs was justified by declaring that some verses of the Qur'ān were general in their intent. They were particularised either by another Qur'ānic text or by the sunna of the Prophet. The function of takhsīs, in fact, was to harmonise the two conflicting sources, and in this particular case to exclude slave-girls from the general injunction of Q.24,2, and narrow the application of the verse to free offenders. The theory of Bayān was vindicated by declaring some verses of the Qur'ān ambiguous. They were either clarified by the Qur'ān or more often by the sunna. Thus, the function of the sunna was to clarify the Qur'ānic statements as to their real intent. In the matter of fornication, when the Prophet stoned non-virgins, without flogging them, the sunna and Q.4,25 showed that by Q.24,2, only free virgins were intended. Shāfi^{c}ī put a lot of weight on the recognition of the sunna. He declared it as a revealed source of law. When men accepted the decision of the Prophet, they accepted it as if it emanated from God, because God had informed them that Muḥammad's order was His order.(55) Shāfi^{c}ī argued that numerous verses of the Qur'ān showed the religious imposition of the sunna of the Prophet.(56) The function of the sunna was twofold. Firstly, to follow what was intended by God, i.e. tafsīr-ḥadīth and secondly, harmony: to elucidate where the Qur'ānic texts were general. Thus, the sunna also provided takhsīs of the general Qur'ānic statements. The function of the sunna - it clarifies the Qur'ānic injunctions - was

adopted by Shāfi^{c}ī in order to save it from rejection because it appeared to contradict the Qur'ān. According to him any conflict between the Qur'ān and the sunna is not real but apparent. Use of the principle of naskh, therefore, was inevitable for resolving the conflict between the sources but it has to be modified to suit his theory of takhṣīṣ. He stressed the point that naskh operated internally i.e. the sunna abrogated the sunna; the Qur'ān abrogated the Qur'ān. Shāfi^{c}ī's main concern, however, was with the abrogation of the sunna by the sunna alone, because he wanted to preserve it from rejection if it conflicted with the Qur'ān. In order to achieve this purpose he had to maintain the parallel theory that the Qur'ān abrogated the Qur'ān. If he accepted the view that the sunna might abrogate the Qur'ān, it would certainly allow his opponents to argue that the Qur'ān could abrogate the sunna. By his special theory of naskh and Bayān which he calls takhṣīṣ, Shāfi^{c}ī documents the stoning penalty.

The penalty at the outset of Islam, according to him, was Q.4,15-16. In answer to a suggestion that the penalty for adultery in the Qur'ān was something else and was later alleviated by Q.4,15-16, he remarks that the ^{c}Ubāda ḥadīth indicates that the provisions of Q. 4,15-16 were the first Qur'ānic wording about zinā.[57] He further applies this penalty only to Muslims because the wording 'نسائكم' meant Muslim women.[58]

Shāfi^{c}ī's teacher, Mālik, had found no difficulty in documenting the stoning penalty. He had offered three possible origins of the penalty. He had not preferred one to the others. These three origins

were the Torah (as mentioned in ibn ᶜUmar's hadīth), the Qur'ān (as mentioned in ᶜUmar's hadīth) and the sunna (as mentioned in the ᶜAsīf hadīth). Mālik's aim was to put his finger on the material which was scattered here and there, during his time, concerning the stoning penalty. He was not concerned with any theory or method and was not concerned with any systematization of the sources, while Shāfiᶜī had to confront this issue because he saw himself as the champion of the sunna and thus he had to ensure that it did not and could not appear to contradict the Qur'ān. He was, however, confronted with a serious difficulty: whether in this case the sunna (ᶜUbāda hadīth) abrogated the Qur'ān, as he was sure that the verses (Q.4,15-16) had been abrogated.

Before we plunge further into Shāfiᶜī's arguments, it is interesting to note that the word fāhisha mentioned in v.15, according to some, does not necessarily refer to fornication. Abū Muslim al-Iṣfahānī[59] argued that the verses do not speak about heterosexual misdemeanours. V.15, he says, refers to women exclusively and the punishment embodied in it is for lesbianism and not for fornication. V.16 refers to men exclusively and the punishment embodied in it is for homosexuality. According to him only Q.24,2 concerns fornication and it has no connection with the provisions of Q.4,15-16. Baiḍāwī[60] records some views according to which it was possible to argue that vv.15-16 refer to fornication but the punishment mentioned in these verses could be combined with the flogging of Q.24,2 and with the stoning and banishment prescribed by the sunna. According to this

view, there is no contradiction between the verses and, therefore, the question of naskh does not arise. We have seen that Jaṣṣāṣ knew that the combination of these penalties was possible, yet he ignored the fact, because the penalty for the unmarried, according to him, was flogging alone.

The material utilized by Shāfi^{c}ī in his discussions on the penalty for adultery, apart from Q.4,15-16, Q.24,2, Q.4,25 and the ^{c}Asīf ḥadīth includes the Mā^{c}iz story and the Prophet's stoning of two Jews.(61) According to the Mā^{c}iz story,(62) it was held that Mā^{c}iz himself came to the Prophet and admitted that he had committed adultery. The Prophet asked him if perhaps he had kissed the woman, or just signalled with an eye or had simply looked at her. When the Prophet was satisfied that Mā^{c}iz was muḥṣan and that he was not drunk, the Prophet commanded Mā^{c}iz to be stoned. Let us examine how Shāfi^{c}ī tackles the problem in question.

He says: "God imposed ḥabs and adhā as punishment for fornication in Q.4,15-16, until He revealed Q.24,2 and Q.4,25.(63) By means of these two verses ḥabs and adhā were abrogated and penalties were confirmed. It was possible that the words of God in sūrat al-Nūr referred to all fornicators or to some, but not to others. We sought an indication in the sunna as to who was intended. We find in the ḥadīth the Prophet's words: 'God has appointed the Sabīl for them.' The words 'God has appointed ...' themselves indicate that this was the first penalty appointed for fornicators, since God said: 'or until God appoint a procedure for them.' God's words concerning

slave-girls (in Q.4,25) indicate the distinction between the penalty for free persons and that for slaves. The half penalty for slave-girls can refer only to flogging, because it contains a divisible number. It cannot refer to stoning because stoning has no end but death." "The Prophet stoned Mā^{c}iz and did not flog him; he stoned the wife of al-Aslamī and did not flog her. Thus, the sunna indicated that the flogging of free non-virgins (mentioned both in Q.24,2 and the ^{c}Ubāda ḥadīth) was abrogated. The ^{c}Asīf ḥadīth and the ḥadīth reported by ibn ^{c}Umar concerning the two Jews (that the Prophet had stoned) indicated that 'stoning' was endorsed for non-virgins and that the flogging with one hundred strokes and banishment for a year was endorsed for virgins."(64)

From the above mentioned statement of Shāfi^{c}ī, a very serious question arises as to which of Q.24,2 and the ^{c}Ubāda ḥadīth should be placed after Q.4,15-16. Shāfi^{c}ī's argument is two-sided. Firstly, he argued that Q.4,15 was abrogated by Q.24,2 which stipulated flogging.(65) This argument he desired to establish, since his main contention was that the Qur'ān could be abrogated only by the Qur'ān. He also argued that Q.4,25 excludes slave-girls from the general application of Q.24,2. To this effect the former verse is later than Q.24,2 and its role is particularization. The second argument of Shāfi^{c}ī is that the ^{c}Ubāda ḥadīth was the first to be revealed after Q.4,15-16. He derived this conclusion from the Prophet's wording: 'قد جعل الله لهن سبيلا',(66) which according to him, indicated that this was the first penalty by which the fornicators were punished, and

was the direct answer to v.15's wording: ' او يجعل الله لهن سبيلا '.
He stresses the point that the ᶜUbāda ḥadīth was the first to be revealed and by it ḥabs and adhā were abrogated. He further claims that flogging in respect of non-virgins was withdrawn by the Prophet's decision concerning Māᶜiz, and in the story of the ᶜAsīf. Therefore, these two were later than Q.24,2. Thus, the chronological arrangement of the material applied by Shāfiᶜī for the penalty for adultery might be read: Q.4,15-16, the ᶜUbāda ḥadīth, Q.24,2, Q.4,25 Māᶜiz and ᶜAsīf, the same order as that proposed by Jaṣṣāṣ.

As we know that Shāfiᶜī does not allow the Qur'ān's abrogation by the sunna, what was the relationship of the ᶜUbāda ḥadīth to Q.4,15-16? Shāfiᶜī could have said that the ᶜUbāda ḥadīth explained Q.4, but he maintained that the ᶜUbāda ḥadīth penalties were the first to come down after Q.4's ḥabs and adhā and by these the provisions of Q.4 were abrogated (اول ما نزل فنسخ به الحبس و الاذى عن الزانيين). Thus, he clearly implies that in this particular case the sunna has abrogated the Qur'ān. To this extent he deserves Schacht's comments:[67] "Shāfiᶜī's theory of repeal breaks down over the problem of punishments for adultery and fornication." Shāfiᶜī's argument that the sunna did not abrogate the Qur'ān, was taken more seriously by Jaṣṣāṣ. We have pointed out[68] that Jaṣṣāṣ proved Shāfiᶜī's inconsistency in his arguments. Jaṣṣāṣ did not say clearly that on the problem of fornication; Shāfiᶜī had failed to uphold his argument but Jaṣṣāṣ' intention was obvious. Shāfiᶜī could not maintain his argument against the abrogation of the Qur'ān by the sunna. Jaṣṣāṣ pointed out[69] that Shāfiᶜī had

abrogated Q.4,15-16 by the ᶜUbāda ḥadīth.

In spite of the fact that Shāfiᶜī places the ᶜUbāda ḥadīth immediately after Q.4,15-16, he argues that the ḥadīth elucidates Q.24,2.[70] To this extent, he says that Q.24,2 abrogates Q.4,15-16. He further says that Q.24,2 is general in its application and is elucidated by Q.4,25 which excludes slave-girls. In other words takhṣīṣ has occurred. The verse of Q.24, in this respect, is confirmed as applying to free persons only. The function of the ᶜUbāda ḥadīth is to distinguish two categories of fornicators (virgins and non-virgins) and to appoint the penalties for each category. For virgins it appoints one hundred strokes and banishment for a year; and for non-virgins it stipulates one hundred strokes and death by stoning. Q.24,2 mentions flogging without restricting it to virgins or non-virgins. Therefore, the question arises as to which category is intended by Q.24,2. The ᶜUbāda ḥadīth does not help because it stipulates flogging for both categories with the additional penalty of banishment for the virgins and stoning for the non-virgins. To solve this problem, Shāfiᶜī has to resort to the ᶜAsīf and Māᶜiz aḥādīth, because in these aḥādīth flogging for non-virgins was not carried out. Thus he concluded that by these aḥādīth flogging was abrogated concerning non-virgins but stoning was endorsed.[71] In other words the function of these aḥādīth was to supply takhṣīṣ or Bayān to Q.24 because they excluded non-virgins from the general implication of the verse.

Takhṣīṣ is a kind of Bayān and its function is to indicate the exclusion of certain categories which are not intended to be part of the

original application of the verses. Shāfiʿī extends this method to numerous verses of the Qur'ān.(72) For example, he argues that the Qur'ān stipulates shares in inheritance for parents, offspring and spouses but the sunna excludes them if they do not fulfil certain conditions.(73) The Qur'ān prescribes the making of a wasīyya but the sunna indicates that it should not exceed more than one-third of the estate nor be made in favour of heirs. Similarly, the Qur'ān enjoins that feet are to be washed during the wudū' but the sunna indicates that in certain circumstances, wiping the boots suffices. The Qur'ān says that the hand of the thief should be amputated but the sunna excludes those who steal goods whose value is less than a quarter of a dīnār. The Qur'ān stipulates flogging, but the sunna indicates that it was meant for certain categories of fornicators. It should be noted that in this particular case the sunna (ʿAsīf or Māʿiz) does not exclude anything but rather adds the stoning penalty because it is known that 'stoning' is not mentioned anywhere in the Qur'ān. Therefore, it is possible to argue that it is not an elucidation or takhsīs of flogging, but a clear innovation and an addition to the Qur'ānic flogging penalty. There is no doubt that takhsīs is a useful ploy of Shāfiʿī's to defend the sunna from rejection if it contradicts the Qur'ān. However, it cannot be applied in the case of stoning, because the function of takhsīs is exclusion and specification, while the stoning which it excludes is not mentioned in the Qur'ān. This can be taken as evidence of Shāfiʿī's failure to maintain his theory of takhsīs. This conclusion can also be applied to all other instances where the sunna

provides extra information on the problems where the Qur'ān is completely silent.

It is extremely interesting to note that Shāfi^{c}ī, being a pupil of Mālik, does not rely on the report of ^{c}Umar in which he had declared the 'stoning verse' as having been part of the Qur'ān text. Shāfi^{c}ī, however, records this report in his late work,[74] but does not pay it more than passing attention. He neither comments on it nor does he emphasise it. Mālik had known this hadīth and recorded it in the Muwatta' showing that the hadīth was in circulation in his time and possibly before that. It is also possible that its circulation was part of a counter-attack by the Sunnīs on the Khawārij and Mu^{c}tazila who outrightly rejected it, arguing:[75] "We do not find it in the Qur'ān." The 'stoning verse', however, does not coincide with the established Fiqh doctrine adopted by the Sunnīs, because the wording it quotes does not necessarily refer to non-virgins. It rather refers to elderly people. That was the reason, probably, that Mālik had to gloss it as 'al-thayyib wa al-thayyiba.'[76] The verse would not help, if the person who committed adultery is not elderly but muhsan (the penalty established in the Fiqh for him, is stoning). The verse would be applicable in a case where an offender is elderly but virgin (the penalty established in the Fiqh, for him, is flogging). The verses therefore, seem to support a different doctrine according to which the penalty for an elderly person is a combination of flogging and stoning.[77] Shāfi^{c}ī, as a matter of fact, had realised that reliance on the 'stoning verse' does not guarantee the stoning penalty. Further, his non-reliance on this verse suggests

that his takhsīs theory was sufficient to serve his purposes. It does not matter that his defence was different from that of his predecessors. We have seen that Shāfiʿī has to defend the 'stoning' on one hand, and to defend the sunna on the other hand. Dr. Burton suggests:(78) "Shāfiʿī failed to solve the problem of the source of the stoning penalty, but he incidentally, by his skilful use of the Qur'ān texts, secured the position of the sunna, generally, as a referent."

We find a wording of the ʿUbāda ḥadīth which suggests that it might have been a revelation. ʿUbāda said:(79) 'Whenever a Qur'ānic verse was revealed to the Prophet, he became distressed and his face coloured. One day a verse came upon him, and he reacted that way, and when he recovered, he said: "Take it from me (repeated twice), God has now appointed a means for them." ' Shāfiʿī never said that the wording of the ʿUbāda ḥadīth was Qur'ānic, but he strongly relied on this ḥadīth and made full use of it. Jaṣṣās remarked:(80) "The wording of the ʿUbāda ḥadīth was not Qur'ānic. How could it be a Qur'ān while the report suggested that it emanated from the Prophet. Had it been a Qur'ān, the Prophet would not have said: take it from me. He would have said: Take it from God." Both Shāfiʿī and Jaṣṣās had to rely on the ʿUbāda ḥadīth, because it did not only provide them with the basis for stoning, but it also represented the established Fiqh doctrine, since it distinguished the non-virgin from the virgin, and provided an extra-Qur'ānic penalty, i.e. banishment for twelve months in the case of virgins. (Banishment was later rejected by Jaṣṣās).

More importantly, it provided the stoning penalty for non-virgins. It should be noted, however, that the hadīth itself is faulty in isnād. Shāfi^{c}ī finds himself in a difficult situation when he deals with the isnād,[81] which in turn suggests that the hadīth was unsound. Tabari[82] clearly refuses to adhere to it because according to him the isnād of the hadīth is unacceptable. We have noticed that Shāfi^{c}ī had difficulty in dating the hadīth. On the basis of his takhsīs theory, the ^{c}Ubāda hadīth comes after Q.24,2, but the wording of the hadīth shows him a way to place it after Q.4. Consequently, he faces a serious problem in determining its relationship to Q.4. The obvious result is nothing other than the abrogation of Q.4 by the ^{c}Ubāda hadīth. This, however, cannot be the conclusion of Shāfi^{c}ī who always said that the function of the sunna was takhsīs and Bayān to the Qur'ān. Although he uses the ambiguous word naskh which undermines his whole discussion on the penalty for fornication, he still argues that takhsīs has taken place. This was merely a clever device in his efforts to safeguard the sunna from rejection by means of references to the Qur'ān. To place the ^{c}Ubāda hadīth before Q.24,2 jeopardized Shafi^{c}i's treatment of the penalty, since it was possible to argue that the hadīth was abrogated by Q.24,2, and the penalty for fornication was simply flogging. We find some authorities who questioned the authenticity of the 'stoning penalty.' Sulaimān al-Shaibānī reported:[83] "I asked ^{c}Abd Allāh b. Abī Aufā, 'Did the messenger of Allāh use stoning?' He answered: 'Yes.' Thereupon I asked: 'Before the revelation of sūrat al-Nūr or after that?' He said: 'I do not know.' " This report

implies a possibility that the stoning embodied in the sunna was abrogated by the flogging of Q.24,2. This further shows that the authorities (Sulaimān al-Shaibānī and Abī Aufā) were not sure about the validity of the 'stoning' and were uncertain about the reports (including ᶜUbāda) which conveyed that 'stoning' was a penalty for fornication. Moreover, the wording of the ᶜUbāda hadīth: "Now God has appointed a procedure" suggests that it was a direct imitation of Q.4,15's wording: "Until God appoints a procedure for them." The words: "Take it from me" are a clear echo of Q.59,7: "Whatsoever God grants as spoil from the people of the townships to His Prophet, belongs to Allāh (i.e. to be used for purposes allowed by God), the Messenger, the next of kin, the orphans, the needy and the wayfarer; so that it will not make a circuit between the wealthy among you. Whatever the Messenger gives you, take it; what he denies you, cease demanding." The verse clearly concerns the distribution of booty gained from a defeated army. The last part of the verse was cleverly taken by Shāfiᶜī particularly, and by the ahl al-ḥadīth generally, in order to prove that the Qur'ān obliges us to accept the authenticity of the sunna of the Prophet.(84) The contents of the ᶜUbāda ḥadīth further suggest that it was designed to bring together all the elements established in practice relating to fornication. For instance, it referred to Q.4's wording 'لهـــن' when it says: " قد جعل الله لهـــن سبيـــلا ." It also covers the flogging of Q.24,2 and the extra-Qur'ānic penalties of banishment and 'stoning.' It is obvious that the ḥadīth was designed to serve as a bridge between the Qur'ānic verses

(24,2 and 4,15-16) and between Q.24,2 and the penalties established in the Fiqh. It can confidently be concluded that the hadīth was not Sahīh and was propounded by the ahl al-hadīth who wanted to prove that the origin of the 'stoning penalty' was in Islam, i.e. the sunna – since all admit it was never in the Qur'ān.

As it was possible to argue that the hadith was abrogated by the subsequent revelation of Q.24, a way was found to maintain the 'stoning penalty.' To this effect, the Mā^{c}iz and ^{c}Asīf stories seem to have been invented (besides both Q.4,15 and ^{c}Ubāda refer only to women). These stories clearly demonstrate the confirmation of the 'stoning' originally created in the ^{c}Ubāda hadīth, which was no longer secure in the face of Q.24,2. The function of these ahādīth was to abrogate the flogging imposed upon non-virgins mentioned in the ^{c}Ubāda hadīth, because the Prophet was now believed to have stoned non-virgins without flogging them. The function of the Mā^{c}iz hadīth was to extend the penalty to male non-virgins, since the ^{c}Ubāda hadīth and Q.4,15 were limited to females, as is indicated by the word 'لهـــن'. The ^{c}Asīf hadīth restores the ^{c}Ubāda stoning for female non-virgins, on the one hand, and it endorses ^{c}Ubāda's one hundred strokes and a year's banishment for virgins, on the other hand. It also extends the penalty to male-virgin fornicators because the man's son is presumed to have been a virgin.(85) The ^{c}Asīf hadīth clearly corresponds with the majority's settled doctrine: stoning is prescribed for non-virgins; flogging is imposed upon virgins. But their banishment is disputed. The Hijazis accept it; the Iraqis reject it.(86) A minority was inclined to apply the dual penalty - stoning and flogging -

to non-virgin offenders. Their authority seems to be ᶜAlī who is believed to have said: "I flogged her on the basis of the Book of God and stoned her on the basis of the sunna."(87) This hadīth represents an attempt to combine all the sources. It was argued that the omission of flogging from the ᶜAsīf hadīth does not mean that the flogging was not applicable. Its omission might mean that it was already in vogue, therefore, there was no need to mention it.(88) The argument perhaps referred to the ᶜUbāda hadīth which contains both the flogging and stoning penalties for non-virgin fornicators. In order to confirm the stoning, it was also argued that the ᶜUbāda hadīth was sunna qawlīyya while the ᶜAsīf hadīth was sunna fiᶜlīyya. According to this interpretation, the ᶜUbāda hadīth does not provide evidence of whether the Prophet stoned and flogged or flogged and banished for a year, but merely tells that these are the penalties. In contrast the ᶜAsīf hadīth actually applies this penalty. The ᶜUbāda hadīth did not coincide with the established Fiqh doctrine, since it prescribed flogging and 'stoning' in the case of non-virgins, whereas the Fiqh enjoined only 'stoning' upon them. Therefore, it has to be abrogated by the hadīth which could fulfil the conditions of the Fiqh. That demand was met by the invention of the Māᶜiz and ᶜAsīf ahādīth.

Jaṣṣāṣ and Shāfiᶜī's discussion on the whole problem in question can be summarised: the habs, adhā and jald were Qur'ānic; the flogging penalty had been abrogated for certain classes of offenders; the non-virgins were liable to 'stoning' and no Muslim should base his judgement on the foundation of the Torah. Shāfiᶜī's problem was an

inability to admit that the sunna could abrogate the Qur'ān. To bolster this view he had appealed to Q.2,106 which according to him indicated that only the Qur'ān could abrogate the Qur'ān. The sunna was defended by Shāfi^{c}ī who argued that God had obliged us to accept Muḥammad's right to rule. The contradiction between the Qur'ān and the sunna was shown to be illusory by Shāfi^{c}ī, because the function of the sunna was merely Bayān to the Qur'ān. This function of the sunna was allegedly based upon some texts of the Qur'ān. We have seen the inapplicability of Shāfi^{c}ī's Bayān - takhṣīṣ theory in the problem of the 'stoning penalty.' Those who had accepted Shāfi^{c}ī's theory that the sunna could not abrogate the Qur'ān and vice versa, were now frustrated and had no recourse but to argue that the 'stoning' must originally have been part of the Qur'ān. The fact that the 'stoning' is not traced in the Qur'ān was justified by introducing a chapter in the collection of the Qur'ān stating that the Qur'ān was not collected by the Prophet. Had the Prophet collected the Qur'ān, he would not have omitted the verse. This collection must be seen as the work of the companions who allowed its omission from the mushaf.(89)

The Ḥanafīs had argued that the sunna could abrogate the Qur'ān. We have seen Jaṣṣās saying that the ^{c}Ubāda ḥadīth has abrogated the Qur'ān. Therefore, he did not need to rely on the 'stoning verse,' which was considered part of the Qur'ān. He rejected any possibility that the 'stoning' once figured in the Qur'ān. In the same vein, were the arguments of the Mālikīs. Finding conflict

between the penalties, they argued that the Qur'ān's flogging has abrogated the habs and adhā, this being a case of the Qur'ān's abrogation by the Qur'ān. The sunna has abrogated the flogging of Q.24,2, this being a case of the Qur'ān's abrogation by the sunna.(90) Shāfi^{c}ī's followers could not accept these views, since the sunna was not capable of tampering with the Qur'ān; and it could not be relied on as the source of the stoning. They have also to respond to the objections of those Muslim scholars who had held that the 'stoning' was not found in the Qur'ān. On this basis, they argued that the 'stoning penalty' must have originated in the Qur'ān. The fact that the 'stoning verse' is not mentioned in the Qur'ān does not nullify their claims, because its wording had already been in circulation before Mālik's time. Otherwise Mālik would not have recorded it in his Muwatta'. It had been part of the Qur'ān, they argue, when the Qur'ān was at the oral stage. It was preserved in the community memory and its ruling is still valid. They adopt this attitude in relying on the theory of naskh al-tilāwa dūna al-hukm. The enthusiasm to adopt this rule was derived from Shāfi^{c}ī who had shown positive response to the legitimacy of this principle of abrogation, not on the question of the stoning penalty but on the problem of Ridā^{c}.(91) According to Shāfi^{c}ī, five sucklings constitute a bar to marriage. This doctrine, he derives from the ^{c}Ā'isha wordings which he asserts were a Qur'ānic enactment, whose tilāwa was withdrawn, but whose ruling is still applicable. It is very interesting to note that he does not adopt the same attitude to the 'stoning verse' in his work. The reason is that he relies on his

theory of takhsīs which affects people. He does not apply naskh which affects time.(92) Shāfi^{c}ī, therefore, fails to document the 'stoning penalty', because,if stoning has replaced flogging, it is naskh. If stoning is additional to flogging, it is still naskh, because according to some,an addition to a previous text is naskh. In view of Shāfi^{c}ī's unsuccessful use of this theory of takhsīs, his followers took the 'stoning verse' as a weapon against fellow sunnīs and against the ahl al-Kalām who had rejected it. The verse which was originally invented in order to counter the views of those who had held that this was recorded in the Torah, was now used as an argument in the methodological squabbles between the ahl al-sunna. This quarrel led the scholars, not to enforce the 'stoning' as a penalty but to document it. The assumption made by Shāfi^{c}ī's followers that it was an instance of naskh al-tilāwa dūna al-ḥukm was merely an extension of Shāfi^{c}ī's treatment of the problem of Ridā^{c}. It can confidently be said that Shāfi^{c}ī was the originator of this mode of naskh. Since its legitimacy was accepted by Shāfi^{c}ī, it led Jaṣṣās to argue that mutatābi^{c}āt was also a case of naskh al-tilāwa dūna al-ḥukm. Hence he argued that fasting in expiation of breach of an oath should be three consecutive days. That the 'stoning' originated in Islam - either in the sunna or in the Qur'ān - was the view of the majority of the scholars. Those who argued that the sunna could abrogate the Qur'ān referred it to the sunna. Those who held the contrary view tended to argue that the basis of the 'stoning penalty' was the Qur'ān whose tilāwa was withdrawn. The former view can be ascribed to Ṭabarī, Naḥḥās, ibn

al-ᶜArabī, Jaṣṣās, Baiḍāwī and many others. The latter view can confidently be ascribed to Shāfiᶜī's followers.

One thing common to the doctrines accepted by the scholars is that the 'stoning' is the penalty for certain offenders, and that the stoning is nowhere mentioned in the Qur'ān. It is equally interesting to note that banishment is not mentioned in the Qur'an, but it is not accepted unanimously. This disagreement in turn suggests that both the 'stoning' and banishment were taken into consideration at different stages of development in the discussions as to the sources of the penalties. Banishment may have been accepted originally by the Ḥijazis. Stoning may have been accepted unanimously by the ancient scholars. The objections that the stoning is not mentioned in the Qur'ān were, as a matter of fact, raised later in the history of Islamic law. They were raised possibly when it was settled that the Qur'ān should be taken as a criterion to judge every case of law. It is also possible to suggest that when the Qur'ān was established as arbitrator in every case of law, the meaning of the expression 'Kitab Allāh' was not yet fixed. That is why we find parallel references on this question to the Torah and to the Qur'ān (or to the sunna as imposition كتـــاب).

We have already pointed out that the 'stoning penalty' is not mentioned in the Qur'ān. The scholars could easily have referred it to the sunna. But in order to explain its absence from the present mushaf, they have to document it, on the one hand, and they have to trace its origin, on the other hand. We find Jaṣṣās and Shāfiᶜī arguing that although it was mentioned in the Torah, it was the Prophet's

legislation. To trace the origin of this penalty, the arguments were referred to the ambiguous expression the 'Book of God.' Some argued that it referred to the Pentateuch and others held that it referred to the Qur'ān. The wording of Mālik's ḥadīth in which the Prophet was alleged to have said: "I shall judge between you according to the Book of God" and the Jew's story presented in another ḥadīth showing that the Prophet had stoned, encourages one to assume that a dispute had occurred between the scholars regarding both the origin of the penalty and its association with the Prophet. The dispute as to the basis on which Muḥammad had rendered his judgement was to be solved by declaring that Muḥammad, as a Prophet, had judged according to a revealed source. To this extent the ʿAsīf ḥadīth was distinguished from that of the Jews. The Jews' stories represent the tafsīr of Q.5,41-49.[93] The stories found on the tafsīr of Q.5,41-49 later became ḥadīths and were eventually transmuted into Sharīʿa materials. These aḥādīth were accepted by both Shāfiʿī and Jaṣṣāṣ. The former under the influence of his sunna doctrine, was content that since the Prophet had stoned, stoning was the sunna. In the same vein, was the argument of Jaṣṣāṣ, but he held also that the sunna had abrogated the Qur'ān. Nonetheless, some technical arguments have to be advanced. It was argued that the Prophet had stoned on the basis of a revealed source. This idea helped some aḥādīth to emerge which described the Prophet as having stoned the Muslims. The fact that the 'stoning penalty' is not traced in the Torah suggested, according to some, that the Jews had concealed it. (Mālik's version clearly

represents this view.)[94] Further, seeking justification from the Jewish literature was opposed by some scholars who argued that the Jews had distorted their works. In the light of this approach one can judge that Islam was not seen as a continuation of Judaism but as a new revelation which abrogated Judaism. Therefore, it was strongly held that the Prophet had not stoned the Jews on the basis of the revealed Torah, but on the basis of Muḥammadan law which had abrogated the provisions of Q.4,15. It can clearly be seen that the present mushaf does not contain the 'stoning verse', it is, therefore, declared to be a clear instance of naskh al-tilāwa dūna al-ḥukm.

CHAPTER SEVEN

THE ABROGATION OF BOTH THE RULING AND THE WORDING

Neither Shāfi^{c}ī nor Jaṣṣās emphasises this mode of naskh. Shāfi^{c}ī simply does not refer to this mode of naskh, as is obvious throughout his discussions on the subject of naskh. However, Jassās[1] mentions this mode of naskh, but remarks that its occurrence was impossible after the death of the Prophet. After settling the meaning of naskh he states:[2] "Naskh can affect the ruling without the wording; it can affect the wording without the ruling it had embodied. It cannot affect more than this." From this statement it is obvious that Jaṣṣās acknowledges only two modes of naskh, i.e. naskh al-ḥukm dūna al-tilāwa and naskh al-tilāwa dūna al-ḥukm. The usūlīs are mainly concerned with the documentation of their Fiqh doctrines. To this extent, they take the Qur'ān merely as a source of law. This third mode of naskh has no connection with their Fiqh activities, because it merely deals with the 'disappearance' of certain 'parts of the Qur'ān.' Therefore, it is suggested that this mode was embraced by those who had been preoccupied with the Qur'ān as a document. We have discussed the first two modes of naskh and saw that they originated in the Fiqh. This mode of naskh, as we shall see, originated in tafsīr.

Q.87,6-7 reads: "We shall teach you (Muḥammad) the Qur'ān and you will not forget (any of it) except what God wills." Scholars differed in their interpretations of this verse. The majority argued that

Muḥammad was capable of forgetting some parts of the revelations, but whenever it happened he was soon reminded so that the part he had forgotten was not irrecoverably lost. One finds ḥadīths which tend to establish this view. It is narrated[3] that, "the Prophet performed a prayer and part of the sūra, he was reciting, was left out. When he completed his prayer, Ubayy said: 'You left out the verse.' The Prophet replied: 'Why did you not remind me?' Ubayy said: 'I thought it was abrogated.' The Prophet replied: 'It was not abrogated, I just forgot it.' " In another ḥadīth[4] the Prophet is believed to have declared: "I am human, I forget as you forget." The scholars argued that this forgetting had occurred because God Himself wanted to omit certain parts of His revelation. Jaṣṣāṣ pointed out:[5] "The abrogation of the wording happened because of Divine intention. God's intention worked in numerous ways: the Prophet was made to forget; the people who had remembered the verses, in his time, were caused to forget; the verses were wiped out from their memories; the people were commanded not to record them in the muṣḥaf so that with the passage of time, but before the demise of the Prophet, the verses would be forgotten."

There were two readings of the clause 'illā mā shā'a Allāh' mentioned in Q.87,7. Those who held that Muḥammad did not forget anything, read the clause as ineffective. Al-Kalbī[6] reported that after the revelation of Q.87,6-7 the Prophet did not forget anything. Al-Farrā'[7] said: "God did not want Muḥammad to forget anything. The mention of the clause illā mā shā'a Allāh was a declaration that if God so desired He could cause His Prophet to forget. God said in

Q.17,86, 'If we desired, we would remove what we have revealed to you.' We are sure that God never wanted to realise this intention. God also said to His Prophet: 'If you associated a partner with Allāh, your deeds would avail you nothing (Q.39,65).' We know that Muḥammad never associated anyone with Allāh." Rāzī[8] indicates that since some read the clause as ineffective, this denies any possibility of Muḥammad's forgetting revelation.

The second reading which regards the clause as effective, is attributed to al-Zajjāj.[9] He finds nothing amiss in declaring that if God wanted Muḥammad to forget, He could do so. But, whatever, Muḥammad forgot he was soon reminded of so that nothing was irrecoverably lost. The champions of this theory further argued that the forgetting may play a role in the moral teachings, but it has no effect on the validity of the rulings. If the Prophet forgot any of the obligatory duties and he was not reminded, it would certainly frustrate the Divine will. Thus, mere forgetting was inconceivable. Ḥadīths come to play their role, i.e. to strengthen these doctrines. The Prophet heard the Qur'ān recital of ᶜAbbād and remarked: "He has reminded me of a verse which I had forgotten."[10]

Muqātil[11] suggests that the clause illā mā shā'a Allāh implies that Muḥammad would be caused to forget and causing to forget is naskh. God said: "mā nansakh min āya aw nunsihā na'ti bi Khairin minhā aw mithlihā." In the light of this verse the meaning would be that you (Muḥammad) would forget part of the revelation for ever. God will order you not to recite it and not to rehearse it when you are praying. That

would be either because of your forgetting or its elimination from your hearts. In order to support this view there emerges a set of ahādīth.

Ibn ᶜUmar reported:(12) "Two men recited a sūra which was taught them by the Prophet. They used to recite it; one night, they stood up to pray but could not recall any word of it. Next morning they went to the Prophet and mentioned the case. The Prophet said: 'It is part of what has been abrogated, ignore it.' " Ibn Masᶜūd said:(13) "The Prophet taught me a verse. I memorised it and recorded it in my mushaf. When night fell I went to my bedroom but could not recall the verse. Early in the morning I consulted my mushaf, but found the page blank. I informed the Prophet and he said to me: 'Oh, ibn Masᶜūd it was withdrawn yesterday.' " These ahādīth, however, do not clearly say that Muḥammad himself had forgotten, but there is a report attributed to ibn ᶜAbbās who said:(14) "Revelation used to descend upon Muḥammad during the night and he forgot it by the following day."

Qatāda(15) was of the view that Muḥammad used to recite verses of the Qur'ān, but later these were withdrawn; God caused His Prophet to forget. Hasan(16) remarked that Q. 87 was a clear reference to the phenomenon of naskh al-ḥukm wa al-tilāwa. Muqātil's interpretation also stands in the line of this doctrine. We have pointed out that according to him Q. 87 refers to naskh. These interpretations were brought together with the tafsīr of Q. 2, 106: mā nansakh min āya aw nunsihā na'ti bi Khairin minhā aw mithlihā. One finds two verbs in

this verse: nansakh and nunsihā. The first root was exploited by the exponents of the theory of naskh, according to which some rulings of the Qur'ān were rendered ineffective but the wording of these rulings was considered valid for recital in prayers. The second 'verb' 'nunsihā' was exploited by the adherents of this third mode of naskh to provide evidence for its existence. For this second stem of Q.2,106, various interpretations were suggested. Some of them are quoted below.

Tansahā = you (Muḥammad) will forget it.

Tunsahā = you (Muḥammad) are made to forget.

Nunsihā = we cause you to forget.

This last interpretation was most popular and attracted the attention of most scholars. ᶜUbaid b. ᶜUmair said: nunsihā means: 'we lifted from you.' Ḥasan said: that it means: 'your Prophet would be instructed to recite a part of the Qur'ān, then he would forget it.' Rabiᶜ said: nunsihā means: 'we withdraw it.' Qatāda said: 'God caused His Prophet to forget whatever He wished.' Ibn Zaid maintained: nunsihā is equal to namhūhā ('we expunge it'). That the omissions occurred by God's causation, was also alleged to be the view of ibn Masᶜūd who read Q.2,106: 'mā nunsik' which means, "We cause you to forget."(17) To bolster the view that Muḥammad's forgetting, if any, was by Divine intention, the Prophet himself was believed to have said: "It is very bad for one of them to say: 'I have forgotten so and so.' "On the contrary, he was made to forget it." (18)

The arguments of the scholars who would not accept the occurrence

of any omission from the Qur'ān on the basis of Muḥammad's human failure, is summarised by Ṭabarī:[19] "It is impossible to hold that the Prophet forgot some parts of the revelation which had not been abrogated. If Muḥammad had forgotten anything and he was not reminded, his companions would not have forgotten because they recited and memorised the verses." The claim that Muḥammad would not forget anything was reinforced by interpreting Q.87,6-7 as one of the Prophet's miracles. The fact that such a lengthy Qur'ān was preserved word by word, although the Prophet was illiterate, was definitely one of his miracles and was surely a Divine favour. Wāḥidī[20] reads Q.87,6-7: "We will cause you to recite the Qur'ān by reminding you of it. Therefore, you will not forget any part of it which once you had rehearsed." Further, the verse was considered one of the earliest revelations of Mecca which in turn suggests, that the whole life of Muḥammad would be free from the shortcoming of forgetting. Thus, it was a second miracle of the Prophet, since God Himself ensured that Muḥammad would not forget anything.

Some suggested that fa lā tansā (Q.87,6) referred to God's prohibition to Muḥammad: "Do not neglect the Qur'ān." This would be contrary to the foregoing interpretation, since it did not exhibit the Prophet's miracle. Therefore, it has to be explained away by comparing Q.87 with Q.75,16: "Do not move your tongue to pronounce it, hastening to recite it, its collection and its recitation are our responsibility." It was thought that given the existence of this verse, no other verse needed to be issued, conveying the same message.[21]

The comparison of a verse with another verse was a common device to support this or that view. One finds the comparison of Q.87 with Q.17,86: "If we so desired we could remove what we have revealed to you." These verses were compared merely to make the point that the clause illā mā shā'a Allāh was ineffective, because it was held that God never wanted to avail Himself of His intention to erase the Qur'ān.

Scholars who have seen Muḥammad as capable of forgetting were inclined to argue that such omissions were unimportant, since these were not related to āyāt al-aḥkām, but to moral regulations. In the light of this interpretation the clause has a dual character, i.e. positive and negative. In its negative sense, it was held that Muḥammad could not forget any part of the revelation originally revealed to him. For its positive function it was urged that God may have wanted to abandon some of His verses which He had once revealed to Muḥammad as part of the Qur'ān. Muḥammad may have momentarily forgotten part of the revelation but it was soon recovered. To this extent we have seen that ḥadīths were propounded. Thus the idea that forgetting may have occurred was accepted on the grounds that its cause was God Himself.. Muḥammad had omitted a verse and was not immediately reminded by his companions, because they had thought that the verse was withdrawn. "Withdrawal is one of the two modes of naskh."(22) Zajjāj argued that Muḥammad might forget some parts of the Qur'ānic revelation but this would have become clear to him, unless the verse had been withdrawn. This interpretation of Q.87 was seen

as adequate in the light of Q.2,106. We have seen Ḥasan remarking that the second root of Q.2,106 (nsy) refers to the phenomenon of naskh al-ḥukm wa al-tilāwa. This root was taken as a Divine reference to omissions from the Qur'ān texts. The tafsīr of Q.87,6-7 and Q.2,106 helped a great number of aḥādīth to emerge. Later, these aḥādīth (which betray their origin in the use of Qur'ānic root aqra') and in the wording of Q.87,6-7 were used to confirm the occurrence of either forgetting or withdrawal.(23)

CHAPTER EIGHT

JASSĀS' CONCEPT OF NASKH

Jaṣṣāṣ states:[1] "People have disagreed concerning the abrogation of the Qur'ān by the sunna. Our companions allowed this, provided the sunna prescribed knowledge, i.e. mutawātir and was not Khabar al-Wāhid. Abū al-Ḥasan used to narrate from Abū Yūsuf that the sunna by which the abrogation of the Qur'ān was possible came by tawātur and prescribed knowledge as, for instance, the report on the wiping of the boots." As far as the abrogation of the sunna by the Qur'ān is concerned Jaṣṣāṣ states:[2] "If the sunna can be abrogated by the waḥy which is not Qur'ān, it can certainly be abrogated by the waḥy which is Qur'ān."

Shāfi^{c}ī's predecessors, both Ḥanafīs and Mālikīs had allowed the abrogation of the Qur'ān by the sunna and vice versa. For Shāfi^{c}ī, who had interpreted Q.2,106 in the light of Q.16,101, it was very difficult to adopt this procedure. Moreover, when he arrived on the intellectual stage, rejection of the role of the sunna because of its contradictory nature was threatened by the ahl al-Kalām. Therefore, Shāfi^{c}ī had to adopt the rule that only the Qur'ān abrogated the Qur'ān; and only the sunna abrogated the sunna. The function of the sunna was merely Bayān to the general provisions of the Qur'ān.[3] Shāfi^{c}ī's rigidity in this view secured the place of the sunna as a source of law and the danger which had threatened it was now no longer felt. Even the followers of Shāfi^{c}ī, let alone the Ḥanafīs and Mālikīs, felt free to

revert to pre-Shāfi^{c}ī thinking. Jaṣṣāṣ, a Ḥanafī exponent, had no difficulty, therefore, in arguing that the sunna could be abrogated by the Qur'ān and the Qur'ān could be abrogated by the sunna. The Qur'ān and sunna mutawātira could not be abrogated by Khabar al-Wāḥid while the latter could be abrogated by the former.(4)

We have seen in chapter six, that the Fuqaha' of the east and the west unanimously accepted 'stoning', differing merely as to its source; whether it was the Qur'ān or the sunna. The Mālikīs and the Ḥanafīs confidently attributed it to the sunna. Shāfi^{c}ī himself did not say that the stoning penalty originated in the Qur'ān, but his followers who had seen the inapplicability of his theory of takhṣīṣ, traced it to a Qur'ān whose tilāwa was thought to have been withdrawn. Thus the mode: 'naskh al-tilāwa dūna al-ḥukm' which was originally created by Shāfi^{c}ī on the problem of Ridā^{c}, was now extended to the problem of stoning. Since its legitimacy was accepted by Shāfi^{c}ī, it led Jaṣṣāṣ to argue that in ^{c}Abd Allāh b. Mas^{c}ūd's muṣḥaf the wording mutatābi^{c}āt concerning the expiation of breaking an oath had existed. The ruling is applicable, but the wording was abrogated.

Apart from the formula quoted above there also existed two other formulae: naskh al-ḥukm dūna al-tilāwa and naskh al-ḥukm wa al-tilāwa. The majority accepted these two formulae which, as we have seen, originated respectively in the Fiqh and tafsīr.

Jaṣṣāṣ, as an Uṣūlī, accepted only two modes: naskh al-ḥukm dūna al-tilāwa and naskh al-tilāwa dūna al-ḥukm. The justification of these modes was sought from Q.2,106 which also spoke for the majority.

In answer to a suggestion that naskh might mean izāla (eradication) Jaṣṣāṣ states:[5] It refers to both the eradication of the ruling without the wording and eradication of the wording without the ruling. If someone seeks justification for one of these meanings, his view is false because the general implication of the word naskh embraces both categories. Further, the meaning of izāla is traced from the second section (nunsihā) of Q.2,106. Naskh, therefore, refers to the abrogation of the ruling and izāla refers to naskh al-tilāwa dūna al-ḥukm. This answer comes in the course of his justification of the occurrence of naskh. He quotes Q.16,101: "We substitute one āya for another" and Q.13,39: "God effaces what He pleases and confirms what He pleases." These verses always stand on an equal footing in the justification of the theory of naskh. The former verse apparently provides Qur'ānic warrant because naskh has been considered as equivalent to tabdīl, i.e. substitution.[6] In answer to an objection that Q.13,39 refers to the abrogation of narrative statements (akhbār), Jaṣṣāṣ remarked: God did not say that He would abrogate (the meaning of the) statements whenever He wished. Ibn ᶜAbbās said: "The meaning of Q.13,39 is that God replaces whatever He wishes of the Qur'ān and He confirms whatever He wishes of the Qur'ān, because He has the master copy." Thus, according to Jaṣṣaṣ Q.13,39 also speaks about the substitution of verses.

We have seen in chapter seven that Q.2,106 was brought together with the tafsīr of Q.87,6-7 on the grounds that both the verses shared the common root 'nsy'. Further, in order to ascertain the meaning

of naskh scholars always referred to its secular usage. Their arguments are clearly outlined by Jaṣṣās. He says:(7) "The scholars disagreed concerning the meaning of naskh. Some said: 'It refers to naql (transfer).' They say: 'nasakha al-kitāb' (He copied the book), i.e. he transferred what was in the original copy to another copy. Others said: 'It refers to ibtāl (nullification).' They say: 'nasakhat al-shams al-ẓill,' (the sun removed the shade). Some of them said: 'naskh is izāla.' They refer to 'nasakhat al-rīḥ al-āthār' (the wind obliterated the traces). These words are close in meaning, and whatever naskh may mean in the Arabic language, when it is used of the abrogation of the rulings, it is used metaphorically." Jaṣṣās, after quoting this statement, rejects all the possible meanings of naskh, derived from secular usage, whether it refers to naql, ibṭāl or izāla. He states:

Some believe that the meaning of naskh in the Arabic language is naql; this meaning does not exactly exist in the abrogation of the ruling. Naql either refers to the transfer of the ruling(8) or transfer of a worshipper from one ruling to another ruling. If naql means the transfer of the ruling, it cannot be accepted, because the ruling cannot be transferred in reality. Further, naql is logically applied to a thing which can be transferred while the ruling cannot. If the naql means the transfer of the worshipper from one ruling to another ruling, it would not be considered as a transfer, if the worshipper devoted himself to another ruling. Naskh al-kitāb refers to naql metaphorically, but not in reality, because when the written text is transferred from one place to another, the original writing remains in its place. The statement

that naskh is izāla in the language, would not be accepted because izāla refers metaphorically to both the wording and ruling. Further, it is feasible to say: "I removed (azaltu) the stone from its place", but it existed in another place as it had existed in its first place. In contrast, the first ruling does not exist after its abrogation. It is not proper to consider naskh equal to izāla except in a metaphorical sense. The statement that naskh is ibṭāl cannot be considered valid when it is applied to aḥkām, because the first ruling cannot be nullified at all. The first ruling is merely not applicable in the second situation, since the nāsikh ruling was confirmed.(9)

Jaṣṣāṣ restricts discussion of the word naskh to Sharī^{c}a usage and remarks:(10) "Naskh is the declaration of the time of the particular ruling which we thought would remain for ever, but the second ruling made it clear that the time of the ruling was for a certain period and it was now no longer valid." He further remarked: "Whatever the meaning of naskh might be in the Arabic language, it could not be strictly applied in the Sharī^{c}a." He quoted Q.2,106 and maintained that God Himself used the word naskh.

This meaning of naskh had not been defined by any of Jaṣṣāṣ' predecessors. Therefore, he was the first person to declare that naskh in the Sharī^{c}a is the Bayān of the duration of the ruling.(11) This definition of naskh was adopted by Jaṣṣāṣ in order to refute the view of those Muslim scholars who held that naskh never occurred in the Islamic Sharī^{c}a. It was also to refute those Jews who had declared that Moses had informed them that the Sharī^{c}a of the Torah and the

Sabbath would never be abrogated. Concerning the Muslim scholars Jaṣṣās stated:(12) "Some of the modern scholars have asserted that there was no naskh in the Sharī'a of our Prophet. The occurrence of naskh was merely an indication that the laws of the previous prophets were abrogated like the Sabbath and facing towards the east or the west while praying. They had argued that our Prophet was the last of the prophets and his Sharī'a was confirmed and everlasting until the Day of Judgement. The man (Abū Muslim al-Iṣfahānī) who had held this view was endowed with knowledge of rhetoric and Arabic, but he had no knowledge of jurisprudence and the principles of jurisprudence. Although it could not be doubted that he was perfect in faith, he deviated greatly from the right path by declaring this dogma, since no one had reported this view before him. Our predecessors and their successors understood from the religion of God, that numerous rulings were abrogated from it; and they have narrated these reports in a way which could not be questioned. There are general, specific, confirmed and obscure passages in the Qur'ān. The one who rejected the occurrence of naskh, rejected all its general, specific, confirmed and obscure commands because these categories all arrived in the same manner. This man had derived, from the abrogating and abrogated verses, judgements which were excluded from the interpretations of our early scholars. I could not understand where he had obtained his information. However, I maintain that he had used his own judgement leaving aside the reports of the salaf. The Prophet had said: 'Whoever interpreted the Qur'ān by using his personal opinion, certainly committed a sin.' "

Jaṣṣāṣ divided the Jews who opposed the occurrence of naskh into two groups. Firstly, those who refused to accept this principle on logical grounds, maintaining that to accept this principle would lead to the idea of Badā', which in no case could be ascribed to God. Secondly, those who persisted in saying that Moses did not allow them to accept the abrogation of the Sabbath and the Shari'a of the Torah.(13) In answer to the former group, Jaṣṣāṣ said that they maintained this view only because they could not understand the meaning of naskh. Naskh indicates that the time of the obligation of the first ruling has expired and that the first ruling is no longer required in the second situation. It is possible that the rulings governing the deeds of men may contradict each other. Some men are asked to follow a ruling which is not prescribed for others. For example, prayer is prescribed for the pure and at the same time forbidden to menstruating women. These rulings are observed in one situation. In a similar vein, God causes some to die and creates others. He makes some ill and restores others to health. He makes some rich and makes others penniless, and this also happens to one person in different situations. There is here nothing which could lead one to the concept of Badā', since what God willed in the second situation is different from what He willed in the first situation. Thus, the obligatory duties follow the same course. As for those who held that Moses had informed them that the laws of the Torah would not be abrogated, they had admitted that the Torah had informed them about the arrival of the prophets after Moses. If it is possible to declare this view lawful,

it meant that God had said: "Declare the Sabbath sacred until I allow you (to work on this day) by the laws of the Prophet who follows Moses." It was also possible if God had said: "Declare the Sabbath sacred until through your own mouth I allow you (Moses) to work on that day." Moreover, if the Jews' declaration about the validity of the Sabbath forever had been confirmed, we certainly would have known it. Since we did not know it - although we heard the reports which they had handed down - we knew that they merely interpreted the wording in that way and made a mistake.[14]

Jaṣṣāṣ asserts[15] that any ruling which bears the word ta'bīd or shows otherwise that it is eternal, would not be abrogated, because it requires us to act upon it forever. It is inconceivable that such a ruling was for a short time or for a defined period, because this would lead to rulings being invalidated. He was reminded that the Jews assert that holding the Sabbath sacred as long as the Heavens and the earth remained firm was decreed in the Torah, whereas it was abrogated through the Prophets who followed Moses. Jaṣṣāṣ remarked that what the Jews had said was not confirmed. Even if that was confirmed, it might refer to ta'bīd or otherwise. Since we could not comprehend the exact meaning of the word of the Torah, what they had said was not to be accepted. The scholars who allowed the abrogation of such a ruling, allowed it because we have to follow the later command which would contradict or confirm the previous one. According to this view, the meaning of ta'bīd would be connected with the possibility of naskh if what had been said was: 'Follow these practices in the future forever - until I abrogate them.' However, the sound view is that a ruling which

shows its eternal nature would not be abrogated. Otherwise, it would be possible to say of all the general meanings of the Qur'ān that we believe in them if God did not intend their particularisation.

According to Jaṣṣās the occurrence of naskh is shown by Q.2,106, Q.13,39 and Q.16,101. Although he knew the use of Q.22,52:[16] "God eradicates (yansakh) what the Devil attempts to insinuate -", he ignored it. But in answering an objection that the abrogation of the Qur'ān by the sunna is not possible, because the latter is not considered better than the former, he stated that if the abrogation of the tilāwa may occur and not involve the abrogating wording of the Qur'ān, it is possible that it involve the abrogating wording of the sunna.[17] The majority of scholars dismissed the use of Q.22,52 in their discussion on the naskh, on the grounds that the verse does not refer to the abrogation of God's revelation.[18] However, when they wanted to nullify or suppress the rulings or wordings of the Qur'ān, they fell back upon the verse and made use of it. Apart from Jaṣṣās, Ṭabarī can be seen using Q.22,52 when speaking of the suppression of rulings.[19] He also argues that there were some verses of the Qur'ān which had been revealed as part of the Qur'ān, but later were forgotten or suppressed. That is why we could not find them in the present muṣḥaf. He adopts this view after rejecting the objections of those Muslim scholars who could not accept that Muḥammad could have forgotten some passages of the Qur'ān. Ṭabarī produced two instances and argued that there are many more.[20]

(1) Anas b. Mālik reported: the following was revealed concerning those seventy Ansār who were killed at Bi'r Ma^{c}ūna: "Inform the people on our behalf that we met our Lord and He was pleased with us."

(2) Abū Mūsā al-Ash^{c}arī reported that they used to recite: "Were ibn Ādam to possess two wādīs of property, he would ask for a third. Nothing will fill the maw of ibn Ādam except dust, but God will forgive him who repents."

The latter report is also recorded by Jaṣṣāṣ, but on the authority of Anas.[21] However, he rejected this, and the rest of the reports which considered wordings as having been revealed to be part of the Qur'ān, arguing that they were not considered as part of the Qur'ān, because the word " قـــرأ " may be used for the sunna as well as for the Qur'ān. An objection[22] was raised claiming that all the abrogated wordings would be unknown to the people and therefore could not be recited. The confirmation of the reports and their recitation suggested that the reports existed after the demise of the Prophet. How could a report once abrogated be known to have existed until this day? Jaṣṣāṣ answered that the reports did not contain the exact wording of the Qur'ān. These were reported by words other than the Qur'ān; the original wording was forgotten while the ruling was not forgotten. He further argued that God could remove the wording from the hearts of the people as He said: "If we wished, we could remove what we have revealed to you," (Q.17,86). When God removed the Qur'ān and caused His creatures to forget, this was no longer the Qur'ān, because

what is not present could not be called the Qur'ān. Therefore it was possible to believe that when a revelation had come down with its original wording, it was Qur'ān; but when it was removed, it was no longer Qur'ān.

Jaṣṣāṣ' opponent(s)[23] quoted several passages from the Qur'ān in order to show that abrogation or withdrawal of the verses was impossible. God said: "We revealed the Reminder (the Qur'ān) and verily We are its guardian" (Q.15,9). God also said: "It is incumbent upon Us to put (the Qur'ān) together and its reading, and when We read it follow its recitation. Moreover, it is for Us to explain it" (Q.75,17-19). The explicit meaning of the verses requires that God would guard the Qur'ān forever and its implication is for the whole Umma, because He did not specify the time or the generation. God said: "The Qur'ān is but a Reminder to the people" (Q.12,104). God in this verse informed us that the whole Qur'ān is a Reminder and it confirms that there would be no abrogation of the wording, because what is abrogated or forgotten and did not reach us, would not be considered as a Reminder for the people. God said when instructing His Prophet: "This Qur'ān has been inspired in me, that I may warn you and whomsoever it may reach" (Q.6,19). God informed us that the Prophet would warn us with all the Qur'ān and what was withdrawn could not be used for warning.

Jaṣṣāṣ explains away these verses simply saying that they refer to something else. These verses do not prevent the possibility of the ruling being abrogated. In similar vein, the verses do not

prevent the possibility of the wording being abrogated. The view that these verses do not prevent us from talking about the abrogation of the wording or ruling might mean that Jaṣṣāṣ was dealing with the two phenomena of naskh: naskh al-tilāwa dūna al-ḥukm and naskh al-ḥukm dūna al-tilāwa. In contrast, Ṭabarī who found nothing amiss in declaring that verses together with their rulings were withdrawn and were not recorded in the mushaf, was also dealing with the two phenomena but different from the two mentioned above. He was not concerned with the mode: naskh al-tilāwa dūna al-ḥukm. The reason Ṭabarī was not interested in this mode of naskh can be put forward in J. Burton's words:(24) "Those scholars who accepted with equanimity the notion that the Qur'ān might abrogate the sunna, or the sunna the Qur'ān (and Ṭabarī is to be reckoned in their number) felt themselves to be under no obligation to consider this third mode of abrogation. Their concern was with only two alleged phenomena - the setting aside of the ruling of one verse by that of another, where both have survived in the documents; and the simple non-survival of both the wording and the ruling of an alleged revealed element of the original Qur'ān."

Ṭabarī had found the stoning penalty in the sunna.(25)

Therefore, he was not concerned with the 'stoning verse' whether it was revealed to become part of the Qur'ān or not. He defined Q.2,106:(26) "Whatever ruling of the Qur'ān we transfer to a different legal category - God changes what was lawful into unlawful, or vice versa. He changes what was not prohibited into what was prohibited, or vice versa."

Ṭabarī's insistence that mā nansakh min āya referred to the abrogation

of the ruling illuminated the fact that for him the sunna ruling might abrogate the Qur'ān ruling, since it was possible that the second ruling might be better than the previous ruling whereas the second āya could not be better than the previous āya, because all the Qur'ān verses are equally mu^{c}jaz (inimitable). Whether the Qur'ān abrogates the sunna or not; whether the sunna abrogates the Qur'ān or not, Q.2,106 is a basis for every scholar who argues in favour of the doctrine of naskh. Those who argue that the sunna cannot abrogate the Qur'ān appeal to na'ti bi Khairin minhā aw mithlihā saying that the sunna cannot be better than the Qur'ān, nor can it be mithl to the Qur'ān. Those who held the reverse attitude interpreted these words in a different way. Jassās can be listed among the latter group. He argued that the words Khairin minhā refer either to wording of the verses, or refer to the fact that the second ruling would be better for us in the sense that it would offer richer rewards. No one would argue in favour of the first sense because no āya is considered better than any other āya. Whereas nothing prevents us accepting that the ruling confirmed by the sunna would be more suitable and more profitable than the ruling of the Qur'ān. That was the reason God revealed some rulings through the Qur'ān and some rulings through the wahy, i.e. the sunna.[27] If that was what was meant by the āya, it indicated the permissibility of the abrogation of the Qur'ān by the sunna. The wording mithlihā might refer to resemblance in all ways or in some ways. The word mithl can be applied when two things resemble each other in some ways as God said: "And (there will be)

fair ones with lovely eyes like hidden pearls" (Q.56,22). God used the word mumāthala because of the resemblance in some ways, since it is known that the eyes do not resemble pearls in every way. They merely resemble each other because of their clarity and purity. The sunna can resemble the āya of the Qur'ān in that both are more proper and more profitable and that both are wahy and come from God.(28)

These arguments suggest that a way was going to be found for the sunna to replace the Qur'ān. We have seen in chapter six that Jaṣṣās' main purpose was to abrogate Q.4,15-16 by the ᶜUbāda ḥadīth and thus ensure that the sunna was the basis of the 'stoning' before Q.24,2. In order to make his argument compelling, he put much weight on the recognition of the sunna and went one step further: that the sunna ruling might be better than the Qur'ān ruling. Jaṣṣās could place the ᶜUbāda ḥadīth after Q.24,2 and thus could argue that the former explained the latter. But what then of the concept of the Qur'ān's abrogation by the sunna? One gets a clear impression that Q.2,106 was interpreted in order to defend the Uṣul al-fiqh. The question of the Qur'ān's abrogation by the sunna and vice versa was now rooted so deeply among the later generations, that scholars like Qurṭubī, Rāzī and Ghazzālī were able to produce instances of such occurrences.

Qurṭubī,(29) a Mālikī, states: "The Qur'ān can be abrogated by the sunna. This occurred in the case of wasiyya, when the Prophet said: 'lā waṣīyya li wārith'. This is clear in the arguments of Mālik, but Shāfiᶜī and Abū Faraj (Mālikī) did not accept this. The first is a

sound view, since both the Qur'ān and the sunna come from God. The flogging of Q.24,2 is abandoned for the non-virgin offenders who are stoned to death. Nothing has abrogated flogging except the sunna. The sunna can be abrogated by the Qur'ān. This occurred in the case of qibla. There is no reference in the Qur'ān to the prayer that was performed facing the Jerusalem qibla."

Rāzī,[30] after listing Shāfi^{c}ī's objections: i.e. the Book cannot be abrogated by the sunna and the sunna cannot be abrogated by the Book, can bring evidence from the majority to show that such cases have occurred. "The verse referring to waṣiyya (Q.2,180) was abrogated by the Prophet's saying: 'there is no waṣiyya in favour of an heir.' Āyat al-jald (Q.24,2) was abrogated by stoning which was referred to in a ḥadīth. The former case had been rejected by Shāfi^{c}ī who argued that the āyat al-mirāth prevented us from making the waṣiyya. The other case was also rejected by Shāfi^{c}ī who said that ^{c}Umar's report al-Shaikh wa al-Shaikha idhā zanayā f-arjumūhumā al-battata, was revealed to be part of the Qur'ān. Perhaps that stoning verse had abrogated Q.24,2." (We have seen in chapter six that Shāfi^{c}ī never said so. This argument was later developed by his followers).[31]

Ghazzālī,[32] Shāfi^{c}ī's follower, also produces some instances where the Qur'ān has abrogated the sunna and the sunna the Qur'ān. Concerning the former case, he argued that the Jerusalem qibla, i.e. the sunna, was replaced by the Meccan qibla, i.e. the Qur'ān. Regarding the latter case, he produced the abrogation of Q.2,180 by

the sunna of the Prophet: 'lā waṣīyya li wārith.' Although Ghazzālī refers to three modes of naskh, he provides the examples for the two; this in turn suggests that as an Uṣūlī he was not interested in the form of naskh according to which both the ruling and wording were dropped. He says, one of the two modes of naskh is that the ruling is abrogated while the tilāwa is not; this being the case of wasiyya. According to the second mode, the tilāwa is abrogated while the ruling is not; this being the case of 'stoning.' Thus, he corresponds to Shāfi^{c}ī and Jaṣṣāṣ who accept these two modes of naskh, but disagrees with Shāfi^{c}ī in his treatment of stoning.

Before we go back to pre-Jaṣṣāṣ thinking we examine his arguments concerning the sunna's abrogation by the Qur'ān. According to Jaṣṣāṣ this principle is acceptable. The proof of the possibility of the sunna's abrogation by the Qur'ān is Q.16,89: "We revealed the Book to you as an exposition of all things." When naskh is the Bayān of the period of the (first) ruling, the general meaning of the verse demands the possibility of the sunna's abrogation by the Qur'ān. (Because the Qur'ān would be revealed to explain the duration of the first ruling established by the sunna). Moreover, when it is possible to abrogate the sunna by one wahy, i.e. the sunna, it is also possible to abrogate it by the other wahy, i.e. the Qur'ān, since both the Qur'ān and the sunna come from God. There is no disagreement among the salaf that the Qur'ān may abrogate the sunna. They have mentioned numerous cases and one of them is the case of the qibla. The Prophet performed his prayer for more than ten months facing the Bait al-maqdis

when he first arrived at Medina. Later God revealed: "Turn your face towards the Ka^{c}ba" (Q.2,144), and by this the earlier practice of the Prophet was abandoned.(33)

In answer to a question that Q.2,106 and Q.16,101 clearly say that only a part of the Qur'ān can abrogate the other part of the Qur'an, Jaṣṣaṣ remarked: The verses merely indicated that naskh occurred in the Qur'ān. They did not state what the nāsikh would be, but did suggest that naskh would occur before the mithl or khair was brought. His interlocutor remarked that the learned merely agree on the abrogation of the Book by the Book; and the abrogation of the sunna by the sunna. Jaṣṣāṣ claimed that they also agreed on the abrogation of the sunna by the Qur'ān. When he was reminded that Shāfi^{c}ī never accepted this Jaṣṣāṣ answered:(34) "The people who preceded Shāfi^{c}ī accepted this, how could Shāfi^{c}ī go against them, and Shāfi^{c}ī could not defend his theory upon the views of his predecessors, whereas we can certainly defend it from those of our predecessors." The opponent of Jaṣṣāṣ referred his case to Q.16,44: "You (Muḥammad) may explain to mankind that which has been revealed for them," and argued that the Prophet was sent forth to explain the Qur'ān. Therefore, the Qur'ān cannot explain the sunna.(35) Jaṣṣāṣ explained away the verse by saying: the verse enjoined upon the Prophet to explain the Qur'ān whether it needed clarification or not. God may reveal the abrogation for the sunna and then the Prophet would explain it. This would be a clear case of the sunna's abrogation by the Qur'ān. Moreover, if the verse means that the Prophet should explain the Qur'ān which

requires explanation it still does not deny the possibility of the sunna's abrogation by the Qur'ān. The Qur'ān explains the Qur'ān and the Qur'ān abrogates the Qur'ān. The sunna explains the sunna and the sunna abrogates the sunna. Therefore, the Prophet's character of elucidator of the Qur'ān does not prevent the Qur'ān from abrogating the sunna.

When the question as to whether the Qur'ān can abrogate the sunna was raised before Shāfi^{c}ī, he had replied that it was impossible. However, if that had happened, the Prophet immediately would have introduced a second sunna in order to demonstrate that his first sunna was abrogated by his second sunna, so that it would become clear that an act could be abrogated by a similar act.(36) Shāfi^{c}ī had defined naskh as izāla and taraka.(37) The latter meaning he applied in the case of the Jerusalem qibla - that it was abandoned. He pointed out that no ruling was ever abandoned unless it was replaced. This was a clear reference to Q.16,101: "When we substitute one āya for another āya." From this Shāfi^{c}ī argued that the sunna abrogated the sunna; the Qur'ān abrogated the Qur'ān.

The sunna would not have been considered above the Qur'ān if Shāfi^{c}ī had been very strict about his special principles of abrogation. On the problem of stoning Shāfi^{c}ī showed himself weak when he discussed the problem of stoning in the Fiqh. The logical argument was that since the stoning was not mentioned in the Qur'ān, it must be sunna. The followers of Shāfi^{c}ī had, however, endeavoured to show that the stoning was in a Qur'ān whose tilāwa was abrogated. But this argument could

not win the hearts of the Ḥanafīs and the Mālikīs. They argued that the stoning was the sunna and it abrogated the Qur'ān. The principle: the sunna can abrogate the Qur'ān, was later extended to other problems where the Qur'ān showed seeming contradiction to the sunna. The principle was justified by referring to the wording of Q.2,106. The verse was also shown to provide sufficient grounds for the above mentioned modes of naskh. Because naskh was used to suppress the ruling, on the one hand, and the wording, on the other hand, its vindication was sought from the Qur'ān itself. Numerous verses could have helped to justify the doctrine, but the choice of Q.2,106 was marvellous, since it provided justification for several claims discussed under the rubric of naskh, such as a lighter command can be replaced by a more demanding command and vice versa. Jaṣṣās accepted the principle of naskh al-ḥukm dūna al-tilāwa because he could not reconcile the apparent contradiction within and between the sources. He further accepted the principle of naskh al-tilāwa dūna al-ḥukm because he had to defend the ruling of mutatābi^{c}at whose tilāwa did not appear in the muṣḥaf. Naskh, therefore, seems to have appeared as an element in the secondary science of Uṣūl al-fiqh in order to defend and justify a particular Fiqh doctrine. Ikhtilāf al-Fuqaha' is responsible for the emergence of differing principles of naskh. The differences were brought back to the key verses of the Qur'ān and thus used to legitimise actual occurrence of naskh.

NOTES

Chapter One: Introduction to the manuscript and text.

(1) Fu'ād Sayyid, Fihris Makhtūtāt, (3 vols.) Cairo, 1347/1954, Vol. 1, p.240.

(2) Ibid.

(3) Usūl al-Jassās, fo. 329b (unedited portion).

(4) Ibid.

(5) E.I., (4 vols) London, 1924, Vol. 4, p.1055.

(6) Abū Yūsuf, K. al-Kharāj, Cairo, 1352/1933; According to Khaṭīb Baghdādī, Abū Yūsuf was the first person to compose a book on Uṣūl al-fiqh, Ta'rīkh Baghdād, (14 vols) Beirūt, n.d. Vol. 14, p.246. But cf. Schacht, The Origins of Muḥammadan Jurisprudence, Oxford, 1979, p.133: "The statement of Khaṭīb Baghdādī, that Abū Yūsuf was the first to compose books on the theory of law on the basis of the doctrine of Abū Ḥanīfa, is not confirmed by the old sources."

(7) Ibn al-Nadīm, al-Fihrist, (2 Vols) London, 1970, Vol. 1, p.506.

(8) Shāfi^{c}ī, Risāla, Cairo, 1358/1939.

(9) M. Khaddūrī, Islamic Jurisprudence: (Shāfi^{c}ī's Risāla), Baltimore, 1961, p.41.

(10) Sa^{c}īd Allāh Qādī, Principles of Muslim Jurisprudence, Lahore, 1981, p.2. Al-Karkhī's al-Uṣūl is published as a supplement to al-Dabūsī's Ta'sīs al-Naẓar, Cairo, n.d. quoted by Shehāby, N., "^{c}Illa and Qiyās in early Islamic legal theory," J.A.O.S. 1982, p.27.

(11) Sa^{c}id Allāh Qādī, op.cit. loc. cit. Khuḍarī, Uṣūl al-Fiqh, Beirūt, 1969, p.10.

(12) cf. Sarakhsī, Uṣūl, (2 Vols), Ḥaiderabād, 1372/1952, Vol. 2, pp.53-86.

(13) M. Zaid, al-Naskh fī-l Qur'ān al-Karīm, (2 Vols) Cairo, 1383/1963, Vol. 1, p.82.

(14) Text, p.101.

(15) Jaṣṣās, Aḥkām al-Qur'ān, (3 Vols) Cairo, 1347/1928, passim.

(16) Zarkashī, al-Burhān, (4 Vols) Cairo, 1376/1957, Vol. 2, p.40.

(17) Suyūṭī, al-Itqān, (2 Vols) Cairo, 1370/1951, Vol. 2, p.26.

Chapter Two: The author.

(1) Jaṣṣāṣ, op.cit., Vol. 1, foreword.

(2) Dihkhūda, Lughāt Nāma, Ṭehrān, 1315/1897, Vol. 1, p.378.

(3) E.I. (new edition) Vol. 2, p.486.

(4) Kaḥḥāla, Muᶜjam al-Mu'allifīn, (15 Vols) Damascus, 1376/1957, Vol. 2, p.7.

(5) Khaṭīb Baghdādī, op.cit., Vol. 4, p.314.

(6) Dihkhūda, op.cit., loc. cit.

(7) Ziriklī, al-Aᶜlām, (10 Vols) Cairo, 1346/1927, Vol. 1-2, p.165.

(8) Ibn Quṭlūbghā, Tāj al-Tarājim, Baghdād, 1382/1962, p.6.

(9) Ibid; Jaṣṣāṣ, op.cit., loc.cit.

(10) Ibn al-Nadīm, op.cit., p.514.

(11) Ibn Kathīr, al-Bidāya wa-l Nihāya, 14 Vols, Beirūt, 1386/1966, 370 A.H.

(12) Jaṣṣāṣ, op.cit., loc. cit.

(13) Dhahabī, Tadhkirat al-Ḥuffāẓ, (3 Vols) Ḥaiderabād, 1377/1957, Vol. 3, no. 781.

(14) al-Samᶜānī, K. al-Ansāb, (6 Vols) Ḥaiderabād, 1382/1962, Vol. 3, p.282.

(15) E.I., loc. cit.

(16) Qurashī, al-Jawāhir al-Muḍīᶜa, (2 Vols) Ḥaiderabād, 1322/1913, Vol. 1, p.84.

(17) E.I., loc. cit.

(18) Ibid.

(19) Kawtharī, Maqālāt, Cairo, 1388/1968, p.643; Baghdādī, op.cit., loc. cit.

(20) Ibid.

(21) Ibn Kathīr, op.cit., Vol. II, p.351.

(22) Baghdādī, op.cit., Vol. I, p.265.

(23) Qurashī, op.cit., Vol. 2, p.24. Ibn Kathīr, op.cit., Vol. 12, p.17.

(24) Ibn Kathīr, op.cit., loc. cit.

(25) Qurashī, op.cit., Vol. I, p.85.

(26) Ibn Quṭlūbghā, op.cit., loc. cit. Ibn al-Athīr, al-Kāmil fī-l Ta'rīkh, (9 Vols) Cairo, 1353/1934, Vol. 7, p.106.

(27) Ibn Kathīr, op.cit., 370 A.H.

(28) Dawālībī, al-Madkhal fī ᶜilm Uṣūl al-fiqh, Beirūt, 1385/1965, p.170; Shahrastānī, al-Milal wa-l Niḥal, (3 Vols) Cairo, 1386/1948, Vol. 1, pp.56-7.

(29) Text, p.31.

(30) Aḥkām, Vol. 1, p.50.

(31) Ibn al-Nadīm, op.cit., p.514.

(32) Ibn Kathīr, op.cit., 340 A.H.

(33) Saᶜīd Allāh Qādī, op.cit., pp.37-38. Ibn Quṭlūbghā, op.cit., p.91.

(34) Aḥkām, passim; According to Saᶜīd Allāh Qādī who prepared a partial edition of Uṣūl al-Jaṣṣās "the chapters of Qiyās and Ijtihād", this is the only copy available to us. He says:
و هنا احسب من واجباتی ان اوضح ان هذه المخطوطة نسخة واحدة ، و مـــا وجدنا حتی الان نسخة اخری فی اية مكتبة من مكتبات الدول الاسلامية ، فان هذه المخطوطة ــ وهی وحيدة ــ كتبها محمد بن قاضی فی المسجد الاقصی.
See Saᶜīd Allāh Qādī, op.cit., p.2. cf. Marie Bernand. The Hanafī Uṣūl al-fiqh through a manuscript of Jaṣṣāṣ, J.A.O.S. 1985, p.623.

(35) Ibn al-Nadīm, op.cit., p.11.

(36) Sezgin, Geschichte Des Arabischen Schrifttums, (5 Vols) Leiden, 1387/1967-, Vol. 1, p.624.

(37) Ḥājī Khalīfa, Kashf al-Ẓunūn, (6 Vols) London, 1253/1837, Vol. 2, p.555.

(38) Fu'ād Sayyid, op.cit., Vol. 1, p.263.

(39) Ibid.

(40) Ibid.

Chapter Three: The sources of Islamic law and naskh.

(1) Q.2,97.

(2) cf. Q.75,94.

(3) See below, p.95.

(4) Abū Yūsuf, op.cit., p.35; cf. Sarakhsī, Uṣūl, Vol. 2, p.8.

(5) Muslim, Ṣaḥīḥ, (8 Vols) Cairo, 1375/1955, Vol. 2, p.169.

(6) ᶜUthmān, H., Shāfiᶜī and the interpretation of the role of the Qur'ān and the Ḥadīth, unpublished Ph.D. thesis, presented to the University of St. Andrews, July 1976, p.29.

(7) Mālik, Muwaṭṭa', (2 Vols) Cairo, 1370/1951, Vol. 2, p.833.

(8) Kindī, K. al-Wulāt wa-l-qudāt, Beirūt, 1908, p.311.

(9) cf. Ṭabarī, Tafsīr, ed. Shākir, (15 Vols) Cairo, 1380/1960, Vol. 8, p.34.

(10) cf. Schacht, Introduction to Islamic law, Oxford, 1964, p.18.

(11) Muwaṭṭa', Vol. 2, p.497.

(12) Qurṭubī, Tafsīr, (18 Vols) Cairo, 1373/1954, Vol. 10, p.76.

(13) Shāfiᶜī, al-Umm, (8 Vols) Cairo, 1381/1961, Siyar al-Auzāᶜī, p.356.

(14) Abu Yusuf, K. al-Kharaj, p.42.

(15) Ibid, p.43.

(16) Jaṣṣāṣ, Aḥkām, Vol. 3, p.154.

(17) Kindī, op.cit., p.309.

(18) Goldziher, Muslim Studies, Translated from the German by C.R. Barber, (2 Vols) London, 1971, Vol. 2, p.38.

(19) Schacht, op.cit., p.26.

(20) Coulson, A History of Islamic law, Edinburgh, 1978, p.31.

(21) Mālik, op.cit., Vol. 2, p.765.

(22) This subject is discussed in chapter 5.

(23) Mālik, op.cit., Vol. 1, p.299; cf. Shāfiᶜī, Risāla, p.122.

(24) A. Rippin, Naskh al-Qur'ān and the problem of early tafsīr texts, Bulletin S.O.A.S, Nov. 1984, p.25.

(25) Abū Yūsuf, K. al-āthār, Ḥaiderabād, 1355/1936, p.14. Jaṣṣāṣ, Aḥkām, Vol. 2, p.425; Text, p.145.

(26) According to one report, Q.9,5 abrogated one hundred and twenty four verses of the Qur'ān. See Hibat Allāh, al-Nāsikh wa-l mansūkh, Cairo, 1387/1967, p.51.

(27) Shaibānī, K. al-Siyar al-Kabīr, ed. M. Khaddūrī, Maryland, 1966, p.94.

(28) Risāla, p.57.

(29) cf. Q.12,6,21,101; Q.66,3.

(30) cf. Q.35,43; Q.48,23.

(31) See below, p.48.

(32) K. al-Kharāj, p.5.

(33) Goldziher, op.cit., Vol. 2, p.24.

(34) Abū Nuᶜaim al-Iṣfahānī, Ḥilyat al-Awlīyā (10 Vols) Cairo, 1936, Vol. 6, p.332.

(35) Abū Yūsuf, al-Radd ᶜalā Siyar al-Auzāᶜī, Cairo, n.d., p.31.

(36) K. al-Kharāj, p.19.

(37) Risāla, pp.453-5.

(38) Shāfiᶜī, Ikhtilāf Mālik, p.201.

(39) Sarakhsī, Mabsūṭ, (30 Vols) Cairo, 1324/1906, Vol. 10, p.30.

(40) Ibid., p.24.

(41) Q.65,4.

(42) Muwaṭṭa', Vol. 2, p.497.

(43) Ibid., pp.5-34.

(44) Shāfiᶜī, Ikhtilāf al-Ḥadīth, p.524; Umm, Vol. 1, p.103.

(45) Umm, Vol. 5, pp.26-7; Vol. 8, p.226. The translation of these aḥādīth is from J. Burton, The Collection of the Qur'ān, Cambridge, 1977, p.87.

(46) This ḥadīth is tendentious because it tries to endorse the alleged Qur'ānic ten sucklings reported by ᶜĀ'isha.

(47) Umm, Vol. 5, p.27.

(48) Muwaṭṭa', Vol. 2, p.601.

(49) Shāfiᶜī, Ikhtilāf Mālik, p.224; cf. Hamadhānī, al-Iᶜtibār, Ḥimṣ 1386/1960, p.187.

(50) Burton, The Collection of the Qur'ān, p.88; Mālik rejects Saᶜīd's opinion in favour of practice, see below p.50.

(51) Umm, Vol. 5, p.27.

(52) Makkī, al-Īḍāḥ li nāsikh al-Qur'ān wa mansūkhihi, Riyāḍ, 1369/1976, p.44.

(53) Aḥkām, Vol. 2, p.150; Also see below, p.143.

(54) Ibid, Vol. 1, p.496; Also see below, p.133.

(55) Mabsūṭ, Vol. 6, p.32.

(56) Umm, Vol. 5, p.235.

(57) This is a clear example of the growth of isnād.

(58) Jimāᶜ al ᶜilm, p.273.

(59) Ibn Qutaiba, Ta'wīl Mukhtalaf al-Ḥadīth, Beirūt, 1393/1973, pp.3-6.

(60) E.I., Article on Uṣūl al-fiqh, Vol. 4, p.1054.

(61) Jimāᶜ al ᶜilm, loc. cit.

(62) Ta'wīl, pp.119, 193.

(63) Shāfiᶜī, K. Siyar al-Auzāᶜī, p.339; Risāla, p.224.

(64) Shāfi^{c}ī, Bayān Farā'id Allāh, p.288. The translation of these aḥadīth is from Schacht, The origins of Muhammadan Jurisprudence, p.45.

(65) Ibid., Burton, The Collection of the Qur'ān, p.54.

(66) K. Siyar al-Auzā^{c}ī, p.341.

(67) Ibid.

(68) Ibid.

(69) Ibid.

(70) Text, p.74; Also see Coulson, op.cit., p.90.

(71) Muwaṭṭa', Vol. 2, p.721.

(72) Shāfi^{c}ī, K. al-Musnad, p.389; Umm, Vol. 6, p.254.

(73) K. Siyar al-Auzā^{c}ī, p.340.

(74) Ikhtilāf Mālik, p.218; Umm, Vol. 5, pp.44,49.

(75) Risāla, pp.110-11.

(76) Muslim Studies, Vol. 2, p.31.

(77) cf. Schacht, The origins, p.47.

(78) Naḥḥās, K. al-nāsikh wa-l mansūkh, Cairo, 1323/1906, p.7; see below, p.99.

(79) See above, p.27.

(80) Muwaṭṭa', Vol. 1, p.35.

(81) Ikhtilāf Mālik, p.226.

(82) Ibid; cf. Abū Ḥanīfa, al-Fiqh al-Akbar, Ḥaiderabād, 1373/1953,p.4.

(83) This doctrine is attributed to Sha^{c}bī, see Naḥḥās, op.cit., p.123.

(84) Risāla, p.108.

(85) Ta'wīl, p.122.

(86) Muwaṭṭa', Vol. 1, p.5.

(87) Dārimī, Sunan, (2 Vols) Cairo, 1386/1966, Vol. 1, p.221.

(88) Risāla, p.284.

(89) Ikhtilāf ^{c}Alī wa ^{c}Abd Allāh b. Mas^{c}ūd, p.164.

(90) Ikhtilāf Mālik, p.200.

(91) Text, p.109.

(92) Ta'wīl, pp.97, 102.

(93) Ibid., p.52.

(94) Ibid., p.53.

(95) Ikhtilāf Mālik, p.197; Ikhtilāf al-Ḥadīth, p.564. For an instance where the Mālikīs reject sunna and use Qiyās, see Ikhtilāf Mālik, p.260.

(96) K. al-Kharāj, p.70.

(97) Muwaṭṭa', Vol. 1, p.144; Ikhtilāf Mālik, p.205.

(98) Ikhtilāf Mālik, pp.207, 228.

(99) Ibid. p.229.

(100) Risāla, p.432.

(101) Ibid., pp.433-34.

(102) Ibid., p.426.

(103) Ibid., p.438; Muwaṭṭa', Vol. 2, p.591. For full version of this ḥadīth see p.132.

(104) Ibid., p.440.

(105) Jimāᶜ al ᶜilm, p.280.

(106) Siyar al-Auzāᶜī, p.338.

(107) Schacht, The origins, p.51.

(108) Uṣūl al-Jaṣṣās fo. 192 (unedited portion).

(109) Text, p.124; According to Shāṭibī, this is Ijmāᶜ,(al-Muwāfaqāt, (4 Vols) Cairo, 1969, Vol. 3, p.106.)

(110) Ikhtilāf Mālik, p.262. The translation is from Schacht, The origins, loc. cit., with few changes.

(111) Risāla, p.599.

(112) Ikhtilāf Mālik, p.259. The translation is from Schacht, The origins, p.61.

(113) Muwaṭṭa', Vol. 2, pp.713-4; Ikhtilāf Mālik, p.246.

(114) Ibid., Vol. 2, p.568.

(115) Ibid., pp.775, 794, 804, 812, 865.

(116) See above, p.22.

(117) Muwaṭṭa', Vol. 2, p.671; Ikhtilāf Mālik, p.220.

(118) Ṭabarī, Annales,(4 Vols) Netherlands, 1964, Vol. 4, p.2505.

(119) Muwaṭṭa', Vol. 2, p.859.

(120) Ikhtilāf ᶜAlī wa ᶜAbd Allāh b. Masᶜūd, p.169; Umm, Vol. 1, p.133.

(121) Ikhtilāf Mālik, p.268.

(122) K. al-Kharāj, p.203.

(123) Ibid., p.59.

(124) Ikhtilāf Mālik, p.260.

(125) Risāla, p.445.

(126) cf. Q.4,59,65,69,80,171; Q.8,20; Q.33,36; Q.24,48-52; Q.59,7.

(127) Jimāᶜ al-ᶜilm, p.274; cf. A.W. Khalāf, ᶜIlm usūl al-fiqh, Cairo, 1397/1977, p.163; Also see below, p.180.

(128) Makkī, op.cit., p.68.

(129) Ṭabarī, Tafsīr, (30 Vols) Cairo, 1373/1954, Vol. 22, p.11.

(130) Risāla, p.443.

(131) Q.2, 129, 151; Q.3, 164; Q.33,34; Q.62,2.

(132) Risāla, pp.78, 93,103; Jimāᶜ al-ᶜilm, p.274.

(133) Ibṭāl al-Istiḥsān, p.229; Risāla, pp.88,103.

(134) Jimāᶜ al-ᶜilm, loc. cit.

(135) Ibid.

(136) Q.2,251. قتل داود جالوت و اتاه الله الملك و الحكمـــــــــــــــــــــة

(137) Q.31,12. و لقد آتينا لقمان الحكمـــــــــــــــــــــــــــــــــة

(138) Risāla, p.109.

(139) Ikhtilāf Mālik, p.191.

Chapter Four: The principles of abrogation.

(1) Risāla, p.106. رحمة لخلقه ، بالتخفيف عنهم ، وبالتوسعة عليهم

(2) Ibid.

(3) Ibn Ḥazm, Iḥkām fi uṣūl al-aḥkām, (8 Vols) Cairo, 1380/1960, Vol. 4, p.478.

(4) Risāla, p.107.

(5) Ghazzālī, Mustaṣfā, (2 Vols) Būlāq, 1322/1904, Vol. 2, p.125. cf. Ṭabarī, Tafsīr, on Q.2,106.

(6) Text, p.152.

(7) Burton, The Collection of the Qur'ān, p.52; Risāla, p.106.

(8) Risāla, pp.108-9.

(9) Text, pp.139-40.

(10) Risāla, p.110.

(11) Ibid., pp.111-12.

(12) Ibid., pp.114-5; Umm, Vol. 1, p.68.

(13) Ibid., p.116.

(14) Text, p.140.

(15) al-I^{c}tibār, p.50.

(16) See above pp.57-8.

(17) Risāla, p.138.

(18) This subject is discussed in the following chapter.

(19) Umm, Vol. 2, p.68; Vol. 1, pp.123-24.

(20) Ikhtilaf al-Ḥadith, p.497.

(21) See above p.39; Umm, Vol. 5, p.133.

(22) Ibn Ḥazm, op.cit., Vol. 4, p.459; Sarakhsī, Uṣūl, Vol. 2, p.12.

(23) Ṭabarī, op.cit., passim.

(24) Uṣūl, loc. cit.

(25) Jaṣṣās, Aḥkām, Vol. 2, p.598.

(26) Ibid.

(27) Ibid.

(28) Text, pp.79-83.

(29) I^{c}tibār, p.10.

(30) op.cit., p.70. He confines this idea to the reports of the Prophet.

(31) op.cit., loc. cit.

(32) cf. Ṭabarī, Tafsīr, on Q.2,106.

(33) Ibtāl al-Istiḥsān, p.301; cf. Shahrastānī, op.cit., Vol. 1, p.348.

(34) Abū ^{c}Abd Allāh Muhammad b. Ḥazm, K. al-nāsikh wa-l-mansūkh, published on the margin of Tafsīr al-Jalālain, Cairo, 1308/1890, p.133. The translation is from J. Burton, al-Nāsikh wa-l-mansukh, Ph.D. thesis presented to the S.O.A.S., University of London, 1970, p.46.

(35) Burton, al-Nasikh wa-l mansukh, p.47.

(36) I^{c}tibār, p.6.

(37) Suyūṭi, Itqān, (2 Vols) Cairo, 1370/1951, Vol. 1, p.12. Sarakhsī, Uṣūl, Vol. 2, pp.20-21.

(38) Risāla, p.128. (ليست تحتاج الى تفسير)

(39) Text, pp.73-4.

(40) op.cit., Vol. 4, p.462.

(41) Risāla, pp.235-38; Ikhtilāf al-Ḥadīth, p.532.

(42) Text, p.81.

(43) I^{c}tibār, p.135.

(44) Risāla, p.106, توسعة ، تخفيف ; Umm, Vol. 7, p.84.

(45) Ghazzālī, op.cit., Vol. 1, p.110; Text, p.10.

(46) Text, pp.22,80.

(47) cf. Q.75,36; Burton, al-Nāsikh wa-l mansūkh, p.73.

(48) Risāla, pp.121, 220.

(49) See below, p. 100.

(50) Text, p.20.

(51) Ibid., p.79.

(52) Naḥḥās, op.cit., p.13; cf. Makkī, op.cit., p.109.

(53) Ibid.

(54) Isfarā'inī, al-Nāsikh wa-l-mansūkh, Chester Beatty Library, Dublin, MS. No. 5246 (2), fo. 77.

(55) Ibid.

(56) Nāsikh, p.15, Ṭabarī, op.cit., Vol. 3, p.174.

(57) op.cit., p.111.

(58) Qurṭubi, op.cit., Vol. 2, p.66; Text, p.125.

(59) Risāla, p.121.

(60) op.cit., p.13.

(61) Ibid.,

(62) Nāsikh, p.16.

(63) Āmidī, Iḥkām fī uṣūl al-aḥkām, (3 Vols) Cairo, 1332/1913, Vol. 3, p.166.

(64) Ghazzālī, op.cit., Vol. 1, p.111; Sarakhsī, Uṣūl, Vol. 2, p.99.

(65) Aḥkām, Vol. 1, p.157; Sarakhsī, op.cit., loc. cit.

(66) Qurṭubī, op.cit., Vol. 6, p.75.

(67) Text, p.16; see below p.203.

(68) Ibid, pp.4-5. Marie Bernand, op.cit., p.630.

(69) Nāsikh, pp.3-4.

(70) Ibid., p.5.

(71) op.cit., p.4.

(72) op.cit., fo.70.

(73) According to the following version the Mosque was in Kūfa.

(74) Nāsikh, loc. cit.

(75) I^{c}tibār, p.6; Ibn Jawzī uses the word " قـاض " instead of " قـاص ", see al-Musaffā bi Akaf ahl al-Rasūkh min ^{c}ilm al-nasikh wa-l mansūkh, ed. Hātim Ṣalih al-Ḍāmin, al-Mawrid in S.O.A.S. Library, Per, 8L, 286846, pp.195-216.(1977)

(76) Nāsikh, loc. cit.

(77) Ibn Khuzaima, al-Mūjaz fī al-nāsikh wa-l mansūkh, printed in the same volume with Naḥḥās' al-Nāsikh wa-l mansūkh, pp.25-60.

(78) Ibn Hajar, Fath al-Bārī (17 Vols) Cairo, 1378/1959, Vol. 9, p.233.

(79) Bukhārī, Sahīh, (9 Vols) Cairo, 1377/1957, Vol. 6, on Q.2,106.

(80) Hindī, Kanz, (12 Vols) Ḥaiderabād, 1365/1945, Vol. 2, p.359.

(81) op.cit., fo. 70; Zarkashī, op.cit., Vol. 2, p.29.

(82) op.cit., p.260.

(83) I^{c}tibār, loc. cit.

(84) op.cit., p.4.

(85) Nāsikh, p.6.

(86) Text, pp.124, 145.

(87) Risāla, pp.108-10.

(88) I^{c}tibār, pp.24-5; Burton, Nāsikh, p.93.

(89) Jaṣṣāṣ, however, does not record these aḥādīth.

(90) Text, p.124.

(91) Jimā^{c} al-^{c}ilm, passim; Ibn Qutaiba, op.cit., passim.

(92) Nāsikh, loc. cit.

(93) Ibid, p.4; Ibn Jawzī, op.cit., p.198.

(94) op.cit., pp.56-7.

(95) Text, pp.6-7.

(96) op.cit., Vol. 1, p.107.

(97) Tafsīr, ed. Shākir, Vol. 2, p.472.

(98) Qurṭubī, op.cit., Vol. 2, p.62.

(99) Tafsīr, ed. Shākir, Vol. 8, p.12.

(100) Text, p.68.

(101) Muwatta', Vol. 1, p.294; I^{c}tibār, p.39.

(102) This doctrine is attributed to ibn ^{c}Abbās.

(103) Text, p.70.

(104) See below, p.163.

(105) Text, p.165.

(106) Naḥḥās, op.cit., p.121.

(107) Umm, Vol. 8, p.2.

(108) Text, p.74; Aḥkām, Vol. 2, p.408.

Chapter Five: The abrogation of the ruling but not of the wording.

(1) The Collection of the Qur'ān, p.46.

(2) Risala, p.138.

(3) Text, p.165; Aḥkām, Vol. 1, p.193.

(4) Ṭabarī, Tafsīr, ed. Shākir, Vol. 3, p.385.

(5) Ibid.

(6) Umm, Vol. 4, p.72. Shahrastānī lists Tāwūs (d.101 A.H.) under the rubric " رجال الشيعة ", op.cit., pp.319, 326.

(7) Aḥkām, loc. cit.

(8) Ibid.

(9) Muwaṭṭa', Vol. 2, p.765.

(10) Tafsīr, Vol. 5, p.62; M. Khuḍarī, op.cit., p.263.

(11) Risāla, pp.137-38.

(12) Ibid. p.139; al-Wāqidī, K. al Maghāzī, (3 Vols) London, 1386/1966, Vol. 2, p.836.

(13) Risāla, p.139.

(14) Umm, Vol. 4, p.99.

(15) Ṭabarī, Tafsīr, ed. Shākir, Vol. 3, pp.388-89.

(16) Risāla, p.145; According to Schacht this tradition dates from the second century, The origins, p.202; cf. Coulson, op.cit., pp.67-70.

(17) Aḥkām, Vol. 1, p.194.

(18) ᶜUthmān, op.cit., p.51.

(19) Makkī, op.cit., p.120.

(20) Tafsīr, loc. cit.

(21) Tafsīr, Vol. 2, p.263.

(22) Umm, Vol. 4, p.113.

(23) The ḥadīth was designed to establish that this was the final decision of the Prophet.

(24) Text, p.166.

(25) Ibid., p.165; Aḥkām, Vol. 1, p.190.

(26) Ibid., p.168.

(27) Uṣūl, Vol. 2, p.69.

(28) Naḥḥās, Nāsikh, p.74.

(29) Ṭabarī, Tafsīr, ed. Shākir, Vol. 5, p.256.

(30) Aḥkām, Vol. 1, pp.490-91.

(31) See above pp.111-2.

(32) Umm, Vol. 5, p.223.

(33) cf. J. Burton, Nāsikh, p.165.

(34) Naḥḥās, Nāsikh, loc. cit.

(35) Qurṭubī, op.cit., Vol. 3, p.224.

(36) Aḥkām, Vol. 1, p.491.

(37) Qurṭubī, op.cit., Vol. 3, p.174. Also see Burton, Nāsikh, p.143.

(38) Nāsikh, p.75.

(39) The ḥadīth conflict was harmonised.

(40) Tafsīr, ed. Shākir, Vol. 5, p.81; for translation cf. Burton Nāsikh, p.146.

(41) Umm, Vol. 5, p.230.

(42) Aḥkām, Vol. 1, p.497.

(43) Naḥḥās, Nāsikh, p.77. وفى الحديث من الفقه والمعانى واللغة شيء كثير فمن ذلك ايجاب الاحداد والامتناع من الزينة والكحل على المتوفى عنها زوجها.

(44) Umm, loc. cit.

(45) Aḥkām, Vol. 1, p.498.

(46) Qurṭubī, op.cit., Vol. 3, p.183.

(47) Aḥkām, Vol. 1, p.493.

(48) Umm, Vol. 5, p.216.

(49) Aḥkām, Vol. 3, p.563.

(50) This doctrine is attributed to Mahdawī (Qurṭubī, op.cit., Vol. 3, p.174).

(51) Shāfi^{c}ī says: "She is allowed to re-marry as soon as she gives birth but her husband is not allowed to assume sexual relations until she is completely purified." (Umm, Vol. 5, p.244).

(52) Aḥkām, Vol. 1, p.492; Sarakhsī, Mabsūṭ, Vol. 6, p.31; Uṣūl al-Jaṣṣās, fo. 72.

(53) Ibid; Umm, Vol. 5, p.224.

(54) Burton, al-Nāsikh wa-l mansūkh, p.153.

(55) Aḥkām, Vol. 3, p.558.

(56) Umm, Vol. 5, pp.226-27.

(57) Ibid.

(58) Mabsūṭ, Vol. 6, p.32.

(59) Umm, Vol. 5, p.235.

(60) Aḥkām, Vol. 1, p.498.

(61) Ibid.

(62) Nāsikh, p.78.

(63) Tafsīr, ed. Shākir, Vol. 5, p.225.

(64) Ibn al-ᶜArabī, Aḥkām al-Qur'ān, (4 Vols) Cairo, 1376/1957, Vol. 1, p.207.

(65) Ṭabarī, Tafsīr, ed. Shākir, Vol. 5, p.258.

(66) Qurtubī admits that the report from Mujāhid quoted by Ṭabarī is sound and confirmed. (Tafsīr, Vol. 3, p.227).

(67) M. ᶜAbduh, al-Aᶜmāl al-Kāmila, (4 Vols) Beirūt, 1972, Vol. 4, p.689.

Chapter Six: The abrogation of the wording but not of the ruling.

(1) Q.5,89.

(2) Text, p.51.

(3) Ṭabarī, Tafsīr, Vol. 7, p.30.

(4) Ibid.

(5) Text, pp.51-54.

(6) Uṣūl, Vol. 2, p.81.

(7) Tafsīr, loc. cit.

(8) Umm, Vol. 2, p.103.

(9) Ibid., Vol. 8, p.293.

(10) Ibid., cf. Ghazzālī, op.cit., Vol. 1, p.102.

(11) Q.58,3-4. والذين يظاهرون من نسائهم ثم يعودون لما قالوا فتحرير رقبة من قبل ان يتماسا ذلكم توعظون به ... فمن لم يجد فصيام شهرين متتابعين من قبل ان يتماسا ، فمن لم يستطع فاطعام ستين مسكينا ... عذاب اليم

(12) Q.4,92. ومن قتل مؤمنا خطأ فتحرير رقبة مؤمنة ودية مسلمة ... فمن لم يجد فصيام شهرين متتابعين توبة من الله ... حكيما.

Umm, Vol. 5, p.280.

(13) See above pp.33-4.

(14) Text, p.63; cf. Ibn Ḥazm, op.cit., Vol. 4, p.441.

(15) cf. Ṭabarī, Tafsīr, ed. Shākir, on Q.5,14; Q.5,41-44.

(16) Mālik, op.cit., Vol. 2, p.819; ibn Ḥajar, op.cit., Vol. 15, pp.174, 188.

(17) Ibid., p.823; cf. Baihaqī, Sunan, (10 Vols), Ḥaiderabād, 1344/1925, Vol. 8, p.211.

(18) Ṭabarī, Tafsīr, ed. Shākir, Vol. 10, pp.329-30.

(19) Ibid; According to Shāfi^{c}ī,v.42 was not abrogated. See Umm, Vol. 7, p.42.

(20) Ibid.

(21) Text, p.83.

(22) Ṭabarī, Tafsīr, ed. Shākir, Vol. 10, pp.329-32.

(23) Mālik, op.cit., loc. cit; Ibn Ḥajar, op.cit., Vol. 15, p.182.

(24) Ṭabarī, Tafsīr, ed. Shākir, Vol. 10, p.328.

(25) Ibid., p.303; For translation see Burton, Nāsikh, p.216.

(26) For the meaning of iḥsān consult J. Burton,"The meaning of Iḥsān". J.S.S. 1974, p.47.

(27) Ṭabarī, Tafsīr, ed. Shākir, Vol. 10, p.310.

(28) Ibid., p.304.

(29) cf. Suyūṭī, op.cit., Vol. 2, pp.26-7.

(30) Ṭabarī, Tafsīr, ed. Shākir, Vol. 10, p.312; Burton, Nāsikh, p.218.

(31) Ibid., p.338.

(32) Muwaṭṭa', Vol. 2, p.824.

(33) Baihaqī, op.cit., Vol. 8, p.211.

(34) Ibid., In this version the words " اذا زنيا " are missing.

(35) Aḥkām, Vol. 3, pp.317-8; For Abū Yūsuf's doctrine see Sarakhsī, Uṣūl, Vol. 2, p.100.

(36) See below p.163.

(37) Text, p.56; Also see Zarkashī, op.cit., Vol. 2, p.36.

(38) Ibid., p.58.

(39) For translation of the verse see above p.104.

(40) Aḥkām, Vol. 2, pp.128-29.

(41) Risāla, p.247.

(42) Aḥkām, Vol. 2, p.130.

(43) Text, p.20; Aḥkām, Vol. 3, p.314.

(44) See above pp.104-5.

(45) Text, pp.161-62.

(46) Tafsīr, Vol. 9, p.232.

(47) Uṣūl, Vol. 2, p.71.

(48) Text, loc. cit.

(49) Aḥkām, Vol. 3, p.315.

(50) Text, p.145.

(51) Ibid., p.75; Aḥkām, Vol. 3, p.316.

(52) See above p.148.

(53) See below p.172.

(54) Risāla, pp.128-32; Burton, Nāsikh, p.232.

(55) cf. Q.4,80.

(56) See above pp.52-53.

(57) Umm, Vol. 7, p.83.

(58) Ibid.

(59) Rāzī, op.cit., Vol. 9, p.231; cf. Baiḍāwī, Tafsīr, Cairo, 1305/1887, p.116.

(60) Baiḍāwī, op.cit., loc. cit.

(61) Risāla, p.250.

(62) Ibn Ḥajar, op.cit., Vol. 15, pp.141,147,148; cf. Ibn Ḥazm, op.cit., Vol. 2, p.191. و لا شك عندنا فى ان ماعزا جلد مع الرجم

(63) Risāla, p.246.

(64) Ibid., p.250.

(65) Umm, loc. cit.

(66) Risāla, p.247.

(67) The origins, p.15.

(68) See above pp.61,114.

(69) Text, p.162.

(70) Risāla, p.129.

(71) Ibid., p.132.

(72) Ibid., pp.64-67. Also see, Burton, Nāsikh, p.251.

(73) The same example is provided by Jaṣṣās for the takhṣīṣ of the Qur'ān by the sunna, see Uṣūl al-Jaṣṣās, fo. 20 (unedited portion).

(74) Ikhtilāf al-Ḥadīth, p.533.

(75) Ibn Ḥajar, op.cit., Vol. 15, p.127.

(76) Muwaṭṭa', Vol. 2, p.824.

(77) Ibn Ḥajar, op.cit., Vol. 15, pp.130,170.

(78) Nāsikh, p.255.

(79) Ṭabarī, Tafsīr, ed. Shākir, Vol. 8, pp.76-7.

(80) Text, p.163.

(81) Umm, loc. cit.

(82) Tafsīr, ed. Shākir, Vol. 8, p.80.

(83) Ibn Ḥajar, op.cit., Vol. 15, pp.130,181.

(84) Jimāᶜ al-ᶜilm, p.274.

(85) Ikhtilāf al-Ḥadīth, loc. cit.

(86) Umm, Vol. 7, p.163.

(87) Ibid., "The Book" here means Q.24,2.

(88) Ibn Hajar, op.cit., Vol. 15, p.129.
Ibn Ḥazm follows this doctrine, op.cit., Vol. 2, p.191.

(89) Itqān, Vol. 1, p.58; cf. p.60.

(90) ibn al-ᶜArabī, op.cit., Vol. 1, p.361.

(91) See above pp.33,143; Burton, Nāsikh, p.287; The Collection, p.86.

(92) Naskh: bayān lil azmān; takhṣīṣ: bayān lil aᶜyān.

(93) That the Jews came to consult the Prophet was also a doctrine of Zuhrī. See Ṭabarī, op.cit., ed. Shākir, Vol. 10, pp.303,325.

(94) Muwaṭṭa', Vol. 2, p.819; Sarakhsī, Uṣūl, Vol. 2, p.100; Burton, Nāsikh, p.300; Uṣūl al-Jaṣṣās, fo. 159 (unedited portion).

Chapter Seven: The abrogation of both the ruling and the wording.

(1) Text, p.54.

(2) Aḥkām, Vol. 1, p.67.

(3) Qurṭubī, op.cit., Vol. 20, p.19; cf. Text, p.55.

(4) Ibn Ḥajar, op.cit., Vol. 2, p.50.

(5) Text, loc. cit.

(6) Rāzī, op.cit., Vol. 31, p.141.

(7) Ibid.

(8) Ibid.

(9) Ibid.

(10) Abū Ḥayyān, al-Baḥr al-Muḥīṭ, (8 Vols) 1969, Riyāḍ, Vol. 8, p.459.

(11) Rāzī, op.cit., loc. cit.

(12) Suyūṭī, op.cit., Vol. 2, p.26.

(13) Hibat Allāh, op.cit., p.5; Ibn al-Bārizī, Nāsikh al-Qur'ān, Beirūt, 1983, p.19.

(14) Suyūṭī, al-Durr al-Manthūr, (6 Vols) n.d. Būlāq, Vol. 1, p.104.

(15) Ṭabarī, op.cit., ed. Shākir, Vol. 2, p.474.

(16) Abū Ḥayyān, op.cit., Vol. 8, p.458.

(17) For all these interpretations, consult, Ṭabarī, op.cit., loc. cit.

(18) Bukhārī, op.cit., Vol. 6, pp.331,333.

(19) Tafsīr, loc. cit.

(20) Rāzī, op.cit., loc. cit.

(21) Ibid.

(22) J. Burton, "The interpretation of Q.87,6-7 and the theories of naskh", Der Islam, August 1985, p.12.

(23) Ibid., p.19.

Chapter Eight: Jaṣṣāṣ' concept of naskh.

(1) Text, p.145.

(2) Ibid., p.124.

(3) Risāla, p.106.

(4) Text, loc. cit.

(5) Ibid, p.19; cf. M. Zaid, op.cit., Vol. 1, p.62.

(6) Sarakhsī, Uṣūl, Vol. 2, p.54; cf. Rāzī, op.cit., on Q.2,106.

(7) Text, pp.1-4.

(8) cf. Ṭabari, Tafsir, ed. Shakir, on Q.2,106.

(9) cf. Rāzī, op.cit., on Q.2,106.

(10) Text, loc. cit.

(11) Ibid.

(12) Aḥkām, Vol. 1, p.67; For Abū Muslim al-Isfahānī's view, see Nūr al-Dā'im, The charge of Shī^{c}ism against Ṭabarī, Ph.D. thesis presented to the University of Edinburgh, 1969, p.115.

(13) Text, p.16; For Shī^{C}a views on the doctrine of Badā', see al-Khū'ī, al-Bayān fī Tafsīr al-Qur'ān, al-Najf, 1966, p.409.

(14) Text, p.18; Also see Abū-l-Ma^{C}ālī, Uṣūl al-fiqh, 2 Vols, Qaṭar, 1979, Vol. 2, p.1302.

(15) Ibid., p.14.

(16) Aḥkām, loc. cit.

(17) Text, p.51.

(18) Makkī, op.cit., p.54.

(19) Tafsīr, ed. Shākir, Vol. 2, p.478; Burton, "The exegesis of Q.2,106 and the Islamic theories of naskh", Bulletin of the School of Oriental and African Studies, University of London, Vol. XLVIII, part 3, 1985, p.469.

(20) Tafsīr, ed. Shākir, Vol. 2, p.479; cf. above p.194.

(21) Text, p.56. According to some,the first report was abrogated by Q.3,169.

(22) Ibid.

(23) Ibid., p.63.

(24) J. Burton, "Those are the high-flying cranes," J.S.S., XV, 2, 1970, p.251.

(25) Tafsir, ed. Shakir, Vol. 8, p.86.

(26) Ibid., Vol. 2, p.472; Also see above p.103.

(27) Text, p.150; Also see ibn Ḥazm, op.cit., Vol. 4, p.477.

نسخ الـــــــــــــــوحى بالـــــــــــــــوحى جـــــــــــائـــز

(28) Ibid.

(29) Tafsīr, Vol. 2, pp.65-66.

(30) Tafsīr, on Q.2,106.

(31) cf. Ikhtilāf al-Ḥadīth, p.533.

(32) Ghazzālī, op.cit., Vol. 1, p.124.

(33) Text, p.125.

(34) Ibid., p.128.

(35) Ibid., p.136.

(36) Risāla, p.110; For Shāfi^{C}ī's theory of naskh, see above, p.57.

(37) Ibid., pp.107,122.

BIBLIOGRAPHY

ᶜABDUH, Muḥammad, al-Aᶜmāl al-Kāmila, 4 vols, al-Mu'assasāt al-ᶜArabīya lil Dirāsāt wa-l Nashr, Beirūt, 1972.

ABŪ ᶜABD ALLĀH, Muḥammad b. Ḥazm, K. fī maᶜrifat al-nāsikh wa-l mansūkh, printed on the margin of Tafsīr al-Jalālain, ᶜĪsā al-Ḥalabī Press, Cairo, 1308/1890.

ABŪ ḤANĪFA, Nuᶜmān b. Thābit, al-Fiqh al-Akbar, Dā'irat al-Maᶜārif Press, Ḥaiderabād, 1373/1953.

ABŪ ḤAYYĀN, Muḥammad b. Yūsuf, al-Baḥr al-Muḥīt, 8 vols, Maktabat al-Naṣr al-Ḥadītha, Riyāḍ, 1969.

ABŪ MAᶜĀLĪ, ᶜAbd al-Malik, Uṣūl al-fiqh, 2 vols, Qaṭar, 1399/1979.

ABŪ NUᶜAIM, Aḥmad b. ᶜAbd Allāh al-Iṣbahānī, Ḥilyat al-Awliyā', 10 vols, Maktabat al-Khānjī, Cairo, 1355/1936.

ABŪ YŪSUF, Yaᶜqūb b. Ibrāhīm, K. al-Āthār, ed. Abū al-Wafā' al-Afghānī, al-Istiqāma Press, Ḥaiderabād, 1355/1936.

K. al-Kharāj, Salafiyya Press, Cairo, 1352/1933.

al-Radd ᶜala Siyar al-Auzāᶜī, ed. Abū al-Wafā'al-Afghānī, Lajnat Iḥyā' al-Maᶜarif al-Nuᶜmānīyya, Ḥaiderabād, 1357.

AL-ĀMIDĪ, Abū al-Ḥasan ᶜAlī b. ᶜAlī, Iḥkām fī Uṣūl al-aḥkām, 3 vols, Mu'assasāt al-Ḥalabī bil Nashr wa-l Tauzīᶜ, Cairo, 1332/1913.

AL-BAGHDĀDĪ, Aḥmad b. ᶜAlī al-Khaṭīb, Ta'rīkh Baghdād, 14 vols, Dār al-Kitāb al-ᶜArabī, Beirūt, n.d.

AL-BAIḌĀWĪ, ᶜAbd Allāh b. ᶜUmar, Anwār al-Tanzīl, Cairo, 1305/1887.

AL-BAIHAQĪ, Aḥmad b. al-Ḥusain, al-Sunan al-Kubrā, 10 vols, Dā'irat al-Maᶜārif Press, Ḥaiderabād, 1344/1925.

BELL, R., Introduction to the Qur'ān, Edinburgh, 1953.

BERNAND, M., 'Ḥanafī Uṣūl al-fiqh through a Manuscript of al-Jaṣṣāṣ,' J.A.O.S, vol. 15, no. 4, December 1985, pp.623-35.

al-BUKHĀRĪ, Abū ᶜAbd Allāh Muḥammad b. Ismāᶜīl, Ṣaḥīḥ, 9 vols in 3, Muṣṭafā al-Ḥalabī Press, Cairo, 1377/1957.

BURTON, J., The collection of the Qur'ān, Cambridge, 1977.
'Those are the high-flying Cranes,' J.S.S, XV,2, 1970, pp.246-65.
'The exegesis of Q.2,106 and the Islamic theories of naskh,' S.O.A.S, vol. XLVIII, Part 3, 1985, pp.452-69.
'The interpretation of Q,87,6-7 and the theories of naskh,' Der Islam, August 1985, pp.5-19.
'The meaning of Iḥsān,' J.S.S, 1974, p.47.
al-Nāsikh wa-l Mansūkh, unpublished Ph.D. thesis presented to the School of Oriental and African Studies, University of London, 1970, Aslib Index to theses, vol. XX, 1969-70, p.6.

COULSON, N.J., A History of Islamic Law, Edinburgh, 1978.

al-DĀRIMĪ, Abū Muḥammad ᶜAbd Allāh b. ᶜAbd al-Raḥmān, Sunan, 2 vols in 1, Dār al-Maḥāsin Press, Cairo, 1386/1966.

al-DĀRA QUṬNĪ, ᶜAlī b. ᶜUmar, Sunan, 4 vols in 2, Cairo, 1386/1966.

al-DAWĀLĪBĪ, Muḥammad Maᶜrūf, al-Madkhal fi ᶜilm Uṣūl al-fiqh, Beirūt, 1385/1965.

al-DHAHABĪ, Abū ᶜAbd Allāh Shams al-Dīn Muḥammad, Tadhkirat al-Ḥuffāẓ, 3 vols, Ḥaiderabād, 1377/1957.

ENCYCLOPAEDIA OF ISLAM, quoted as E.I., Leiden-London, 1927-60.

al-GHAZZĀLĪ, Abū Ḥāmid Muḥammad b. Muḥammad, K. al-Mustaṣfā min ᶜilm al-Uṣūl, 2 vols, Būlāq, 1322/1904.

GOLDZIHER, I., Muslim Studies, vol. 2, George Allen & Unwin Ltd, London, 1971, (Translated from the German by C.R. Barber & S.M. Stern).

HAMADHĀNĪ, Abū Bakr Muḥammad b. Musā b. ᶜUthmān b. Ḥāzim, K. al-Iᶜtibār fī bayān al-nāsikh wa-l mansūkh min al-āthār, Matbaᶜat al-Andalus, Ḥimṣ, 1386/1980.

HIBAT ALLAH, Abu al-Qasim b. Sallama, al-Nasikh wa-l mansukh, Muṣṭafā al-Ḥalabī Press, Cairo, 1386/1967.

HINDĪ, ᶜAlī al-Muttaqī, Kanz al-ᶜUmmāl, 12 vols, Dā'irat al-Maᶜārif Press, Ḥaiderabād, 1365/1945.

IBN AL-ᶜARABĪ, Abū Bakr Muḥammad b. ᶜAbd Allāh, Aḥkām al-Qur'ān, 4 vols, ᶜĪsā al-Ḥalabī Press, Cairo, 1376/1957.

IBN AL-ATHĪR, Muḥammad b. ᶜAbd al-Karīm b. ᶜAbd al-Wāhid, al-Kāmil fil Ta'rīkh, 9 vols, al-Munīrīyya Press, Cairo, 1353/1934.

IBN ḤAJAR, Shihāb al-Dīn Aḥmad b. ᶜAlī b. Muḥammad, Fatḥ al-Bārī bi-Sharḥ al-Bukhārī, 17 vols, Muṣṭafā al-Ḥalabī Press, Cairo, 1378/1959.

IBN ḤANBAL, Aḥmad, Musnad, 6 vols, Dār Ṣādir, Beirūt, 1389/1969.

IBN ḤAZM, Abū Muḥammad ᶜAlī b. Aḥmad al-Ẓāhirī, Iḥkām fī Uṣūl al-aḥkām, 8 vols in 2, al-Imām Press, Cairo, 1380/1960.
al-Muḥallā, 11 vols, al-Munīrīyya Press, Cairo, 1352/1933.

IBN AL-JAWZĪ, Abū al-Farj Jamāl al-Dīn ᶜAbd al-Raḥmān, Zād al-Masīr fī ᶜilm al-Tafsīr, 9 vols, Damascus, 1385/1965.
'al-Muṣaffā bi Akaf ahl al-Rasūkh min ᶜilm al-nāsikh wa-l mansūkh,' ed. Ḥātim Ṣāliḥ al-Ḍāmin, al-Mawrid, (Baghdād), pp.195-216.

IBN KATHĪR, Abū al-Fidā' , al-Bidāya wa-l Nihāya, 14 vols in 7, Maktabat al-Maᶜārif, Beirūt, 1386/1966.
Tafsīr al-Qur'ān, 4 vols, ᶜĪsā al-Ḥalabī Press, Cairo, I370/I950.

IBN KHALDŪN, ᶜAbd al-Raḥmān, Ta'rīkh, 7 vols, Dār al-Kitāb al-Lubnānī, Beirūt, 1376/1956.

IBN KHUZAIMA, al-Muzaffar b. al-Ḥasan b. Zaid b. ᶜAlī, al-Mūjaz fī al-nāsikh wa-l mansūkh, printed in the same volume with Naḥḥās' al-Nāsikh wa-l mansūkh, (see below p. 239).

IBN MĀJA, Abū ᶜAbd Allāh Muḥammad b. Yazīd, Sunan, 2 vols, ᶜĪsā al-Ḥalabī Press, Cairo, 1372/1952.

IBN AL-NADĪM, Muḥammad b. Isḥāq, al-Fihrist, 2 vols, London, 1970.

IBN QUTLŪBGHĀ, Zain al-Dīn Qāsim, Tāj al-Tarājim fī Ṭabaqāt al-Ḥanafīyya, al-ᶜĀnī Press, Baghdād, 1382/1962.

IBN QUTAIBA, Abū Muḥammad ᶜAbd Allāh b. Muslim, Ta'wīl Mukhtalaf al-Ḥadīth, ed. Muḥammad Zuhrī al-Najjār, Dār al-Jīl, Beirūt, 1393/1973.

IBN SAᶜD, Muḥammad, al-Ṭabaqāt al-Kubrā, 8 vols, Dār Ṣādir, Beirūt, 1956.

ISFARĀ'ĪNĪ, Abū ᶜAbd Allāh Muḥammad b. ᶜAbd Allāh, al-Nāsikh wa-l mansūkh, Chester Beatty Library, Dublin, Manuscript no. 5246,2.

AL-JAṢṢĀṢ, Abū Bakr Aḥmad b. ᶜAlī al-Rāzī, Aḥkām al-Qur'ān, 3 vols, al-Bahīyya Press, Cairo, 1347/1928.
Uṣūl al-Jaṣṣāṣ, Dār al-Kutub al-Miṣrīya, Cairo, Manuscript no. 229 Uṣūl.

JEFFERY, A., Materials for the History of the Text of the Qur'ān, E.J. Brill, Leiden, 1937.

KAḤḤĀLA, ᶜUmar Riḍā, Muᶜjam al-Mua'llifīn, 15 vols, Damascus, 1957.

KAWTHARĪ, Muḥammad Zāhid, Maqālāt, Cairo, 1388/1977.

KHALLĀF, ᶜAbd al-Wahhāb, ᶜIlm Uṣūl al-fiqh, Cairo, 1397/1977.

KHUḌARĪ, Muḥammad, Uṣūl al-fiqh, Cairo, 1329/1911.

KHADDŪRĪ, Muḥammad, Uṣūl al-fiqh (Shāfiᶜī's Risāla), Baltimore, 1961.

al-KINDĪ, Abū ᶜUmar Muḥammad b. Yūsuf, K. al-Wulāt wa-l Quḍāt, ed. Rhuvon Guest, al-Abā' al-Yasūᶜiyīn Press, Beirūt, 1908.

MAKKĪ, Abū Muḥammad Makkī ibn Abī Ṭālib, al-Īḍāh li nāsikh al-Qur'ān wa mansūkhihi, ed. Aḥmad Ḥasan Farḥāt, Riyāḍ, 1369/1976.

MĀLIK B. ANAS, Muwaṭṭa', ed. M.F. ᶜAbd al-Bāqī, 2 vols, ᶜĪsā al-Ḥalabī Press, Cairo, 1370/1951.

MUSLIM, Abū Ḥusain Muslim b. al-Ḥajjāj, Saḥīḥ, ed. M.F. ᶜAbd al-Bāqī, 8 vols in 2, ᶜĪsā al-Ḥalabī Press, Cairo, 1375/1955.

al-NAḤḤĀS, Abū Jaᶜfar Muḥammad b. Aḥmad b. Ismāᶜīl al-Ṣaffār, K. al-nāsikh wa-l mansūkh, Zakī Mujāhid Press, Cairo, n.d.

al-NASAFĪ, Abū al-Barakāt ᶜAbd Allāh b. Aḥmad, Tafsīr, 4 vols in 2, Muḥammad ᶜAlī Ṣabīḥ Press, Cairo, 1385/1966.

al-NASĀ'Ī, Abū ᶜAbd al-Raḥmān, Sunan, 8 vols in 4, Beirūt, n.d.

al-PAZDAWĪ, ᶜAlī b. Muḥammad, Kashf al-Asrār, 4 vols, Istanbūl, 1307/1889.

al-QURṬUBĪ, Abū ᶜAbd Allāh Muḥammad b. Aḥmad, al-Jāmiᶜ li aḥkām al-Qur'ān, 20 vols in 10, Dār al-Kutub, Cairo, 1373/1954.

RIPPIN, A., 'Naskh al-Qur'ān and the problem of early Tafsīr texts,' B.S.O.A.S. November 1984, pp. 22-43.

al-RĀZĪ, Abū ᶜAbd Allāh Muḥammad b. ᶜUmar Fakhr al-Dīn, Mafātīḥ al-Ghaib (al-Tafsīr al-Kabīr), 32 vols in 16, Dār al-Kutub al-ᶜilmīyya, Ṭehrān, n.d.

SAᶜĪD ALLĀH QĀḌĪ, Principles of Muslim Jurisprudence (Chapters on Qiyās and Ijtihād by al-Jaṣṣās), Lahore, 1981.

al-SARAKHSĪ, Muḥammad b. Aḥmad, al-Mabsūṭ, 30 vols in 15, al-Saᶜāda Press, Cairo, 1324/1906.

Uṣūl, ed. Abū al-Wafā' al-Afghānī, 2 vols, al-Nuᶜmānīyya Press, Ḥaiderabād, 1372/1952.

SAYYID, Fu'ād, Fihris Makhṭūṭāt, 3 vols, Cairo, 1347/1954.

SCHACHT, J., The Origins of Muhammadan Jurisprudence, Oxford, 1979.

Introduction to Islamic Law, Oxford, 1964.

SEZGIN, F., Geschichte des Arabischen Schrifttums, 7 vols, E.J. Brill, Leiden, 1387/1967.

al-SHĀFIᶜĪ, Muḥammad b. Idrīs, Risāla, ed. Aḥmad Muḥammad Shākir, Cairo, 1358/1939.

K. al-Umm, 8 vols. in 3, Ḥusain Muḥammad al-Bābī Press, Cairo, 1381/1961.

K. Ikhtilāf al-Ḥadīth, printed on the margin of the Umm.

K. Ikhtilāf ᶜAlī wa ibn Masᶜūd, printed in the Umm, vol. 7.

K. Jimāᶜal-ᶜilm, printed in the Umm, vol. 7.

K. Ibṭāl al-Istiḥsān, printed in the Umm, vol. 7.

K. Siyar al-Auzāᶜī, printed in the Umm, vol. 7.

Bayān Farā'iḍ Allāh, printed in the Umm, vol. 7.

al-SHAHRASTĀNĪ, Muḥammad b. ᶜAbd al-Karīm, K. al-Milal wa-l Niḥal, 3 vols, Maktabat al-Ḥusain al-Tijārīya, Cairo, 1386/1968.

al-SHAIBĀNĪ, Muḥammad b. al-Ḥasan, K. al-Siyar al-Kabīr, ed. Muḥammad Khaddūrī, Maryland, 1966.

al-SHĀṬIBĪ, Abū Isḥaq Ibrāhīm b. Musā, al-Muwafāqāt fi Uṣūl al-aḥkām, 4 vols, Ṣabīḥ Press, Cairo, 1969.

al-SHAWKĀNĪ, Muḥammad b. ᶜAlī b. Muḥammad, Fath al-Qadīr, 5 vols, Cairo, 1349/1930.

al-SUYŪṬĪ, Jalāl al-Dīn ᶜAbd al-Raḥmān, al-'Itqān fi ᶜUlūm al-Qur'ān, 2 vols, Muṣṭafā al-Ḥalabī Press, Cairo, 1370/1951.
al-Durr al-Manthūr fī al-Tafsīr bil Mā'thūr, 6 vols, Būlāq, n.d.

al-ṬABARĪ, Abū Jaᶜfar Muḥammad b. Jarīr, Jāmiᶜ al-Bayān ᶜan Ta'wīl āy al-Qur'ān, ed. Muḥammad and Aḥmad Muḥammad Shākir, 15 vols to date, Dār al-Maᶜārif Press, Cairo, 1380/1960.
op cit, second edition, 30 vols. in 12, Muṣṭafā al-Ḥalabī Press, Cairo, 1373/1954.
Annales, Tertia Series, (1-4), E.J. Brill, Bat, 1964.

al-ṬAḤĀWĪ, Abū Jaᶜfar Aḥmad b. Muḥammad, Sharḥ Maᶜānī al-Āthār, 4 vols, Cairo, 1386/1966.

ᶜUTHMĀN, Hājī, Shāfiᶜī and the interpretation of the role of the Qur'ān and the Ḥadīth, unpublished Ph.D. thesis presented to the University of St. Andrews, July 1976.

al-WĀQIDĪ, Muḥammad b. ᶜUmar b. Wāqid, K. al-Maghāzī, ed. J.M.B. Jones, 3 vols, London, 1386/1966.

WATT, W.M., Bell's Introduction to the Qur'ān, Islamic Surveys (8), Edinburgh, 1970.

ZAID, Muṣṭafā, al-Naskh fil Qur'ān al-Karīm, 2 vols, Dār al-Fikr al-ᶜArabī, Cairo, 1383/1963.

al-ZARKASHĪ, Badr al-Dīn Muḥammad b. ᶜAbd Allāh, al-Burhān fī ᶜUlūm al-Qur'ān, 4 vols, ᶜĪsā al-Ḥalabī Press, Cairo, 1376/1957.

PAGE NUMBERING AS ORIGINAL

NOTES

THE FOLLOWING NOTES ARE ARRANGED ACCORDING TO THE TOPICS OF THE TEXT.

فصل في الكلام في ماهية النسخ

(I) al-Sarakhsī, Usūl al-fiqh, (2 Vols) Haiderabad, I372/I952, Vol.2, p.53.

قال السرخسى : اعلم بأن الناس تكلموا في معنى النسخ لغة فقال بعضهم : هـو عبارة عن النقل ، من قول القائل : نسخت الكتاب اذا نقله من موضع الى موضـع. و قال بعضهم : هو عبارة عن الابطال ، من قولهم نسخت الشمس الظل : اى ابطلته. و قال بعضهم : هو عبارة عن الازالة ، من قولهم نسخت الرياح الآثار : اى ازالتها. و كل ذلك مجاز لا حقيقة .

It seems that al-Sarakhsī has borrowed this statement from al-Jassās.

(2) al-Sarakhsī, op.cit., loc.cit.

فان حقيقة النقل أن تحول عين الشيء من موضع الى موضع آخر و نسخ الكتاب لا يكون بهذه الصفة اذ لا يتصور نقل عين المكتوب من موضع الى موضع آخر و انمـا يتصور اثبات مثله في المحل الآخر. وكذلك في الاحكام فانه لا يتصور نقل الحكم الذى هو منسوخ الى ناسخه و انما المراد اثبات مثله مشروعا في المستقبل او نقل المتعبد من الحكم الاول الى الحكم الثانـــــــــــــــــــــــــي.

See Makkī, al-Īdāh li nāsikh al-Qur'ān wa mansūkhihi, al-Riyād, I369/I976, p.4I.

Cf. Rāzī, al-Tafsīr al-Kabīr, (32 Vols) Tehrān, n.d.,Vol.3, p.226.

Cf. Tabarī, Jāmi^{c} al-Bayān ^{c}an Ta'wīl āy al-Qur'ān, (I5 Vols to date) Cairo, I380/I960, Vol.2, p.47I.

Cf. Āmidī, Ihkām fī Usūl al-ahkām,(3 Vols) Cairo, I332/I9I3, Vol.3, p.I60.

(3) al-Sarakhsī, op.cit., loc.cit.

و كذلك معنى الازالة فان ازالة الحجر عن مكانه لا يعدم عينه و لكن عينه باق فـي المكان الثاني و بعد النسخ لا يبقى الحكم الاول ، و لو كان حقيقة النسخ الازالة لكان يطلق هـــــــــــــــذا الاسم على كل مـــــــــــــــــــا توجد فيه الازالة و أحد لا يقول بـــــــــــــــــــــــــــــذلك.

Cf. Rāzī, op.cit., loc.cit.

(4) Q.45,29.

(5) al-Sarakhsī, op.cit., loc.cit.
وكذلك لفظ الابطال فان بالنص لا تبطل الآية وكيف تكون حقيقة النسخ الابطال وقد أطلق الله تعالى ذلك في الاثبات بقوله تعالى : (انا كنا نستنسخ ما كنتم تعملون).
And see Suyūṭī, Itqān fī ʿUlūm al-Qur'ān, (2 Vols) Cairo, I370/I95I, Vol.2, p.2o.
Cf. Nahḥās, al-Nāsikh wa-l mansūkh, Cairo, n.d., p.8.

(6) al-Nasafī, Tafsīr, (4 Vols) Cairo, I385/I966, Vol.I, p.63.
تفسير النسخ لغة التبديل وشريعة بيان انتهاء الحكم الشرعي المطلق الذي تقرر في اوهامنا استمراره بطريق التراخي.
See M. Zaid, al-Naskh fī-l Qur'ān al-Karīm, (2 Vols) Cairo, I383/I963, Vol.I, pp.82-3.
فان هذا التعريف كان نواة لتعريفات ستة، طوال خمسة قرون، فقد عرفه عبد القاهر البغدادي بأنه "بيان انتهاء مدة التعبد"، ثم عرفه الامام ابن حزم بأنه "بيان انتهاء زمان الامر الاول فيما لا يتكرر"، وبعد أكثر من قرنين من الزمان — عرفه شهاب الدين القرافي بأنه "بيان لانتهاء مدة الحكم"، والقاضي البيضاوي — وكان معاصرا للقرافي — بأنه "بيان انتهاء حكم شرعي متراخ عنه".

(7) See p.4, note.9.

(8) al-Jassās, Aḥkām al-Qur'ān, (3 Vols) Cairo, I347/I928, Vol.I, p.67.
قال قائلون النسخ هو الازالة وقال آخرون هو الابدال قال الله تعالى : (فينسخ الله ما يلقي الشيطان) اي يزيله ويبطله ويبدل مكانه آيات محكمات وقيل هو النقل من قوله: (انا كنا نستنسخ ما كنتم تعملون) وهذا الاختلاف انما هو في موضوعه في اصل اللغة ومهما كان في اصل اللغة معناه فانه في اطلاق الشرع انما هو بيان مدة الحكم والتلاوة والنسخ قد يكون في التلاوة مع بقاء الحكم ويكون في الحكم مع بقاء التلاوة دون غيره.
From this statement it is clear that Jassās acknowledges only two modes of naskh i.e. naskh al-ḥukm dūna al-tilāwa and naskh al-tilāwa dūna al-ḥukm. Cf. Text, p.54; Introduction, p.I89.
Cf. Qurṭubī, al-Jāmiʿ li aḥkām al-Qur'ān, (20 Vols) Cairo, I373/I954, Vol.2, p.62.

(9) Q.2,I06.

باب القول فيما يجوز نسخه و ما لا يجوز

(I) Sa^{c}īd Allāh Qādī, Principles of Muslim Jurisprudence, (chapters on Qiyās and Ijtihād by al-Jassās) Lahore, I98I, p.93.

ان العبادات ترد من الله تعالى على انحاء ثلاثة (الاول) واجب في العقل فيرد الشرع بايجابه تأكيدا ، لما كان في العقل من حاله، و ذلك نحو التوحيد و صدق الرسول صلى الله عليه و سلم و شكر المنعم و الانصاف و ما جرى مجـــــــراه .

(2) Sa^{c}īd Allāh Qādī, op.cit., loc.cit.

و الثاني ، محظور في العقل ، فيرد الشرع بحظره تأكيدا ، لما كان في العقل من حكمه قبل وروده (نحو) الكفر و الظلم و الكذب و سائر المقبحات في العقـــول .

(3) Sa^{c}īd Allāh Qādī, op.cit., loc.cit.

فهذان البابان لا يجوز ورود الشرع فيهما بخلاف ما في العقل و لا يجـــــوز فيهما النسخ و التبديـــل .

(4) Sa^{c}īd Allāh Qādī, op.cit., loc.cit.

و قسم ثالث و هو واسطة بينهما ، ليس في العقل حظره ، و لا ايجابه الا علـــــى حسب ما تقتضيه حاله من حسن او قبح ، و في العقل تجويز كونه من خبر الواجب ، او المحظور، او المباح ، فاذا حظره السمع علمنا قبحه ، و ان اوجبه او اباحه علمنا حسنه .

And see Jassās, op.cit., Vol.2, pp.34,90.

(5) The old name of the three days following the day of immolation (IOth of dhul hijja) during the Hajj festival.

See M. Cowan, Arabic English Dictionary, 3rd edition, New York, I976, p.468.

(6) Cf. Tabarī, op.cit., loc.cit.

And cf. Nahhās, op.cit., p.IO.

(7) See p.I4, note.3.

And see al-Sarakhsī, op.cit., Vol.2, p.58.

و نحن نجوز ذلك في الاخبار ايضا بأن تترك التلاوة فيه حتى يندرس و ينعـــدم حفظـــــــه في قلوب العباد كما فـــــــــي الكتب المقدمـــــة .

(8) al-Sarakhsī, op.cit., Vol.2,p.59.

قال السرخسي :

الا ترى انه لا يستقيم أن يقال اعتقدوا الصدق في هذا الخبر الى وقت كذا ثـــــم اعتقدوا فيه الكذب بعد ذلك . و القول بجواز النسـخ في معاني الاخبار يؤدى الى هذا لا محالة و هو البـــــــــــــــــداء .

(9) Badā', appearance; In the dogmatic sense, the intervention of new circumstances which bring about the alteration of an earlier Divine determination.
E.I. London, I927-60, Vol.I, p.550.
Cf. M. Zaid, op.cit.,Vol.I, p.20.
And cf. Nahhās, op.cit.,p.II.

(I0) Q.5,I0I.

(II) Q.2,284.

(I2) Q.I3,39.

(I3) The mother of the book is the original copy of the Qur'ān which exists with God in Heaven.
See Baidāwī, Anwār al-Tanzīl, Cairo, I305/I887, p.334.

" The original of the Qur'ān is thought of as a book preserved in the seventh Heaven in the presence of God. This is assumed to be what is meant by the preserved tablet (lawh mahfūz) spoken of in LXXX,22. Sometimes it is thought of as having been sent down to the nearest Heaven on the night of power, lailat al-qadar, described in XCVII, so as to be available for revelation to the Prophet by the angel Gabriel."
See Bell,R., Introduction to the Qur'ān , Edinburgh, I953, p.37.

And see Khaddūrī, Muhammad, Usūl al-fiqh (Shāfi'ī's Risāla), Baltimore, I96I, p. I24.

(I4) Qurtubī, op.cit.,Vol.9, p.33I.
Tabarī, op.cit., second edition, Cairo, I373/I954, Vols. I3-5, p.I69.

حدثنى المثنى ، قال : حدثنا عبد الله بن صالح ، قال : ثنى معاوية ، عن علـى ، عن ابن عباس (يمحو الله ما يشاء) قال : من القران ، يقول يبدل الله ما يشاء ، فينسخه و يثبت مـــــــــــــــــا يشاء فلا يبدلـــــــــــــــه ، عنده ام الكتاب، يقول : و جملة ذلك عنده في ام الكتـــــــــــــــاب الناسخ و المنسوخ ، و ما يبدل و ما يثبت، كل ذلك في الكتـــــــــــاب.

(I5) Tabarī, op.cit., loc.cit.

حد ثنى يونس ، قال : اخبرنا ابن وهب، قال : قال ابن زيد في قوله: (يمحـو الله ما يشاء) مما ينزل على الانبياء (و يثبت) ما يشاء: مما ينزل على الانبياء ، قال : (و عنده ام الكتاب) لا يغيـــــــــــــــــــــــــــــــر و لا يبدّل.

(I6) See ibn Kathīr, Tafsīr al-Qur'ān, (4 Vols) Cairo, I370/ I950, Vol.2, p.520.

قال الحسن البصرى : (يمحو الله ما يشاء و يثبت) قال : من جاء اجله يذ هب و يثبت الذى هو حى يجرى الى اجلـــــــــــــــــــــــــــــــه.

And see Tabarī, op.cit., loc.cit.

فصل

(I) See Text, p.26.

(2) See Muhammad al-Khudarī, Usūl al-fiqh, Cairo, I329/I9II, pp.309-I0.

من الاحكام الشرعية ما ينص الشرع على تأبيده بطريقة الخبر نحو الجهاد ماضر الى يوم القيامة و منها ما ينص على تأبيده بطريقة الانشاء و قد يتبع هذا النـص بتأكيد التأبيد و قد اختلفوا فى ورود النسخ على مثل هذه الاحكام فاختـــار بعضهم امتناع النسخ اذا اكد نص التابيد اما اذا لم يؤكد فلا و راى اخرون ان الممتنع ورود النسخ عليه انما هو ما جاء على طريق الخبر كالحد يث الذى اورد ناه لانه يلزم من نسخه الكذب و اختار ائمة الحنفية كابى منصور الماتريدى و ابى بكر الجصاص و شمس الائمة و فخر الاسلام امتناع نسخ الحكم المنصـوص على تأبيده مطلقا و هو الظاهر لان التأبيد و النسخ متناقضان اذ ان الاول يقتضى بقاء الحكم ابدا و الثانى يقتضى رفعه و الاول يقتضى حسن الفعـــل فى جميع الاوقات و الثانى يقتضي قبحه فى بعضها و بعد فانه لم يحصل فـــى الشريعة نسخ حكم مـــــــــــــــــن هذا النوع فالاشتغـــــال بالجدال فيه مضيعة للـــــــــــــــــــــــــــــــوقت.

(3) See Abū-l-Maʿālī ʿAbdul Malik ibn ʿAbd Allāh b. Yūsuf, Usūl al-fiqh, (2 Vols) Qatar, I399/I979, Vol.2, p.I302.

ان ما ادعوه من دينهم ، لو كان صريحا ، لاظهروه ، و باحوا به من عصر نبيّنا عليه السلام و لاتخذ وا ذلك أقوى عصمهم ، و لو فعلوا ذلك لنقله الناقلـــون متواترا لأن الامر الخطير لا يخفى وقوعه ، و تتوفر الدواعـى على نقلـــــه.

باب في الدلالة على جواز النسخ في الوجوه التي بيّنّا

(I) al-Sarakhsī, op.cit., Vol.2, p.54.

ثم المذهب عند المسلمين ان النسخ جائز في الامر و النهى الذى يجوز أن يكون ثابتا و يجوز أن لا يكون على ما نبيّنه في فصل محل النسخ. و على قول اليهود النسخ لا يجوز اصلا ، و هم في ذلك فريقان : فريق منهم يأبى النسخ عقلا ، و فريق يأبى جوازه سمعا و توقيفا. و قد قال بعض من لا يعتد بقوله من المسلمين انه لا يجوز النسخ ايضا.

Āmidī, op.cit., Vol.3, p.I66.

Rāzī, op.cit., loc.cit.

For detail see M. Zaid, op.cit., Vol.I, pp.26-52.

(2) ibn Kathīr, op.cit., Vol.I, pp.I50-5I.

يرشد عباده تعالى بهذا الى انه المتصرف في خلقه بما يشاء فله الخلق و الامر و هو المتصرف فكما خلقهم كما يشاء و يسعد من يشاء و يصح من يشاء و يمرض من يشاء و يوفق من يشاء و يخذل من يشاء فيحل ما يشاء و يحرم ما يشاء و يبيح ما يشاء و يحظر ما يشاء و هو الذى يحكم ما يريد لا معقب لحكمه ، (و لا يسئل عما يفعل و هم يسئلون).

(3) Isfarā'īnī, al-Nāsikh wa-l mansūkh, Chester Beatty Library, Dublin, MS, No.5246(2), fo.72.

فامّا الدليل على جواز النسخ فهو أن نقول معلوم ان في دين آدم على نبينا و عليه السلام تزويج الاخوة و الاخوات كان حلالا و هو محرم في دين موسى عليه السلام و في ديننا ليس النسخ الا هذا و لهذا امثلة يطول ذكرها.

ibn Kathīr, op.cit., loc.cit.

al-Rāzī, op.cit., loc.cit.

al-Shawkānī, Fath al-Qadīr, (5 Vols) Cairo, I349/I930, Vol.I, p.I08.

(4) See p.5, note 3.

(5) Q.2,I06.

(6) Q.I6,I0I.

(7) Q.I3,39.

(8) Q.5,48.

(9) Q.3,50.

(IO) Ibid.

(II) Q.4,I60.

(I2) Q.2,I44.

(I3) Q.2,I42.

(I4) Nahhās, op.cit., pp.I3-4.

حد ثنا بكر بن سهل قال حد ثناابو صالح قال حد ثنا معاوية بن صالح عن علي بن ابى طلحة عن ابن عباس قال فكان اول ما نسخ الله عز و جل من القران القبلة و ذلك ان رسول الله صلى الله عليه و سلم لما هاجر الى المدينة و كان اكثرها اليهود امره الله تعالى أن يستقبل بيت المقدس ففرحت اليهود بذلك فاستقبلها رسول الله صلى الله عليه و سلم بضعة عشر شهرا و كان رسول الله صلى الله عليه و سلم يحب قبلة ابراهيم عليه السلام فكان يدعو الله و ينظـــر الى السماء فانزل الله تعالى : (قد نرى تقلب وجهك فى السماء) الى قوله : (فولوا وجوهكم شطره) يعنى نحوه فارتاب من ذلك اليهود و قالوا (ما ولاهم عن قبلتهم التي كانوا عليها) فانزل الله (لله المشرق و المغرب فاينما تولوا فثم وجه الله) و قال تعالى : (و ما جعلنا القبلة التي كنت عليها الا لنعلم من يتبع الرسول ممن ينقلب على عقبيـــــــــــــــــــــــــــه) .

Tabarī also records this report (op.cit., Vol.2, p.52I)

(I5) Q.4,I5-6. (و اللاتى يأتين الفاحشة ــــــــــــ توابا رحيما)

(I6) Q.24,2.

(I7) Q.2,240.

(I8) Q.2,234.

(I9) Ghazzālī, Mustasfā, (2 Vols) Būlāq, I324/I906, Vol.I, p.II2.
الدليل الثالث ما اشتهر فى الشرع من نسخ تربص الوفاة حولا باربعة اشهـــر و عشر و نسخ فرض تقديم الصدقة امام مناجاة الرسول صلى الله عليه و سلـــم حيث قال تعالى : (فقدموا بين يدى نجواكم صدقة) و منه نسخ تحويل القبلة عن بيت المقدس الى الكعبة بقوله تعالى : (فول وجهك شطر المسجد الحرام) .

For naskh in the sunna:
See al-Hamadhānī, al-I^{c}tibār, Hims, I386/I960.

(20) Ghazzālī, op.cit., loc.cit.

(I) Isfarā'īnī, op.cit., loc.cit.

و المنسوخ في كتاب الله تعالى على ثلاثة اقسام ، منها حكم رفع بما هـــو أغلظ من الاول مثل حد الزنـــــــــــــــــــــــــــــــــا .
و القسم الثانى هو رفع حكم الى ما هو أخف منه كما في باب الجهـــــــاد .
و القسم الثالث هو أن يرفع الحكم مثله مثل امر القبلـــــــــــــــــــة .

ibn Hazm, Ihkām fī Usūl al-ahkām, (8 Vols) Cairo, I380/I960, Vol.4, p.446.
Qurtubī, op.cit., Vol.I, p.65.

(2) al-Sarakhsī, op.cit., Vol.2, p.62.

(3) Ghazzālī, op.cit., Vol.I, p.I20

قلنا به فلم يستحيل أن تكون المصلحة في التدريج و الترقى من الأخف الى الأثقل كمـــــــــــــــــــــــــــــا كانت المصلحة فـــــــــــــى ابتداء التكليف و رفع الحكم الاصلـــــــــــــــــــــــــــــــــــى .

(4) al-Sarakhsī, op.cit., loc.cit.

فقد يكون المنفعة تارة في النقل الى ما هو أخف على البدن ، و تارة فـــى النقل الى ما هو أشق على البدن ، الا ترى ان الطبيب ينقل المريض مـــــن الغذاء الى الدواء تارة و من الدواء الـــــــــــــــــــــــــــــــى الغذاء تارة بحسب ما يعلم مـــــــــن منفعة فيـــــــــــــــــــه .

(5) Q.4,I60.

(6) Q.2,I84.

(7) Q.2,I85.

(8) Jassās, op.cit., Vol.I, p.206.
Hibat Allāh, al-Nāsikh wa-l mansūkh, Cairo, I387/I967, p.I8.
For detail see Tabarī, Tafsīr on Q.2,I84-5.

(9) Nahhās, op.cit., p.4I.
ibn Hazm, op.cit., Vol.4, p.47I.

(I0) Q.5,I3.

(II) Q.22,39.

(I2) Q.9,5. The sword verse . Cf. Hibat Allāh, op.cit., p.5I.

ان الآية هى الآية الناسخة ، و لكن نسخت من القران مائة و اربعا و عشرين آية ثم صار آخرها ناسخا لاولها ، و هي قوله تعالـــــــــــــــــى :

(فان تابوا و اقاموا الصلاة و آتوا الزكاة فخلوا سبيلهم) .

(I3) Q.2,I90 ; Q.2,244.

(I4) ibn Ḥazm, op.cit.,Vol.4, pp.448-9.

و نسخ تعالى الاذى و الحبس عن الزوانى و الزناة بالجلد و الرجم ، و الجلد و التغريب و لا شك عند من له عقل ان الحجارة و السياط أثقل من السب و السجن .

Āmidī, op.cit.,Vol.3, p.I77.

و من ذلك ان الله تعالى اوجب في ابتداء الاسلام الحبس فى البيوت و التعنيف حدا على الزنا و نسخه بالضرب بالسياط و التغريب عن الوطن في حق البكر و بالرجم بالحجارة في حق الثيب .

(I5) Cf. Mālik, Muwaṭṭa', (2 Vols) Cairo, I37I/I95I, Vol.I, p.297.

(I6) Mālik, op.cit.,Vol.I, p.I46.

ibn Ḥajar, Fatḥ al-Bārī, (I7 Vols) Cairo, I378/I959, Vol.2, p.9.

حدثنا عبد الله بن يوسف قال اخبرنا مالك عن صالح بن كيسان عـــــــن عروة بن الزبير عن عائشة ام المومنين قالت: فرض الله الصلاة حين فرضهـــا ركعتين ركعتين في الحضر و السفر فاقرت صلاة السفر و زيد في صلاة الحضر .

But cf. Q.4,I0I.

(واذا ضربتم في الارض فليس عليكم جناح ان تقصروا من الصلاة ان خفتم ان يفتنكم الذين كفروا ان الكافرين كانوا لكم عدوا مبينـــــــــــــا)

(I7) Q.2,I06.

(I8) al-Rāzī, op.cit., Vol.3, p.232.

لم لا يجوز أن يكون المراد بالخير ما يكون أكثر ثوابا في الآخرة ثم ان الذى يدل على وقوعه ان الله سبحانه نسخ في حق الزناة الحبس فى البيوت الى الجلد و الرجم و نسخ صوم عاشوراء بصوم رمضان و كانت الصلاة ركعتين عند قوم فنسخت باربع في الحضر-

Āmidī, op.cit., Vol.3, p.I79.

al-Khuḍarī, op.cit., pp.3II-2.

باب القول في نسخ الحكم قبل مجيء وقته

(I) See *Text*, p.48, l.I0.
Shāfiᶜī, *Risāla*, ed. Aḥmad Muḥammad Shākir, Cairo, I358/I939, p.59.
ibn Ḥazm, *op.cit.*, Vol.4, p.39I.
Cf. Schacht,J., *The Origins of Muḥammadan Jurisprudence*, Oxford, I967, p.52.

(2) *Uṣūl al-Jaṣṣāṣ*, fo.II0. (unedited portion)

و متى فات الوقت قبل فعله لم يلزمه بالامر الاول فعله بعد خروج الوقت لأن الامر توجه في الابتداء الى فعله في الوقت وما بعد الوقت لم يتضمنه الامر.

(3) Ibid, fo.97.

كان شيخنا ابو الحسن رحمه الله يحكى ذلك عن اصحابنا و نستدل عليه بقولهم في فرض الحج انه على الفور (من استطاع اليه سبيلا) وانه لا يسعه تأخيره، و الدليل على صحة هذا القول انه قد ثبت ان الامر على الوجوب بما قدمنا و الفعل مراد من المأمور في الحال بدلالة اتفاق الجميع على ان فاعله فيها مود للواجب بالامر فاذا كان فعله في الحال مرادا بالامر صار بمنزلة قوله افعله في اول احوال الامكان فلزم فعله في الحال.

(4) See *Text*, p.I4.
And see p.5, note.2.

(5) *Uṣūl al-Jaṣṣāṣ*, ff.II0-I4. (unedited portion)

(II)

فصل فى الدلالة على امتناع جواز نسخ الامر قبل مجئ وقته

(I) M.M. Dawālībī, al-Madkhal fī ʿilm Usūl al-fiqh, Beirūt, I385/I965, pp.I66-67.

قال علماء الاصول : ان الشريعة اذا امرت بفعل فان الحسن يثبت لذلك الفعل بحكم الشريعة كما اذا نهت عن فعل فان القبح يثبت لذلك الفعل بحكم الشريعة ايضا ، و الحجة في ذلك انما امرت و نهت تحقيقا لمصلحة ، و هذه المصلحة تستلزم ثبوت الحسن فيما امرت به ، و ثبوت القبح فيما نهت عنه ، و الا انقلبت الى عبث و مفسدة.

(2) A.W. Khalāf, ʿilm Usūl al-fiqh, Cairo, I397/I977, pp.I05-6.

الواجب شرعا هو ما طلب الشارع فعله من المكلف طلبا حتما .....

المندوب هو ما طلب الشارع فعله من المكلف طلبا غير حتم .

(3) For "الفاظ العموم" see Ghazzālī, op.cit., Vol.2, pp.35-6.
A.W. Khalāf, op.cit., pp.I82-83.
M.M. Dawālībī, op.cit., pp.I45-46.

(4) See Usūl al-Jassās, fo.I07. (unedited portion)

لا يجوز ورود الامر بشريطة ان افعلوه ان لم انسخه عنكم قبل وقت الفعل ، و الفصل بينه و بين ما ذكرنا انه اذا امر بامر فقد اراده منه و اذا نهاه عنه فقد كرهه منه و لا يصح أن يقول قد اردته منك ان لم اكرهه ، فلما لم يصح أن يجمع ذلك في لفظ الامر لم يصح الامر به معقودا بهذه الشريطة و لا يمتنع أن يقول افعله ان قدرت عليه و ان امكنك ، فلما صح الجمع بين اللفظين على هذا الوجه صح ورود الامر معلقا بالشرط على هذا الوجه ، الا ترى ان الامر منا لعبيدنا جائز على هذه الشريطة و انه لا يصح أن يقول واحد منا لعبده قد اردت منك هذا الفعل ان لم اكرهه الا و معناه عنده ان لم يبد ، و ذلك لا يجوز على الله تعالى عالم بالعواقب ، لا يجوز عليه البداء.

(5) Q.60,II.

(6) Q.58,I2.

(7) Q.58,I3.

(8) Q.24,62.

(9) Jassās, op.cit., Vol.2, p.I2.

و ان من نذر لله تعالى قربة يلزمه الوفاء بهـــــــــــــــــا .

(IO) ibn Rushd, Bidāya al-Mujtahid wa Nihāya al-Muqtaṣid,
(2 Vols) Cairo, I379/I960, Vol.I, p.305.

و جمهورهم على أن الحالف اذا حنث مخيّر بين الثلاثة منها اعنى الطعام او الكسوة او العتق و انه لا يجوز له الصيام الا اذا عجز عن هذه الثلاثـة لقوله تعالى : (فمـــن لم يجـــد فصيـــام ثلاثـــة ايـــام) .

(II) Jassās, op.cit., Vol.I, p.3II.

حدثنا محمد بن بكر قال حدثنا زهير بن حرب و عثمان بن ابى شيبة قـالا حدثنا يزيد بن هارون عن سفيان بن حسين عن الزهرى عن ابى سنـــان الدؤلى عن ابن عباس ان الاقرع بن حابس سأل النبي صلى الله عليـــه و سلم فقال يا رسول الله الحج في كل سنة او مرة واحدة ؟ قال بل مـرة واحدة فمن زاد فتطـــــــــــــــــــــــــــــــوع .
And see Usūl al-Jassās, fo.I04. (unedited portion)

(I2) ibn Hanbal, Ahmad, Musnad, (6 Vols) Beirūt, I389/I969,
Vol.I, pp.259,3I6,3I8.

(I3) See p.42, note.28.

(I4) ibn al-Jawzī, Zād al-Masīr fī ᶜilm al-Tafsīr, (9 Vols)
Damascus, I385/I965, Vol.I, p.75.

(I5) Q.37.I02.

(I6) M. Zaid, op.cit., Vol.I, p.I85.

هكذا قالوا لكنه لا دليل على ان هذا النسخ قد وقع قبل مجيء وقت تمكن المهاجرة فيه و يمكن الرد ..... و بدون هذا الدليل لا تعتبر الواقة حجة لجواز النسخ قبل التمكن من الامتثـــــــــــــــــــال .

(I7) Āmidī, op.cit., Vol.2, p.I73.
Nahhās, op.cit., p.23I.
ibn Kathīr, op.cit., Vol.4, p.326.
M. Zaid, op.cit., p.I83.

ان الروايات فيما رأينا ... مجمعة على ان عليا كرم الله وجهه قـــــد عمل بالآية المنسوخـة قبل أن تنسخ و بعض الروايـــــــــــات لا تقصر على هذا ، فتذكر انـــــه كان المسلمون يقدمـــــــون

بين يدى النجوى صدقة فلما نزلت الزكاة نسخ هذا ، و تذكر ان المسلمين اكثروا المسائل على رسول الله صلى الله عليه و سلم حتى شقوا عليه ، فاراد الله ان يخفف عن نبيه عليه السلام ، فلما قال هذا يعنى الآية التي تأمر بالصدقة بين يدى النجوى جبن كثير من المسلمين و كفوا عن المسألة ، فانزل الله بعد هذا : (ءاشفقتم ـــ) الآية ٠
فهل يصح مع هذه الروايات القول بأن النسخ كان قبل التمكن من الفعل ؟

(I3) Q.9,5.

(I9) Q.24,4.

(20) Jaṣṣās, op.cit., Vol.3, p.III.

(2I) Jaṣṣās, op.cit., p.3jI.

قال ابوبكر: كان حد قاذف الاجنبيات و الزوجات الجلد ، و الدليل عليه قوله صلى الله عليه و سلم لهلال بن امية حين قذف امرأته بشريك بن سحماء ائتنى باربعة يشهدون و الا فحد في ظهرك ، و قال الانصار ا يجلد هلال بن امية و تبطل شهادته في المسلمين ، فثبت بذلك ان حد قاذف الزوجات كان حد قاذف الاجنبيات و انه نسخ عن الازواج الجلد باللعان لأن النبي صلى الله عليه و سلم قال لهلال بن امية حين نزلت آية اللعان ائتنى بصاحبتك فقد انزل الله فيك و فيها قرانا و لاعن بينهما ٠

(22) Mālik, op.cit., Vol.I, p.299.
And see Makkī, op.cit., pp.I22-3.

قالت عائشة : كان يوم عاشوراء يوما تصومه قريش في الجاهلية فلما قدم رسول الله صلى الله عليه و سلم المدينة ، صامه و امر بصيامه فلما فرض رمضان كان هو الفريضة و ترك صيام يوم عاشوراء فمن شاء صامه و من شاء تركه٠ و قال جابر بن سمرة و غيره و قد قال قوم ان فرض صوم يوم عاشوراء باق الى الان و هو قول شاذ غير معمول به٠

Also see Shāfiʿī, ikhtilāf al-Ḥadīth, p.498.

قال الشافعى :
لا يحتمل قول عائشة ترك عاشوراء معنى يصح الا ترك ايجاب صومه٠

باب في نسخ التلاوة مع بقاء الحكم

(I) See **Text**, p.I6, l.2.

(2) Q.87,I8-9.

(3) Suyūṭī has quoted this passage in his Itqān, Vol.2, p.26.

قال ابوبكر الرازى : نسخ الرسم و التلاوة و انما يكون بأن ينسيهم الله اياه و يرفعه من اوهامهم و يأمرهم بالاعراض عن تلاوته و كتبه في المصحف فيندرس على الايام كسائر كتب الله القديمة التي ذكرها في كتابه في قوله : (ان هذا لفى الصحف الاولى صحف ابراهيم و موسى) و لا يعرف اليوم منها شيء ، ثم لا يخلو ذلك من أن يكون في زمان النبي صلى الله عليه و سلم حتى اذا توفى لا يكون متلوا من القران او يموت و هو متلو موجود بالرسم ثم ينسيه الله الناس و يرفعه من اذهانهم و غير جائز (عندنا) نسخ شيء من القران بعد وفاة النبي صلى الله عليه و سلم .

And see Zarkashī, al-Burhān, (4 Vols) Cairo, I376/I957, Vol.2, p.40.

(4) ع.5,99.

(5) Jassas, op.cit., Vol.2, p.56I.

(فمن لم يجد فصيام ثلاثة ايام) روى مجاهد عن عبدالله بن مسعود و ابو العالية عن ابى (فصيام ثلاثة ايام متتابعات) و قال ابراهيم النخعى في قرائتنا (فصيام ثلاثة ايام متتابعات) و قال ابن عباس و مجاهد و ابراهيم و قتادة و طاوس هن متتابعات لا يجزى فيها تفريق فثبت التتابع بقول هؤلاء و لم تثبت التلاوة لجواز كون التلاوة منسوخة و الحكم ثابتا و هو قول اصحابنا .

(6) al-Sarakhsī, op.cit., Vol.2, p.3I.

و امّا نسخ التلاوة مع بقاء الحكم فبيانه فيما قال علمائنا : ان صوم كفارة اليمين ثلاثة ايام متتابعة بقرأة ابن مسعود (فصيام ثلاثة ايام متتابعات) و قد كانت هذه قرأة مشهورة الى زمن ابى حنيفة و لكن لم يوجد فيه النقل المتواتر الذى يثبت بمثله القران و ابن مسعود لا شك في عدالته و اتقانه فلا وجه لذلك الا ان نقول كان ذلك مما يتلى في القران كما حفظه ابن مسعود رضى الله عنه ثم انتسخت تلاوته في حياة رسول الله صلى الله عليه و سلم .

(7) See **Text**, pp.3-IO.

(8) ibn Hanbal, op.cit., Vol.4, p.74.
Hibat Allāh, op.cit., p.5.
ibn Kathīr, op.cit., Vol.I, p.I49-50.

(9) Q.87,6-7.

(I0) Q.2,I06.

(II) ibn Kathīr, op.cit., Vol.I, p.I50.

(I2) al-Baihaqī, al-Sunan al-Kubrā, (I0 Vols) Haiderabād, I344/I925, Vol.8, p.2II.
ibn Māja, Sunan, (2 Vols) Cairo, I372/I952, Vol.2, p.853.
Hindī, Kanz al-ᶜUmmāl, (I2 Vols) Haiderabād, I365/I945, Vol.2, p.359.
Suyūṭī, op.cit., Vol.2, p.25.

(I3) Hindī, op.cit., loc.cit.
Suyūṭī, op.cit., loc.cit.

(I4) Zarkashī, op.cit., Vol.2, p.39.
Suyūṭī, op.cit., loc.cit.

(I5) Ṭabarī, op.cit., Vol.2, p.I06.
Suyūṭī, op.cit., Vol.2, p.26.

(I6) Zarkashī refers to this by saying:

و بالجملة فهذه الملازمة مشكلة ، و لعله كان يعتقد انه خبر واحد ، و ان القران لا يثبت به و ان ثبت الحكم.

op.cit., Vol.2, p.36.
And see Suyūṭī, op.cit., Vol.2, p.26.

و يحمل قول من قال في آية الرجم انه في كتاب الله : اى فى حكم الله تعالى كما قال تعالى : (كتاب الله عليكم) اى حكم الله عليكم.

(I8) al-Baihaqī, op.cit., loc.cit.
Muslim, Ṣaḥīḥ, (8 Vols) Cairo, I375/I955, Vol.I, p.II6.
Qasṭallānī, Irshād al-Sārī, (I0 Vols) Beirūt, I39I/I97I Vol.7, p.2I2.

(I9) Q.4,24.

(20) Q.8,75 ; Q.33,6.

(2I) Q.2,I83.

(22) Q.2,2I6.

(23) al-Sarakhsī, *op.cit.*, Vol.2, p.39.

أن ظاهر قوله : لو لا أن يقول الناس ـــــ الخ . أن كتابتها جائزة ، وانما منعه قول الناس، و الجائز في نفسه قد يقوم من خارج ما يمنعه ، و اذا كانت جائزة لزم أن تكون ثابتة ، لأن هذا شان المكتوب و قد يقال لو كانت التلاوة باقية لبادر عمر رضى الله عنه و لم يحرج على مقال الناس، لأن مقال الناس لا يصلح مانعا .

But cf. Suyūṭī's statement: (*op.cit*., loc.cit.)

قلت و خطر لى فى ذلك نكتة حسنة و هو أن سببه التخفيف على الامة بعدم اشتهار تلاوتها و كتابتها في المصحف و ان كان حكمها باقيا لأنه أثقل الاحكام و أشدها و أغلظ الحدود .

(24) Q.53,3-4.

(25) Naḥḥās, *op.cit.*, p.9.
Jeffery, A., *Materials for the History of the Text of the Qur'ān*, Leiden, I937, p.78.

(26) Q.30,22 ; Q.42,29.

(27) Q.I0,7 ; Q.I3,3.

(28) Baihaqī, *op.cit.*, loc.cit.

(و أخبرنا) ابو ذكريا و ابوبكر قالا حدثنا ابو العباس أنباء الربيع أنباء الشافعى أنباء مالك عن يحيى بن سعيد أنه سمع سعيد بن المسيب يقول قال عمر بن الخطاب رضى الله عنه : "اياكم ان تهلكوا عن آية الرجم أن يقول قائل لا نجد حدين فى كتاب الله عزوجل فقد رجم رسول الله صلى الله عليه و سلم و رجمنا فوالذى نفسى بيده لو لا أن يقول الناس، زاد عمر فى كتاب الله لكتبتها ، الشيخ و الشيخة اذا زنيا فارجموهما البتة ....".
Mālik, *op.cit.*, Vol.2, p.824.

(29) Q.I7,86.

(30) Q.I5,9.

(3I) Q.75,I7-9.

(32) Q.I2,I04.

(33) Q.6,I9.

(34) Q.4I,42.

(35) Q.I7,9.

(36) Q.2,97.

(37) See Text, p.60. l.7.

(38) Shāfi^{c}ī, K. al-Umm, (8 Vols) Cairo, I38I/I96I, Vol.7, p.224.

قال الشافعى : أخبرنا مالك عن عبد الله بن ابى بكر بن محمد بن عمرو بن حزم عن عمرة عن عائشة أنها قالت: كان فيما انزل الله في القران عشـــــر رضعات معلومات يحرمن ثـم نسخن بخمس معلومات فتوفى رسول الله صلى الله عليه و سلم و هن مما يقرأ من القران.

(39) Pazdawī, Kashf al-Asrār, (4 Vols) Istanbūl, I307/I889, Vol.3, p.909.
ibn Hazm, op.cit., Vol.4, p.452.
al-Sarakhsī, op.cit., Vol.2, p.79.

(40) Q.4I,42.

(4I) al-Sarakhsī, op.cit., loc.cit.

وحديث عائشة لا يكاد يصح لأنه قال في ذلك الحديث وكانت الصحيفة تحت السرير فاشتغلنا بدفن رسول الله فدخل داجن البيت فأكله و معلوم أن بهذا لا ينعدم حفظه من القلوب، و لا يتعذر عليهم اثباته و صحيفة اخرى ، فعرفنا انه لا اصل لهذا الحديث.

Also see ibn Qutaiba, Ta'wīl Mukhtalaf al-Hadīth, Beirūt, I393/I973, pp.3I0-5.

(42) Q.I5,9.

(43) Q.75, I7-9.

(44) Jassās, op.cit.,Vol.2, p.I52.

و امّا حديث عائشة فغير جائز اعتقاد صحته على ما ورد و ذلك لانّها ذكرت انه كان فيما انزل من القران عشر رضعات فنسخن بخمس و ان رسول الله صلى الله عليه و سلم توفى و هو مما يتلى ، و ليس احد من المسلمين يجيز نسخ القران بعد موت النبي صلى الله عليه و سلم فلو كان ثابتا لوجب أن تكون التلاوة موجودة فاذا لم توجد به التلاوة و لم يجز النسخ بعد وفاة النبي صلى الله عليه و سلم ، لم يخل ذلك من احد وجهين : امّا ان يكون الحديث مدخولا في الاصل غير ثابت الحكم او يكون ان كان ثابتا فانما نسخ في حياة رسول الله صلى الله عليه و سلم ،و ما كان منسوخا فالعمل به ساقط و جائز أن يكون ذلك كان تحديدا الرضاع الكبير و قد كانت عائشة تقول به في ايجاب التحريم في رضاع الكبير دون سائر ازواج النبي صلى الله عليه و سلم و قد ثبت عندنا و عند الشافعى نسخ رضاع الكبير .

(45) Q.4,I5.

(46) Q.58,I2.

(47) Q.58,I3.

(48) Q.2,240.

(49) Q.2,234.

(50) Q.2,I84.

(5I) Q.2,I85.

(52) al-Sarakhsī, op.cit.,Vol.2, p.80.

فامّا دليلنا على وجود نسخ الحكم مع بقاء التلاوة قوله تعالى : (فامسكوهن في البيوت) فان الحبس في البيوت و الاذى باللسان قد كان حد الزنا و انتسخ هذا الحكم مع بقاء التلاوة و كذلك قوله تعالى : (متاعا الى الحول غير اخراج) فان تقدير عدة الوفاة بحول كان منزلا و انتسخ هذا الحكم مع بقاء التلاوة و قوله تعالى : (فقدموا بين يدى نجواكم صدقة) فان حكم هذا قد انتسخ بقوله : (فاذ لم تفعلوا و تاب الله عليكم) و بقيت التلاوة و حكم التخيير بين الصوم و الفدية قد انتسخ بقوله : (فليصمه) و بقيت التلاوة و هو قوله : (و ان تصوموا خير لكم).

Ghazzali, op.cit,,Vol.I, p.I24.

ibn Hazm, op.cit.,Vol.4, p.44I.

باب القول في الوجوه التي يعلم بها النسخ

(I) al-Sarakhsī, op.cit., Vol.2, p.65.

قال رضى الله عنه :
اعلم بأن الحجج اربعة : الكتاب، و السنة ، و الاجماع، و القياس.

(2) Q.2,I87.

(3) Ibid.

(4) ibn Kathīr, op.cit., Vol.I, p.22I.
Hibat Allāh, op.cit., p.I7.
For detail see Tabarī, Tafsīr on Q.2,I87.

(5) Q.5,I3.

(6) Q.4I,34.

(7) Q.22,39.

(8) Watt, W.M., Bell's Introduction to the Qur'ān, Islamic Surveys (3), Edinburgh, I970, p.I63.

" It is known from Sura 73 that prayer for a large part of the night was a practice of the Muslims at Mecca but that this rule was abrogated (by verse 20) so that rising at night ceased to be obligatory."

And see Shāfi^{c}ī, Risāla, pp.II3-7.

(9) Q.24,4.

(I0) See p.I3, note.2I.
And see ibn Hajar, op.cit., Vol.I0, pp.65-6.

(II) Mālik, op.cit., Vol.I, p.294.
Muslim, op.cit., Vol.I, p.40.

(I2) Q.4,I5.

(I3) Q.24,2.

(I4) See Text, p.75, l.5.

(I5) Q.4,I5.

(I6) See p.42, note.28.

(I7) Jassās, op.cit.,Vol.3, p.3I4.

(I8) Q.2,I80.

(I9) See Text, p.I65, l.2.

(20) See p.I3, note.22.

(2I) Nahhās, op.cit.,pp.5)-6.

(قال ابوجعفر) و قال الضحاك نسخت الزكاة كل صدقة في القران فهذا قول من قال انها منسوخة •

Hibat Allah, op.cit.,pp.II,20.

قال ابوجعفر بن زيد بن القعقاع: نسخت الزكاة المفروضة كل صدقة في القران ، و نسخ شهر رمضان كل صيام في القران ، و نسخ ذباحة الاضحى كل ذبح •

According to Jassās these were not cases of abrogation.

He has tried to harmonise them. See Text, p.73. l.I.

(22) According to Shāfi'ī, this hadīth was abrogated.
See ikhtilāf al-Hadīth, p.495.

أخبرنا الثقة عن الاوزاعي عن عبد الرحمن بن القاسم عن ابيه او عن يحيى بن سعيد عن القاسم عن عائشة قالت: اذا التقى الختانان فقد وجب الغسل فعلته إنا و رسول الله فاغتسلنا • وحديث "الماء من الماء" ثابت الاسناد و هو عندنا منسوخ بما حكيت فيجب الغسل من الماء و يجب اذا غيب الرجل ذكره في فرج المرأة حتى يوارى حشفته •

But cf. Jassās, op.cit.,Vol.3, p.308.

قال ابوبكر: و هذا عندى لا يدل على الوجوب لأن نسخ الواجب هو بيان مدة الوجوب،

(23) Q.5,42.

(24) Q.5,49.

(25) Shāfiᶜī argued that vv.48,49 " Judge between them ....." served to confirm and elucidate v.42. (op.cit., Vol.7,p.39) But Jaṣṣāṣ and Naḥḥās argued on the authority of ibn ᶜAbbās and Mujāhid that v.42 was abrogated by v.49.

(See Naḥḥās, op.cit., p.31; Jaṣṣāṣ, Text, pp.73,83.)
Also see Introduction, pp.149-50.

(26) Jaṣṣāṣ, op.cit., Vol.1,p.12.

(27) Q.73,20.

(28) Jaṣṣāṣ, op.cit., Vol.3, p.35.

(29) Q.8,65.

(30) Q.8,66.

(31) ibn al-ᶜArabī, Aḥkām al-Qur'ān, (4 Vols) Cairo, 1376/1957, Vol.2, p.866.
Shāfiᶜī, Risāla, p.127.
Jaṣṣāṣ, op.cit., Vol.3, p.59.
ibn Ḥazm, op.cit., Vol.4, p.486.

(32) Q.5,6.

(33) Jaṣṣāṣ, op.cit., Vol.2, p.408.

قوله تعالى : (فاغسلوا وجوهكم) يقتضى جواز الصلاة بوجود الغسل سواء قارنته النية اولم تقارنه و ذلك لانْ الغسل اسم شرعى مفهوم المعنى في اللغة و هو امرار الماء على الموضع و ليس هو عبارة عن النية فمن شرط فيه النية فهو زائد في النص و هذا فاسد من وجهين : احدهما انه يوجب نسخ الآية ... و الوجه الآخر ان النص له حكمه و لا يجوز أن يلحق به ما ليس منه كما لا يجوز أن يسقط منه ما هو منــــــــه .

But cf. Muzanī's statement, Shāfiᶜī , op.cit., Vol.8, p.2.

قال الشافعى : و لا يجزى طهارة من غسل و لا وضوء و لا تيمم الا بنية ، واحتج علـــــــــــــــى

من اجاز الوضوء بغير نية بقوله صلى الله عليه و سلم: "الاعمال بالنيات"، و لا يجوز التيمم بغيـــــر نية و همـــــــــا طهارتان فكيف يفترقـــــــان ؟

Also see Introduction, pp.I06-7.

(34) Q.2,282.

(35) Jassās, op.cit., Vol.I, p.6II.
al-Tahāwī, Sharh Maᶜānī al-Āthār, (4 Vols) Cairo, I386/ I966, Vol.4, pp.I44-45.
Cf. Shāfiᶜī, op.cit., Vol.7, p.7.

(36) Q.24,2.

(37) Ibid.

(38) See p.42, note.28.

(39) Q.2,240.

(40) Q.2,234.

(4I) Q.2,282.

(42) Q.24,2.

(43) See Text, p.II6.

(44) See p.20, note.I4.

(45) Q.2,I44.

(46) Q.2,I42.

(47) See p.7, note.I4.

(48) Q.8,65.

(49) Q.8,66.

(50) See p.2I, note.3I.

(5I) Q.73,20.

(52) Q.73,2.

(53) Q.73,20.

(54) See p.I9, note,8.

(55) Q.58,I2.

(56) Q.58,I3.

(57) Q.2,I37.

(58) See p.I9, note.4.

(59) Muslim, op.cit., Vol.6, p.92.
Nasā'ī, Sunan, (8 Vols) Beirūt, n.d., Vol.4, p.89.
اخبرنى محمد بن آدم عن ابى فضيل عن ابى سنان عن محارب بن د ثار عن عبد الله ابن بريدة عن ابيه قال قال رسول الله صلى الله عليه و سلم نهيتكم عن زيارة القبور فزوروها و نهيتكم عن لحوم الاضاحى فوق ثلاثة ايام فامسكوا ما بدا لكم و نهيتكم عن النبيذ الا في سقاء فاشربوا في الاسقية ·

(60) According to Jassās this sunna was abrogated by the Qurān.
See Text, p.I2, l.5, And see op.cit.,Vol.2, p.382.
ibn al-Jawzī, op.cit., Vol.2, p.290.

(6I) ibn Ḥanbal, op.cit., Vol.2, p.I33 ; vol.6, p.39I.
ibn Māja, op.cit., Vol.2, p.I068.
حد ثنا ابوبكر بن ابى شيبة ، حد ثنا شبابة ، حد ثنا شعبة عن ابى التياح قال سمعت مطرفا يحد ث عن عبد الله بن مغفل ان رسول الله صلى الله عليه و سلم امر بقتـــل الكلاب ثـم قال : "ما لهم و الكلاب" ثـم رخص لهم في كلب الصيد ·
Cf. Goldziher, Muslim Studies, London, I97I, vol.2, p.56.

(62) ibn Ḥanbal, op.cit., Vol.2, p.280.

(63) According to the majority the ruling to kill a man if he drinks fourth time is abrogated, but Suyūṭī thinks it is not abrogated. See Sharḥ Nasā'ī, op.cit., Vol.8, p.3I3.

(64) al-Bukhārī, Ṣaḥīḥ, (9 Vols) Cairo, I377/I957, Vol.I, p.63.
Muslim, op.cit., Vol.I, p.I87.
Nasā'ī, op.cit., Vol.3, p.4I4.
ibn Māja, op.cit., Vol.I, p.I64.
Ṭaḥāwī, op.cit., Vol.I, p.67.

قال الطحاوى :

ان آخر الامرين من رسول الله صلى الله عليه و سلـــــم
هو ترك الوضوء مما غيرت النار و أن ما خالف ذلك فقد نسخ بالفعل الثانى .

(65) Q.9,5.

(66) Ibid.

(67) ibn al-ᶜArabī, op.cit., Vol.2, pp.879-80.

قال ابن عربى :

قال علماءونا : هذه السورة من آخر ما نزل بالمدينة و لذلك قل فيها المنسوخ ... و كانت الانفال من اول ما نزل ، و برأة آخر ما نزل من القران ، و روى عن ابى بن كعب آخر ما نزل برأة .
Cf. Suyūṭī, op.cit., Vol.I, p.27.

(68) Q.47,4.

(69) Bukhārī, op.cit., Vol.7, pp.202,206.
Nasā'ī, op.cit., Vol.5, p.I70.
ibn Ḥanbal, op.cit., Vol.3, pp.I83.203.
Ṭaḥāwī, op.cit., Vol.3, p.I80.
Jaṣṣāṣ, or.cit., Vol.I, p.I89.

قد كان النبي صلى الله عليه و سلم مثل بالعرنيين ، فقطع ايديهم و سمل اعينهم و تركهم فى الحرة حتى ماتوا ثم نسخ سمل الاعين بنهيه عـــن المثلة .... قال سمرة بن جندب: ما خطبنا رسول الله صلى اللـــــه عليه و سلم خطبة الا امرنا فيها بالصدقة و نهانا عن المثلـــــــــة .

(70) Bukhārī, op.cit., Vol.I, p.I45.
Muslim, op.cit., Vol.2, p.I07.

(7I) ibn Māja, op.cit., Vol.I, p.222.

(72) Q.2,I78.

(73) Jaṣṣāṣ, <u>op.cit.</u>, Vol.I, p.I83.

قد روى سفيان الثورى عن جابر عن ابى عازب عن النعمان بن بشير قال قال رسول
الله صلى الله عليه و سلم : "لا قود الا بالسيف» و هذا الخبر قد حوى معنيين :
احد هما بيان مراد الآية في ذكر القصاص و المثل و الآخر انه ابتداء عموم يحتج به
في نفى القود بغيـــــــــــــــــــــــــــــره .

(74) Jaṣṣāṣ, <u>op.cit.</u>, Vol.I, p.I73.

(75) Jaṣṣāṣ, <u>op.cit.</u>,Vol.I, p.I34.

عن سودة بنت ذمعة قالت: كانت لنا شاة فماتت فطرحناها فجاء النبي صلى الله عليه
و سلم فقال : ما فعلت شاتكم فقلنا رميناها ، فتلا قوله تعالى : (قل لا اجد فيما اوحى
الى محرما على طاعم يطعمه) الآية ، افلا استمتعتم باهابها فبعثنا اليها فسلخناها
و دبغنا جلدها و جعلناه سقاء و شربنا فيه حتى صار شنا ، و قالت ام سلمة : مر النبي
صلى الله عليه و سلم بشاة ميمونة فقال : ما على اهل هذه لو انتفعوا باهابها .

(76) Bukhārī, <u>op.cit.</u>, Vol.3, pp.222-3.
Nasāʾī, <u>op.cit.</u>, Vol.6, p.I02.
ibn Māja, <u>op.cit.</u>,Vol.I, p.622.
Jaṣṣāṣ, <u>op.cit.</u>,Vol.I, p.485.

(77) Q.5,49.

(78) Q.5,42.

(79) See p.2I, note.25.

(80) Jaṣṣāṣ, <u>op.cit.</u>, Vol.2, pp.I5I-2.

حدث ابوالحسن الكرخى قال حدثنا الحضرمى قال حدثنا عبد الله بن سعيد قال
حدثنا ابو خالد عن حجاج عن حبيب بن ابى ثابت عن طاوس عن ابن عباس انه
سئل عن الرضاع فقلت ان الناس يقولون لا تحرم الرضعة و لا الرضعتان قال قد كان
ذلك فاما اليوم فالرضعة الواحدة تحرم .

Makkī, <u>op cit</u>, p.44.

فالعشر رضعات عند مالك و اهل مدينة نسخ لفظهن و حكمهن بقوله : (و اخواتكم
من الرضاعة) فرضعة واحدة عندهم تحرم ، فهذا قول حسن ، الناسخ فيه متلو
و المنسوخ غير متلـــــــــــــــــــــــــــــو .

(81) Jaṣṣāṣ, <u>op.cit.</u>,Vol.3, p.540.

(82) Jaṣṣāṣ, op.cit., Vol.I, p.526.

قال الزهري :

فكان هذا قبل بدر ثم استحكمت الامور بعده ·

And see Text, p.I76, l.3.

(83) Jaṣṣāṣ, op.cit., Vol.I, p.I89.

متى ورد عنه عليه السلام خبران و اتفق الناس على استعمال احدهما و اختلفوا في استعمال الآخر كان المتفق عليه منهما قاضيا على المختلف فيه خاصا كان او عاما ·

(84) Āmidī, op.cit., Vol.2, p.I88.
al-Sarakhsī, op.cit., Vol.2, pp.66-7.
M.M. Dawālībī, op.cit.,p.34I.

(85) Q.60,II.

(86) Jaṣṣāṣ, op.cit., Vol.3, p.542.

(87) ibn Ḥanbal, op.cit., Vol.2, p.454.
[illegible]

(88) ibn Ḥanbal, op.cit., Vol.5, p.6.
Hamadhānī, op.cit., p.205.

(89) ibn Māja, op.cit., Vol.2, p.853.
ibn Ḥanbal, op.cit., Vol.4, p.276.
Hamadhānī, op.cit., loc.cit.

(90) Q.5,67.

(9I) Q.I5,94.

(92) Jaṣṣāṣ, op.cit., Vol.2, pp.388,507.

(93) Q.7,32.

(94) Q.67,I5.

(95) Q.7,3I.

(96) Jaṣṣās, op.cit.,Vol.2, p.153.

قال الشعبى : سئل علي عن ذلك فقال : "احلتهما آية و حرمتهما آية فالحرام اولى ،،
قال ابوبكر: احلتهما آية يعنون به قوله تعالى : (و المحصنات من النساء الا ما ملكت ايمانكم) و قوله: "حرمتهما آية ،، قوله: (و ان تجمعوا بين الاختين) .

(97) ibn Ḥanbal, op.cit.,Vol.3, p.479.

حدثنا عبدالله حدثنى ابى ثنا اسحق بن عيسى قال اخبرنى مالك عن ابى النصر عن زرعة بن جرهد الاسلمى عن ابيه و كان من اصحاب الصفة قال : جلس رسول الله صلى الله عليه و سلم فرأى فخذى منكشفة فقال خمر عليك أ ما علمت "ان الفخذ عورة ،، .

Ṭaḥāwī, op.cit., Vol.3, p.475.

قال ابوجعفر:"ان الفخذ عورة ،، تبطل الصلاة بكشفها .
و امّا وجه ذلك من طريق النظر، فانا رأينا الرجل ينظر من المرأة التى لا محرم بينه و بينها الى وجهها و كفيها ، و لا ينظر الى ما فوق ذلك ، من رأسها ، و لا الى أسفل منه ، من بطنها ، وظهرها ، و فخذيها ، و ساقها . و رأيناه في ذات المحرم منه لا باس أن ينظر منها الى صدرها ، و شعرها ، و وجهها ، و رأسها ، و ساقها ، و لا ينظر الى ما بين ذلك من بدنها .

(98) Bukhārī, op.cit.,Vol.5, p.17.

أن النبي صلى الله عليه و سلم كان قاعدا في مكان فيه ماء قد انكشف عن ركبتيه او ركبته فلما دخل عثمان غطاها .

Muslim, op.cit., Vol.7, p.116.

أن عائشة قالت كان رسول الله صلى الله عليه و سلم مضطجعا في بيتى كاشفا عن فخذيه او ساقيه فاستأذن ابوبكر ..... ثم دخل عثمان .....
فقال : الا استحي من رجل تستحي منه الملائكة .

(99) Jaṣṣās, op.cit.,Vol.3, p.23.

و اختلف في اكل الضب فكرهه اصحابنا و قال مالك و الشافعى لا باس به و الدليل على صحة قولنا ما روى الاعمش عن زيد بن وهب الجهنى عن عبد الرحمن بن حسنة قال نزلنا ارضا كثيرة الضباب فاصابتنا مجاعة فطبخنا منها فان القدور لتغلى بها فجاء رسول الله صلى الله عليه و سلم فقال ما هذا فقلنا ضباب اصبناها فقال ان امة من بنى اسرائيل مسخت دواب الارض و انى اخشى أن تكون هذه فاكفئوها ، و هذا يقتضى حظره لانه لو كان مباح الاكل لما امر باكفاء القدور لانه عليه السلام نهى عن اضاعة المال .

al-Sarakhsī, op.cit., Vol.2, p.20.
Cf. Shāfiʿī, Ikhtilāf al-Ḥadīth, p.508.
ibn Qutaiba, op.cit., p.266.

(I00) Jassās, op.cit., Vol.2, p.I58.

اذا تساوى سببا الحظر و الاباحة رجح منها الحظر.

(I0I) Bukhārī, op.cit., Vol.I, p.20.
ibn Māja, op.cit., Vol.2, pp.I3I8-I9.
ibn Hanbal, op.cit., Vol.4, pp.267,269,27I,275.
al-Dārimī, Sunan, (2 Vols) Cairo, I386/I966, Vol.2,p.I6I.

(I02) Bukhārī, op.cit., Vol.7, p.I37.
ibn Hanbal, op.cit., Vol.6, pp.36,7I,97,I90,226.
Nahhās, op.cit., p.44.

(I03) Baihaqī, op.cit., Vol.8, p.302.

(I04) See p.24, note.64.

(I05) ibn Māja, op.cit., Vol.I, p.I63.
ibn Hanbal, op.cit., Vol.6, p.407.
Hamadhānī, op.cit., p.4I.

(I06) Jassās, op.cit., Vol.I, p.27I.

قد روى ابن عباس انه بعث رجلين لينظرا له طلوع الفجر في الصـــوم
فقال احد هما قد طلع، و قال الآخر لم يطلـــــــــــــــــــع،
فقال : اختلفتما فاكل و كذلك روى عن ابن عمـــــــــــــــــر.

(I07) Bukhārī, op.cit., Vol.7, p.I6.
al-Dārimī, op.cit., Vol.I, p.368.
al-Sarakhsī, op.cit., Vol.2, p.2I.

(I08) Bukhārī, op.cit., Vol.3, p.94.
al-Sarakhsī, op.cit., loc.cit.

و اختلف مشايخنا فيما اذا كان احد النصين موجبا للنفي و الآخر موجبا للاثبات فكان الشيخ ابو الحسن الكرخي رحمه الله يقول : المثبت اولـى من النافي ، لأن المثبت اقرب الى الصدق من النافي و لهذا قبلـت الشهادة على الاثبات دون النفي. وكان عيسى بن ابان رحمه اللـه يقول : تتحقق المعـــارضة بينهمـــا لأن الخبـــر الموجب

للنفى معمول به كالموجب للاثبات، و ما يستدل به على صدق الراوى في الخبر الموجب للاثبات فانه يستدل بعينه على صدق الراوي في الخبر الموجب للنفى ٠٠٠٠٠٠٠٠٠
و روى أن بريرة اعتقت و زوجها كان حرا فخيرها رسول الله صلى الله عليه و سلـــــم ،
و روى انها اعتقت و زوجها عبد ، و لا خلاف أن زوجها كان عبدا في الاصل فكان الاثبات في رواية من روى ان زوجها كان حرا حين اعتقت فأخذ نا بذلك ، فهذا يدل علـــى أن الترجيح يحصل بالاثبات ٠

(I09) ibn Māja, op.cit., Vol.2, p.I0I8.
al-Sarakhsī, op.cit., Vol.2, p.24.

و من ذلك حديث بلال رضى الله عنه ان النبي عليه السلام لم يصل في الكعبة ، مع حديث ابن عمر رضى الله عنه انه صلى فيها عام الفتح ، فانهم اتفقوا انه ما دخلها يومئذ الا مرة ، و من اخبر انه لم يصل فانه لم يعتمد دليلا موجبا للعلم به و لكنه لم يعاين صلاته فيها و الآخر عاين ذلك ، فكان المثبت اولى من النافى ٠

(II0) See Text, p.II0, l.I2.

فصـــل

(I) ibn Mājа, op.cit., Vol.I, p.279.
Shāfiᶜī, op.cit., Vol.I, p.IO4.
And see ikhtilāf al-Hadīth, p.524.

(2) Dāraqutnī, Sunan, (4 Vols) Cairo, I386/I966, Vol.I, p.239.
Shāfiᶜī, op.cit., loc.cit.

(3) According to Jassās, the Zuhrī hadīth was abrogated by the hadīth which was narrated by ᶜAbd Allāh b. Masᶜūd and Barrā' b. ᶜĀzib. On the contrary Shāfiᶜī followed the Zuhrī hadīth on the grounds that the isnād was sound and the reports were manifold.
See Shāfiᶜī, op.cit., loc.cit.

(4) Dāraqutnī, op.cit., Vol.2, p.37.

(5) Dāraqutnī, op.cit., Vol.2, p.38.
Also see margin, loc.cit.

استدل بعضهم على نسخ القنوت في الفجر بهذا الحديث.

(6) According to Abū Hanīfa, Abū Yūsuf and al-Shaibānī the Qanūt (invocation) in all the prayers was abrogated.
See Tahāwī, op.cit., Vol.I, p.25.
According to Shāfiᶜī, the Qanūt in the morning prayer was still allowed.
See ikhtilāf al-Hadīth, p.542.

فأمّا القنوت فى غير الصبح فمباح ان يقنت و أن يدع لأن رسول الله لم يقنت في غير الصبح قبل قتل اهل بئر معونة و لم يقنت بعد قتل اهل بئر معونة فى غير الصبح فدل على أن ذلك دعاء مباح كالدعاء المباح في الصلاة لا ناسخ و لا منسوخ.

(7) Tahāwī, op.cit., Vol.I, p.33I.

(8) Cf. Shāfiᶜī, op.cit., p.527.

قال الشافعى : فهذا نقول اذا كسفت الشمس و القمر صلى الامام بالناس ركعتين في

كسوف كل واحد منهما في كل ركعة ركوعان فان لم يصل الامام صلى المرء لنفسه كذلك قال الشافعي : و بلغنا أن عثمان بن عفان صلى في كسوف الشمس ركعتين في كل ركعة ركوعان.

(9) Q.2,282.

(IO) See p.22, note.35.

(II) " مزابنة" signifies the selling dates in their fresh ripe state upon the heads of the palm-trees for dried dates by measure; which is forbidden, because it is a sale by conjecture, without measuring and without weighing: it is from " الزبن"; because it leads to contention and mutual repulsion: and in like manner, the selling any fruit upon its trees for fruit by measure.
Lane, Arabic English Lexicon, (8 Vols) London, I863-93, Vol.3, p.I2I3.
Muslim, op.cit., Vol.5, p.I7.
Ṭaḥāwī, op.cit.,Vol.4, p.32.

(I2) " خرص النخل" and " التمر": the computing by conjecture the quantity of fruit upon palm-trees and of dates. It is the computing quantity by opinion, not by knowledge.
" عرايا": A needy man, having some dried dates, would come to the owner of palm-trees and say to him, " sell to me the fruit of a palm-tree or of two palm-trees", and would give him those remaining dried dates. According to Mālik and Shāfiʿī this sort of sale is allowed. Lane, op.cit.,Vol.2, p.723, Vol.5, p.2029.
See Mālik, op.cit., Vol.2, p.6I9.
And see Shāfiʿī, op.cit., p.552.

(I3) See p.24, note.64.

(I4) Baihaqī, op.cit.,Vol.3, p.390.

(I5) Baihaqī, op.cit., loc.cit.

(I6) ibn Ḥanbal, op.cit., Vol.2, p.372.

(I7) Mālik, op.cit., Vol.I, p.29.
Muslim, op.cit., Vol.I, p.I30.

(I8) Ṭaḥāwī, op.cit., Vol.I, pp.I06-7.

انا قد رأينا الطهارات تنتقض باحداث، منها الغائط، و البول، و طهارات تنتقض بخروج اوقات، و هي الطهارة بالمسح على الخفين، ينقضها خروج وقت المسافر و خروج وقت المقيم.
و هذه الطهارات المتفق عليها، لم نجد فيما ينقضها صلاة، انما ينقضها حدث او خروج وقت، و قد ثبت ان طهارة المستحاضة، طهارة ينقضها الحدث و غير الحدث، فثبت بذلك قول من ذهب الى انها تتوضاء لكل وقت صلاة، و هو قول ابى حنيفة و ابى يوسف و محمد بن الحسن رحمهم الله تعالى.

(I9) See p.30, note.8.

Also see Ṭaḥāwī, op.cit., Vol.I, p.33I.

Shāfi^{c}ī, al-Umm, Vol.I, pp.242-46.

Mālik, op.cit., Vol.I, p.I86.

فصـــل

(I) See **Text**, p.74, l.5.

(2) Q.24,2.

(3) Jassās, op.cit., Vol.3, p.3I5.

و الدليل على ان نفى البكر الزانى ليس بحد ان قوله تعالى : (الزانية و الزانى فاجلدوا كل واحد منهما مائة جلدة) يوجب أن يكون هذا هو الحد المستحق بالزنا و انه كمال الحد فلو جعلنا النفى حدا معه لكان الجلد بعض الحد و في ذلك ايجاب نسخ الآية ، فثبت ان النفى انما هو تعزير و ليس بحد ، و من جهة اخرى ان الزيادة في النص غير جائزة الا بمثل ما يجوز به النسخ و ايضا لو كان النفى حدا مع الجلد لكان من النبي صلى الله عليه و سلم عند تلاوته توقيف للصحابة عليه لئلا يعتقدوا عند سماع التلاوة ان الجلد هو جميع حده و لو كان كذلك لكان وروده في وزن ورود نقل الآية فلما لم يكن خبر النفى بهذه المنزلة بل كان وروده من طريق الآحاد ثبت انه ليس بحد .

But cf. Shāfi^{c}ī, op.cit., Vol.7, p.I63.

و ينفى الزانيان البكران من موضعهما الذى زنيا به الى بلد غيره بعد ضرب مائة و قد نفى النبي صلى الله عليه و سلم الزانى و نفى ابوبكر و عمر و عثمان و على رضى الله تعالى عنهم .

(4) Mālik, op.cit., Vol.2, p.282.
Muslim, op.cit., Vol.5, p.I2I.
Tabarī, op.cit., Vol.4, p.I99.
ibn Ḥajar, op.cit., Vol.I2, pp.I20-43.

(5) See p.42, note.28.

(6) Jaṣṣās, op.cit., loc.cit.
al-Sarakhsī, op.cit., Vol.2, p.33.

فنقول : الثابت بآية الزنا جلد و عو حد ، فاذا التحق النفى به يخرج الجلد من أن يكون حدا لأنه يكون بعض الحد حينئذ و بعض الحد ليس بحد بمنزلة بعض العلة فانه لا يوجب شيئا من الحكم الثابت بالعلة فكان نسخا من هذا الوجه .

Also see Abū Yūsuf, K. al-Kharāj, Cairo, I352/I933, p.I62.

(7) Q.58,3.

(8) Jaṣṣās, op.cit., Vol.3, p.522.
al-Sarakhsī, op.cit., loc.cit.

وكذلك في الرقبة فان مع الاطلاق التكفير بتحرير رقبة و بعد القيد تحرير رقبة بعض ما يتأدى به الكفارة ، فعرفنا انه نسخ .

(9) Ghazzālī, op.cit., Vol.2, p.I26.

لا يجوز نسخ النص القاطع المتواتر بالقياس المعلوم بالظن و الاجتهاد على اختلاف مراتبه جليا كان او خفيا ، هذا ما قطع به الجمهور الا شذوذا منهم ، قالوا ما جاز التخصيص به جاز النسخ به و هو منقوض بدليل العقل و بالاجماع و بخبر الواحد ، فالتخصيص بجميع ذلك جائز دون النسخ ، ثم كيف يتساويان و التخصيص بيان و النسخ رفع و البيان تقرير و الرفع ابطال .
al-Sarakhsī, op.cit., Vol.2, p.66.

و لا خلاف بين جمهور العلماء في أنه لا يجوز نسخ الكتاب و السنة بالقياس، و كان ابن سريج من اصحاب الشافعي يجوز ذلك . و الانماطي من اصحابه كان يقول لا يجوز ذلك بقياس الشبه و يجوز بقياس مستخرج من الاصول ، و كل قياس مستخرج من القران يجوز نسخ الكتاب به ، و كل قياس هو مستخرج من السنة يجوز نسخ السنة به ، لأن هذا في الحقيقة نسخ الكتاب بالكتاب، و نسخ السنة بالسنة ، فثبوت الحكم بمثل هذا القياس في الحقيقة يكون محالا به على الكتاب و السنة ، و هذا قول باطل باتفاق الصحابة . فقد كانوا مجمعين على ترك الرأى بالكتاب و السنة .

Āmidī, op.cit., Vol.2, p.I90.
M.M. Dawālībī, op.cit., pp.290-I.
Khuḍarī, op.cit., p.3I3.

(IO) ibn Ḥanbal, op.cit., Vol.5, pp.236,242,
ibn Sa'd, al-Ṭabaqāt al-Kubrā, (8 Vols) Beirūt, I376/I956, Vol.3, p.384.
The tradition of Mu'ādh has been reported by the authorties.
According to ibn Ḥazm, this ḥadīth is not Ṣaḥīḥ.
See op.cit., Vol.6, pp.766,773.
It is interesting to note that Bukhārī and Muslim do not mention this ḥadīth.
Cf. Schacht, op.cit., p.I06.

(II) Uṣūl al-Jaṣṣās. fo.33. (unedited portion)

(I2) See Text, p.I73, l.II.

(I3) Q.2,282.

باب القول في نسخ بعضه ببعض و ما لا ينسخ

(I) Q.I6,89.

(2) al-Sarakhsī, op.cit., Vol.2, p.76.

و الدليل على جواز نسخ السنة بالكتاب قوله تعالى : (و نزلنا عليك الكتاب تبيانا لكل شيء) فان السنة شيء و مطلقها يحتمل التوقيت و التأبيد فناسخها يكون مبينا معنى التوقيت فيها • و الله تعالى بيّن أن القران تبيان لكل شيء ، فيه يظهر جواز نسخ السنة بالكتاب ، و الدليل عليه جواز نسخ السنة بالسنة ، فان كل واحد منهما ثابت بوحي غير متلو ، فاذا جاز نسخ السنة بوحي غير متلو ، فان يجوز نسخها بوحي متلو كان اولى •

ibn Ḥazm, op.cit. Vol.4, p.477.

و ان كل ذلك من عند الله بقوله تعالى : (و ما ينطق عن الهوى ان هو الا وحي يوحى) ، فنسخ الوحي بالوحي جائز ، لأن كل ذلك سواء في أنه وحي •

Ghazzālī, op.cit., Vol.I, p.I24.

يجوز نسخ القران بالسنة و السنة بالقران لأن الكل من عند الله عز و جل •

But cf. Shāfi^{c}ī, Risāla, p.I06. (For 'نسخ السنة بالقران' see p.II0)

و ان السنة لا ناسخة للكتاب ، و انما هي تبع للكتاب بمثل ما نزل نصا ، و مفسرة معنى ما انزل الله منه جملا •

(3) Q.2,I44.

(4) Bukhari, op.cit., Vol.6, p.27.
al-Sarakhsi, op.cit., loc.cit.
Ghazzali, op.cit., loc.cit.

(5) See p.23, note.6I.

(6) See p.23, note.60.

(7) Q.5,4.

(8) Q.2,2I9.

(9) Q.5,90.

(I0) Shawkānī, op.cit., Vol.I, p.I97.
For detail see Ṭabarī, Tafsīr, on Q.5,90.

(II) Q.2,I87.

(I2) ibn Kathīr, op.cit., Vol.I, pp.220-2I.
Makkī, op.cit., pp.I22-24.

(I3) Q.60,IO.

(I4) Qurṭubī, op.cit., Vol.I8, p.63.
ibn Kathīr, op.cit., Vol.4, p.350.
Ghazzālī, op.cit., loc.cit.

(I5) Q.60,IO.

(I6) Jaṣṣās, op.cit., Vol.3, p.540.

(I7) Q.9,5.
See p.9, note.I2.

(I8) Makkī, op.cit., p.378.

(I9) Jaṣṣās, op.cit., Vol.3, p.454.

(20) Q.33,40.

(2I) Q.33,5.

(22) Jaṣṣās, op.cit., Vol.3, p.436.
قال ابوبكر:
هذا يوجب نسخ السنة بالقران ، لأن الحكم الاول كان ثابتا بغير القران و نسخه بالقران .

(23) Q.2,I96.

(24) Naḥḥās, op.cit., p.34.

(25) Q.59,7.

(26) Q.7,I58.

(27) Q.5,92 ; Q.64,I2.

(28) Q.2,I06.

(29) Q.I6,I0I.

(30) Ibid.

(3I) Q.6,90.

(32) Q.2,2I9.

(33) Q.5,90.

(34) Q.2,I83.

(35) Q.6,90.

(36) Ibid.

(37) Q.6,I46.

(38) Q.6,90.

(39) al-Sarakhsī, op.cit., Vol.2, pp.76-7.

(40) Q.2,I83.

(4I) Q.2,I87.

(42) Q.2,I83.

(43) Q.2,I84.

(44) Q.2,2I9.

(45) Ibid.

(46) Ibid.

(47) Q.7,33.

(48) Jassās, op.cit., Vol.I, p.382.

(49) Jassās, op.cit., loc.cit.

(50) Q.I6,44.

(5I) Q.2,I06.

(52) Q.I6,I0I.

(53) Q.I6,44.

(54) Q.5,67.

(55) Q.I6,44.

(56) Ibid.

(57) Q.I6,89.

(58) Q.I6,44.

(59) Ibid.

(60) Q.I6,89.

(6I) Q.2,I06.

(62) Q.I6,I0I.

(63) Shāfi^{c}ī, Risāla, pp.I08-9.

(64) Shāfi^{c}ī, op.cit., p.II0.

(65) Q.7,3.

(66) Cf. Q.2,23 ; I0,83 ; II,I3.

(67) Q.2,275.

(68) Q.24,2.

(69) Shāfi^{c}ī, op.cit., p.III.

(70) Shāfi^{c}ī, op.cit., pp.242-45.

(7I) Ibid.

اخبرنا محمد بن اسماعيل بن ابى فديك عن ابن ابى ذئب عن المقبـرى
عن عبد الرحمن بن ابى سعيد عن ابى سعيد الخدرى قـــــال :
حبسنا يوم الخندق عن الصلاة ، حتى كان بعد المغرب بهوى مـــن
الليل ، حتى كفينا ، وذلك قول اللـــــــــــــــــــــــه :
(وكفى الله المؤمنين القتـــــال كان الله قويا عزيـــــــــزا) .

See Text, pp.I7I-72.

(72) Mālik, op.cit., Vol.I, pp.I83-84.
Shāfi^{c}ī, op.cit., loc.cit.
Muslim, op.cit., loc.cit.

باب القول في نسخ القران بالسنة

(I) Jassās, op.cit., Vol.2, p.425.

قال ابوبكر: قد ثبت المسح على الخفين عن النبي صلى الله عليه و سلم من طريق التواتر و الاستفاضة من حيث يوجب العلم و لذلك قال ابو يوسف: انما يجوز نسخ القران بالسنة اذا وردت كورود المسح على الخفين في الاستفاضة و ما دفع احد من الصحابة من حيث نعلم المسح على الخفين .

Pazdawī, op.cit., Vol.3, p.393.

Shāfi'ī, op.cit., Vol.I, p.32, Vol.7, p.226.

Mālik, op.cit., Vol.I, pp.35-7.

(2) al-Sarakhsī, op.cit., Vol.2, p.67.

و على قول الشافعي لا يجوز نسخ الكتاب بالسنة و لا نسخ السنة بالكتاب فانه قال في كتاب الرسالة: و سنة رسول الله صلى الله عليه و سلم لا ينسخها الا سنة كما لا ينسخ الكتاب الا الكتاب، فمن اصحابه من يقول مراده نفى الجواز و منهم من يقول مراده نفى الوجود اى لم يوجد في الشريعة نسخ الكتاب بالسنة و لا نسخ السنة بالكتاب .

Pazdawī, op.cit., Vol.3, p.397.

Ghazzālī, op.cit., Vol.I, p.124.

(3) Q.16,44.

(4) Ibid.

(5) al-Sarakhsī, op.cit., Vol.2, p.72.

الحجة لاثبات جواز نسخ الكتاب بالسنة قوله تعالى: (و انزلنا اليك الذكر لتبيّن للناس ما نزّل اليهم) فان المراد بيان حكم غير متلو في الكتاب مكان حكم آخر، و هو متلو على وجه يتبيّن به مدة بقاء الحكم الاول و ثبوت حكم الثاني، و النسخ ليس الا هذا .

(6) ibn Hazm, op.cit., Vol.4, p.439.

انا لم نقل ان النسخ هو البيان و انما قلنا: هو نوع من انواع البيان: كل نسخ بيان و ليس كل بيان نسخا .

(7) Q.16,89.

(8) Q.42,52-3.

(9) Q.53,3-4.

(I0) See p.35, note.2.

(II) See p.I4, note.3.

(I2) See p.I7, note.37.

(I3) See Text, p.69, l.I0.

(I4) Usūl al-Jassās, fo.22. (unedited portion)

(I5) Q.2,I06.

(I6) Rāzī, op.cit., Vol.3, p.232.
Ghazzālī, op.cit., Vol.I, p.I25.

نقول ليس المراد الاتيان بقران آخر خير منها ، لأن القران لا يوصف بكون بعضه خيرا من البعض كيفما قدّر قديما او مخلوقا ، بل معناه أن يأتى بعمل خير من ذلك العمل لكونه أخف منه او لكونه اجزل ثوابا .

(I7) Q.65,22-3.

(I8) See p.I4, note.3.

(I9) Q.II2,I.

(20) Q.I09,I.

(2I) Rāzī, op.cit., Vol.32, pp.I36,I74.

(22) Q.2,I06.

(23) Q.I0,I5.

(24) ibn Ḥazm. op.cit., Vol.4, p.477.

و احتج من منع ذلك بقوله تعالى : (قل ما يكون لى ان ابدله من تلقاء نفسى) قال ابو محمد : و هذا لا حجة لهم فيه لأننا لم نقل ان رسول الله صلى الله عليه و سلم بدّله من تلقاء نفسه و قائل هذا كافر . و انما نقول انه عليه السلام بدّله بوحي من عند الله تعالى كما قال ــ آمرا ان يقول ــ (ان اتبع ما يوحى الى) فصح بهذا نصا جواز نسخ الوحي بالوحي ، و السنة وحي فجائز نسخ القران بالسنة ، و السنة بالقران .

(25) Q.I6,IOI.

(26) ibn Ḥazm, op.cit.,Vol.4, p.479.

و احتجوا بقوله تعالى : (و اذا بدلنا آية مكان آية و الله اعلم بما ينزل) قال ابو محمد : و هذا لا حجة لهم فيه لانّه لم يقل تعالى : انى لا ابدل آية الا مكان آية و انما قال لنا انه يبدّل آية مكان آية ، و نحن لم ننكر ذلك بل اثبتناه ، و قلنا انه يبدّل آية مكان آية و يفعل ايضا غير ذلك ، و هو تبديل وحي غير متلو مكان آية ، ببراهين آخر .

(27) Q.4,I5-6.

(28) Shāfiᶜī, Risāla, pp.I29,247.
Muslim, op.cit.,Vol.5, p.II5.
ibn Ḥanbal, op.cit.,Vol.5, p.3I3.

قال رسول الله صلى الله عليه و سلم : "خذوا عنى ، خذوا عنى ، قد جعل الله لهن سبيلا ، البكر بالبكر جلد مائة و نفى سنة ، و الثيب بالثيب جلد مائة و الرجم ،،

(29) Qasṭallānī, op.cit., margin, Vol.7, pp.208-I4.

(30) Q.24,2.

(3I) Jaṣṣāṣ, op.cit., Vol.2, p.I30, Vol.3, p.3I6.
حديث عبادة وارد لا محالة قبل آية الجلد و ذلك لانّه قال : "خذوا عنى قد جعل الله لهن سبيلا ،، فلو كانت الآية قد نزلت قبل ذلك لكان السبيل مجعولا قبل ذلك و لما كان الحكم مأخوذا عنه بل عن الآية ، فثبت بذلك أن آية الجلد انما نزلت بعد ذلك .

(32) Q.4,I6.

(33) Q.24,2.

(34) Shāfiᶜī, Risāla, p.I32.
لانّ قول رسول الله : "خذوا عنى قد جعل الله لهن سبيلا البكر بالبكر جلد مائة و تغريب عام و الثيب بالثيب جلد مائة و الرجم ،، اول ما نزل فنسخ به الحبس و الاذى عن الزانيين .

(35) Jaṣṣāṣ, op.cit., Vol.3, p.3I4.
في حديث عبادة بن الصامت عن النبي صلى الله عليه و سلم "خذوا عنى قد جعل الله لهن سبيلا البكر بالبكر جلد مائة و تغريب عام و الثيب بالثيب الجلد و الرجم ،، فكان ذلك عقيب الحبس و الاذى المذكورين في قوله : (واللاتى يأتين الفاحشة من نسائكم) الى قوله : (او يجعل الله لهن سبيلا) و ذلك لتنبيه النبي صلى الله عليه و سلم ايّانا على ان ما ذكره من ذلك هو السبيل المراد بالآية و معلوم انه لم تكن بينهما واسطة حكم آخر .

(36) Some of the Mu^{c}tazila and the Khawārij do not recognize the 'stoning penalty' on the grounds that such a verse is not traced in the Qur'ān. They insist on applying the penalty which does appear in the Qur'ān. (24,2)

See ibn Hajar, op.cit., Vol.I5, p.I27.
Also see Jassās, op.cit., Vol.2, p.I30.

(37) Shāfi^{c}ī, op.cit., Vol.4, pp.27,36,40.
ibn Hanbal, op.cit., Vol.5, p.267.
ibn Māja, op.cit., Vol.2, p.83.
ibn Hazm, Muhallā, (II Vols) Cairo, I352/I939, Vol.9, p.3I6.
Kawtharī, Maqālāt, Cairo, I388/I966, p.8I.

(38) See p.42, note.35.

(39) Q.2,I80.

(40) Q.2,240.

(4I) Q.2,I83.

(42) See note.37.

(43) Q.4,II.

(44) Jassās, op.cit., Vol.I, p.I93.

(45) Jassās, op.cit., loc.cit.

(46) Q.4,II.

(47) Shāfi^{c}ī, Risāla, p.I38.

فكانت الآيتان محتملتين لأن تثبتا الوصية للوالدين و الاقربين ، و الوصية للزوج ، و الميراث مع الوصايا ، فيأخذون بالميراث و الوصـــــــــايا . و محتملة بأن تكون المواريث ناسخة للوصـــــــــــــــــــايا .

(48) See Text, p.72, l.II.

(49) al-Sarakhsī, op.cit., Vol.2, p.69.

(50) Q.4,II.

(5I) Q.4,I2.

(52) Jassās, op.cit., loc.cit.
Shāfiʿī, Risāla, p.I43.

(53) Jassās, op.cit., loc.cit.
Shāfiʿī, Risāla, loc.cit.

(54) Q.2,I44.

(55) M.M. Dawālībī, op.cit., p.204.

لأن دليل التخصيص اذا تأخر وروده كان نسخا و تغييرا لا تخصيصا و بيانا ، و اذا تقدم كان منسوخا ، و هذا خلافا للشافعية الذين عدوا الخاص، سواء كان متأخرا ام متقدما ، بيانا و تخصيصا للعام .

Also see Pazdawī, op.cit., Vol.I, p.306.
ibn Hazm, op.cit, Vol.3, p.362.

(56) See p.39, note.72.

(57) Q.2,I44.

(58) Q.2,II5.

(59) Q.2,I44.

(60) Q.2,II5.

(6I) Q.4,23.

(62) Ibid.

(63) Q.2,II5.

(64) Mālik, op.cit.,Vol.I, p.I5I.
Muslim, op.cit.,Vol.2, p.I49.
ibn Kathīr, op.cit.,Vol.I, p.I58.

(65) Q.2,II5.

(66) al-Wāqidī, The K. al-Maghāzī, (3 Vols) London, I386/I966, Vol.I, pp.395-402.
ibn Khaldūn, Tārīkh, (7 Vols) Beirūt, I376/I956, Vol.2, p.772.

(67) See p.44, note.56.

(68) Q.60,II.

(69) Q.33,52.

(70) al-Sarakhsī, op.cit., Vol.2, p.75.
و الدليل على جواز نسخ الحكم الثابت بالكتاب بغيره ان قوله تعالى : (لا يحل لك النساء من بعد) قد انتسخ باتفاق الصحابة على ما روى عن ابن عمر و عائشة رضى الله عنهما انهما قالا : ما خرج رسول الله صلى الله عليه و سلم من الدنيا حتى ابيح له النساء ، و ناسخ هذا لا يتلى في الكتاب ، فعرفنا انهم اعتقدوا جواز نسخ الكتاب بغير الكتاب .
It is obvious that al-Sarakhsī borrowed this idea from Jassās.

(7I) Q.33,50.

(72) Ibid.

(73) Q.33,52.

(74) Ibid.

(75) Q.33,50.

(76) See Text, p.I24, l.4.

(77) See Text, p.I22, l.II.

(78) Ibid.

(79) See Text, p.I23, l.5.

باب ذكر نسخ الناسخ من الاحكام

(I) Q.8,67.

(2) Q.47,4.

(3) Q.9,5.

(4) See p.24, note.67.

(5) Q.4,I5.

(6) See p.42, note.23.

(7) Q.24,2.

(8) See p.33, note.4.

(9) See p.42, note.35.

(I0) Muslim, op.cit., Vol.2, p.7I.

عن عبد الله قال كنا نسلّم على رسول الله صلى الله عليه و سلم و هو في الصلاة فيرد علينا فلما رجعنا من عند النجاشى سلمنا عليه فلم يرد علينا ، فقلنا يا رسول الله كنا نسلّم عليك في الصلاة فترد علينا ، فقال : ان في الصلاة شغلا اى بالتلاوة و الاذكار مانعا من غيرها ، انما الصلاة لقراءة القران و ذكر الله .

(II) Shāfiʿī, ikhtilāf al-Ḥadīth, p.539.
Cf. Text, p.69, l.I0.

(I2) Jaṣṣās, op.cit., Vol.I, p.526.
Shāfiʿī, op.cit., loc.cit.

(I3) Q.2,238.

(I4) Muslim, op.cit., loc.cit.

عن زيد بن ارقم قال : كنا نتكلم في الصلاة يكلم الرجل صاحبه و هو الى جنبه في الصلاة حتى نزلت (قوموا لله قانتين) فامرنا بالسكوت و نهينا عن الكلام.

(I5) Shāfi^{c}ī, op.cit., pp.540-4I.

(I6) Jassās, op.cit., loc.cit.

(I7) Shāfi^{c}ī, op.cit, p.534.

(I8) Shāfi^{c}ī, op.cit., loc.cit.
Jassās, op.cit., Vol.2, p.I77.
Tahāwī, op.cit., Vol.3, p.24.

(I9) ibn Hazm, op.cit., Vol.4, p.456.

ان نكاح المتعة اباحه الله تعالى ، ثم نسخه ، ثم اباحه ، ثم نسخه ، ثم اباحه ، ثم نسخه الى يوم القيامة.
Cf. Qurtubī, op.cit., Vol.5, pp.I30-33.
Also cf. al-Khū'ī, al-Bayān fī Tafsīr al-Qur'ān, al-Najf, I966, p.333.

باب آخر في النسخ

(I) Q.4,33.

(2) Q.9,7I.

(3) Q.8,72.

(4) Q.33,6.

(5) Jassās, op.cit., Vol.2, p.226.

(6) Q.33,6.

(7) Jassās, op.cit., loc.cit.

(8) Q.24,58.

Text cut off in original

ابواب في علم الناسخ و المنسوخ

في كتاب اصول الفقه

لابي بكر احمد بن على الرازى الشهير بالجصاص (٣٠٥ ــ ٣٧٠ هـ)

اعداد

محمد اكرم

بحث قدم لجامعة سانت اندروس (اسكتلندا) نحو شهادة الدكتوراة

فـــــــى الدراســـــــــــات الأسلاميـــــــــــــة

١٩٨٦

بسم الله الرحمن الرحيم

فهرست ابواب الكتاب

باب الكلام في الناسخ و المنسوخ

fo.IIja.

فصل في الكلام في ماهية النسخ

اختلف العلماء في معنى النسخ في موضوع اللغة ، فقال قائلون هو النقل و منه قولهم نسخ الكتاب اى نقل ما فيه الى غيره فيطلقون اسم النسخ و النقل على ذلك • و قال آخرون معناه الابطال و منه قولهم نسخت الشمس الظل اذا ابطلته • و قال بعضهم هو الازالة و منه قولهم نسخت الرياح الآثار • و هذه الالفاظ متقاربة المعانـــــي و ايّها كان المعنى في اللغة فانه متى استعمل في نسخ الاحكام فهو مستعمل فيها على وجه المجاز دون الحقيقة ، و ذلك لانّه ان كان معنى النسخ في موضوع اللغة هو النقل فهذا المعنى بعينه غير موجود في نسخ الحكم ، لانّ للنقل معنى معقولا في اللغة لا تصح حقيقته في نسخ الحكم و لا يخلو حينئذ من أن يكون المراد بـــه نقل الحكم نفسه او نقل المتعبّد به عن الحكم الاوّل الى غيره ، فان كان المراد الحكم فان الحكم ليس هو/ب/معنى يصح نقله في الحقيقة لانّ النقل المعقول في اللغـــــة هو نقل الشيء من مكان الى غيره و ذلك مستحيل في الحكم ، و ان كان المـــــراد نقل المتعبّد بالحكم الى حكم غيره فانه لم يحصل فيه نقل بأن تعبّد بحكم غير الاوّل •

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a) ms مابيه

b) ms فانها

فعلمت ان الاسم ان كان موضوعا في اللغة حقيقة فانه مجاز في الحكم فكأنه انما سمى بذلك على جهة التشبيه ، لأن النقل يوجب تغيّر المنقول عن الحال التي كان عليها الى غيرها فشبّه تغيّر الحكم في الثاني بالنقل • وعلى أن نسخ الكتاب انما سمى نقلا مجازا ايضا لا حقيقة ، لأن المكتوب بدّيا هو باق في موضعه غير منقول عنه فانما سمى ما نسخ منه منقولا تشبيها له بالشيء المنقول من مكان الى غيره فلم يحصل معنى النسخ انه نقل في الكتاب، ولا في الاحكام الا مجازا •

واما من قال النسخ هو الازالة في اللغة فانه لا يرجع منه ايضا الا الى المجاز في اللغة والحكم جميعا ، لأن قولهم نسخت الرياح الآثار قد يطلق في الريح اذا عفت على [a]آثار الديار بأن سفت عليها التراب فاخفتها فهي باقية كما يقال عفت الديار :o.II5b.o
و درست ويدلّ عليه ايضا انه لا يصح اطلاق النسخ على كل مزال ، لأنه لو ازال جسما من مكان الى غيره لم يجز أن يقال له قد نسخه فلما كان من الاشياء المزالة ما ينتفى عنه اسم النسخ دلّ ذلك على ان[b] اطلاق لفظ النسخ في ازالة الريح للاثر[c] مجازا[d] لا حقيقة و هو في الحكم ايضا كذلك ،لأن الحكم الاوّل لا يصح ازالته بعد ثبوته اذ كان المأمور به بعينه غير جائز أن يكون منهيّا عنه فلم يكن هناك حكـــــــــــــــم

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a) sic

b) ms above the line.

c) ms الاثر

d) ms مجازا

ازيل بالنسخ • و انما النسخ يبيّن ان[a] مثل ذلك الحكم لا يجب في المستقبل و لا يكون النسخ بمعنى الازالة على هذا الوجه الا تشبيها له بما كان ثابتا في موضع فازيل عنه الى غيره ، و يدلّ على ما ذكرنا ايضا ان ازالة الشيء في اللغة لا يقتضى ارتفاع عينه و لا ابطاله ، لانه يصح أن يقال ازلت الحجر عن موضعه فهو باقٍ[b] العين في موضع غيره و الحكم الاوّل ليس بباق، بعد النسخ فلا يصح فيه معنى الازالة الا على وجه المجاز(3) •

و امّا من قال معناهُ الابطال في اللغة و استدلّ عليه بقولهم نسخت الظلّ الشمس فانه يوجب ايضا أن يكون هذا اللفظ مجازا لانّهم قد قالوا نسخت الكتاب و ليس فيه ابطال شيء و قال الله سبحانه و تعالى : (انا كنا نستنسخ ما كنتم تعملون)(4) و لم يرد به ابطال شيء بل معناه اثبات مقاديرها و ما يستحق عليها من ثواب او عقاب ، و الله اعلم ، و هو في معنى نسخ الكتاب و اثبات مثله في هذا الوجه اولى بمعنى اللفظ من الابطال ، و لو ثبت ايضا ان معناه الابطال لما صح اطلاقه في الاحكام الا مجـــازا ، لانّ الحكم الاوّل لا يصح ابطاله بحال ، و انما يثبت في الثاني حكم غير الاوّل لم يكن قط مرادا في الثاني فليس هناك حكم ابطل بالنسخ(5) •

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a) ms الى

b) ms باق

و النسخ في الشريعة هو بيان مدّة الحكم الذى كان في توهمنا و تقديرنا جواز بقائه (6)
فتبيّن لنا ان ذلك الحكم مدّته الى هذه الغاية و انه لم يكن قط مرادا بعدها ،
و لا يجوز نسخ الاحكام معنى غيره لأنه غير جائز أن يكون الحكم الاوّل مرادا في
الوقت الثاني الذى فيه النسخ ثم ابطله و نهى عنه لأن ذلك هو البداء (7) ، و لا يجوز
على الله تعالى اذ هو العالم بالعواقب ، فغير جائز أن يبدو[a] له علم شيء لم يكن
علمه في الاوّل • فيثبت بذلك أن معنى النسخ في الشرع ما وصفنا و على +اىّ وجه fo.II6a.
كان معنى النسخ في اللغة فانه لا يحل /ب/ معناه في الشرع، لأنه اذا كان معلوما وقوعه
في الشرع على الحد الذى وصفنا فقد اريد به معنى ليس الاسم موضوعا له في
اللغة فقد صار اسما شرعيا • قال الله تعالى : (ما ننسخ من آية او ننسها نأت بخير
منها او مثلها) (8) و ليس في اللغة ان توقيت المدّة فيما كان نظن بقاءه و دوامه (9)
يسمى نسخا ، فثبت انه اسم شرعى • انه لا يصح اطلاقه في اوامرنا لمن[b] يلزمه طاعتنا
من عبيدنا و من تحت ايادينا[c] و ان هذا الاسم مخصوص باحكام الشرع و ليس كل ما
بيّن به مدّة[d] الحكم يسمى نسخا ، لأنه لو كانت المدّة معلومة مع ورود الامر بأن قال
صلّوا في هذا اليوم و لا تصلّوا في غيره لم يكن زوال الامر بمضى الوقت نسخا ،

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a) ms يبدوا

b) ms لم

c) sic.

d) ms هذا

لانّا قد علمنا عند ورود الامر توقيت مدّته ٠ و انما يطلق اسم النسخ فيما كان في توهمنا و تقديرنا تجويز بقائه على الدوام فيأتي[a] الحكم الناسخ و يبيّن ان ما كان في تقديرنا من بقاء الحكم غير ثابت و أن مدّة الحكم الاوّل قد انقضت ٠

و من الناس من يظن ان النسخ رفع الحكم ، و هذا جهل مفرط ، و ذلك لأن ما ثبت من الاحكام لا يجوز رفعه ، لانّه يدلّ على البداء ٠ و انما يدلّنا النسخ ان الحكم المنسوخ لم يكن مرادا في هذا الوقت ٠

a) ms فیای

باب القول فيما يجوز نسخه و ما لا يجوز

الاصل[a] في هذا الباب انّ احكام افعال المكلفين اذا وقعت على قصد من فاعلها فهى على ثلاثة انحاء في الفعل • منها واجب لا يجوز عليه التغيّر و التبديل (1)
كتوحيد الله عز و جل و تصديق رسله و شكر المنعم و اجتناب المقبحات في العقول •

و منها ممتنع محظور لا يجوز انقلابه عن حال[b] نحو كفران النعمة و الكذب و تكذيب رسل الله و ارتكاب المقبحات في العقول • (2)

فهذان البابان يجريان في حكم العقل على شاكلة واحدة ، لا يجوز عليهما[c] التغيّر و التبديل ، و لا يصح مجيء العبادة فيهما[d] بخلاف ما في العقول من حكمهما[e] ، (3)
و من اجل ذلك لم يصح نسخهما • و ذلك لانّ العقل حجة لله تعالى فما حسنه من شيء فهو حسن و ما قبحه فهو قبيح ، و السمع حجة لله تعالى ايضا ، و غير جائز انْ تتضاد حجج الله و لا تتنافى[f] • فثبت انّ السمع لا يرد برفع ما في العقل وجوبه ، و لا بايجاب[g] ما في العقل حظره ، فلذلك قلنا ان[h] هذين الوجهين لا يجوز ورود النسخ فيهما • .II6b.

و امّا الوجه الثالث فهو ما يجوز العقل ايجابه /تارة/ و حظره اخرى و اباحته اخرى مثل

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a) ms الامل
b) sic.
c) ms عليها
d) ms فيها
e) ms حكمها
f) ms نتنافا
g) ms لان
h) ms ايجاب

(4)
الصلاة و الصيام و الحج و ذبح البهائم و ما جرى مجرى ذلك ٠

فهذا الضرب مما يجوز ورود النسخ فيه على الوجه الذى كان يجوّز العقل مجيء

الشرع به ٠ و انما صار النسخ يتطرق على هذا الوجه ، لأن حكمه مردود الى ما

في علم الله تعالى من المصلحة ، فاذا علم المصلحة في ايجابه اوجبه ، و اذا علمها

5 في حظره بعد الايجاب حظره ، و اذا علمها في اباحته دون ايجابه اباحه ، فلذلك[a]

جاز أن يأمر بصيام شهر رمضان و الصلوات في اوقاتها المعلومة و يحظر صيام يوم الفطر

(5)
و يوم النحر و ايام التشريق و يحظر الصلاة عند طلوع الشمس و عند الغروب ، و يبيح[b]

فعل الصيام في غير هذين الوقتين و كذلك الصلاة ٠ فلذلك ليس يمتنع أن يتعبّد

(6)
الله تعالى بفعل هذه الاشياء على وجه الايجاب ثم ينسخه بحظرها او اباحتها ،

IO و يدلك على الفرق بينه و بين الوجهين الاولين انه جائز ورود العبادة بلزوم

٤٥٠ الصيام و الصلاة /على/ بعض المكلفين و حظرهما على بعضهم كنحو ما امر

الطاهر بفعل الصلاة و الصوم و نهى عنهما الحائض ٠ و هو في هذا الباب يجرى

مجرى سائر افعال الله تعالى في تدبير عباده من الغنى و الفقر

و المرض و الصحّة و من احداث الحر و البرد كل[c] شيء من ذلك في وقت دون

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a) ms فحظره بعد

b) ms ببح

c) ms كل كل second كل crossed out.

وقت لما علم تعالى من مصالح عباده ، فكذلك سبيل هذا الضرب الذى يتطرق عليه مجيء العبادة به تارة و بضده اخرى على حسب المصلحة ٠

و البابان الاولان لا يختلف حكم سائر المكلفين فيهما ٠ الا ترى انه لا يصح انْ يكون بعض المكلفين مأمورا بالتوحيد و تصديق الرسول عليه السلام و بعضهم منهيين عنه او مباح لهم تركه و الاعراض عنه ٠ و كذلك لا يصح انْ يكلّف بعضهم مجانبة القبيحات في العقول ككفران[a] النعمة و تكذيب الرسل و يومُر بعضهم بارتكابها ، فلما لم يختلف حكم سائر المكلفين في هذين البابين في زمان واحد لم يختلف حكم سائر المكلفين فيهما[b] في الازمنة المختلفة ٠ فلم يجز من اجل ذلك ورود النسخ فيهما[c] و لما جاز في غيرهما[d] مما وصفنا اختلاف احكام المكلفين فيها في الزمان الواحد جاز مثله في الازمنة ٠ فيتعبّدون بالحظر في زمان و بالايجاب او[+e] الاباحة fo.II7a. في زمان غيره ٠

و امّا الخبر الوارد عن الله تعالى و عن رسوله صلى الله عليه و سلم فانه ينتظم معنيين : احدهما العبادة باعتقاد مخبره على ما اخبر به ، فهذا ما لا يجوز نسخه و لا تبديله و لا التعبّد فيه بغير الاعتقاد الاوّل ٠ و المعنى الآخر حفظه و تلاوته ،

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a) ms كفران
b) ms فيها
c) ms فيها
d) ms ها
e) ms اذ

و هذا مما يجوز نسخه بأن يأمر بالاعراض عنه و ترك تلاوته حتى يندرس على مرور[a] الازمان فينسى كما نسى سائر كتب الله تعالى القديمة كصحف ابراهيم و كثير من الانبيـــاء عليهم السلام قد نسخت تلاوتها[b] حتى صارت لا يتلوها احد و لا يحفظها(7). و انمـــا لم يجز ورود العبادة بنسخ اعتقاد معنى الخبر و ان جاز ورود ها بنسخ الخبـــر الذى هو التلاوة من قبل انه لو جاز ذلك لكان فيه ايجاب اعتقاد التعبّد لشيء على خلاف ما هو به لأن خبر الله تعالى لا بد ان يكون صدقا يلزمنا عند ورود ه اعتقاد مخبره على ما هو به . و هذا لا يجوز على الله تعالى و لا على رسوله صلى اللـه عليه و سلم /نسخه/، و لو جاز أن يأمرنا باعتقاد ذلك لجاز أن يأمرنا بالاعراض[c] عنـــه على حسب ما امرنا باعتقاده ، فيكون امرا لنا بالكذب و لو جاز أن يأمرنا بالكذب لجاز أن يفعله هو ،تعالى الله عن ذلك علوا كبيرا ، فلذلك قلنا ان معاني الاخبار الواردة من الله تعالى لا يجوز ورود النسخ على اعتقادنا فيها بأن يتعبّدنا باعتقاد ضـــد مخبرها لأن[d] المخبر عنه لا يجوز عليه التغيّر و التبديل بتغيّر الاحوال و الازمـــان ، فلذلك لم يجز أن نعتقد فيها خلاف ما اوجبه ورود الخبر . و هذا نظير ما امر الله تعالى به من العبادات و استقرّ عليه احكامها و مضى عليها اوقات فعلهـــا .

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a) ms مرر

b) ms تلاوته

c) ms بالاخبار

d) ms لا

فغير جائز انْ ترد العبادة بنسخ اعتقاد صحتها و ثبوتها في الاوقات الماضية لانْ
a
في نسخ ذلك الاعتقاد وجوب اعتقاد فساد ما امر الله تعالى به،و اعتقاد ذلك قبيح
لا يجوز ورود العبادة به فلذلك كان الامر فيه على ما وصفنا ٠ و مما يبيّن انْ اعتقاد
معانى الاخبار الواردة عن الله تعالى و عن رسوله صلى الله عليه و سلم جار مجرى
5 التوحيد و تصديق الرسل و سائر ما لا يجوز فيه النسخ و التبديل ، فانه مخالف لما
له في العقول حالان من الامور التي يجوز ورود العبادة بها تارة و باضداد ها
b
اخرى،لانّه يمتنع الامر بالاعتقادين في خطاب واحد لزمانين+مختلفين ٠ فلا يجوز :o.II7b.
أن يقول اعتقدوا في خبرى هذا انه ما هو عليه الى مدّة كذا فاذا انقضت المـــدّة
فاعتقدوا فيه ضده كما لا يجوز انْ يقول اعتقدوا صحة التوحيد و تصديق الرسل الى
d c
IO وقت كذا فاذا مضى الوقت فاعتقدوا ضدهما ٠فثبت انّ اعتقاد معنى الخبر يجرى في
حكم العقل على شاكلة واحدة كاعتقاد التوحيد و العدل و تصديق الرسل عليهم
السلام فلا يجوز ورود النسخ على واحد منهما ٠

و من وجهّ النسخ في اعتقاد معانى خبر الله تعالى و خبر الرسول عليه السلام فقد
(3)
e
وصف الله تعالى بالبداء ، و انه ظهر له في التالي ما لم يكن علمه قبل لانْ البـــداء

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a) ms نسنخ :

b) ms انه

c) ms و لا تصوموا و لا تصلوا

d) ms after الخبر see لا

e) ms عليه

معناه الظهور ٠ (9) قال الله تعالى : (لا تسئلوا عن اشياء ان تبد لكم تسؤ كم) (I0) ، يعنى ان تظهر لكم ، و قال تعالى : (ان تبدوا ما في انفسكم او تخفوه يحاسبكم به الله) (II) ٠

و من جوّز البداء على الله تعالى فهو خارج عن ملّة الاسلام ٠

فان قال قائل قال الله تعالى : (يمحو الله ما يشاء و يثبت و عنده ام الكتاب) (I2)(I3) و هذا 5 يدلّ على جواز نسخ الاخبار اذا شاء الله نسخها ٠

قيل له ليس في الآية دليل على ما ذكرت لانّه لم يقل تعالى يمحوa الله ما يشاء من معاني الاخبار الواردة من جهته ،فان تعلّقت بعمومه فجعلته على الخبر و غيـــره ، فالواجب عليك اولا انْ تثبت انّ نسخ معاني الاخبار مما يجوز انْ يشاء ه الله ٠ و قد دلّلنا انفا على ان هذا سفه و قبيح ، لا يجوز انْ يشاء ه الله تعالى ٠ و الاحتجاج I0 بظاهر الاية في هذا المعنى ساقط ٠ و على انه لو ثبت انّ المراد نسخ الخبر لكـان المعنى نسخ تلاوته لا مخبره /و/ليس هو الخبر و قد بيّنا جواز نسخ التلاوة و امتناع جواز نسخ اعتقاد مخبره ٠ و قد روى في تاويل هذه الآية عن جماعة من السلف اقاويل ليس في شيء منها انّ المراد نسخ الاخبار لانّ ابن عباس قال : معناه ان الله تعالى يبدّل ما يشاء من القران فينسخه و يثبت ما يشاء فلا يبدّله و عنده ام الكتاب (I4) يعنـــي

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a) ms يمحو

جملة ذلك عنده في ام الكتاب • وعن زيد بن اسلم يمحوّ[a] الله ما يشاء مما ينزله على الانبياء ويثبت ما يشاء مما ينزله على الانبياء وعنده ام الكتاب لا يغيّر ولا يبدّل • وعن الحسن قال : يمحو[b] الله من جاء اجله فيذهب ويثبت[c] الذى هو حيّ يجرى الى اجله •

a) ms يمح

b) ms يمحوا

c) ms لطيف but cf. ibn Kathīr, Tafsīr,vol.2,p.520.

فصل

من هذا الباب قد بيّنا القول فيما يجوز نسخه و ما لا يجوز نسخه بما فيه كفاية · fo.118a.

و نبيّن الآن حكم الالفاظ الواردة في القبيل الذى يجوز نسخه من الاحكام و ما لا يجوز نسخه منها · فنقول ان الحكم الوارد عن الله تعالى و عن رسولـــــه صلى الله عليه و سلم اذا لم يكن موقتا و لا مقرونا بلفظ التأبيد في الازمـــان المستقبلة ، فان الذى يجب على سامعه من المكلفين له و[a] المتعبدين به اعتقاد جواز نسخه ما دام النبي عليه السلام حيا،كقوله صلّوا و صوموا في مستقبل الايّام و نحو ذلك · و هذا ما لا خلاف فيه بين احد من اهل العلم نعلمه · و امّا[b] اذا قرنـه بوقت بعينه نحـــو[c] ان يقول صلّوا هذه السنة في كل يوم او يقول[d] صوموا شهـــر رمضان القابل ، فان هذا لا يجوز ورود النسخ فيه عندنا بحال و سنفرد القول فيه بعد هذا[(I)] · و امّا اذا قال :صلوا الظهر ابدا في مستقبل اعماركم و من يحدث بعد كم الـــى ان تقوم الساعة ، فان من الناس من يجيز ورود النسخ في مثله اذا كان هـــذا القول من شرائع الانبياء عليهم السلام الذين كانوا قبل نبينا عليه السلام او من نبينا عليه السلام ما دام حيا لانّه صلى الله عليه و سلم خاتم النبيين لا يجوز النســـــخ

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a) ms after و see ٣

b) ms افريد بن

c) ms يجوز

d) ms يقولوا

a
بعده • و من الناس من لا يجيز ورود النسخ على مثل هذه الالفاظ • فامّا الوجه
الاوّل الذي بدائنا بذكره في هذا الفصل ، و انما جاز نسخه لأنه لما لم يحضره
توقيت و لا مدّة و كان جواز النسخ قائما في مثله ، وجب علينا أن لا نعتقد عند
حصوله الينا بقاء حكمه على التأبيد مع بقاء النبي عليه السلام• بل الواجب علينا
c b
5 في مثله اعتقاد جواز نسخه ، و اذا كان ذلك جائز ورود النسخ فيه حتى اذا توفى
النبي صلى الله عليه و سلم قبل نسخه استقرّ حكمه على التأبيد ، لأن النسخ لا يجوز
بعد موته عليه السلام• و امّا اذا امر به على التأبيد فقال : افعلوا انتم و من /يحدث/
بعدكم الى ان تقوم الساعة ، فان الاظهر في مثله انه لا يجوز نسخه ، لأنه قد الزمنا
(2)
اعتقاد بقائه مؤبدا ، و غير جائز أن يكون المراد بقاءه الى وقت و مدّة ، لأن تجويز
I0 ذلك يؤدى الى ابطال دلالة الكلام على حسب ما تقدّم القول في اثبات العموم
و امتناع جواز تأخير الخصوص فيما سلف•
فان قال قائل ان اليهود تزعم ان في التوارة الامر بالتمسك بالسبت ما دامت
السماوات و الارض و قد ورد نسخه على لسان كثير+ ممن جاء بعده من fo.II8b.
الانبياء عليهم السلام•

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a) ms يخبر
b) ms حواد
c) ms جاز

قيل له لم يثبت ان في التوراة هذا الذى قالوه • ولو كان ثابتا لم يمتنع أن يكون اللفظ الذى ادّعوه في التوراة باللسان العبراني يحتمل التأبيد و يحتمل غيـــره ، فحمل هؤلاء على التأبيد من جهة التأويل • واذا لم يكن عندنا علم بحقيقة معنى اللفظ المذكور في التوراة في هذا الباب لم يثبت ما ذكروه • وايضا فلو كان مـــا
a
5 ادّعوه في ذلك ثابتا وكان العلم به واقعا لوجب أن يقع لنا العلم به مع سماعنا لذلك كوقوع علمهم به في زعمهم ،فلما لم يثبت عندنا ذلك مع سماعنا لهذه الاخبار علمنـــا بطلان ما ادّعوه (3) • ومن اجاز ذلك في ازمان الانبياء عليهم السلام مع ذكر التأبيد فيه ممن وصفنا قولهم فانما اجازوه لأن علينا اعتقاد صحة ما يأتي به النبي صلى الله عليه و سلم بعد ذلك من الشريعة مما يخالف ذلك او يوافقه ، فيصير تقدير ذكر التأبيد
IO فيه مقرونا بجواز النسخ كأنه قال افعلوا هذه الافعال في الزمان المستقبل ابدا ما لم انسخه • والصحيح عندنا هو الاوّل لأن هذا لو جاز لجاز مثله في العموم فيقال انا نعتقد فيه العموم ان لم يكن اراد الخصوص • ولجاز في الحكم المفروض في وقت بعينه أن يقول له افعله في ذلك الوقت ما لم انسخه • وهذا قول فاحش قبيح لا يصح فثبت بذلك ما وصفنا •

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a) ms عنا outer left-hand margin.

باب في الدلالة على جواز النسخ في الوجوه التي بيّنا

من ينكر النسخ فريقان : احدهما اليهود،و الآخرون من اهل الملّة من المتآخرين لا يعتد بهم • فامّا اليهود فان منهم من ينكر النسخ فيما زعم من طريق العقل،و منهم من يجوزه في العقل الا انه يزعم ان موسى عليه السلام قد اعلمهم انّ شريعة التوراة (I) و يوم السبت لا ينسخان ابداً[a] • فامّا من منع منهم ذلك من جهة العقل فانه ذهب الى بداء[b] و رجوع عن ارادة الشيء الى كراهته و هذا لا يكون يرى[c] الا ممن كان جاهلا بالعواقب و الله تعالى عالم بالاشياء قبل كونها ، فان كان المأمور به صحيحا فالرجوع عن الصحيح لا يفعله حكيم،و ان كان فاسدا لم يجز انْ يشرعه الله تعالى في وقت من الاوقات •

قال ابو بكر رحمه الله : و هذا الذى قالوه جهل[d] منهم لمعنى النسخ لانّ المأمور به غير المنهي عنه فيما يقع به النسخ • و انما النسخ يبيّن ان زمان فرض[e] الاوّل قد انقضى و ان الواجب في الزمان المستقبل غير الواجب كان في الماضي و هذا لو نص+ .II9a عليه في خطاب واحد كان جائزا مستقيما ، الا ترى انه لو قال تمسّكوا بتحريم السبت الى مائة سنة ثم احلّوه كان جائزا و كذلك لا يمتنع انْ يطلق القول بتحريم السبت

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a) ms بنسخ
b) ms هدا
c) ms بدا
d) ms حهلا
e) ms العرض

ثم يبيّن الوقت الذى انتهى اليه مدّة التحريم على حسب ما علم سبحانه من مصالـــح العباد فيه و كما جاز انْ يخالف بين احكام العباد فيتعبّد بعضهم بحكم و بعضهم بضد ذلك الحكم في زمان واحد نحو تحريم الصلاة و الصوم على الحائض و ايجابهما على الطاهر على حسب ما علم من مصالحهم،كذلك لا يمتنع انْ يخالف بين احكامهم

a
5 يميت واحدا و يخلق آخر و يمرض واحدا و يصح آخر و يغنى واحدا و يفقر آخـــر و ذلك لواحد في زمانين مختلفين و لم يكن شيء من ذلك دليلا على البداء و علـى الرجوع عما اراده لانْ الذى اراده في الثاني غير الذى اراده في الاوّل و كذلـــك العبادات تجرى على هذا المنهاج(2).

و ايضا قد كان مباحا لولد آدم من صلبه انْ يتزوّج الاخ منهم باخته و لو لا ذلك لم

IOيكن بينهم تناسل و هو محرم في شريعة التوراة و سائر الشرائع بعدها و لم يكن فيه ما يوجب البداء فكذلك تحريم السبت و سائر الشرائع التي يجوز العقل حظرها تارة و اباحتها اخرى ، جائز نسخها و الابانة عن مضى وقت تحريمها(3).

و امّا من زعم منهم انْ موسى عليه السلام قد اعلمهم انْ شريعة التوراة لا تنسخ فانـه معترف انْ التوراة قد انبأت عن نبوّة انبياء بعد موسى عليه السلام فاذا احلته صـار

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a) ms above the line.

ذ لك مقرونا الى لفظ التحريم كانّه قال حرّموا السبت ما لم احلّه على لسان نبي ياتّي بعد موسى كما كان يجوز انّ يقول لموسى تمسّك بتحر يم السبت ما لم احلّه علـــــى لسانك ، و على ان ما يدعونه من توقيف موسى عليه السلام على التمسّك بتحريمه ابدا لو كان ثابتا لوجب انّ يقع لنا العلم به مع سماعنا للخبر عنه كما ادّعى هوءلاء لانفسهم فلما لم يقع لنا العلم بذلك مع سماعنا الاخبار التي سمعوها في ذلك علمنا انهم صاروا الى ذلك من طريق التأويل فاخطأوا[a] فيه (4) .

و قد تكلّم الناس عليهم في هذا الباب باشياء كثيرة لا انفصال لهم منها ، و ليس غرضنا في هذا الموضع الكلام على هوءلاء و انما الكلام في اصول الفقه الا انه لما عرض فيـــه القول بالنسخ احببنا انّ لا نخليه من جملة تدلّ عليه و بطلان قول من ابى ذلك من الفرقة التي تنتحل دين الاسلام ثم صاحب اليهود في امتناعها[b] من تجويز نسخ الشريعة .

فنقول بعد تقدمة القول في جواز+ النسخ في الحجة ان الفرقة المنكرة للنسخ مـــن اهل الصلاة قد خالفت الكتاب و الآثار المتواترة و اتفاق السلف و الخلف جميعـــا فيما صارت اليه هذه المقالة .

فامّا مخالفتها للكتاب فقوله تعالى : (ما ننسخ من آية او ننسها نأت بخير منها او مثلها) (5)

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a) ms فاحطوا

b) ms فى

فاثبت النسخ في الكتاب ٠

فان قال قائل انما اراد بالنسخ في هذا الموضع الازالة و الاسقاط ٠

قيل له لا يخلو/من/ انّ تريد به ازالة الحكم مع بقاء الرسم او ازالة الرسم مع بقـــاء الحكم ، فان اردت به احد هما فان هذا فاسد من وجهين : احد هما ان عموم اللفظ يقتضى الامرين و من حمله على احد الوجهين د ون الآخر بغير د ليل فهو متحكّـــم قائل بغير علم ٠ و الوجه الآخر انا لو سلمنا لك ما ادعيت من ازالة الرسم فد لالته قائمة على ما ادعينا فانه قد اسقط عنا فرض تلاوته و اعتقاد كونه من القران بعد ان كان لزمنا ذلك ٠ و وجه آخر و هو انه قد ذكر في الآية الازالة و الاسقاط في قولـه تعالى : (او ننسها) ، فعلمنا انّ مراده بذكر النسخ هو نسخ الحكم ٠ و قـــال تعالى : (و اذا بدّلنا آية مكان اية)(6) و قال تعالى : (يمحو الله ما يشاء و يثبت و عنده ام الكتاب)(7) و قال تعالى : (لكل جعلنا منكم شرعـة و منهاجا)(8) و اخبر عن نسخ بعض احكام الشرائع المتقدّمة بقوله تعالى : (و لا حل لكم بعض الذى حرّم عليكم)(9) و قـــال تعالى : (و على الذين هادوا حرّمنا كل ذى ظفر)(10) و قال تعالى : (فبظلم من الذين هادوا حرّمنا عليهم طيبات احلت لهم)(11) ٠

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a) ms ~

و قد ورد من طريق النقل المستفيض و الخبر المتواتر الذى لا يتطرّق[a] عليه الفساد

و البطلان انّ النبي صلى الله عليه و سلم قد كان يصلي الى بيت المقدس الى ان

نسخ الله تعالى الصلاة الى تلك الجهة[b] و امره بالتوجه الى الكعبة بقوله تعالى :

(قد نرى تقلب وجهك في السماء فلنولينك قبلة ترضا ها فولّ وجهك شطر المسجد

(I2)
5 الحرام) ثم قال تعالى : (سيقول السفهاء من الناس ما ولّاهم عن قبلتهم التي

(I3)
كانوا عليها قل لله المشرق و المغرب يهدى من يشاء الى صراط مستقيم) ،فاخبر

(I4)
انهم كانوا على قبلة غير ها ثم نقلوا عنها • و قد كان حد الزانيين الحبس،

(I5)
و الاذى فنسخا عن غير المحصن بقوله تعالى : (الزانية و الزاني فاجلدوا كل واحد

(I6)
منهما مائة جلدة) • و كانت عدة المتوفى عنها زوجها سنة بقوله تعالى : (متاعا

(I7)
Io الى +الحول غير اخراج) ثم نسخ منه ما عدا الاربعة الاشهر و العشر بقوله fo.I20a.

(I8)
تعالى : (يتربصن بانفسهن اربعة اشهر و عشرا) •

(I9)
و امثال ذلك اكثر من انْ تحصى في الكتاب و السنة ، و قد نقلت الامة الناسخ

و المنسوخ و توارثو هما قرنا عن قرن لا يتناكرونه و لا يشكّون فيه • و ذكر من ابى

وجود النسخ في القران /ان/ المذكور في القران انما هو نسخه من اللوح المحفوظ

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a) ms بتطر

b) ms الصلا

و تنز يله على النبي صلى الله عليه و سلم ، و هذا يوجب أن يكون القران كله منسوخا
و كله ناسخا (20) ، و هذا محال ممتنع عند الأمة و قول هذه الطائفة اظهر فسادا a و ابين

انحلالا من أن يحتاج الى الاكثار في الابانة /عن/ قبحه وشناعتـــــــــــــــــه .

a) ms فساد

باب نسخ الحكم بما هو أثقل منه

اختلف الناس في ذلك فقال قائلون و هم الاكثر لا يمتنع نسخ الحكم بما هو مثله و بما هو اخف منه و بما هو اثقل منه (I) . و قال آخرون لا ينسخ حكم الا بما هو اخف منه و منهم من يقول ينسخ بمثله و بما هو اخف منه و لا ينسخ بما هو اثقل منـــــــه .

و كل واحد من هاتين المقالتين ، انما هى تظنين و حسبان من قائلها لا يرجـــع منها الى دلالة تعضد بها مقالته . و الصحيح هو القول الاوّل و هو عندى قـول اصحابنا رحمهم الله (2) .

و الاصل فيه انّ العبادات انما ترد من الله تعالى حسب ما يعلم من مصالحنا فيها و ليس يمتنع انّ تكون المصلحة تارة في الاخف و تارة في الاثقل ، فينقل المتعبّد[a] من احدهما الى الآخر على حسب ما تقتضيه المصلحة ، الا ترى انه قد ينقلهم من الرخاء الى الشدّة تارة و من الشدّة الى الرخاء اخرى ، فيغنى في وقت و يفقر في آخر و يصح في وقت و يمرض في آخر كذلك العبادات[b] جارية هذا المجرى و العلّة في الجميع[c] واحدة و هى جهة المصلحة (3) . و هذا ايضا معلوم من تدبير الحكماء لمن يكون /تحت/ امرهم من اولادهم و عبيدهم انهم ينقلونهم من الشدّة الى الرخاء و من الرخاء الى الشدّة

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a) ms المنصل

b) ms العادات

c) ms الجمع

فينقلونهم من حال الى حال على حسب ما يرون لهم من المصلحة في احوالهم (4) • و ايضا فان مقالة هاتين الطائفتين توجب أن لا يفرض الله شيئا ابدا بعد ان لم يكن مفروضا لأن ايجاب الفرض تكليف و هو أثقل من الاباحة •

و قد وجدنا في كتاب الله تعالى ما يوضح عن بطلان قول هؤلاء ، قال تعالى : (فبظلم (5) من الذين هادوا حرّمنا عليهم طيّبات احلت لهم و بصدهم عن سبيل الله كثيـــرا)

fo.I20b. فاخبر انه نقلهم من الاباحة[+] الى الحظر و هو اشدّ على[a] المكلّف • و روى عن معاذ ابن جبل و ابن عباس و سلمة بن الاكوع و جماعة من التابعين في تأويل قوله تعالى : (6) (و على الذين يطيقونه فدية طعام مسكين) ، فكان من شاء صام و من شاء افطـــر و اطعم مسكينا ثم انزل الله تعالى : (فمن شهد منكم الشهر فليصمـــه) ، (7) (8) فجعل الصوم حتما و اسقط التخيير • فان الخمر قد كانت مباحة في اوّل الاســلام ثم حرّمها الله تعالى • (9) و قد كان النبي عليه السلام مأمورا بترك قتال المشركين بقوله تعالى : (فاعف عنهم و اصفح) (I0) ثم اوجبه الله تعالى بقوله : (اذن للذ يـــن يقاتلون بانهم ظلموا) (II) و قال تعالى : (فاقتلوا المشركين حيث وجد تموهم) (I2) و قـــال تعالى : (و قاتلوا في سبيل الله) (I3) و نحوه ، فنقلهم من الأخف الى ما هو اشق عليهم •

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a) ms من

و قد كان حد الزانيين الحبس و الاذى فنقلوا الى الجلد و الرجم (I4) • و قد كـــــان من قتل مسلما لا كفارة عليه ثـم اوجبها الله تعالى • و من كان[a] يفطر في شهر رمضان لم يجب عليه كفارة ثـم اوجبها النبي عليه السلام على المجامع (I5) • و كفارة اليمين لم تكن واجبة حتى اوجبها الله تعالى و كذلك سائر البيعات[b] المحرمة لم تكن تحريمها متقدما ثـم حرمت •

و العلّة الموجبة بجواز النسخ في الاصل لا يفرق بين نسخ الأخف بالأثقل و بيـــن نسخ الأثقل بالأخف • ان المعنى في الجميع[c] ما يعلم الله تعالى من مصلحة المتعبّد[d] و لا يمكن لاحد[e] أن يقول قد علمت انه لا مصلحة في نقل المتعبّد من الأخف الـــى الأثقل لأن ذلك شيء لا يعلمه الا الله تعالى العالم بكل شيء • و ايضا لو جمـــع الامران جميعا في خطاب واحد لم يتنافيا بأن يقول قد ابحت لكم كذا الى وقت كذا ثـم هو محرم عليكم كما اباح الافطار في سائر السنة الى دخول شهر رمضـــــان فاذا جاء شهر رمضان حظر الافطار ، كما قالت عائشة رضي الله عنها : "فرضت الصلاة في السفر و الحضر ركعتين ثـم زيدت[f] في صلاة الحضر و اقرت صلاة السفر على ما كانت" (I6) • فان قيل قال الله تعالى : (ما ننسخ من آية او ننسها نأت بخير منها او مثلهـــا) (I7) ،

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a) ms above the line.

b) ms البياعات

c) ms الجمع

d) ms المتعبده

e) ms احد

f) sic.

و هذا يدلّ على انه لا ينقل الى ما هو اشقّ علينا و انما ينقل الى مثله او اخف /منه/٠

قيل له ليس في قوله تعالى : (نأت بخير منها) دلالة على انه لا ينقل الى ما هو
(I8)
اشقّ علينا منه فانه لا يمتنع ان يكون الاثقل خيرا لنا و اصلح ،الا ترى ان فعـــل
الصلاة و الصوم و الحج اشقّ على العباد من تركها،و فعلها مع ذلك خير لنا من
5 تركها ٠ فليس الخير اذا عبارة عن الاخف و لا الاثقل فلا دلالة في الآية علـــى
ما ذكره ،و الله اعلم و احكم ٠

باب القول في نسخ الحكم قبل مجيء وقته

ليس يخلو الامر في تعلقه بالمأمور به من احد اقسام خمسة · اما أن يتعلق بـــــه fo.I2Ia.

في وقت بعينه نحو قوله صلّوا اذا زالت الشمس او يقول صوموا شهر رمضان لشهـــــر بعينه ، او أن يعلقه بوقت بغير عينه نحو أن يقول صلوا صلاة واحدة في اىّ يـــــوم شئتم و صوموا شهر رمضان في اىّ شهر رمضان[a] شئتم ، و أن يكون مطلقا غير محصور بوقت و هو فرض واحد لا يقتضى لفظ الامر فعله مكررا في اوقات مستقبلة و لا التخيير[b] في اوقات فعله نحو قوله صلوا صلاة واحدة و صوموا يوما او شهرا واحـــــــــدا ، و أن يكون موقّتا بالتأبيد نحو أن يقول صلوا ابدا في كل يوم ما بقيتم و صومـــــوا شهر رمضان في كل سنة ما حييتم ، او أن يكون واردا بلفظ يقتضى ادنى الجمـــــع (I) حقيقة و يحتمل اكثر منه و يقتضى فعله مكررا في الازمان الا انه غير مقرون بذكـــــر التأبيد ·

فالامر الوارد عن الله تعالى و عن رسوله عليه السلام لا يخلو من أن يكون واردا علـى احد هذه الاقسام · فان هذه الاقسام الاربعة /الاولى / التي قدمنا ذكرها فغير جائز ورود النسخ فيها بحال و ان كان قد يسقط عنا الزمن بامور اخرى[c] على غيـــر

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a) ms above the line.

b) ms يتناول فرضا فى احد الا على وجه تكراره في الاوقات
but cf. p.28,l.9.

c) ms اخر

وجه النسخ • و القسم الخامس هو الذى يجوز فيه النسخ •

و الاصل في ذلك انّ كل مأمور به تعلّق وجوب فعله بوقت بعينه او بغير عينه فغيـــر جائز ورود نسخه لانّه يكون نهيا عن المأمور به بعينه و غير جائز أن يكون المأمور /به /من احكام الله تعالى هو المنهي عنه • و الاقسام الاربعة التي قدّمنا ذكرها هي مـــن 5 هذا القبيل •

و ذلك لانّ قوله صلّوا اذا زالت الشمس من هذا اليوم و صوموا شهر رمضان من هـذه السنة فرض قد تعلق بوقت بعينه فليس يخلو من انّ ينسخ قبل مجيء وقت الفعل /اوبعده /لما نستدلّ عليه ان شاء الله تعالى و اذا مضى وقت الفعل قبل فعله[a] فان ما تعلق بالامر من لزوم الفعل قد سقط بمضى وقته لما بيّناه فيما سلف من الابواب المتقدّمة لانّ[(2)] ذلك كان معقولا مع ورود الامر فيما لا يتوهم بقاءه لأن ما /يسقط/ بلفظ الامر[b] يسمى سقوطا بمضى وقته /لا / نسخا ، الا ترى انّه لو قال : صوموا يوم عاشوراء من هذه السنة و اقتصر عليه فلم يصمه ،لم يلزمه القضاء بذلك الامر و انه يحتاج في لزوم القضاء الـى دلالة من غيره و ان سقوطا بمضى الوقت[c] على هذا الوجه لا يسمى نسخا •

و امّا + القسم الثاني و هو قوله صلّوا صلاة واحدة في ايّ وقت شئتم او صوموا شهرا ايّ o.I2Ib.

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a) ms يفعله but cf. p.49, l.IO.

b) ms after الامر see لا

c) ms سقوط

شهر شئتم على قول من يجيز ورود الامر بمثله ، فان هذا لو صح الامر به لم يصح نسخه[a] و ذلك لانّه ما دام حيّاً فاتٍ وقت فعل فيه المأمور به كان ذلك وقت فرضه ، و الاظهر عندنا انّه غير جائز ورود الامر بمثله لما بيّنا فيما سلف من انّه لو صح ذلك وسعه التأخير ابدا ثم لا يصير مفرطا بالموت لعدم علمه بالوقت الذى تعيّن عليه[b] فيه الفرض فيخرج ذلك الامر من انْ يكون فرضا الا انا تكلّمنا فيه على قول من يجيز ورود الامر بمثله . فقلنا واجب ألاّ يجوز نسخه لانّ كل وقت ياتي عليه اذا فعله فيه كان فاعلا للمأمور به بذلك الامر بعينه فغير جائز ورود نسخه قبل مجيء وقته لما وصفنا في القسم الاوّل . و امّا اذا فعله فقد سقط عنه فرضه فليس هناك امر يتوهم بقاؤه فينسخ .

و امّا القسم الثالث و هو انْ يكون الفرض مبهما غير محصور بوقت و هو فرض واحد لا يقتضى لفظ الامر فعله مكررا في اوقات مستقبلة فانه لا يصح نسخه ايضا ، و ذلك لانّ عليه (3) فعله على الفور عند ورود الامر في اوّل الاحوال /و اوّل / الامكان فغير جائز نسخه قبل وقته ، فان لم يفعله في الوقت الاوّل فعليه مثله في الثاني بذلك الامر بعينه ، فان لم يفعله في الثاني لزمه فعل مثله في الثالث بالامر ايضا ، فصار تقدير الامر انْ يفعله في الوقت الاوّل فان لم يفعله ففي الثاني فان لم يفعله ففي الثالث فلما كان كل وقت

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a) ms عد

b) ms علمه

لم يفعل فيه كان الذى يليه وقتا لفعله بالامر الاوّل /ثـم/لم يخل من أن ينسخه قبل الفعل او بعده ، و لا يجوز النسخ قبل وقته كما قلنا في نسخ الفعل قبل /مجيء/ وقته المعيّن له ، او أن ينسخه بعد الفعل و هذا محال لانه قد ادّى الواجب عليه بالامر و من سقط عنـه /الفرض/ باداءه فغير جائز ان يقال له قد نسخ عنه ما قد ادّاه و لم يقتض لفظ الامر لزوم غير ما فعله ·

/و امّا القسم الرابع و هو أن يوجب فعله/ مكررا في اوقات و يقرنه ذكر التأبيد نحو قوله صلّوا ابدا ما بقيتم في كل يوم و صوموا شهر رمضان في كل سنة ابدا ما حييتم الى ان تقوم الساعة · فان هذا قد ذكرنا حكمه فيما سلف و اختلاف الناس في جواز نسخه و امتناعـه و بيّنا ان الاظهر من امره انه لا يجوز نسخه ·

(4)

و امّا القسم الخامس و هو أن يكون وروده بلفظ يتناول ادنى الجمع حقيقة و يحتمل أكثر منه و يقتضي فعله مكررا في اوقات مستقبلة+ من غير أن يكون موقتا و لا مقرونا بذكر التأبيـد · فان هذا هو الذى يجوز نسخه بعد التمكين من فعله على ادنى ما يتناوله لفظه سواء فعله المأمور به او لم يفعله ·

(5)

و اقسام النهي فيما يجوز نسخه و ما لا يجوز على هذا النحو الذى ذكرناه في الامر[a] الا فى

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a) ms النهى

وجه واحد و هو ان قوله صل وصم و نحو ذلك ، انما يقتضي فعله مرة واحدة اذ الم تقم الدلالة على أن المراد فعله مكررا فمتى فعله لم يلزمه شيء اخرَ بالامر فلم يصح معنى النسخ /فيه/ قبل فعله و لا بعد فعله ٠

و امّا النهي فانه اذا قال لا تصم او لا تصل ففعل المنهي عنه لم يسقط عنه حكم النهي فيما يستقبل و يكون في توهمنا و تقديرنا بقاء حكم النهي ما لم يرد النسخ فيصح ورود النسخ /فيه/ ٠ و امّا في سائر الوجوه التي ذكرنا ها فهو /و/ الامر بسواء على ما بيّنا ٠

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a) ms احد

فصل في الدلالة على امتناع جواز نسخ الامر قبل مجيء وقته

الدلالة على امتناع جواز ذلك انّ اطلاق لفظ الامر يقتضى لزوم فعله في الوقت الذى علق به • وقد علمنا ان الله عز وجل لا يأمر الا بحسن ولا ينهى الا عن قبيـــح • فكل[a] ما امر الله به قد دلّ بامره به على حسنه وعلى قبح تركه ، وكل[b] ما نهى عنه فقد دلّ على قبحه بنهيه عنه ، فجرى ذلك مجرى الاخبار منه بكون المأمور به حسنا وكون تركه قبيحا • واذا صح هذا لم يجز/انْ/ ينهى عما ورد الامر به مما هذا وصفه ، لانّه لو نهى عنه لكان نهيه دلالة منه على قبحه وعلى حسن تركه • وكان ذلك بمنزلة الاخبار منه بكونه قبيحا اذا وقع من فاعله • وغير جائز انْ يدلّ على فعل شيء فـــي وقت بعينه انه حسن ثم يدلّ عليه ايضا انه قبيح من الوجه الذى عليه حسنه لانّ هذا يقتضى تناقض دلائله وتنافيها ، تعالى الله عن ذلك.وكما لا يجوز انْ يخبرنـــــا عنه بانّه حسن ويخبر عنه ايضا بانّه قبيح ، فكذلك لا يجوز انْ يتناوله الامر والنهـــى على هذا الوجه لما قدّمنا انّ الامر والنهى يجريان مجرى الاخبار في باب الدلالة (I) على الحسن او القبيح •

فان قال قائل ما انكرت انْ يكون المأمور به فيما ذكرت غير المنهى عنه وان كان معينا

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a) ms فكان

b) ms كلما

بوقت محصور ؟

قيل له هذا محال لانّه قد دلّ بالامر على انه متى وقع هذا الفعل في ذلك الوقت على الوجه المأمور به وقع حسنا ، و النسخ اذا ورد فانما تناول ذلك الفعل بعينه لا فعلا غيره لانّه لم يكن هناك فعل غير ما تعلق حكمه بالامر فيتناوله[a] النســـــخ ·

5 على انه ان كان النهى الذى وقع به النسخ لم يتناول ذلك المأمور به بعينه فواجب أن يبقى وجوب فعله بعد النهى على[+] حسب ما اقتضاه الامر بدءًا · و هذا يدلّ :o.I22b.

على ان هذا السائل لم يحصل بمعنى ما قال · و دليل آخر و هو انّه معلوم ان ما امر الله[b] به فقد اراده منا و ما نهانا عنه فقد كره منا فعله لانّه لو جاز أن لا يكون مريدا ما امر[c] به لجاز أن يكون مريدا ضده[d] ، و لو جاز ذلك لما كان المأمور مطيعــا

IO بفعل ما امر به لانّه انما يكون مطيعا له بفعل ما اراده منه · و كان لا يكون عاصيا بفعل ما نهاه عنه لانّه قد اراده منه فكان يجب أن يكون مرتكب النهى مطيعا للــه تعالى لانّه فعل ما اراده منه · و هذا يوجب سقوط معنى الامر و النهى و يجعل ورود هما عبثا و سفها فاذا صح هذا ثــم ورد الامر مقتضيا لارادة الفعل لم يجــز أن يكرهه منه بعد ذلك من الوجه الذى اراده منه · و في النهى[e] عنه بعد الامــر

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a) ms فيتناول

b) ms انزل

c) ms لما

d) ms بضد

e) ms الامر

به كراهة لذلك الفعل بعينه من الوجه الذى اراده و هذا هو البداء الذى هو منفي عن الله تعالى لانّه لا يكرهه بعد ارادته له الا و قد استحدث علما لم يكن علمه وقت ارادته او أن يكون الامر عبثا و سفها في الابتداء و الوجهان جميعا منفيان عن الله عز و جل • و ليس يمتنع أن يراد الفعل من وجه و يكره من وجه آخر فتتعلق الارادة و الكراهة به من و جهين مختلفين فاماّ من وجه واحد فلا ، و تعلق الارادة و الكراهة من و جهين أن يريد الفعل عبادة للبرية و يكرهه عبادة لله • و هذا هو حقيقة النسخ قبل مجيء وقت الفعل الذى اجازه مخالفونا في ذلك و ذلك غير جائز على الله، تعالى الله عن ذلك علوا كبيرا • و دليل آخر و هو أن النسخ انما يجوز ورود ه على وجه يجوز شرطه مع الامر في خطاب واحد مثل ان يقول صلّوا الى وقت كذا الى بيت المقدس ثم صلّوا بعد ذلك الى الكعبة و ما لا يجوز شرطه مع لفظ الامر في خطاب واحد لم يصح ورود النسخ /فيه/ و ما ذكرنا وصفه من نسخ الامر قبل مجيء وقت الفعل هو من هذا القبيل الا ترى انه لا يجوز أن يقول قد فرضت عليكم الظهر و نهيتكم عنه بعينه ، فلما لم يجز أن يكون المنهى مذكورا مع لفظ الامر يصح أن يريده الله عز و جل و لا يتعبّد بالنهى عنه بعده ، الا ترى ان سائر ما يجوز نسخه

انما يجوز على وجه لو ذكر مع لفظ الامر بدّيا لم يتناقض الكلام و استحال بما لو ذكر
مع لفظ الامر يتناقض الكلام [a] [b] • فدلّ على صحة ما ذكرنا من امتناع نسخ ما هذه صفته •

فان قال قائل ما انكرت [+]انْ يجوز ورود النسخ فيما هذا وصفه اذا كان لفظ الامر ?o.I23a.

مطلقا و ان لم يجز ذكر النهى عنه مع لفظ الامر بانْ يكون الامر معلقا بعدم ورود النسخ

5 فيصير تقديره افعلوا ان لم انسخه عنكم ؟

قيل له فهذا هو المستنكر الذى لا يجوز شرطه في لفظ الامر لانّه يصير في معنى قوله
قد امرتكم به ان لم انهكم عنه و قد اردته منكم ان لم اكرهه • و لا يجوز شرط ذلك في
الامر فكذلك قوله افعلوه ان لم انسخه عنكم ، اذا كان يقتضى ذلك لم يجز انْ يشرطه
مع الامر • و على ان قائل هذا لا يخلو من انْ يقول بانّ الامر يقتضى فعل المأمور به

(2)

IO في الوقت المعيّن على جهة الايجاب او الندب على حسب اختلاف الناس فيه او انْ
يقول ان صيغة الامر لا تقتضى شيئا من ذلك و انما يكون حكمه في اقتضاء الفعل
المأمور به موقوفا على دلالة غير اللفظ • فان كان ممن يابى القول باقتضاء ورود الامر [c]
فعل المأمور به و يقول انه موقوف على الدليل فان الامر مع ذلك في صيغته
و حال وروده ليس بالايجاب اولى منه بالنهى حتى اذا ورد النهى علمت انه لم يرد [d]

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a) ms تناقص

b) ms after see الكلام و استحال

c) ms يابا

d) ms حيال

بالنهى الايجاب • فهذا قول مردود خارج عن اقاويل الامة اذ ليس احد منهم يجوز انْ يكون المراد بالامر النهى • وان كان ممن يقول ان الامر يقتضى ايقاع الفعل على احد الوجوه التي اختلف الناس فيها[a] فغير جائز انْ يكون معلقا بشرط انْ لا ينسخ لانْ اللفظ قد اقتضى ايقاعه على جهة الايجاب او الندب، فلا يجوز انْ

(3)
5 يجعل معلقا بشرط و لا مقيدا بوصف غير مذكور في اللفظ كما يقول في الفاظ العموم و الحقائق انها متى وردت مطلقة كانت مقتضية لاحكامها الموضوعة لها في اصل اللغة • و لزمنا بها اعتقاد موجب صيغتها ثم غير جائز انْ ترد بعد استقرار حكمها على ما اقتضته صورتها بحصول الفراغ منها غير مقيّد بشرط و لا وصف ان المراد بها غير ما اقتضته حقيقة الفاظها[b] فكذلك الامر اذا ورد مطلقا لفعل المأمور به في الوقت المذكور

I0 له ، فغير جائز انْ يجعل مقيّدا بشرط انْ[c] لا ينسخ • فهذا الذى ذكرناه في هذا الفصل ، انما هو كلام في نفى اثبات الشرط في الامر المطلق العارى من الشرط على حسب ما ذكره السائل و سنتكلم بعد هذا في انه لا يجوز ورود الامر مقيّدا بهذا الشرط •

فان قال قائل آ ليس لو قال لنا صلّوا الظهر[+] في مستقبل اعماركم او صوموا شهر رمضان .o.I23b

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a) ms فيه

b) ms لد علفها

c) ms below the line.

في مستقبل السنين كان الواجب علينا اعتقاد وجوبه في مستقبل الاوقات مكررا ثـــم جائز مع ذلك عندك ورود نسخه بعد التمكين من فعل ادنى ما يقتضيه اللفظ فمـــا انكرت أن يجوز ورود النسخ فيه قبل مجيء وقته و التمكن من فعل شيء منه كما اجزت وروده فيما يستقبل من فعل الصلاة و الصوم على الوجه الذى بيّناه ؟

قيل له ليس هذا مما ذكرناه في شيء و ذلك لأن ورود الامر على هذه الصفة مقـارن لجواز نسخه بعد التمكين من ادنى فعل ما تناوله اللفظ ما دام النسخ ممكنا ببقـاء a النبي صلى الله عليه و سلم فاذا ورد النسخ علمنا أن الفرض كان المقدار الذى وقـع التمكن منه الى وقت النسخ و ان ما بعد الوقت لم يكن مرادا بالامر و ليس كذلـك مسئلتنا لأنه اذا قال لنا صلّوا اذا زالت الشمس من هذا اليوم لزمنا اعتقاد وجوبهـا في الوقت المذكور من غير تجويز لغيره فمتى ورد نسخه كان نهيا عن المأمور بعينه و قد بيّنا فساده .

فان قيل فهلا اجزت ورود الامر معقودا b بشرط فعله في وقته ان لم /ينه/ عنه و لم ينسخه فيقول صلّوا عند الزوال ان لم انسخه عنكم ؟

قيل له هذا لا يجوز لأنه يصير بمنزلة قوله قد اردته منكم ان لم اكرهه و كقوله هـو

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a) ms كلما

b) ms مقررا but cf. p.4I,l.4.

حسن في ذلك الوقت ان لم يكن قبيحا و كقوله خبرى هذا صدق ان لم يكن كذبـــا ،
تعالى الله عن ذلك ، و كقوله امرتكم به ان لم يبد لي في ذلك الامر و هذا لا يقولـه
الا جاهل بالعواقب • و نقبح الامر او نحسنه لأن الامر بالشيء ليس هو المـــوجب[a]
بحسن المامور به و لا النهى عنه موجب بقبحه ، و انما يدلان اذا وردا من الله تعالى
5 على حسنه او قبحه لانّه تعالى عالم بحسن المامور به قبل الامر به و عالم بقبحـــــه
قبل النهى عنه ،فغير جائز منه جواز شرط النهى فيما علم حسنه و لا تجويز شرط الامر
فيما علم قبحه •

فان قال آليس جائز فيما بيننا انَ يقول الرجل لعبده ادخل الدار غدا ما لم انهـــك
عنه و لا يكون هذا مستنكرا عند العقلاء فما انكرت من تجويز مثله في اوامر الله تعالى ؟
I0قيل له انما يجوز هذا فيما بيننا لجواز البداء علينا و التنقّل في الرأى و استحـــداث
العلم[c] بالامور ، فجاز انْ يقول الواحد منا لعبده افعل غدا كذا ما لم انهك عنه كما يجوز
انْ يقول افعله ان لم يبد لي فيه • و الله تعالى لا تجوز عليه البداوات و لا استحداث
العلم بالامور فلذلك امتنع جواز شرط ذلك في اوامره الا ترى[+] ان من قال ذلك منـــا .I24a ،
لعبده عقلنا من لفظه انه انما جوّز على نفسه انتقاله عن الرأى الـــــــــــــى

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a) ms after الموجب see و

b) ms لان

c) ms الراى but crossed out. cf. 1.I3.

غيره لما عسى انْ يبدو[a] له في المستانُف و انْ يستحدث علما لم يكن علمه في الاوّل ،
فلما كان كذلك وجب انْ لا يجوز مثله على الله تعالى كما لا تجوز عليه البداوات[b]
و استحداث العلم بالامور ٠

فان قال /قائل / قد اجزت فيما سلف من الابواب المتقدمة ورود الامر من الله تعالى
معلقا بشرط التمكين منه مثل انْ يقول صلّ اذا زالت الشمس ان كنت صحيحا في
ذلك الوقت و قاتل المشركين غدا ان امكنك و ان كان في المعلوم انّه لا يبلغ حال
التمكين و لا يمنع ذلك عندك صحة الامر معلقا بهذه الشريطة ، فهلا جوّزت /أن يقول /
صلّ عند الزوال ان لم انهك عنه ؟

قيل له ما قدّمنا من علّة كل واحد من المسئلتين في الجواز او الامتناع هو الموجب للفصل
بينهما و هو انه لا يصح انْ يقول قد اردته منك ان لم اكرهه و ان امرى اياك بذلك
حسن ان لم يكن قبيحا و ان هذا القول منه يقتضى تجويز البداء و هذه الصفة منفية
عن الله تعالى و ليس في قوله صلّ ان قدرت عليه اقتضاء صفة حكمها انْ تكون منفية
(4)
عن الله تعالى فلم يمتنع وروده على هذه الشريطة ٠ و من جهة اخرى انْ شرط صحة
الامر و كونه حسنا وجود التمكين في حال لزوم فعله و لا يمتنع وروده مقرونا بهذه

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a) ms يبدوا

b) ms البدوات

الشريطة و ان كان في المعلوم انه لا يبلغ حال التمكين• و يدل على هذا ايضا
انه يصح أن يأمر الله تعالى بفعل يفعله في الثاني مع علمه بأنه يأمره[a] فى الثانـي
ما يضا /د / فعل المأمور به[b] ، و معلوم امتناع وقوع الفعل منه في حال وجود ضده
كما انه معلوم امتناع وقوعه مع عدم التمكين منه ثـم لم يمتنع ورود الامر بفعل فـي
5 وقت معيّن لاجل ما في المعلوم من وقوع ضده منه في تلك الحال بد لا منه و لم يكن
هذا عبثا و لا سفها كذلك الامر المعلّق بشرط التمكين امر صحيح و ان كان /فـي /
معلوم الله تعالى ان المأمور لا يبلغ حال التمكين• و من منع[c] حسن الامر علـى
شرط التمكين اذا كان في المعلوم انه لا يتمكّن منه فانما منع ذلك من جهة أن الآمر
اذا كان عالما بذلك كان امره عبثا كامره لنا بصعود السماء و نحوه• و فرق بيـن
IO اوامر الله تعالى و اوامرنا لعبيدنا و من يلزمه طاعتنا في جوازه معلقا بشرط التمكين
منه ،لأن الآمر منا يجوز في مثله بلوغ المأمور حال التمكين و لو كان وجوده من المأمور[+] fo.I24b.
فيما بيننا ميؤوسا[d] منه لما كان الامر به حسنا•

قال : فكذلك اذا كان في معلوم الله تعالى ان المكلف لا يبلغ حال التمكيـن
لم يصح امره•

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a) ms يفعله

b) ms ففعل

c) ms فقر

d) ms مابوسا

و الجواب عن هذا ان هذا انما جاز وروده من الله تعالى مقرونا بهذه الشريطة فيما يجوز فيه بلوغ حال التمكين و ان كان /في/ معلوم الله تعالى انا لا نبلغها لأنّا متى جوزنا ذلك لزمنا بوروده اعتقاد وجوبه على الشريطة المذكورة له و يلزمنا به توطين النفس و تسهيله عليها ان بلغنا حال التمكين • و هذه عبادة يجوز أن يتعبدنا الله تعالى بها و يلزمنا بها[a] في الحال • وليس هذا بمنزلة الامر بصعود السماء بشرط الامكان لأنّا قد تيقنا انا لا نبلغ حال التمكين منه ابدا ، و لا يصح مع ذلك اعتقاد جواز بلوغ حال الامكان و توطين النفس على الفعل اذا بلغنا ها • فاذا لم يتعلق بهذا الامر وجوب الفعل و لا اعتقاد شيء تصح العبادة به كان عبثا فلم يصح أن يفعله الله تعالى •

فان قال ما انكرت على هذا أن يجوز ورود الامر معقودا بشريطة افعلوا ما لم انسخه عنكم قبل مجيء وقت الفعل و أن تكون العبادة علينا فيه اعتقاد وجوبه ان لم ينسخه ؟

قيل له لا يخلو من أن يلزمه اعتقاد وجوبه بورود الامر او ان يلزمه اعتقاد وجوبه ان كان واجبا او اعتقاد حظره ان كان محظورا فيعتقد احدهما بخير عينه او يعتقد انه واجب عليه ان لم ينهه عنه •

فان قلنا انه يلزمه بورود الامر المعقود بشريطة أن لا ينهى عنه اعتقاد وجوبه فهذا الاعتقاد

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a) ms لها

ليس هو ما يقتضيه لفظ الامر المعقود بالشرط على الوصف الذى ذكرت بل هو مقتضى اعتقاد الامر المبهم الذى لا شرط فيه فيؤدّى هذا الى اسقاط فائدة الشرط • و قد دللنا على فساد القول بجواز نسخ المبهم العارى عن الشرط اذ الم يتناول[a] وقتا محصورا[b] • وايضا فان كونه معقودا بشريطة انّ لا ينهى عنه يمنع وقوع العلم بوجوبه لانّه ليس اعتقاد وجوب فعله عند مجيء وقته باولى من اعتقاد وجوب تركه فلو لزمنا بورود الامر الذى هذه صفته اعتقاد وجوبه كان في ذلك ايجاب اعتقاد ما ليس بواجب و هذا امر باعتقاد الشيء على خلاف ما هو به و جواز الامر بمثله منتف عن الله تعالى فبطل هذا القسم بما وصفنا • فان كان انما يلزمه ورود الامر الذى هذا /هو/ وصف اعتقاد وجوبه ان كان واجبا او+حظره ان كان محظورا على وجه الشك o.I25a.

فهذا لم يحصل بعد على اعتقاد شيء لا حظر و لا ايجاب و هذا يؤدى الى سقوطه راسا لانّه حاله بعد ورود الامر كهي قبل وروده لانّه قد كان يعتقد قبل ورود الامر ان ما يوجبه الله تعالى عليه في المستانف فهو واجب و ان ما يحظره فهو محظور فيؤدى هذا القول /الى/ اسقاط فائدة الامر راسا فبطل هذا القسم ايضا • فان قلنا انه يعتقد انه واجب عليه ان لم ينهه عنه لم يصح هذا لانّه لا يصح مجيء

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a) ms تناول .

b) ms محظورا

العبادة به كما لا يجوز انْ يقول قد ارد ته منك ان لم اكرهه و هو حسن ان لم يكن قبيحا و ان هذا الخبر صدق ان لم يكن كذبا فلما لم يجز ورود الخطاب مـــــن الله تعالى بذلك لم يجز انْ يعتقد في خطابه ما لا يجوز عليه فلما لم يكن للاعتقاد في الامر الذى وصفه ما ذكرت، وجد غير ما وصفنا و لم يصح شيء منها لما بيّنا ثبت امتناع جواز وروده على هذه الشريطة ٠

فان قال ما انكرت انْ يجوز ورود الامر على هذه الشريطة فيقول قد امرتك به ان لم انسخه و يكون الذى يلزمنا بورود الامر الذى هذه صورته ان هذا الخطاب قد تعلق به حكم مجمل يرد بيانه في الثاني من حظر او اباحة و يكون بيان حكمه متوفيا بمجيء وقت الفعل فان حظره علمنا ان المراد به كان الايجاب كما نقول في سائر الالفـــاظ المجملة التي لا سبيل الى استعمالها الا بورود بيانها و لا يؤدّى الى ابطـــال فائدته كما يجوز اللفظ المجمل عاريا من الفائدة و لو ورد مجملا ؟

قيل له هذا فاسد من وجهين : احدهما انْ قوله صلّ ركعتين عند زوال الشمـــس او تصدّق بدرهم غدا ليس بمجمل من حيث اقتضى وجوب الفعل في الوقت المذكور له فقد الزمنا بوروده اعتقاد وجوبه فلو جاز انْ يقرن به افعل ما لم انسخه لما كان

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a) ms سا

ذلك موثرا في نفس الامر انه مقتض للايجاب الا انه شرط جواز رفعه و قد بيّنا انّ ذلك لا يجوز · و امّا المجمل فمن حيث لم يلزمنا فيه اعتقاد شيء بعينه جاز انْ يكون حكمه موقوفا على البيان مهما ورد فيه من بيان حكم علمنا انه كان المراد بالجملة · و الوجه الآخر انّ النهى لو ورد بعد ذلك لم يجز انْ يكون لفظ الامر عبارة عنه فقولك ان لفظ الامر المقرون بجواز شرط النهى موقوف على ورود البيان خطاء لأن النسخ لـــــو صح لما كان الامر باقيا بل يكون مرفوعا زائلا فكيف يكون ما +يوجب رفعه و اسقاطه بيانا له و هو يوجب ايضا انّ يكون لفظ الامر موضوعا للنهى و لفظ الايجاب موضوعا للحـظر في هذا الموضع و هذا خلف من القول · فامّا ورود بيان المجمل بغير مزيل لحكـــم اللفظ ، لأنّ لفظ الجملة قد كان يصلح له و يصح أن يكون عبارة عنه امّا في اللغـــة او الشرع فلم يكن بيانه منافيا لحكم الجملة ·

و قد احتج من اجاز نسخ الحكم قبل مجيء وقته بما روى انّ النبي صلى الله عليه و سلم فرض عليه و على امته ليلة اسرى به الى السماء خمسون صلاة فما زال يسئل الله حتـــى ردّها الى خمس · قالوا فقد نسخ فرض الخمسين الى الخمس قبل مجيء وقت الفعل · و بامر الله تعالى ابراهيم بذبح ابنه و انه نسخ قبل مجيء وقت الفعل · و صالـــح[a]

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a) ms يصلح

5.I25b.

النبي صلى الله عليه و سلم قريشا على انّه يردّ عليهم من جاءَ مسلما ثـم نسخ ذلك
a
عن النساءقبل مجيئهن اليه بقوله تعالى : (يا ايها الذين آمنوا اذا جاءَ كم المؤمنات

مهاجرات فامتحنوهن الله اعلم بايمانهن فان علمتموهن مؤمنات فلا ترجعوهن الى
(5)
الكفار) ، /كمانسخ قوله تعالى / : (اذا ناجيتم الرسول فقدموا بين يدى نجواكـم
b (6)
صدقة) ثـم قال تعالى : (ءاشفقتم ان تقدّموا بين يدى نجواكم صدقات فاذ لم تفعلوا
(7)
و تاب الله عليكم) ، فاخبر انه نسخه قبل مجيءَ وقته ·

الجواب عن ذلك ان ما روى من فرض الخمسين صلاة يجوز انْ يكون ورد في الابتـداءَ

معقودا بشرط اختيار النبي عليه السلام لذلك كما قال تعالى : (فاذا استاذنوك
(8)
لبعض شانهم فاذن لمن شئت منهم) · قال ابن عباس: " فجعل النبي عليه السلام

باعْلى النظرين في ذلك ،، ليس يمتنع عندنا تعلق الفرض باختيار المأمور بـــــه
(9)
كاختلاف حكم صلاة السفر و الحضر باختياره السفر و الاقامة و كما يلزمنا القرب بالنذر

و ايجابنا لها على انفسنا و كما يكون الحانث في يمينه مخيّرا في انْ يكفر يمينـــــه
(10)
بواحدة من الاشياءَ الثلاثـة و بايّها كفّر تعيّن حكم الفرض به دون غيره ·

فان قيل لا يجوز انْ يكون اختيار الفرض موكولا الى اختيار احد من المأمورين لانْ

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a) ms missing.

b) ms فان

الفروض و الاوامر انما حسب المصالح و لا علم لاحد غير الله تعالى بمصالح العباد ٠
قيل له ليس يمتنع عندنا أن يكون في معلوم الله تعالى أن هذه الاشياء متساوية في
جهة الصلاح ، فاذا خيّر النبي عليه السلام في ذلك لا يختار الا ما هو صلاح فيكل
و جوب الفرض الى اختياره ٠ و قد قال بعض اهل العلم : /انه/ جائز أن يكـــون
الله عز و جل قد جعل لنبيه عليه السلام أن يسنّ ما رأى و يفرض ما شاء باختياره
من غير وحي يأتيه في ذلك الشيء بعينه كما قال :للاقرع بن حابس لما سئله عـــن
الحج " آ واجب في كل عام او حجة واحدة ،، فقال عليه السلام : " بل حجة واحدة
و لو قلت نعم لوجبت ،، و كما استثنى الاذخر عند مسئلة العباس اياه حين قال : " لا
يختلا خلاها و لا يعضد شوكها ،، فقال العباس : " الا الاذخر يا رسول الله ،،
فقال : " الا الاذخر ،، بعد ما اطلق النهى في الجميع ٠ قال فهذا يدلّ علـــى
انه قد كان حكم التحريم او الاباحة معلقا باختياره ، و كما قال : " خذوا عني قـد
جعل الله لهن سبيلا البكر بالبكر جلد مائة و تغريب عام و الثيب بالثيب الجلـــد
و الرجم ،، فدلّ على أن ايجاب ذلك كان مجعولا اليه و موقوفا على اختيـــــاره ٠
و ليس الغرض الكلام في هذه المسئلة الا انا بيّنا أن ذلك غير ممتنع عند قوم مـــن

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a) ms above the line.

b) ms الجمع

c) ms after عني see و

اهل العلم ٠

قال :لم يثبت عند ناصحته اذا لم يكن قوله من طريق الاجتهاد ٠

و اذا كان ذلك كذلك لم يمتنع أن يكـل فرض الخمسين الى اختيار النبي صلى الله

عليه و سلم /الى / المسئلة فيه فما زال صلوات الله عليه يسئل الله تعالى في ذلك حتى

استقّر الفرض على خمس ٠

فان قيل فان كان الفرض في الابتداء موكولا الى اختيار النبي عليه السلام فما معنى

مسئلة التخفيف و مراجعته فيه ؟

قيل له انما قلنا انه لا يمتنع أن يكون موكولا الى اختيار النبي عليه السلام بأن يسئـل

الله تعالى التخفيف عن امته فيكون مسئلته سببا للتخفيف كما قلنا /في /فرض السفر و الاقامة

انه موقوف على اختيارنا للسفر و الاقامة ، فيختلف الفرض باختلاف الحالين اللتين هما

موقوفان على اختيارنا ٠ و قد بيّنا فيما سلف ان الفرض في كفارة اليمين احد الاشياء

الثلاثة لا جميعها و ان حكم المفروض فيها متعلق باختيار المكفّر حتى يتعيّن بـــه

الحكم اذا فعله دون غيره ٠

و اما امر الله تعالى ابراهيم عليه السلام بذبح ابنه فقد قيل فيه وجوه : احدها انـه

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a) ms عند

انما امره بذبحه في وقت بعينه على شرط التمكين منه و ارتفاع الموانع الحائلة بينـــه
و بينه و قد بيّنا جواز ورود الامر معقودا بهذه الشريطة فلما عالج اسباب الذبح حيل
بينه و بينه بصرف من المنع • و قد قال بعض اهل العلم في التفسير: " ضرب اللـه
(I4)
تعالى على حلقه صفيحة نحاس فلم تعمل فيها الشفرة ،، فقيل له بعد ذلك قد صدقت
5 الروءيا لانّه فعل ما امكنه و بذل المجهود فيه و لم يكن عليه غيره • و هذا التأويـل
(I5)
غير مخالف لقوله تعالى : (انى ارى في المنام انى اذبحك) لانّه جائز أن يكون انمـا
رأى في المنام فعل اسباب الذبح و معالجته و قد فعل و سمّاه ذبحا لانّه سبب يقع
بمثله الذبح في العادة ما لم يحدث منع كما يسمى الشيء باسم غيره اذا كان مجاورا + o.I26b.
له او كان منه بسبب •
IOفان قال قائل فلا معنى اذا للفدية اذ لم يكن مأمورا بالذبح لعدم التمكين منه و لا
يقع ما سمى فدية موقع الفدية لأن الفدية ما قام مقام الشيء و ما فدى به عندك لم يقم
مقام شيء امر به ثـم لم يفعله اذ كان جميع ما امر به قد فعله عندك •
قيل له /ما/ يمتنع أن يكون قد سمى فدية لما كان يتوقعه ابراهيم عليه السلام مـــن
حدوث الموت بالذبح ففدى ما كان في تقديره انه سيقع بما فدى به • و قد قيل انـه

ذبحه و فرى الاوداج ثـم وصلها الله في اسرع من لمح الطرف قبل خروج الروح و هذا ايضا جائز غير ممتنع ·

و امّا صلح النبي عليه السلام قريشا على ما صالحهم عليه و نسخ الحكم عن النساء فـلا دلالة فيه على ما ذكره لانّه قد كان مضى من وقت الحكم الى انْ نزل القران بردّ النساء

(I6)
مدّة يمكن استعمال الحكم فيها فليس في هذا نسخ الحكم قبل مجيء وقته و كذلك نسخ الصدقة عند مناجاة الرسول عليه السلام هو على هذا السبيل لانّه قد كان مضى مـن

(I7)
وقت نزول الحكم الى وقت ورود النسخ مدّة يمكن استعمال الحكم فيه و نسخ مثله غيـر ممتنع، و ليس هو مسئلتنا في شيء فثبت بما ذكرنا امتناع جواز النسخ قبل مجيء وقت الفعل و جميع الاقسام التي ذكرنا التي لا يجوز نسخها هو في معنى ذلك ·

و امّا القسم الذى ذكرنا جواز نسخه و هو انْ يرد لفظ يقتضى ظاهره عموما في جنس يوجب فعله على الدوام في مستقبل الاوقات من غير ذكر توقيت فهو من نحو قوله تعالى :

(I8) (I9)
(اقتلوا المشركين) و قوله تعالى : (و الذين يرمون المحصنات) و ما جرى مجرى ذلك من الفاظ العموم و في مستقبل الاوقات كقوله صوموا عاشوراء فيما /يأتي / من السنين و نحو قوله لبني اسرائيل تمّسكوا بتحريم السبت في مستقبل الزمان فيجب على من كان

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a) ms الدوم

b) ms فيما

مخاطبا /بها / اعتقاد موجب لفظها و تجويز نسخها مع ذلك اذا وجد من وقت الفعل ادنى ما يتناوله لفظ الامر لأن لفظ العموم لما كان عبارة عن ثلاثة فما فوقها و ذكره لمستقبل الاوقات يصلح أن يكون عبارة عن قليل الاوقات و كثيرها ، لم يمتنع ورود النسخ فيه بأن يبيّن تارة ان حكم بعض المشركين الى هذه الغاية وجوب قتلهم و من الآن قبول الجزية منهم ، و يبيّن ان حكم بعض القاذفين الى هذا الوقت الجلد و من الآن اللعان و هم قاذفو الزوجات[a]، و يبيّن ان صوم عاشوراء فرضه الى وقت نزول الامر بصوم شهر رمضان ، و ان تحريم السبت /الى الوقت/ الذى نسخه على لسان نبي آخر جاء بعده و سواء في ذلك فعل المأمور به او لم يفعل فان نسخه جائز عندنا + و ذلك لانه اذا وقع التمكين من الفعل فقد لزمه فرضه و تفريطه فيه لا يمنع نسخه عنه كما يجوز أن يعلّقه في الابتداء بوقت بعينه فاذا مضى الوقت قبل فعله سقط عنه الفرض[b] .

و يدلّ على ذلك ايضا ان ورود النسخ جائز و ان ترك بعض المأمورين مما امر به في وقت لزومه و لو لا أن ذلك كذلك لكان الرسول عليه السلام اذا اراد نسخ شيء سئلهم هل ترك احد منكم فعل المأمور به حتى يصح نسخه على قول المخالف و لو فعل ذلك لنقل فلما لم يسئلهم عن ذلك في شيء مما نسخه بل قد روى عنه انه نسخ

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a) ms قاذفوا

b) ms after الفرض see كما يجوز ان يشرط ذلك في الابتداء فيقول على تركه و لا فرض عليك بعده .

اشياء كثيرة من غير بحث منه عن حال المأمورين في فعله او تركه دلّ على انه ليس شرط جواز النسخ فعل المأمور به ٠

و ايضا قد اتّفق الجميع على ان النهى يصح نسخه بعد التمكين من تركه و ان ارتكب المنهى فعله و لم يكن ارتكابه للفعل المنهى عنه مانعا من نسخه كذلك تركه لفعل المأمور به لا يمنع جواز نسخه ٠

باب في نسخ التلاوة مع بقاء الحكم

اختلف الناس[a] في نسخ رسم القران و تلاوته مع بقاء حكمه ، فقال قوم : لا يكون رفع حكمه الا برفع رسمه و تلاوته فيرتفع الحكم بارتفاعهما . و قال آخرون : يجوز رفع احدهما مع بقاء الاخر ايهما كان من تلاوة او حكم . و قالت طائفة : لا يجوز نسخ القران و تلاوته و لكن يجوز نسخ الحكم مع بقاء التلاوة .

قال ابوبكر رحمه الله : امّا جواز نسخ الحكم فلا خلاف فيه بين الامّة الا فرقة شذّت (I) عنها و قد حكينا فيما تقدّم قولها . و امّا نسخ الرسم و التلاوة فانما يكون بأن ينسيهم الله تعالى اياه و يرفعه من اوهامهم /او يأمرهم/ بالاعراض عن تلاوته و كتبه في المصحف فيندرس على الايام كسائر كتب الله القديمة التي ذكرها في كتابه في قوله تعالى : (ان هذا لفى الصحف الاولى صحف ابراهيم و موسى)(2) ، و لا يعرف اليوم منها شيء ثم لا يخلو ذلك من أن يكون في زمان النبي حتى اذا توفى لا يكون متلوا[b] من القران او يموت و هو متلو[c] موجود[d] بالرسم ثم ينسيه الله الناس و يرفعه من اوهامهم ، و غير جائز عندنا نسخ شيء من القران بعد وفاة النبي صلى الله عليه و سلم لا رسمه و لا حكمه ،(3) و لا خلاف بين الامّة ان نسخ القران و سائر الاحكام لا يكون بعد موت

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a) ms اتياس

b) ms متولوا

c) ms متلوا

d) ms موجودا

النبي صلى الله عليه و سلم الا قوم ملحدة يستهزئون باظهار الاسلام و يمهّدون افساد الشريعة بتجويز نسخ الاحكام بعد موت النبي عليه السلام ٠

و امّا نسخ رسم القران +دون حكمه في حياة النبي عليه السلام ، فان في مذهب اصحابنا fo.I27b.
ما يدل على تجويز هم نسخ التلاوة قبل وفاة النبي عليه السلام مع بقاء الحكم و امـــا
بعد وفاته عليه السلام فغير جائز ، و الذى يدلّ على مذهب اصحابنا على ما ذكرنـــا
ايجابهم التتابع في صوم كفارة اليمين لما ذكروا ان في حرف عبد الله بن مسعود (فصيام
ثلاثة ايام متتابعات) (4) ٠ و معلوم ان ذلك ليس في القران اليوم و لا يجوز تلاوتـــــه
فيه و لا القطع بأنه منه ، و قد كان حرف عبد الله مستفيضا عند هم في ذلك العصـــــر (5) ،
و معلوم أن النسخ غير جائز وقوعه بعد موت النبي عليه السلام لانه لو جاز بعد موتـه
لم نأمن أن تكون الشريعة كانت عند وفاة النبي عليه السلام اضعاف ما في ايدينـــــا
اليوم فرفعها الله من اوهام الامّة و لو جاز ذلك لجاز أن لا يكون شيء مما فـــــــي
ايدينا من الشريعة مما كان موجودا في عصر النبي عليه السلام بأن تكون انســـــى
الامّة جميع ما اتى به النبي عليه السلام و رفعه من اوهامهم ثم الّف بين قلوبهم و الهمهم
هذه الشريعة التي في ايدينا و في القول هذا [a] خروج عن الملّة ، فثبت امتنـــــاع

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a) sic.

جواز النسخ بعد وفاة النبي عليه السلام• و اذا ثبت ذلك وجب أن يكون ما ذكروه من شروط التتابع في كفارة اليمين في حرف عبد الله بن مسعود منسوخ التلاوة في حياة النبي عليه السلام بأن يكون قد امروا بأن لا يقراؤه من القران و لا يكتبوه في المصحف ، فلذلك لم ينقل الينا من الطريق التي نقل /بها/ القران ، و يكون معنى قولهم[a] انه في حرف عبد الله ثم نسخت التلاوة و بقى الحكم لأنه لو كان المراد انه ثابت في حرف عبد الله بعد وفاة الرسول عليه السلام لما جاز أن يكون نقله الينا الا من الوجه الذى نقل الينا منه سائر القران و هو التواتر و الاستفاضة حتى لا يشكّ احد في كونه منه ، فلما لم يرد نقله على هذا الوجه دلّ ذلك على ان مراد هم انه مما كان في حرف عبد الله (6) و ان تلاوته منسوخة •

فان قال قائل فاذا لم ينقل ذلك الينا الا من طريق الآحاد فلا يثبت حكمه و لا يعترض به على حكم القران /و/ لا من اصلك أن الزيادة في اصل القران لا يجوز به النسخ • قيل له قد كان هذا الحكم مستفيضا عند هم انه كان متلوا من القران فاثبتنا الحكم بالاستفاضة و تلاوته غير ثابتة بالاستفاضة لأنه جائز بقاء الحكم مع نسخ التلاوة فلذلك لم نثبته متلوا منه •

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a) ms قوله

فان قال قائل فان كان الحكم ثابتا بالاستفاضة فاثبت التلاوة بمثلها لأن الوجه الذى منه نقل +الحكم هو الذى منه نقل الرسم ·

fo.I28a.

قيل له لا يجب ذلك لأن التلاوة لما لم يبق حكمها اليوم من جهة نقل الاستفاضة اذا لم يثبت في سائر المصاحف علمنا انها منسوخة ، و ليس في ترك تلاوتها ما يوجب نسخ حكمها ، اذ لا يمتنع بقاء احد هما مع عدم الآخر ·

فأما نسخ التلاوة و الحكم جميعا ، فجائز عند نا في زمان النبي عليه السلام و يجوز عند نا ايضا نسخ الاخبار دون مخبرها في حياته عليه السلام على ما بيّنا في ما سلف ، و لا يجوز ذلك بعد وفاته صلى الله عليه و سلم و ذلك لأن العبادة تتعلق علينا بورود رسم[a] القران من وجهين : احد هما التلاوة و الآخر الحكم ، فليس يمتنع زوال العبادة بالامرين جميعا ، اما نسخ الحكم فبأن يتعبّد بضدّه و اما نسخ التلاوة فبأن ينسيه النبي عليه السلام و من كان حفظ من الامّة في عصره ، و يرفعه من اوهامهم او يأمرهم بأن لا يثبتوه في المصحف و لا يتلوه ، فينسى على مر الاوقات قبل وفاة النبي عليه السلام · و قد روى ان نسخه بالنسيان قد كان في زمان النبي عليه السلام ، و ان بعضهم انسى سورة قد كان حفظها فسئل النبي عليه السلام عن ذلك فقال عليه السلام : "انها

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a) ms اسم

نسخت،، و روى أن النبي عليه السلام قرأ في صلاة سورة فترك اية منها فقال له رجل :
" تركت آية كذا ،، فقال : " الا ذكرتمونيها ،، فقال الرجل : " ظننت انها نسخت،، (3)
و قال تعالى : (سنقرئك فلا تنسى الا ما شاء الله) ، و قال تعالى : (ما ننسخ من (9)
آية او ننسها نأت بخير منها او مثلها) . و روى في التفسير (او ننسها) من النسيان (10)
و روى انها من الترك بأن لا ينسخها ، و اقل احوال الآية اذا كانت محتملة (11)
تاويل ما وصفنا فيها .

و أما ما طعن به بعض اهل الالحاد ممن ينتحل[b] دين الاسلام فليس منه في شيء ثم كشف قناعه و ابدى ما كان يضمره من الحاده بأن القران مدخول فاسد النظام لسقوط كثير منه عنه . و يحتج فيه بما روى أن عمر رضي الله عنه قال : " ان آية الرجم في كتاب الله تعالى و سيجيء اقوام يكذبون بالرجم و انه كان فيه اذا زنا الشيخ و الشيخة (12)
فارجموهما البتة ،، و أن ابي بن كعب قال : " ان سورة الاحزاب كانت توازي البقرة او لهى اطول و ان كان فيها آية الرجم و انه كان فيها لو ان لابن آدم واديين من ذهب لابتغى اليهما ثالثا و لا يملأ جوف ابن آدم الا التراب و يتوب الله على (13)
من تاب ،، و انه روى ان ابابكر الصديق رضي الله عنه كان يقرأ " لا ترغبوا عن ابائكم

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a) ms تحويل

b) ms after ينتحل see به

فانه كفر بكم "، و روى عن انس انهم كانوا يقرأون " بلّغوا قومنا عنا انا لقينا ربنا فرضى (I4) a
عنا "، و نحو ذلك مما روى انه كان في القران فانه لا مطعن لملحد فيه لأن + هذه fo.I08b.

الاخبار ورود ها من طريق الآحاد فغير جائز اثبات القران بها (I6)، ثم لا يخلو من

أن تكون صحيحة في الاصل ثابتة على ما روى فيها او سقيمة مدخولة ، فان كانت
مدخولة فالكلام عي b فيها ساقط ، و ان كانت صحيحة في الاصل لم يخل من احد c
وجهين : اما ان تكون محتملة أن يكون المراد بها انها من القران و محتملة لغيره
او لا يحتمل الا كونها من القران . فما لا يحتمل منها الا أن يكون قد كان من القران
فهو من الحيز الذى قلنا انه منسوخ التلاوة و الرسم في زمان النبي عليه السلام ،
و ما احتمل منها لفظه وجهين : احدهما أن يكون مراده آية من القران و احتمل (I7)
أن يكون المراد آية من حكم الله و مما انزله الله و ان لم تكن من القران فليس القطع
فيه باحد وجهى الاحتمال باولى به من الاخر ، فالكلام فيه عي d ساقط . و على ان
وجه حمل فلا اعتراض فيه لملحد لانه ان حمل على انه كان من القران فهو/من / القبيل
الذى هو منسوخ التلاوة . و على ان كل خبر ذكر في e سياق f لفظه فليس في ظاهره
دلالة على أن المراد به انه كان من القران مثل خبر عمر رضي الله عنه g .

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a) ms قوما
b) ms عيا
c) ms احد احد
d) ms عنا
e) ms فيه
f) ms سياقه
g) ms above the line.

فان لفظه يحتمل معنيين و لا د لالة فيه على انه كان من القران لانّه قال : " ان الرجم (I8)
في كتاب الله قرانّاه و وعيناه ،، فهذا يحتمل أن يكون مراده انه من فرض الله كما[a] (I9)
قال تعالى : (كتاب الله عليكم) يعني فرضه و كقوله تعالى : (و اولوا الارحام بعضهم (20) (2I)
اولى ببعض في كتاب الله) يعني في فرضه و كقوله تعالى : (كتب عليكم الصيام) و(كتب (22)
5 عليكم القتال) يعني فرض عليكم • و اذا كان كذلك لم يثبت أن مراده انه كان
من القران فنسى تلاوته لانّ ذلك لا يعلم الا باستفاضة النقل في لفظ لا يحتمل الا
معنى واحدا • و يدلّ على ان مراده كان ما وصفنا انّه قال : " لو لا أن يقول الناس
زاد عمر في كتاب الله لكتبته في المصحف ،، فلو كان عنده آيّة من القران لكتبه فيه
قال الناس او لم يقولوه • فهذا يدلّ على انه لم يرد بقوله ان الرجم في كتاب الله (23)
IO آيّة من القران ثم روى عنه انه قال : " ان الرجم مما انزل الله و سيجيء قوم يكذّبون
به ،، و هذا اللفظ ايضا لا د لالة /فيه/ على انه اراد به من القران لانّ فيما انزل الله
تعالى قرانا و غير قران ، قال الله تعالى في وصف الرسول عليه السلام : (و ما ينطق
عن الهوى ان هو الا وحى يوحى) (24) ، و روى في بعض الفاظ هذا الحديث انه قال :
" ان مما انزل الله آية الرجم ،، و هذا اللفظ لو ثبت لم يدلّ ايضا على ان مراده

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a) ms above the line.

(25)
انه كان من القران لأن ما يطلق عليه اسم الآية لا يختص بالقران دون غيره ، قال تعالى :
(26) (27)
(و من آياته +خلق السماوات و الارض) ثـــم قال تعالى : (ان فى ذلك لآيات) فسمى .o.I29a:

الآية القائمة مما خلق على توحيده آية ، فليس أن[a] يمتنع أن يذكر آية الرجم و هو يعنـي

أن ما يوجب الرجم انزله الله على رسوله عليه السلام بوحي من عنده . و ايضـــــا

5 فانه يحتمل أن يكون اصل الخبر ما ذكر فيه " ان مما انزل الله ،، ثـم تغيّر الالفـــاظ

فيه من جهة الرواة فعبّر كل منهم بما كان عنده انه هو المراد لأن من الرواة من يرى

نقل المعنى عند ورود اللفظ فظنّ بعض الرواة انه اذا قال : " انه مما انزل اللـــه ،،

فقد قال : انه من القران و انه آية منه فعبّر عنه بذلك .

فان قيل فلو لم يكن عنده من القران كيف كان يجوز له أن يقول : " /لو لا أن يقول /الناس زاد عمر

IO في كتاب الله لكتبته في المصحف ،، و كيف يجوز أن يكتب في المصحف ما ليس منه ؟

قيل له يجوز أن يكون مراده انه كان يكتبه في اخر المصحف ، و يبيّن مع ذلك انه ليس

من القران ليتصل نقله و يتواتر الخبر به كما يتصل نقل القران لئلا يشك فيه شاك و لا

يجحده جاحد فقال : " لو لا أن يظنّ ظان انه من القران او يقول قائل ان عمـــــر

زاد في القران لكتبته في المصحف ،، . و يدلّ عليه ما روى عن ابن عباس عن عمـــــر

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a) sic.

رضي الله عنهما أنه قال : " لقد هممت أن اكتب في المصحف شهد عمر بن الخطاب و عبد الرحمن بن عوف أن رسول الله صلى الله عليه و سلم رجم و رجمنا بعده و سيجيء قوم يكذّبون بالرجم و بالشفاعة و بقوم يخرجون من النار (28)" فبيّن بهذا الحديث أن مراده كان اشاعته و اظهاره ليستفيض نقله لا انه من القران و ذلك لأنه كان سمع النبي صلى الله عليه و سلم يقول : " سيجيء قوم يكذّبون بذلك " لأنه غير جائز أن يكون قوله : " سيجيء قوم يكذّبون بالرجم " من قبل نفسه من غير توقيف من النبي صلى الله عليه و سلم له لأن ذلك لم يعلم الا بطريق الوحي .

و امّا حديث ابي بن كعب فان ثبت و صح فهو من المنسوخ التلاوة[a] لا محالة ، و ما روى عن ابي بكر الصديق رضي الله عنه انّه كان يقرأ " لا ترغبوا عن ابائكم فانه كفر بكم " فلا دلالة على انه كان يراه من القران لأن السنن و سائر كلام الناس تقرأ و كذلك حديث أنس .

فان قال قائل تأ ويلكم لهذه الاخبار انه ان ثبت الخبر فانه من حيز[b] المنسوخ التلاوة و الرسم كلام متناقض لأن كل منسوخ الرسم و التلاوة لا يعرفه الناس و لا يقرأونه و قد اجزت ثبوت الخبر و قرائتهم اياه بعد وفاة النبي عليه السلام فكيف يكون منسوخ الرسم

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a) ms تلاوة

b) ms الخبر

ما بقيت+تلاوته و رسمه الى يومنا هذا ؟ fo.I29b.

قيل له تجويزنا لثبوت الخبر لا يمنع ما ذكرنا و لا ينقض تأويلنا لان الخبر لم يقتض أن يكون هذا المنقول بعينه هو الذى كان من الفاظ القران على نظمه و تأليفه حسب ما نقلوه الينا ، و ليس يمتنع أن يكون ذلك قد نقلوه على نظم آخر و نسخ ذلك النظم و انسى من كان يحفظه و لم ينسخ الحكم فنقلوه بلفظ غير اللفظ الذى كان يسمى القران باسم القران حين نزوله الى ان رفع فلا يكون هذا من القران و هذا جائز أن يفعله الله و ذلك لأن قوله من القران و من رسمه يتعلق به احكام لا يتعلق بغيره • منها انه مما يلزم الجميع اعتقاده انه كلام الله تعالى الذى انزله على رسوله صلى الله عليه و سلم على نظمه و ترتيبه من /غير/ تغيير لنظمه و لا ازالة لتأليفه ، فاذا نسخ رسمه و نظمه اسقط عنا التعبّد بالاعتقاد الذى الزمناه في حال كونه غير منسوخ • و الثاني ما يتعلق به من حكم جواز الصلاة به و ان قرأ ه فيها لا يفسد ها و اذا كان من غير القران افسد ها • و الثالث العبادة بالتقرب الى الله تعالى بتلاوته و ما يستحقّ من الثواب الجزيل بقرأته • و الرابع أن نكون مأمورين بحفظه و اثباته في مصاحفنا و نقله على نظمه و ترتيبه •

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a) ms نقولوه

b) ms اسم

فهذه كلها احكام متعلّقة بوجود[a] رسم القران دون معانيه و احكامه المذكورة فلا يمتنع اذا كان هذا كما وصفنا أن ينسخ الرسم فتزول هذه الاحكام عن المنسوخ و يبقى حكمه فيكون بمنزلة سائر السنن كما نسخ رسم الكتب القديمة و تلاوتها و كثير من احكامها و معانيها باقية ٠

5 فان قال قائل كيف يجوز نسخ الرسم و التلاوة و هو مما لا يجوز أن يختلف حكم الاعتقاد فيه فنعتقد في حال انه قران و في حال انه غير قران و هذا كان بمنزلة سائر الاشياء التي لا يجوز نسخها كاخبار الله تعالى ان اعتقادنا في مخبراتها لما لم يختلف حكمها في حال فنعتقد في حال نزولها موجب مخبراتها و نعتقد في حال اخرى خلاف ذلك لم يجز نسخها ؟

I0 قيل له ما ذكرت لا يمتنع/نسخ / الرسم و التلاوة على الوجه الذى ذكرنا و ذلك لأن القران انما كان /قرانا/ لوجوده على هذا الضرب من النظم المعجز للانس و الجن و الله قادر على ازالة النظم و رفعه من قلوب عباده و اوهامهم كما قال تعالى : (و لئن شيئنا لنذهبن بالذى اوحينا اليك (29)) فاذا ذهب به فانساه خلقه لم يكن قرانا لأن /مـــا / ليس بموجود لا يسمّى قرانا ، و اذا كان كذلك لم يمتنع ورود +النسخ فيه على هذا الوجه ?o.I30a.

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a) ms ﻩ above the line.

على ان اعتقاد الاول باق في ان ما انزل علـــــى ذلك الضرب من النظم كان قرانا حين كان موجودا متلوا و مسطورا ، فاذا عدم ذلك فيه لم يكن في هذه الحال قرانا و ليس كذلك مخبر اخبار الله تعالى لانه قد لزمنا اعتقاد معناه على ما وقع عليه ورود الخبر به و ذلك المعنى الذى ورد الخبر به لم يتغيّر و لم يتبدّل ، فلم يجز أن يتعبّد بخلاف معتقده كان بدّيا • و امّا النظم الذى من اجله كان قرانا اذا زال فقـــــد زال المعنى الذى من اجله لزم الدوام[a] على الاعتقاد في بقائه في المستقبل قرانـــا فلذلك اختلفا •

فان قال قائل قال الله تعالى : (انا نحن نزلنا الذكر و انا له لحافظون)(30) و قـــال تعالى : (ان علينا جمعه[b] و قرانه[c] فاذا قرأناه[d] فاتبع قرانه ثـم ان علينا بيانه)(3I) و ظاهره يقتضى أن يكون حافظا له ابدا ، و ان البيان به حاصل لجميع الامّة اذ لم يخصّ وقتا من وقت و لا قوما من قوم • و قال تعالى : (ان هو الا ذكر للعالمين)(32) فاخبر أن جميعه ذكر للعالمين و ذلك يؤمننا وقوع نسخ تلاوته و رسمه لانّ ما رفع و انسى و لم ينقل لا يكون ذكرا للعالمين • و قال تعالى : (لانذركم به و من بلغ)(33) فاخبر انه منذر بجميع القران في كل الاوقات و ما رفع لا يصح الانذار به • و قال تعالى : (و انه لكتاب

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a) ms الدوائر

b) ms after علينا see للهدى crossed out.

c) ms missing.

d) ms بيان

(34)
عز يز لا ياتيه الباطل من بين يد يه و لا من خلفه تنز يل من حكيم حميد) و هـــذا
(35)
يمنع جواز رفعه ، و قال تعالى : (ان هذا القران يهدى للتي هى اقـــــــوم)

فاخبر انّ جميعه يهدى و لم يستثن وقتا من وقت فوجب أن توجد الهداية فـــي
(36)
جميعه ابدا • و قال تعالى : (مصد قا لما بين يد يه و هدى و بشرى للمؤمنين) ،

5 و ذلك خبر عن جميعه •

a
و الجواب ان جميع ما ذكر لا يمنع جواز نسخ رسمه و تلاوته كما لم يمنع جواز نســـخ

احكامه و موجباته لانّ القران ينتظم شيئين : النظم و المعنى ، فاذا لم تمنع هـــذه
b
الآيات من جواز نسخ احكامه لم تمنع جواز نسخ رسمه و تلاوته ، و كانت معانـــــي

هذه الآيات محمولة على غير جواز النسخ • و امّا نسخ الرسم و التلاوة بعد وفاة

IO الرسول /صلى الله عليه و سلم/ فغير جائز كما لا يجوز نسخ الحكم و لو جاز ذلك في
c
رسمه و تلاوته لجاز مثله في احكامه فلما امتنع نسخ احكامه بعد وفاة الرسول عليه

السلام امتنع نسخ رسمه و تلاوته لانّ الرسم قد تعلّق به احكام على ما بيناه فيمـــا
(37)
سلف و قد ينسخه لنسخ تلك الاحكام •

و قد احتج الشافعى لاعتبار الخمس رضعات في ايجاب+ التحريم بمـــــــــا .o.I و Ob.

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a) ms اسمه

b) ms جوا

c) ms فجار

روى ابو بكر بن محمد بن عمرو بن حزم و يحيى بن سعيد الانصارى عن عمرة عـــــن عائشة رضي الله عنها قالت: " كان فيما نزل من القران عشر رضعات معلومـــــات يحرّمن ثـم نسخن بخمس معلومات يحرّمن فتوفّى رسول الله صلى الله عليه و سلـــم و هن مما يقرأ من القران (38)،، و في بعض الفاظ هذا الحديث " و كانت في صحيفـــة تحت السرير فلما مرض رسول الله صلى الله عليه و سلم اشتغلنا بمرضه فدخلت داجن فاكلتها (39)،، فلا يخلو المحتج بهذا الحديث من احدى منزلتين : امّا أن يجيـــز نسخ رسم القران و تلاوته بعد وفاته عليه السلام او لا يجيزه ، فاذا اجازه ارتكب امرا شنيعا قبيحا خارجا عن اقاويل الامة و /اتّبع/ طرق الملحدين الطاعنين في القران القول بأنه لم ينقل أكثره و انه قد فقد أعظمه[a] و لا يمكنه مع ذلك الفصل بين اجازة نسخ رسمه و تلاوته و بين اجازة نسخ احكامه بعد وفاة رسول الله صلى الله عليه و سلم لمـــا بيّناه فيما سلف . و ان منع جواز نسخ رسمه و تلاوته بعد وفاة رسول الله صلى اللـــه عليه و سلم لم يصح له احتجاج لانّ فيه ان رسول الله صلى الله عليه و سلم توفّـــى و رسمه باق[b] لانّها قالت: " توفّى رسول الله صلى الله عليه و سلم و هن مما[c] يقـــرأ من القران ،، فان كان الخبر ثابتا عنده فالواجب عليه اثباته من القران لانّه قـــد

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a) ms عظمه

b) ms باقى

c) ms ممن but cf. line 4.

اعطى امتناع[a] جواز النسخ بعد وفاة النبي عليه السلام ٠

فان قال انما اثبت الحكم د ون التلاوة كما اثبتت آية التتابع في كفارة اليمين لما في حرف عبد الله و ان لم تثبت الرسم ٠

قيل له ليس في حرف عبد الله أن رسول الله صلى الله عليه وسلم توفى و هو من القران و كونه من القران في وقت لا يوجب كونه من القران ابدا ما دام النبي عليه السلام باقيا فوجب اذا لم يثبت نقله قرانا من طريق التواتر ألاّ نثبته قرانا بعد وفاة النبي عليه السلام ، و في خبر عائشة هذا انه كان قرانا بعد وفاته ، و ما ثبت ذلك له لا يجوز بعد ذلك نسخه على انه قد ذكر فيه ان ذهابه كان لاجل ان الداجن اكل الصحيفة التي كان فيها ذلك و لا يجوز ان يتوهم في كتاب الله الذى (لا يأتيه الباطل من بين يديه و لا من خلفه) (40) انه كان معرضا لاكل الداجن له و ذهابه بعد وفاة النبي عليه السلام (41) ٠

فان قيل فما وجه هذا الحديث عندكم ؟

قيل له يحتمل أن يكون لفظ عائشة فيه على غير الوجه الذى روى في هذا الحديث بأن تكون قالت انه كان[b] فيما انزل الله تعالى او في كتاب الله كيت و كيت[c] و نحوه من

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a) ms امتناع

b) ms كاك

c) ms كب كب

الالفاظ+التي يحتمل ان يراد به القران و يراد به وحي غير قران فظّن الراوى ان معنى fo.I3Ia.
اللفظين واحد و ان المراد انه كان قرانا الى ان توفّى فنقل المعنى عنده على نحو ما
ذكرنا في خبر عمر في الرجم ، و اذا احتمل ذلك سقط الاحتجاج به في اثبات ما روى
فيه لا سيّما و هو معنى يردّه الكتاب و اجماع الامّة • قال الله تعالى : (انا نحن نزلنا
(42)
الذكر و انا له لحافظون) و قال تعالى : (ان علينا جمعه و قرانه فاذ اقرأنه فاتبع قرانه
(43)
ثم ان علينا بيانه) و نحو/ذلك / من الاىّ المقتضية لبقاء رسم القران و نظمه بعد وفاة
النبي عليه السلام •

فان قيل فاثبتوا الحكم و ان لم تثبتوا[a] الرسم •

قيل له الفرق بينهما ان حديث عائشة لا يخلو من احد معنيين : امّا انْ يكون واهنا
سقيما غير ثابت في الاصل من طريق الرواية فسقط الاحتجاج به في اثبات الاحكام ،
او انْ يكون ثابتا على غير الوجه الذى ورد النقل به فلا يصح اثبات حكمه لما قد بان
من خطاء الراوى له في نقله ، اذ غير جائز انْ يكون لفظه ثابتا له في نقله على ما روى
فيه ، و اذا لم يثبت لفظ الحديث و لم يكن لنا سبيل الى معرفة حقيقته لم يجز
اثبات حكمه لانّه ليس معنى من المعاني يقصد الى اثباته الا و جائز أن/يكون / هو مما غلط

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a) ms تثبتو

فيه راويه كغلطه في لفظه ، و جائز أن يكون قد حذف منه ايضا بعض لفظه مما يوجب
الاقتصار بحكمه على بعض الاحوال و في بعض المرضعين[a] دون بعض بأن يكون قد كان
حكما في رضاع الكبير (44) خاصة فلما تعذّر الوقوف على حقيقة لفظه و سياق معناه سقـــــط
الاحتجاج به • و امّا حرف عبد الله في التتابع فليس في ظاهر لفظه ما يدفع، لأن أكثرما
فيه ان ذلك كان من القران و هذا معنى صحيح غير مدفوع ، و ليس لأنه كان من القران
ما يوجب أن يكون منه في كل وقت قبل وفاته صلى الله عليه و سلم /و بعد ها/ •
و امّا نسخ الحكم مع بقاء الرسم فموجود[b] في القران في كثير من المواضع نحو قوله تعالى :
(45)
(و اللاتي يأتين الفاحشة من نسائكم) الى آخرها منسوخ الحكم بالجلد تارة و بالرجم
(46)
اخرى و كقوله تعالى : (اذا ناجيتم الرسول فقدّموا بين يدى نجواكم صدقة) منسوخ
(47)
بقوله تعالى : (فاذ لم تفعلوا و تاب الله عليكم فاقيموا الصلاة و اتوا الزكاة) • و قوله
(48)
تعالى : (متاعا الى الحول غير اخراج) منسوخ بقوله : (و الذين يتوفون منكم و يذرون
(49)
ازواجا يتربصن بانفسهن اربعة اشهر[c] و عشرا) • و قوله تعالى : (و على الذيـــــن
(50)
يطيقونه فدية طعام مسكين) ، روى أن الصحيح كان مخيّرا بين[d] الصوم و الفدية فنسخ fo.I3Ib.
(52) (51)
بقوله تعالى : (فمن شهد منكم الشهر فليصمه) و اشباه ذلك كثيرة في القران •

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a) ms الموضعين

b) ms لوجوه

c) ms missing.

d) ms عير

باب القول في الوجوه التي يعلم بها النسخ

قال ابوبكر رحمه الله : نسخ احكام الشرع على وجهين : احد هما من وجوه اربعة الكتاب و السنة و الاتفاق ثم د لائل الاصول اذا عدم ذلك (1) . و الحكم الناسخ هو الذى يرد بعد استقرار حكم المنسوخ و يمتنع معه اجتماعهما في امر واحد في حال واحدة لشخص واحد فيكون الآخر ناسخا للاوّل . و ان اقتضى زوال بعضه فهذا ناسخ لذلك البعض . فاما نسخ الجميع فنحو قوله تعالى : (علم الله انكم كنتم تختانون انفسكم فتاب عليكم و عفا عنكم (2)) . روى انه قد كان حرم عليهم[a] الجماع و الاكل و الشرب بعد النوم في ليالى الصوم فنسخ ذلك بقوله تعالى : (فكلوا و اشربوا حتى يتبين لكم الخيط الابيض من الخيط الاسود (3)) الآية . و اباح الاكل و الشرب[b] و الجماع في ليالى الصوم بعد النوم و قبله (4) . و نحو قوله تعالى : (فاعف عنهم و اصفح (5)) و نحو قوله تعالى : (فاذا الذى بينك و بينه عداوة كأنه ولى حميم (6)) نسخه قوله تعالى : (اذن للذين يقاتلون بأنهم ظلموا (7)) .

و امّا نسخ بعض الحكم فنحو الصلاة الى بيت المقدس انما نسخ منها التوجه الى هناك و سائر احكامها باقية . و صلاة الليل نسخ منها الوجوب[c] و سائر احكامها باقية من

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a) ms عليكم

b) ms و الشرب و الشرب

c) ms جميع

(8)
اوصاف افعالها و شرائطها و كونها قربة ثابتة • و نحو ما اوجب الله تعالى مـــن
(9)
الجلد على قاذف الاجنبيات و الزوجات بقوله : (و الذين يرمون المحصنات) الآيـة

ثـم نسخ الجلد على قاذف الزوجات و اوجب اللعان اذا كانا على صفة و يدلّ على

ان حد الجميع كان الجلد قوله عليه السلام لهلال بن اميّة حين قذف امرأته : " ايتنى
5 باربعة يشهدون و الا تحد في ظهرك ،، و قالت الانصار : " الآ ن يجلد هلال بن

اميّة و تبطل شهادته في المسلمين ،، و لم يوجب النبي عليه السلام غير الجلد فلمـا
(IO)
نزلت آية اللعان امره باللعان و لم يحد •

و اذا صحّ تاريخ الحكمين اللذين لا يصح اجتماع التعبّد بهما في حال واحدة لشخص

واحد فان الآخر منهما ناسخ للاوّل • قال ابن عباس رضي الله عنه : " كان اصحاب
(II)
IO رسول الله يتّبعون الاحدث فالاحدث من امره ،، و انما قلنا أن النسخ يقع بما لا

تصح العبادة به مع الحكم الاوّل في حال واحدة لشخص واحد و ما[a] يصح اجتماعه مع

الاوّل في[b]+ حال واحدة لم يكن نسخا لانّ ما جازت العبادة به في حال واحدة لشخص fo.I32a.

واحد فليس في تكليف احدهما ما ينفى لزوم الآخر ، يجب أن تثبتا اذا ورد احدهما

بعد الآخر • و الدليل على ذلك انه كان /يصح / التعبّد بهما معا في حال واحدة في

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a) ms انما

b) ms فى فى

امر واحد فاذا لم يتنافيا اذا وردا معا وجب أن لا يتنافيا اذا ورد احد هما بعد الآخر، الا ترى ان الصلاة و الصيام لما صح الامر بهما في حال واحدة لـــم يكن احد هما ناسخا للآخر و لا مانعا من بقاء حكمه اذا ورد بعده٠ و هذا الاعتبـــار واجب في نظائر ذلك من العبادات و قد يرد حكم يصح اجتماعه مع الاول و يكون

5 وروده عقيب نسخ الاول فيطلق /الناسخ/ في الحقيقة واقعا لغيره و اطلاق هـــذا مجاز عندنا ليس بحقيقة٠ و انما سمى هذا نسخا لأنه ورد عقيب النسخ متصلا به و سمى باسمه كما يسمى /الشيء/ باسم غيره اذا كان مجاورا له و كان منه بسبب على جهة المجاز و التشبيه به٠ و ذلك نحو قوله تعالى : (و اللاتي يأتين الفاحشة من نسائكم فاستشهدوا عليهن اربعة منكم (I2)) الى آخر القصة٠ فروى ان هذا كان حد الزانيين في اول الامر٠

IO قال ابن عباس: و هو منسوخ بقوله تعالى : (الزانية و الزانى فاجلدوا كل واحد منهما مائة جلدة (I3)) و معلوم انا لو خلينا و الآيتين لم يكن يمتنع الجمع بينهما علـــى شخص واحد في حال واحدة فيكون /حده/ الحبس و الاذى و الجلد مـــع ذلك فلا يكون وجوب الجلد على غير المحصن مانعا من بقاء حكم الحبس و الاذى و لا يكون ذلك مزيلا لهما مـــن هذا الوجه الا انه يكون نسخا من جهة اخرى و هي الزيادة فـــي النص لأن الزيادة

في النص توجب النسخ عندنا لما سنبينه بعد هذا ان شاء الله تعالى (I4) · علمنا[a] ان
زوال حكم الحبس و الاذى لم يتعلق بوجود الجلد و انما تعلق بشيء غيره ، فلمـــا
اوجب الجلد على الزاني غير المحصن عند نسخهما اطلق عليه انه نسخه ، و هـــذا
الذى قلناه هو في الزاني غير المحصن · فاما الزاني المحصن فهذا الحكم لا محالة
منسوخ عنه بسنة الرسول عليه السلام في ايجابه الرجم على المحصن اذ لا يصح اجتماع
الرجم و الحبس و الاذى ·

فان قال قائل قد كان يصح اجتماع الحبس و الاذى و الرجم عليه و يكونان عقوبته بأن
يكون الرجم بعد الحبس و الاذى ·

قيل له اما الذى في الآية فلم يكن يصح اجتماعه مع الرجم لأنه قال : (حتى يتوفاهن
الموت او يجعل الله لهن سبيلا (I5)) فكان الحبس و الاذى هما الحد الى ان تمـوت
حتف انفها او يجعل الله لها سبيلا[b] غير هما و وقوع الرجم يمنع استيفاء ذلك فقـد fo.I32b.
نسخ الرجم هذا الحكم بحيث لم يصح اجتماعهما في حال واحدة · و من جهة اخرى
ان الرجم اذا كان مستحقا بالزنا و قد كان قبل ذلك حد هما الحبس و الاذى في
الحال التي ابدل مكانهما[c] الرجم فغير جائز ثبوت الحبس و الاذى في الحال التي

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a) ms اعلمنا

b) ms سبيل

c) ms مكانها

وجب فيها الرجم لأن وقوع الرجم ينافيهما ، فثبت انهما منسوخان به على الحقيقة • و يدلّ على ذلك ايضا ان النبي عليه السلام قال : "خذوا عنى قد جعل الله لهن سبيلا ـــ و هذا يعنى والله أعلم السبيل المذكور في قوله تعالى : (حتى يتوفاهن الموت) ـــ البكر بالبكر جلد مائة /وتغريب عام / و الثيب بالثيب الجلد و الرجم"(I6)، فاخبر بزوال الحبس لأن الله تعالى اوجب حبسهن الى وقت ورود السبيل فبيّن الرسول عليه السلام ذلك السبيل و اخبر بنسخ حكم الآية عن الزانى غير المحصن لا بايجاب الجلد لكن بمعنى غيره و نسخه عن المحصن بالرجم ، لأن وقوع الرجم ينافى الحبس• و نحو قوله تعالى : (كتب عليكم اذا حضر احدكم الموت ان ترك خيرا الوصية للوالدين و الاقربين)(I7)• قيل انها منسوخة بالميراث و معلوم ان وجوب الميراث لم يكن ينافى بقاء الوصية فيستحقهما جميعا معا الا انه لما نسخت الوصية(I8) و اوجب عقيبها الميراث قيل على وجه المجاز انها منسوخة به و لو خلينا و الآيتين لاستعملنا هما جميعا• و مثله ما روى ان النبى صلى الله عليه و سلم امر بصيام عاشوراء(I9) ثم نسخ بصيام شهر رمضان• و ان الزكاة نسخت كل صدقة كانت واجبة قبلها و ان قوله عليه السلام "الماء من الماء ،، منسوخ بايجاب الغسل بالتقاء الختانين(20)• و لم يكن يمتنع(21)(22)

اجتماع ذلك كله فعلمنا ان شيئا من هذه الاحكام لم ينسخ بالاحكام الواردة بعد ها فان من سمى ذلك نسخا فانما سماه مجازا لا حقيقة لانّه لما نسخ الاوّل وجب الثاني عقيبه و ان كان النسخ واقعا بغيره ٠

و اما كل حكمين لا يصح مجيء التعبد بهما في حال واحدة لشخص واحد فان الثاني منهما يكون ناسخا للاوّل اذا ورد بعد استقرار حكمه و ذلك نحو قوله تعالى : (فان جاءوك فاحكم بينهم او اعرض عنهم) (23) ، متى استقرّ هذا الحكم ثم قال تعالى : (و ان احكم بينهم بما انزل الله) (24) فاوجب ذلك نسخ التخيير المذكور فيه اذ لا يصح اجتماعهما في حال واحدة الا ترى انه لا يصح أن يقول قد خيّرتك بين الحكم و الاعراض و مع ذلك فاحكم بينهم من غير اعراض لانّ اللفظ يتناقض به و يستحيل معناه ٠ (25)

و من اجل ذلك منعنا[a] أن يعترض بقوله عليه السلام : " لا صلاة الا بفاتحة الكتاب" على قوله تعالى : (فاقرءوا ما تيسّر من القران) (27) لانّ الآية اقتضت التخيير في المفروض من القراءة و اذا حمل معنى التخيير على تعيّن فرض القراءة بفاتحة الكتاب اوجب اسقاط التخيير الذى في الآية فيكون ناسخا له و لا يجوز نسخ القران بخبر الواحد ٠ (28)

و نحو قوله تعالى : (ان يكن منكم عشرون صابرون يغلبوا مائتين و ان يكن منكم مائة

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a) ms منعنلى

يغلبوا الفا) (29) فاوجب على العشرين مقاومة المائتين و على المائة مقاومة الالف و حظر

عليهم الفرار منهم ، ثـم قال : (الآن خفّف الله عنكم و علم ان فيكم ضعفا فان يكن منكم
مائة صابرة يغلبوا مائتين و ان يكن منكم الف يغلبوا الفين) (30) فصار الثاني ناسخا للاوّل
لاستحالة اجتماعهما في حال واحدة ، فثبت نسخ الاوّل بالثاني (31) ·

5 و من هذه الجهة قلنا ان الزيادة في النص نسخ بعد استقرار حكمه /a و كذلك النص/b
يكون ناسخا للزيادة و ذلك /c لاستحالة/ جمعهما في حال واحدة ·

فالوجه الاوّل نحو قوله تعالى : (فاغسلوا وجوهكم و ايديكم الى المرافق) (32) · اقتضى
ظاهره و حقيقته جواز الصلاة بغسل هذه الاعضاء فصار كقوله قد اجزأتكم صلاتكم
بغسلها دون وجود النية فيه فلا يصح أن يقول مع ذلك النية واجبة في غسلها فان
IO لم تنووا به الطهارة لم تجز كم صلاتكم (33) ·

و كذلك قوله تعالى : (و استشهدوا شهيدين من رجالكم) (34) الآية ، لا يصح اجتماعه
مع الشاهد و اليمين في امر واحد مع استعمال حكم الآية على حسب مقتضاها و موجبها
لانه لا يصح أن يقول اوجبت عليكم الحكم بالشاهدين و الرجل و المرأتين دون غيرهم d
و اجزت لكم مع ذلك الحكم بالشاهد و اليمين لان اللفظ يتناقض و يستحيل معناه (35) ·

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a) ms حكمها

b) ms فانه

c) ms كذلك

d) ms above the line.

(36)
و كذ لك قوله تعالى : (الزانية و الزانى فاجلدوا كل واحد منهما مائة جلدة) ، يقتضى
a
أن تكون المائة حد هما يوجب وقوعها موقع الجزاء و استيفاء كمال الحد بها فغير جائز

أن يقول بعد ذ لك هذا بعض الحد دون جميعه و ان كماله بوجود النفى معه و نظائر

ذ لك كثيرة • فلما امتنع وجود هما في امر واحد وجب أن يكون وروده بعد استقرار
b
5 الحكم الأول موجبا لنسخه ، و لا فرق بين ورود النص منفردا عن ذكر الزيادة في كونه

ناسخا للنص المتقدّم له المعقود بذكر الزيادة و بين ورود الزيادة بعد ورود النص

منفردا عنها •

فأما ورود النص بعد الزيادة فنحو قوله تعالى : (الزانية و الزانى فاجلدوا كل واحد
(37)
منهما مائة جلدة) فاقتصر فيها على ذكر الجلد دون النفى و الرجم و قد كان تقدّم

IO قبل نزول هذه الآية من النبي عليه السلام ذكر النفى و الرجم مع الجلد في حال وجود
(38)
الاحصان او عدمه بقوله : " خذوا عني قد جعل الله لهن سبيلا ،، فلما اخبر ان السبيل

المذكور في الآية ماخوذ عنه بما ذكر علم ان الآية لم تكن نزلت قبله فلما نزلت الآية

بعده منفردة عن ذكر النفى و الرجم وجب أن + يكون حكمها مستعملا على حسب مقتضا ها .o.I33b

و موجبها ، فيكون الجلد المذكور فيها كمال الحد و تكون ناسخة للنفى و الرجم المذكور f

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a) ms الجواز

b) ms كونها

في الخبر حدا[a] مع الجلد ٠

فان قيل فقد قلت فيما سلف أن النسخ انما يصح على الوجه الذى يجوز ورود الامر به في خطاب واحد و ان ما لا يصح اجتماع ذكره مع المنسوخ في خطاب واحد لم يصح نسخه به و الزيادة مع الاصل مما يصح وجوده معه في خطاب واحد ٠

قيل له ليس فيما ذكرنا الى هاهنا من حكم الزيادة في النص نفى لما قلنا في اعتبار جواز النسخ في الاصل بل هما جميعا صحيحان و ذلك لأنا قلنا ان ما[b] يصح ورود التعبّد به في حال واحدة حتى يكون مأمورا باعتقاد الحكم على وجه و مأمورا ايضا في تلك الحال باعتقاد على خلافه في ذلك الوقت الذى يلزمه تنفيذ الحكم لا يصح ورود النص به نحو ما ذكرنا في ان الآية اذا كانت موجبة لكون الحد كاملا و لا يصح أن يقول فاعتقدوا في هذه الحال ايضا ان جلد المائة هو بعض الحد اذ غير جائز أن يكون هو بعض الحد و هو جميعه ٠ و كما لا يصح أن تكون عدة المتوفى عنها زوجها سنة و عدتها ايضا اربعة اشهر و عشرا فلا يصح الامر باعتقاد كل واحدة[c] من المدّتين عدة كاملة في حال واحدة ٠

و أمّا ما قلنا في اعتبار جواز النسخ باجتماع ذكر الحكمين جميعا في خطاب واحد

f0٠

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a) ms كذا ٠

b) ms after ما see لا

c) ms واحد

فهو صحيح لأن هناك امرين مدّة كل واحد منهما مدّة الآخر نحو قوله تعالى : (والذين يتوفون منكم و يذرون ازواجا وصية لازواجهم متاعا الى الحول غير اخراج (39)) ، فكان هذا حكما ثابتا في عدة المتوفى عنها زوجها ثم نزل قوله تعالى : (يتربصن بانفسهن اربعة اشهر و عشرا (40)) فكان ناسخا لما عدا هذه المدّة من الحول المذكور في الآية الاخرى

و قد كان يجوز أن يجمعهما في خطاب واحد بأن يتعبّد بهما في حالين نحو أن يقول عدّة المتوفى عنها زوجها حول الى ان يمضى خمس سنين فاذا مضت السنون الخمس، كانت عدّة المتوفى عنها زوجها اربعة اشهر و عشرا ٠

فان قال قائل ما ذكرت في حكم الزيادة في النص لا يقتضى ما ذكرت من ايجابها النسخ لانه يصح أن يقول حد الزنا الجلد و النفى و يجوز أن يقول : (و استشهدوا شهيدين من رجالكم (4I)) او شاهدا و يمينا و ان غسل الاعضاء الاربعة فرض مع احضار النية لـــه و لا يناقض الخطاب به فليس ورود احدهما بعد الآخر ما يوجب النسخ ٠

قيل له هذا سؤال محال على هذا الوجه لانّهما اذا وردا معا لا تكون زيادة في النص و انما يكون المذكور جميع النص لأن ما جمعه امر واحد و خطاب واحد لا يصح أن يقال ان بعضه زيادة في بعض ٠ و انما الزيادة[+] في النص ان[b] يرد النص مفردا عن ذكر fo.I34a.

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a) ms المتوفا

b) ms او

الزيادة ثـم ترد الزيادة منفصلة عن خطاب النص نحو قوله تعالى : (الزانية و الزانى فاجلدوا كل واحد منهما مائة جلدة)(42) فتكون الآية موجبة لكون جلد المائة حدا واقعا موقع الجزاء[a] في عقاب الزانى فاذا قال بعد ذلك : فاجلدو هم مائة جلدة و انفوهم فقد تعيّن بورود الزيادة على هذا الوجه اعتقاد موجب حكم الآية ، فكل[b] ما ورد بعده مما يوجب زيادة فيه او نقصانا منه فهو لا محالة نسخ لاستحالة ورود الخطاب به في امر واحد بأن[c] يقول جلد المائة هو جميع الحد و هو بعضه .

فاما أن يردا معا فهذا غير ممتنع و لا يكون زيادة كما لا يمتنع أن يقول[d] عدة المتوفى عنها زوجها سنة و تكون الاربعة الاشهر و العشر داخلة فيها و يمتنع أن يقول العدة سنة و العدة اربعة اشهر و عشرا ، وكما لا يمتنع أن يقول صلوا الى بيت المقـــدس و ان شئتم فالى الكعبة و يمتنع أن يقول صلّوا الى بيت المقدس و صلّوا الى الكعبـة في خطاب واحد ، و متى استقر احدهما ثـم ورد الآخر كان ناسخا للاوّل فكذلك الزيادة هاهنا في النص على هذا المعنى . و ايضا فانا نقول في الزيادة كما يقول مخالفنا معنا في النقصان ، فلما كان النقصان بعد استقرار الفرض نسخا كذلك الزيادة ، و ذلك نحو أن يقول العدة سنة ثـم يقول العدة اربعة اشهر و عشر كان ذلك نسخا ، و لو

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a) ms الجواز

b) ms فكلما

c) ms بل يقوله

d) ms يقوله

جمعهما في خطاب واحد بأن قال : العدة سنة الا كذا كذا شهرا لم يكن نسخا ،
كذلك الزيادة اذا وردت مع النص في خطاب واحد فليس بنسخ و اذا وردت بعد استقرار
حكم النص كان نسخا • و هذا الذى ذكرناه انما هو كلام في الزيادة اذا وردت بعد
النص • فاما اذا ورد النص منفردا عن ذكر الزيادة و وردت الزيادة و لا يعلم تاريخهما
فان هذا له شريطة اخرى غير ما كنا فيه و سنذكرها ايضا فيما بعد (43) و ان كان قد
تقدم ذكر شيء منها فيما سلف من هذا الكتاب (44) •

قد بينا كيفية وجود النسخ و نبين الآن الوجوه التي توصل الى العلم بالناسخ من
المنسوخ من الجهات التي ذكرنا أن النسخ يقع بها فنقول ان ما[b] يعلم به النسخ على
وجوه : منها أن يرد لفظ يشتمل على ذكر الناسخ و المنسوخ معا مع ذكر تاريخهما
و لا يشكل على سامعهما أن الثاني منهما في التاريخ ناسخ للاول نحو قوله تعالى :
(45)
(فلنولينك قبلة ترضاها فول وجهك شطر المسجد الحرام) و قد قال تعالى قبل ذلك :
(46)
(سيقول السفهاء من الناس ما ولاهم عن قبلتهم[+] التى كانوا عليها) فاخبر انهم قد fo.I34b.
(47)
كانوا على قبلة غيرها ثم حولوا اليها •
(48)
و نحو قوله تعالى : (ان يكن منكم عشرون صابرون يغلبوا مائتين) فكان هذا حكما ثابتا

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a) ms د above the line.

b) ms انما

ثـم قال : (الآن خفّف الله عنكم و علم ان فيكم ضعفا (49)) الى اخر الآية فدلّ ذكره للتخفيف انه وارد بعد حكم هو أثقل منه فصار ناسخا له (50) ·

و نحو قوله تعالى : (ان ربك يعلم انك تقوم ادنى من ثلثى الليل و نصفه و ثلثه (5I)) الى قوله تعالى : (فتاب[a] عليكم) ، يعني فخفّف عنكم و هذا بعد قوله تعالى : (قم الليل الا قليلا (52)) ثـم قال : (علم ان سيكون منكم مرضى (53)) الى اخر السورة ، فاقتضت القصّة بفحواها و مضمون خطابها أن فرض صلاة الليل منسوخ بما تضمنت من اباحة تركها (54) ·

و كقوله تعالى : (اذا ناجيتم الرسول فقدّموا بين يدى نجواكم صدقة (55)) ثـم قال تعالى : (فاذ لم تفعلوا و تاب[b] الله عليكم فاقيموا الصلاة و اتوا الزكاة (56)) ·

و كقوله تعالى : (علم الله انكم كنتم تختانون انفسكم فتاب عليكم و عفا عنكم (57)) يعني والله أعلم سهل عليكم و خفّف عنكم ، فدلّ على نسخ حظر الاكل و الشرب و الجماع بعد النوم في ليالى رمضان (58) · فانتظم هذه الايات ذكر الناسخ و المنسوخ معا في خطاب واحد ·

و السنة على وجهين : قول من النبي عليه السلام و فعل و قد يقع النسخ بكل واحد منهما · فامّا النسخ بالسنة من جهة القول فنحو[c] قول النبي عليه السلام : " كنت نهيتكم عن زيارة القبور فزوروها و كنت نهيتكم عن الاوعية فاشربوا و لا تسكروا و كنت نهيتكم عن لحوم الاضاحى

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a) ms فاب

b) ms فان

c) ms فنحول

فوق الثلث فكلوا و ادخروا (59)، فانتظم الخبر الناسخ و المنسوخ معا • و كما روى عبد الله ابن مغفل[a] ان النبي عليه السلام امر بقتل الكلاب (60) ثم قال : " ما لى و الكلاب "، ثم رخّص في كلب الصيد • و قال جابر: " امر النبي صلى الله عليه و سلم بقتل الكلاب ثم اذن لطوائف (61)، فهذه الاى و الاخبار مما نقل الينا فيه الحكم الناسخ و المنسوخ و كل ما كان هذا وصفه فلا اشكال على احد في حكمه •

و امّا النسخ من جهة الفعل فنحو ما روى أن النبي صلى الله عليه و سلم قال : " من شرب الخمر فاجلدوه فان عاد فاجلدوه ثم قال في الرابعة فان عاد فاقتلوه (62)، ثم روى عن النبي صلى الله عليه و سلم " اتى بشارب الخمر في الرابعة فلم يقتله (63)"

و مثل ما روى أن النبي صلى الله عليه و سلم " اكل لحما و صلى و لم يتوضأ (64)"، نسخ به ما روى من قوله : " توضؤا مما مسّت النار "•

و من الالفاظ ما يوجب النسخ من جهة قيام الدلالة[+] على تأخر حكمها عن حكم المنسوخ f°.I35a. و ان لم يكن الحكم المنسوخ مذكورا معها كقوله[b] تعالى : (اقتلوا المشركين حيث وجدتموهم) (65) ثم قال تعالى : (فان تابوا و اقاموا الصلاة و اتوا الزكاة فخلّوا سبيلهم) (66) فمنع تخلية سبيلهم الا بشرط الايمان • و روى ان سورة برأة من اخر ما انزل من القران (67)،

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a) ms المغفل but cf. ibn Māja, Sunan, vol.2, p.1086.

b) ms بقوله

فوجب بذلك أن يكون ناسخا للقدر المذكور في قوله تعالى : (فامّا منّا بعد و امّا فداء)(68)
و مثله ما روى عن النبي عليه السلام انه رضخ رأس يهودى قتل جارية على اوضاح لها ،
و انه قطع ايدى العرنيين و ارجلهم و سمل اعينهم لما ارتدّوا و قتلوا راعى الابـــل
و ساقوها ، و روى عنه /انه/ اشعر البدن ثـم روى عنه عليه السلام في اخبار مستفيضة
5 انه نهى عن المثلة ، و قال سمرة : " ما خطبنا رسول الله صلى الله عليه و سلـــم
الا و امرنا بالصدقة و نهانا عن المثلة"(69) فاقتضى ذلك وجود النهى عنها في اخر خطبه
خطبها فيكون ناسخا لسـمل اعين المحاربين و رضخ الرأس على وجه القصاص و اشعار
البدن لأن جميع ذلك من المثلة . و مثله ما روى عن النبي عليه السلام " انه كـــان
يصلى بالهجر حين قدم المدينة "، ثـم قال : " ابردوا بالظهر فان شدّة الحر مـــن
IO فيح جهنم "(70)، فاخبر بأن الامر بتاخير الظهر في شدّة الحر كان متآخرا ، فالواجب أن
يقضى على خبر خباب " شكونا الى رسول الله صلى الله عليه و سلم حر الرمضاء فلـــم
يشكنا "(7I)، لانه قد ثبت أن الامر بالتاخير كان متاخرا .

و من الالفاظ الدالة على تاخير احد الحكمين عن الاخر ما روى عن النبي عليه السلام
انه قال : " لا قود الا بالسيف[a]"، فهذا يدّل على ان حكم وجود القود متقدّم لهذا الخبر

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a) ms باسيف

لأنه لا يذكر كيفيّة القود الا و قد تقدّم ذكر وجوبه فغير جائز لاحد أن يستدلّ بقوله تعالى : (كتب عليكم القصاص)(72) على ايجاب القود بكل ما قتل به لأن ايجاب القـــود بالسيف متأخر عنه فهو قاض عليه (73) • و نحو قوله عليه السلام : " الا ان قتيل خطاء العمد قتيل السوط و العصا فيه الدية مغلظة ،، فلم يذكر خطاء العمد الا و قد تقدّم ذكر العمد و الخطاء (74) • و مثله ما روى في شاة ميمونة أن النبي عليه السلام قال حين رأها ميتة : " هلا انتفعتم باهابها ،، فقالوا : " انها ميتة ،،فدلّ على أن تحريم الميتة كان متقدّما لذلك (75) • وكذلك قوله عليه السلام : " انما الرضاعة من المجاعة ،، وكـــذلك قوله : " انما الرضاع ما انبت اللحم و انشز العظم ،، يقتضى أن يكون ايجاب التحريـم بالرضاع متقدّما لهذا الخبر ، و نظائر ذلك كثيرة (76) •

و يجوز أن يجعل اخبار الصحابي و التابعي عن تاريخ الحكمين عبارة عن هذا الباب فيوجب به النسخ نحو +ما روى عن مجاهد و عكرمة ان قوله تعالى : (و ان احكـــم بينهم بما انزل الله) (77) نزل بعد قوله تعالى : (فاحكم بينهم او اعرض عنهم) (78) • و نحـــو ما روى عن ابن عباس رضى الله عنه انه لما ذكر له " الرضعة و الرضعتان ،، قـــال : " قد كان ذلك فامّا اليوم فلا (79) ،، فاخبر عن تقديم علمه بهذا الخبر و اخبـــر fo.I35b.

انه قد كان و ان حكمه غير ثابت الآن فصار ذلك اخبارا منه بنسخه و تاريخ حكمـــه ٠

و مثله ما[a] روى عن الزهرى أن النبي عليه السلام ردّ زينب ابنته عليها السلام على ابى

العاص بن الربيع و كانت هاجرت و بقى هو مشركا ثـم جاء مسلما بعد سنين ،قـال

(31)

الزهرى : " وكان هذا قبل أن تنزل الفرائض،، و نحوه ما روى من قصّة ذى اليد ين

(32)

في الكلام في الصلاة ،قال الزهرى : " كان ذلك قبل ان استحكمت الفرائض،، و انما

قلنا ان الصحابي و التابعي اذا اخبرا بنسخ حكم كان خبر هما مقبولا فيـــــه

من قبل ان العلم بالتاريخ لا سبيل اليه من طريق الاجتهاد و الرائى و انما يعلم

من جهة السماع و التوقيف فعلمنا انه لم يقل ذلك الا من جهة التوقيف ٠ فهـــذه

الوجوه التى ذكرنا من الكتاب و السنة مما اوصل الى العلم بتاريخ الحكمين امّـــا

بذكر للناسخ و المنسوخ معا مع ذكر تاريخهما او بذكر الناسخ و تاريخه دون ذكر

المنسوخ من جهة اللفظ او فحوى الخطاب و دلالته ٠

و امّا الاستدلال بالاجماع على النسخ فقد ذكر عيسى بن ابان رحمه الله و ذلك انه

(33)

قـــال : " اذا[b] روى خبران متضادان و الناسر على احد هما فهو الناسخ للآخر[c]،،

فاستدلّ بالاجماع على النسخ ٠

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a) ms ما ما

b) ms before قال see اذا

c) ms above the line.

قال ابو بكر: لسنا نقول ان الاجماع يوجب النسخ لانّ الاجماع انما يثبت حكمه بعد وفاة الرسول صلى الله عليه و سلم ، و امّا في حال حياته فالمرجع اليه صلى الله عليه و سلم في معرفة الحكم لمن[a] كان بحضرته ، و لا اعتبار بالاجماع فيه و معلوم أن النسخ لا يصح الا من طريق التوقيف و لا يصح بعد وفاة الرسول عليه السلام الا ان الاجماع اذا حصل على زوال الحكم قد ثبت بالنص دلّنا الاجماع على انه منسوخ بتوقيف و ان لم ينقل الينا اللفظ الناسخ له (84) •

فمما دلّنا الاجماع على نسخه قوله تعالى : (و ان فاتكم شيء من ازواجكم الى الكفار فعاقبتم فاتوا الذين ذهبت ازواجهم مثل ما انفقوا (85)) و لم يعلم زوال هذا الحكم الا من طريق الاجماع (86) • و نحوه حديث ابى هريرة عن النبي عليه السلام" من غسل ميتا فليغتسل و من حمله فليتوضأ (87) ،، و حديث سلمة بن المحيق فيمن وطى جارية امرأته فقال عليه السلام : " ان كانت طاوعته فعليه مثلها و هي له و ان استكرهها فهى حرّة و عليه مثلها (88) ،، و حديث النعمان بن بشير عن النبي عليه السلام فيمن[+] وطى جارية امرأته" انها ان كانت اذنت له جلد مائة و ان لم تكن امرأته اذنت له فعليه الرجم (89) ،، فهذه الاحكام التي ذكرناها ثبت نسخها بدلالة الاجماع عليه • fo.I36a.

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a) ms لم

و أمّا اعتبار دليل النظر على الناسخ من الحكمين فانما يجب فيما لا يعرف تاريخه من جهة النقل على الوجوه التي بيّنا فرجع فيه الى شواهد الاصول و دلائل النظر فيثبت فيه ما اثبتته و ينتفي منه ما نفته ٠

و قد ذكر عيسى بن ابان رحمه الله في هذا المعنى جملة يعرف بها عامّة هذا الباب من فهم معاني كلامه ٠ قال عيسى : " اذا روى خبران متضادان و الناس على احدهما فهو الناسخ ، و ان اختلفوا ساغ الاجتهاد فيهما و استعمل اشبههما بالاصول ، و ان علم تاريخهما فالاخر ناسخ للاوّل اذا لم يحتمل الموافقة، و ان احتمل الموافقة ساغ الاجتهاد ، فان عمل الناس بالاوّل و هو الظاهر في يد اهل العلم و الآخر خامل لا تعمل به الا الشاذ نظر فان سوّغ الذين عملوا بالاوّل العمل بالاخر ساغ الاجتهاد فيه و ان عابوا من عمل بالاخر كان ما عمل به الناس هو المستعمل لأنّ النسخ لو كان ثابتا لعرفوه كما عرفوا الاوّل و لظهر النسخ فيهم كما ظهر الفرض الاوّل حتى لا يشذّ عنه الا القليل الا ترى ان لحوم الاضاحى قد ظهرت الاباحة فيها كما ظهر الحظر و كذلك زيارة القبور و اباحة الظروف و متعة النساء" ٠

قال ابوبكر: اما اذا كان الناس على احدهما فهو الناسخ ، فان وجهه ان قد ثبتت

صحة الاجماع فحيث ما وجدت الحكم بصحته فان وجد الحكم بصحة ما اجمعوا عليه و استحال ثبوت ما يضاده من الحكم في حال ثبوته ثبت هو و انتفى ما يضاده و كان هذا دليلا على ان الحكم الآخر منسوخ بما اجمعوا عليه ٠

و امّا قوله : "اذا اختلفوا ساغ الاجتهاد فاستعمل اشبههما بالاصول ،، فان مراده في هذا الفصل اذا لم يعلم تاريخهما ، فاذا كان هكذا وجب الاستدلال بالاصول على الناسخ منهما و جهات الاستدلال بها على الناسخ منهما مختلفة و انا ذاكر منها طرفا يستدلّ به على جملة القول فيه ٠

فنقول قبل أن نشرع في ذكر جهات الاستدلال على الحكم الناسخ ان الدليل على وجوب الاستدلال على الحكم الناسخ منهما ان اختلاف الناس[a] في حكم الخبرين[b] المتضادين اللذين[c] لا يحتملان[d] غير النسخ يجعل الحكم الذى تضمّنه كل واحد منهما في معنى سائر احكام الحوادث التي قد اختلف الناس فيها على وجوه مختلفة ثم كان طريق استدراك حكمها النظر و الاستدلال بالاصول ، فوجب أن يكون طريق اثبات حكم احد الخبرين دون الآخر اعتبار شواهد الاصول فيكون الخبر[+] الذى يعضده الاصول fo.I36b. فيهما اولى بالاثبات كحكم الحادثة اذا عاضدته دلائل[e] الاصول فيكون

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a) ms before ان see على

b) ms الناسخ

c) ms اللذان .

d) ms يحتملا

e) ms دلايل دلايل

اولى بالاثبات من غيره مما اختلف فيه • و ايضا فان الخبرين اذا تضادت احكامهما على هذا الوجه فان اقل احوالهما[a] أن يسقطا كأنهما لم يردا فيجعل الحكم موقوفا على شواهد الاصول فما دلت الاصول على ثباته من الحكمين فهو الثابت دون الآخر • و ايضا فان حكما يوجبه الاثر[b] و دلائل الاصول اولى بالاثبات من حكم ينفرد بايجابه الاثر دون الاصول • فدلّ جميع ما وصفنا على وجوب اعتبار الاستدلال بالاصول على الناسخ من الخبرين •

و امّا قوله : " ان علم تاريخهما فالاخر اولى اذا لم يحتمل الموافقة ،، فمن قبل ان الاخر ثابت الحكم لانّه لم يوجد بعده ما يزيله و في ثبوت الاوّل ايضا ردّ هما •

و امّا قوله : " ان احتمل الموافقة ساغ الاجتهاد ،، فلانّه اذا احتمل النسخ و احتمل الموافقة لم يجز اثبات النسخ بالاحتمال ، لانّ الحكم بالموافقة ايضا بالاحتمال اذ ليس احد الوجهين اولى به من الاخر فصار طريقه الاجتهاد و الاستدلال بالاصول على ثبوتهما بالحمل على الموافقة او اثبات حكم احدهما باثبات النسخ •

فان قال قائل هلا حكمت بالموافقة دون النسخ من غير اعتبار الاصول لانّ الاصل ان كل خبر فحكمه ثابت قائم بنفسه حتى يثبت ما يزيله فاذا احتمل كون الثاني ناسخا

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a) ms احولهما

b) ms الابه

للاوّل و احتمل كونه موافقا له لم يزل عن الحكم الاوّل الا بيقين و لم يثبت النسخ بالشك ٠

قيل له هذا غلط لأن هاهنا اصل آخر و هو الخبر الثاني اذ كان حكمه منافيا للحكم الاوّل فهو ناسخ له فاذا احتمل الموافقة صار بقاء الحكم الاوّل مشكوكا فيه و صار ايجاب النسخ مشكوكا فيه ايضا فلا تطرق على /اسقاط/ الحكمين جميعا ٠ احتجنا الى اعتبارهما بالاصول فان شهدت الاصول لاحد الحكمين دون الآخر كان حكمه ثابتا فان كان هو الاوّل حمل الثاني على موافقته فان شهدت الاصول للثاني دون الاوّل كان الخبر الثاني ثابت الحكم و كان الاوّل محمولا على موافقة الثاني ٠

و امّا قوله : "فان عمل الناس/بالاوّل /و هو الظاهر فى يد اهل العلم و الآخر/خامل / لا تعمل به الا الشاذ نظر فان سوّغ الذين عملوا بالاوّل العمل بالآخر ساغ الاجتهاد فيه و ان عابوا من عمل بالآخر كان ما عمل به الناس هو المستعمل ،، فان الاصل فيه ان عملهم بالاوّل مع تركهم النكير على من عمل بالثاني دليل على ان طريق استعمال حكم كل واحد منهما الاجتهاد +لو لا ذلك لكان الآخر عندهم ناسخا للاوّل و لظهر fo.137a. النكير على من عمل بالاوّل فكان في ترك بعضهم النكير على بعض فيما ذهب اليه من حكم احد الخبرين دلالة على جواز الاجتهاد عند هم في استعمال احد

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a) ms missing but cf. p.86,l.3.

b) ms missing but cf. Ibid.

c) ms نسخا

الخبرين ايّهما كان د ون الاخر ٠

و امّا قوله : " و ان عابوا من عمل بالاخر كان ما عمل به الناس هو المستعمل ،، فلانّهم اذا عابوا على الآخرين ما ذ هبوا اليه من ذ لك فقد ابانوا عن نسخ الآخر و افصحوا به و لو لا ان ذ لك كذ لك لكان الاجتهاد فيه سائغا عند هم و ما يسوغ فيه الاجتهاد لا يسع بعضهم اظهار النكير فيه على بعض ٠ فـــــدلّ[a] ظهور النكير منهم علـــــى الآخرين فيما ذ هبوا اليه على ان خبرهم ثابت عند هم غير منسوخ فصار ذ لك كالاخبار منهم بأن الثابت هو الذى استعملوه د ون الآخر ولأن نسخ الاوّل /لو كان / ثابتـا لعرفوه كما عرفوا الاوّل و لظهر النسخ فيه كما ظهر الآول حتى لا يشذّ عن علمـــــه الا القليل منهم كالنهى عن لحوم الاضاحى و زيارة القبور و الشرب في الظروف و متعة النساء على حسب ما حكيناه عن عيسى بن ابان رحمه الله ٠

فان قال قائل كيف يكون الاوّل ناسخا[b] للآخر ؟

قيل له لم نقلّ[c] الاوّل ناسخ للآخر و انما قلنا ان[d] ما ذ كرناه من حاله يدّل على انه هو الثابت الحكم د ون الآخر و ان الآخر لا ينفك من احد معنيين : امّا أن يكون غيـــــر ثابت في الاصل /او كان ثابتا / فان كان ثابتا فهو محمول على معنى لا يخالف الاول

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a) ms after فدل see على

b) ms ناسخ

c) ms تعلـــلّ

d) ms انما

و يكون منسوخا بالاوّل و ذلك بمعنى آخر لم ينقل الينا كما قلنا فيما دلّ الاجماع على نسخه من الاخبار ·

قال ابوبكر: و ما حكيناه عن عيسى من ان نسخ الاوّل لو كان ثابتا لظهر فيهم كظهور الحكم صحيح يجب اعتباره و ذلك لأنّ الحكم اذا ثبت و انتشر في الكافة ثم احدث النبي عليه السلام نسخا فلا بد أن يظهره عليه السلام للكافة حتى يعرفوه كما كانوا عرفوا المنسوخ قبل نسخه لأنّهم اذا علموا أنهم ثابتون على الحكم الاوّل معتقدون لبقائه عليهم فغير جائز أن يقرّهم على اعتقاد ثبوته و العمل به مع ايجاب نسخه لأنه لو اقرّ هم على ذلك لكان فيه اقرارهم على اعتقاد الشيء على خلاف ما هو عليه و على العمل بالمنسوخ الذى لا يجوز العمل به· و لكان فيه ايضا ترك الابلاغ الذى امره الله تعالى به بقوله تعالى : (يا ايّها الرسول بلّغ ما انزل عليك من ربك) (90) و قوله تعالى : (فاصدع بما تومر) (91) · و كان صلى الله عليه و سلم من اشدّ الناس مسارعة الى اثبات امر الله تعالى ، فوجب من اجل ذلك اظهار الحكم الناسخ لمن عرف الحكم المنسوخ بدّيا + و متى ظهر فيهم نقلوه كما نقلوا الاوّل و لو نقلوه لاستفاض فيهم و ظهر كظهور الاوّل فلما لم ينقل الحكم الآخر الا الشاذ منهم و ثبت الحكم f٥.I37b.

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a) ms ٧

الاوّل بنقل الكافة كان الحكم الاوّل ثابتا غير مدفوع بالثاني الذى لا يوازنه في النقل a
و الاستعمال • و ايضا فان الحكم الآخر اذا كانت الحاجة الى معرفته ماسة لمـــن
عرف الاوّل فالواجب توقيفهم عليه و اعلامهم اياه فيكون الحكم الناسخ بمنزلة الاشيـاء
التي تعم البلوى بها فلا يقبل فيه الا نقل الكافة و لا يلتفت/فيه/الى نقـــل الشاذ
5 فيصير الحكم حينئذ بمنزلة ما لم يرد فيه نقل و صار الاوّل ثابتا غير معارض بالآخـــر•
قال ابوبكر رحمه الله : و ينبغى أن يكون كذلك الآيتان اذا اوجبتا حكمين لا يصـــح b
اجتماعهما على الوجوه التي ذكرنا c في الاخبار •
فان قال /قائل /ان عمل الناس باحد هما يدل على ضعف الآخر و وهانته من طـــريق e d
النقل او على اغفال بعض الرواة لبعض معانيه و ما جرى مجرى ذلك فيصير المعمول به
IO عند الناس كالمنقول من طريق التواتر و الآخر كخبر الواحد فلا يعترض به عليـــه
و امّا الآيتان فجواز وقوع ذلك فيهما مأمون منهما •
قيل له ليس كذلك لأن عيسى لم يفرق بين الخبرين المتضادين اذا وردا من جهـــة
التواتر و بينهما اذا وردا من طريق الآحاد ، فعلمنا انه لم يعتبر ما ذكرت• و على انه
لو اعتبر ظهور الحكم الناسخ انه ناسخ كظهور المنسوخ كان عندهم بديّا و جب أن لا

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a) ms بالفساد
b) ms الايتين
c) ms ذكرها
d) ms من
e) ms قل

يختلف في حكم الآيتين و الخبرين لأن نقل الناسخ منهما انه ناسخ واجب[a] على من
علمه كذلك كنقل لفظه و احكامه و اذا لم ينقل انه هو الناسخ علمنا ان حكمه موكول[b] الى
الاجتهاد و اعتبار الاصول[c] ٠

قال ابوبكر: و اما طرق الاستدلال على الحكم الناسخ منهما من جهة الاصول فعلى
وجوه كثيرة يتعذّر وصف جميعها و لكنا نذكر منها جملا تعتبر بها نظائرها و تدلّ على
امثالها فنقول و بالله التوفيق ، مما يجب اعتباره في حكم الخبرين المتضادين اذا
لم يعلم تاريخهما و جاز على احدهما أن يكون منسوخا بآخر ، ان ما كان من ذلك
مباح الاصل ثم ورد فيه خبران احدهما توجب الاباحة و الآخر الحظر فحكم الحظر
(92)
اولى و يصير خبر الحظر رافعا للاباحة ٠ و من الناس من لا يسمى ذلك نسخا
اذا لم تكن الاباحة المتقدّمة ثابتة من جهة الشرع و ليس غرضنا في هذا الموضع
الكلام في أن ذلك يسمى نسخا او لا يسمى لأن ذلك كلام في العبارة فلا معنى
للاشتغال به و انما يجب أن يكون كلامنا في المعنى و في اثبات الحكم او زواله[d]
و في ان ايّ الخبرين[+] يجب أن يكون قاضيا على الآخر و مزيلا لحكمه٠ فنقول ان الدلالة .o.I33a
على صحة ما ذكرنا من وجوب القضاء لخبر الحظر دون الاباحة انا قد علمنا ورود النقل

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a) ms وجب

b) ms عمله

c) ms , outer left-hand margin.

d) ms و

عن الاباحة التي كانت /الاصل[a]/ بخبر الحظر و الخبر المبيح جائز أن يكون ورد مؤكدا للاباحة التي كانت هي الاصل من طريق دلالة العقل اذ ذلك غير ممتنع • و في القران و السنن منه ما يفوق الاحصاء نحو قوله تعالى : (قل من حرّم زينة الله التي اخرج (93) لعباده و الطيّبات من الرزق) و قوله تعالى : (فامشوا في مناكبها و كلوا من رزقـــه (94) (95) و قوله تعالى : (وكلوا واشربوا و لا تسرفوا) و نحو ذلك • فاذا كان خبر الاباحة جائزا[b] أن يكون ورد مؤكدا لما كان العقل عليه[c] و كان خبر الحظر طاريا لا محالة على الاباحة و ناقلا عنها الى الحظر وجب أن يكون حكم الحظر ثابتا و ان لا يعترض عليه بخبـــر الاباحة ان لم يتيقّن وروده على الحظر و ناقلا عنه •

و قد روى نحو هذا الاعتبار عن علي بن ابي طالب رضى الله عنه حين سئل عن الجمع بين الاختين بملك اليمين فقال : " احلّتهما آية و حرّمتهما آية و التحريم اولى ،، فاثبت (96) حكم الحظر عند[d] تعارض موجب الآيتين و هذه الجملة قد كان يقولها شيخنا ابو الحسن الكرخي رحمه الله في هذا المعنى • و ذلك نحو خبر جرهد الاسلمي و معمر بـــن عبد الله عن النبي عليه السلام انه امر بتغطيه الفخذ و قال : " انها عورة ،، و ما روى (97) ان ابابكر و عمر رضى الله عنهما دخلا على النبي صلى الله عليه و سلم و فخذه مكشوفة[e]

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a) ms missing but cf. 1.2.

b) ms جائز

c) ms منها

d) ms عنه

e) ms مكشوف

فلم يغطها ثـم دخل عثمان فغطاها ،فقيل له في ذلك فقال : " أ ما استحى مـــن
(93)
رجل تستحى منه الملئكة ،، فاقتضى هذا الخبر اباحة كشف الفخذ و اقتضى جرهـد

و معمر حظر كشفها فكان خبر الحظر اولى • وكذلك ما روى عن النبي عليه السلام
(99)
انه نهى عن اكل الضب و روى عنه انه اباحه فكان خبر الحظر اولى لما وصفنا •

5 فان قال قائل فهلا وقفت حكم الحظر و الاباحة فيما كان هذا وصفه على دلالة اخرى

من غير هذين الخبرين لأن خبر الحظر و ان كان يقينا في وروده على اباحـــة

الاصل فان بقاءه مع ورود خبر الاباحة ليس بيقين لجواز أن يكون خبر الاباحـــة

/متاخرا / و ان جاء بعد الحظر فيكون رافعا له و ان كان ذلك جائزا فيهما وقف كل

واحد من الخبرين موقف الاحتمال فلا يخلو حينئذ من أن يجعلا كأنهما لم يردا

IO فيبقيا الشيء على حكم الاباحة المتقدّمة او ا وقف حكمه و يطلب حكم حظره او اباحته

من وجه غير هما ؟

قيل له لا يجب ذلك لأنا لما علمنا ورود الحظر على الاباحة و ثبوت حكمه بعـــده

a b
لم يجز لنا الحكم بزواله الا بيقين لأن خبر الاباحة لو كان متأخرا لعرفه من عرف f0.I38b.

c
الحظر فكان يجب أن ينقل الجميع تاريخ الاباحة متاخرا عن الحظر لأنهم عرفوا الحظر

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a) ms لم لم

b) ms متخرل

c) ms متخرا

بعد الاباحة المتقدّمة كما قلنا في زيارة القبور و ما ذكر معها و متعة النساء و نظائر ها

فلمتنا لم ينقل تاريخ الاباحة متاخرا عن الحظر علمنا[a] أن خبر الاباحة وارد[b] على

الاصل الذى كان عليه حال الشيء المحكوم فيه قبل ورود حظره • و ايضا فان ما

كان اصله الاباحة قبل ورود السمع ثم اقرّ النبي عليه السلام الناس عليه و ترك

5 النكير عليهم في اثباتهم اياّه وجه الاباحة فان ذلك يكون بمنزلة الاخبار عن النبي

عليه السلام باباحته ، فلما لم يمنع ما كان اصله ما وصفنا من القضاء بخبر الحظر عليه

و ازالته عن حكم الاباحة المتقدّمة كذلك ورود خبر الاباحة مع خبر الحظر لا يمنع

القضاء بالحظر دون الاباحة كما لا يمنع /اقرار/ النبي عليه السلام الناس على

اباحة شيء /من/ ازالتها بخبر الحظر •

I0 فان قال قائل يلزمك على هذا الاصل ان تقضى بخبر ايجاب الوضوء من مسّ الذكر

على الخبر النافى له لأن خبر النفى وارد على الاصل و خبر الايجاب ناقل عنه فوجب

/أن/ تحظر الصلاة قبل احداث الطهارة بعد المس •

قيل له لا يلزمنا ذلك لأن خبر الوضوء من مسّ الذكر انفرد عن معارضة خبر النفى

لما لزمنا قبوله على اصلنا لانّه مما بالناس الى معرفته حاجة عامة فلا يقبل فيه

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a) ms علما

b) ms واردا

اخبار الآحاد • وانما ذكرنا الاعتبار الذى وصفنا في الخبرين اذا توازيا و تساويا في (I00)
النقل /و/وجه الاستعمال فامّا اذا كانا على غير هذا الوجه فلهما حكم آخر • وكذلك

يجب على هذا الاعتبار الذى قدمنا أن يقول لو علمنا شيئا كان اصله الحظر ثم ورد
خبر بنسخه و خبر بحظره ان الاباحة يجب أن تكون اولى لأن الاباحة في هذه الحال
5 طارية على الحظر لا محالة و الحظر يجوز أن يكون تاكيدا لما كانت عليه حاله قبل
ورود اباحته فخبر الاباحة ناقل عن الحظر فلا يعلم خبر الحظر طاريا عليها ناقلا عنها
فوجب أن يكون خبر الاباحة اولى ما لم تقم الدلالة على ورود خبر الحظر بعد خبر
الاباحة • و لا احفظ[a] عن ابى الحسن رحمه الله شيئا من هذا في هذا الفصل الاخير
و اعتلاله لما ذكرنا في الفصل المتقدّم يدلّ على أن خبر الاباحة في مثله اولى لما
IO ذكرنا من ثبوت ورودها على الحظر و ازالتها لحكم يقين • و غير معلوم ورود خبر
الحظر عليها بعد ذلك بل جائز أن يكون ورد[b] تاكيدا[c] لما كان عليه حكم الحظر قبل
ورود الاباحة الا انى سمعته يحتج ايضا لوجوب استعمال خبر الحظر دون الاباحة
في الفصل المتقدّم[+] اذا وردا على الجهة التي وصفنا بأن ترك المباح لا يستحقّ عليه fo.I39a.
العقاب و فعل المحظور يستحقّ عليه العقاب فالاحتياط ــ اجتنابه ــ و الامتناع

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a) ms احفص

b) ms ورود

c) ms تاكيد

من موافقته ٠

قال ابوبكر: و الذى يعضد هذه[a] الحجج[b] قول النبي عليه السلام: " الحلال و الحرام بيّن و بين ذلك امور مشتبهة[c] فدع ما يريبك الى ما لا يريبك ،، قال: " فمن تركهن كان اشدّ استبراءً لعرضه و دينه ،، و قال عليه السلام: " ان لكل ملك حمى[d] و حمى[e] الله محارمه فمن رتع حول الحمى يوشك أن يقع فيه ،، ٠

(IOI)

قال ابوبكر: و الحجج[f] التي[g] حكينا عن ابى الحسن في هذا الفصل يوجب أن /لا/ يختلف الحكم في وجوب اعتبار الحظر لاختلاف حال الشيء المحكوم فيه في الاصل من حظر او اباحة لأنه اذا كان المعنى الموجب لاستعمال خبر الحظر فيما وصفنا ما لزم من الاخذ بالحزم و الاحتياط للدين فهذا موجود فيما كان اصله الحظر ثم ورد فيه خبران احد هما حاظر و الآخر مبيح و تجويز خبر الحظر بعد الاباحة قائم فالواجب أن يكون ما لزم من الاحتياط للدين و الاخذ بالحزم موجبا للحظر دون الاباحة ٠

فان قال قائل ليس في استعمال الحظر دون الاباحة احتياط و لا اخذ بالحزم من الوجه الذى ذكرت لأنه محظور عليه اعتقاد الحظر فيما هو مباح كما حظر عليه اعتقاد الاباحة فيما هو محظور فمن اعتقد الحظر فيما جاز أن يكون مباحا فهو

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a) ms هذا
b) ms الححاح
c) ms مشتبها
d) ms حما
e) ms حما
f) ms الححاح
g) ms الذى

تارك للاحتياط ٠

قيل له ليس كذلك لأنه اذا كان مأمورا بترك الاقدام على ما لا يأمنه محظورا وكـــان ذلك اصلا ثابتا في الشريعة وجب اعتباره فيما وصفنا وقد بيّنا ذلك فيما سلف مـــن القول في وجوب القول[a] ٠

5 قال ابوبكر: وقد ذهب عيسى بن ابان الى غير هذا المذهب الذى حكيناه عـــن ابى الحسن رحمه الله فيما كان اصله الاباحة ثـم ورد خبر حاظر ومبيح ولم يعلـم تاريخهما فقال عيسى : فمنهما اذا عريا من شواهد الاصول وتساويا في جهة النقـل فانهما اذا تعارضا ولم تحصل الموافقة سقطا وصارا كأنهما لم يردا وبقى الشيء على اصل الاباحة كأنه لم يرد فيه خبر ٠ وذكر من نظائر ذلك حديث النبي عليه السـلام

(I02)
I0 " كل شراب أسكر فهو حرام ،، وما روى عنه اتى بنبيذ فرفعه الى فيه فقطب فقيل لـه آحرام هو ؟ فدعا بماء وصبّه عليه وشرب ٠ وروى عنه " من خشى من شرابه فليكسره
(I03)
بالماء ،، وذكر أن خبر الاباحة اولى لأن الحظر لو كان ثابتا في مثله لعرفه جـــلّ الصحابة وقد روى عنهم الاباحة ولأن خبر الحظر يحتمل المعاني وخبر الاباحـــة لا يحتملها ثـم قال بعد +ذلك : فلو لم يكن في واحد من الخبرين شيء الا وفـــي f٥.I39b.

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a) sic

الآخر مثله لكان الامر عندنا على احلاله لأن التحريم لا يثبت اذا تضاد الخبران كذلك ما اشبه هذا من الاخبار المتضادة ٠

و ذكر ايضا خبر الوضوء مما مست النار و أن النبي عليه السلام اكل مما مست النار ثم (I04) صلى و لم يتوضأ ٠ و ذكر حديث الوضوء من مس الذكر و ما روى عن النبي عليه السلام (I05) 5 " انه لا وضوء فيه "، ثم ذكر وجوه الترجيح للخبر النافي للوضوء من ذلك ثم قال بعد ذلك : و لو لم يكن في ذلك الا تضاد الخبرين و لم يكن لاحد هما ما ليس للآخر كان الخبران كأنهما لم ياتيا و كان الامر على أن لا وضوء فيه ٠ و ذكر عيسى بن ابان عن ابن عباس و ابن عمر ان كل واحد منهما بعث رجلين ينظران الى الفجر فقال احد a هما : " قد طلع "، و قال الآخر : "لم يطلع"، فقال ابن عباس : " اختلفتما اذا تتركا " (I06) IO و قال ابن عمر مثل ذلك ٠ قال عيسى : فاسقطا الخبرين عند التعارض و تركا الامر على الاصل ٠

قال ابوبكر رحمه الله : فهذا المذهب خلاف ما حكيناه عن ابى الحسن رحمه الله و وجه ما ذهب اليه عيسى رحمه الله ان كل واحد من خبرى الحظر b و الاباحة لما احتمل أن يكون طاريا على صاحبه بنسخه c وجب أن يسقطا اذا d تساويا كأنهما لم يردا

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a) ms ادا سراكى but cf. Jaṣṣās, aḥkām, vol.I, p.27I.

b) ms اد

c) ms فنسحه

d) ms اذا اذا

فيبقى الشيء على ما كان عليه قبل ورود هما ٠ و قد بيّنا الوجه و ما كان يقولـــــه ابو الحسن رحمه الله في ذلك و مذهب ابى الحسن في هذا اظهر القولين عندى و الله اعلم بالصواب ٠

فان قال قائل قلتم في رجل دعى الى طعام او شراب فقال له رجل مسلم ثقـــــة : " ان هذا اللحم ذبيحة مجوسي و هذا الشراب قد خالطته خمر "، و اخبره آخـــر: " انه طاهر حلال "، وكان ذلك فيما اراد الوضوء به و قال له احد المخبرين : "قد حلت به نجاسة "، و قال الآخر: " انه طاهر "، انه ينظر في ذلك فيعمل على اكثر ظنّه فان لم يكن له رأى في ذلك و استوت الحالات عنده جاز له اكل ذلك و شربـــه و الوضوء به ٠ و اسقطتم الخبرين لما تعارضا و جعلتموه بمنزلة ما لم يرد فيه خبـــر فهلا قلتم مثله في الخبرين المتضادين اذا رويا عن النبي عليه السلام و تساويا فـــي النقل و دلالة الاصول انهما يتعارضان و يسقطان ؟

قيل له الفرق بينهما ان اخبار النبي عليه السلام لما جاز فيها ورود الحظر علـــــى الاباحة ثـم ورود الاباحة بعد الحظر و قد علمنا الحظر طاريا على الاباحـــــــة لا محالة و الاباحة لو وردت بعد الحظر لظهر امرها و انتشر تاريخها فيمن عـــرف

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a) ms خالط

b) ms حلته

الحظر ، لأن النبي عليه السلام كان لا محالة يظهر الاباحة لكافة من علم الحظر حتى
ينتشر فيهم و يظهر كظهور الحظر قبلها على نحو ما قلنا من خبر النهى عن[a]
زيارة القبور و ما +ذكر معها و متعة النساء و نحوها ، فلما فقدنا ذلك فيما وصفنا دل fo.I40a.
ذلك على /نسخ / الاباحة و رد[b] الاصل و أن خبر الحظر متأخر عنه ، وكانت هذه
جهته توجب لخبر الحظر تبرئة ليست لخبر الاباحة و تغلب بها في النفس انه اولى منه
كما قلنا في المخبرين اذا اخبر احدهما بنجاسة الطعام و الشراب و الآخر
بطهارته انه متى غلب في الظن صحة احد الخبرين عملنا عليه و الغينا الآخر.
و الخبران المتضادان عن النبي صلى الله عليه و سلم في اثبات حكم الحظر دون الاباحة[c]
بمنزلة غلبة الظن فى خبر احد المخبرين بالنجاسة و الطهارة و لا يشبه
تساوى الخبرين المتضادين فى الطهارة و النجاسة فيسقطان و يبقى الشيء مباحا
على الاصل لأنه غير جائز ارتفاع حكم النجاسة بعد حلولها في الطعام و الشراب
فيعتبر فيه ورود الاباحة على الحظر و ظهور امرنا لو ثبت على حسب ما قلنا في
اخبار النبي عليه السلام فلما لم يدن لنا حال يغلب بها جهة الحظر دون الاباحة
تساوى الخبران جميعا و سقطا و لم يثبت لهما الحكم و صارا كأنهما لم يردا

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a) ms على

b) ms after رد see على

c) ms با above the line.

و بقى الشيء على اصل الاباحة ٠

فان قال : ان كانت العلّة في تغليب جهة الحظر على الاباحة ما ذكرت من أن الاباحة لو كانت بعد الحظر لظهر امرها و انتشر تاريخها حتى تعرفها عامّة من عرف الحظر فان ذلك يلزمك مثله في الاباحة لأن الحظر لو كان ثابتا بعد الاباحة لظهر تاريخ الحظر عنها و تعرفه عامّة من عرف الاباحة متاخرا عنها ٠

قيل له لا يجب ذلك لأن ورود خبر الاباحة ليس باكثر في ايجابه ما اوجب من ذلك بكون الشيء مباحا على الاصل و اقرار النبي عليه السلام الناس عليها ثم لم يجب اذا ورد خبر الحظر عاريا عن خبر الاباحة لفظا عن النبي عليه السلام أن تكون الاباحة اولى بل يكون الحظر اولى ٠ و لا يحتاجون أن ينقلوا الينا أن هذا الحظر كان بعد اقرار النبي عليه السلام الناس على الاباحة المتقدمّة كذلك اذا نقل لفظ الاباحة عن النبي عليه السلام و نقل الحظر فليس يجب عليهم ذكر ورود الحظر بعد الاباحة لأن ذلك قد علم كونه على هذا الوجه فلا نحتاج فيه الى نقل التاريخ ٠ و امّا اذا ثبت الحظر ثم نقلوا عنه الى الاباحة فلا بدّ من نقل تاريخه و ظهوره فيمن عرف الحظر فاذا لم يوجد

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a) ms after ذلك see باكثر من ذلك باكثر من علمنا

b) ms ينقلون

بهذا الوصف علم أن الاباحة واردة على ما كان عليه الاصل و أن الحظر وارد بعدها فكان اولى ٠

فان قال قائل ما ذكرت في الفصل بين اخبار النبي عليه السلام و بين خبر المخبرين بالطهارة و النجاسة بأن ما يثبته النبي عليه السلام من ذلك شرعا يجوز فيه

ورود الاباحة[a]+على الحظر تارة و ورود الحظر على الاباحة اخرى و ان ذلك ممتنع fo.I40b.
في مخالطة النجاسة للطعام و الشراب لأنه لا يصير طاهرا بعد ان كان نجسا لوجب /أن/ ياخذ خبر النجاسة و التحريم على خبر الطهارة و التحليل لأنه اذا حلت[b] به نجاسة فغير جائز أن يطهر بعده و ما حظره النبي عليه السلام يجوز أن ينسخه بعده ٠

قيل له لا يجب ذلك من قبل انا لم نجعل الفصل بين المسئلتين أن احديهما يجوز فيها ورود كل واحد من حظر او اباحة على صاحبه و أن الاخرى لا يجوز فيها ورود الاباحة بعد الحظر فحسب دون ما ذكرنا من أن اخبار الشرع في الحظر و الاباحة لما جاز فيها ورود الاباحة على الحظر و قد علمنا صحة الحظر طاريا على الاباحة امتنع وجود الاباحة بعده الا مع ورود تاريخها[c] متاخرا عن الحظر منتشرا ظاهرا

---

a) ms الاباحد

b) ms حلته

c) ms تاريخهما

عند من عرف عندهم الحظر او أكثرهم فلما عدمنا ذلك علمنا أن خبر الاباحة وارد و أن
b a
خبر الحظر بعده • قلنا ان مثل ذلك ممتنع في خبر المخبرين بالنجاسة و الطهـــارة
لامتناع ورود الطهارة على الماء بعد ورود النجاسة فلم يكن هاهنا جهة توجب كون
c
اثبات النجاسة اولى من اثبات الطهارة • و يبيّن لك الفصل بينهما أنّا مختلفا /ن/
d
5 في صحة خبر الحظر طاريا على اباحة الاصل و انما تريد اثبات الاباحة التي هى قول
من النبي عليه السلام او فعل طاريا على الحظر و لا تقول مثله في الخبرين بالنجاسة
و الطهارة لأنك تمنع اثبات الطهارة بعد النجاسة و انما عارضت احدهما بالآخـــر
f e
فاسقطناهما معا و بقى الشيء على ما كان عليه حاله قبل خبر المخبر •

و مما يدلّ على الفصل بين خبر النجاسة و الطهارة و بين اخبار الشرع في الحظـــر
g
IO و الاباحة ان المخبرين بالنجاسة و الطهارة انما يتناول خبر احدهما باعتبار احـــد
بنجاستها و الآخر بطهارتها و يستحيل وجود مخبريهما على ما اخبرا به من حكـــم
h
المخبر عنه فلما كان كذلك علمنا ان احد المخبرين قد اوهم في خبره و اخبر عن الشيء
i
/علـــــــى/ خلاف حقيقة حاله فلما لم يعرف الغالط منهما و لم /يكن/ احد هما
اولى بقبول خبره من الآخر سقط الخبران جميعا فصار وجود خبريهما على هذا الوسف

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a) ms بدت but cf. p.I03,l.3.
b) ms عنده
c) ms ابدا
d) ms الاباحة
e) ms فاسقطنهما
f) ms بقيت
g) ms after احد see خبر احدهما
h) ms after الشيء see عليه السلم
i) ms حقيقته

قادحا في نفس الخبر • وليس كذلك حكم اخبار الشرع اذا وردت[a] متعارضة في الحظر
و الاباحة لأن ورودهما على هذا الوجه لم يقدح في نفس الخبر و لم يوجب كونه
مشكوكا فيه اذ[b] لا فرق عندنا في ذلك بين ما ورد +من طريق التواتر و من جهة الآحاد fo.I4Ia.
فانما تعارض الخبران من حيث فقدنا العلم بتاريخهما لأنهما لم يردا في حكم
5 شيء واحد في حال واحدة الا ترى ان خبر الحظر اذا ورد علمت اباحته في الاصل
و قد اقرّ النبي عليه السلام /الناس/ عليها انه يقضى على الاباحة و يرفعها و لا يكون
ذلك تعارضا و لا تضادا في الخبرين لأن ما حظر من ذلك غير ما كان مباحا
فلم يرد الخبران في عين واحدة انه محظور مباح فلما كان هذا كذلك ثبت حكم الحظر
د[c]ون الاباحة للعلّة التي ذكرنا و كان خبر الاباحة صحيحا محكوما به ايضا الا انه
IO قبل الحظر في غير ما ورد فيه الحظر فلذلك لم يتعارضا على هذا الوجه لأن الخبرين
جميعا في اثبات الاباحة و الحظر ثابتان الا انا حكمنا بتقدّم الاباحة على الحظر
و اثبتنا الحظر بعدها فالكلام في ذلك انما هو في تاريخ الحكمين ايّهما المتقدّم
لصاحبه • و امّا المخبران بطهارة الماء و نجاسته فان كل واحد منهما يثبت ما
اخبر به في حال يثبت صاحبه فيه ضدّه فلم يصح ثبوتهما اذا تساويا و لم يجز الحكم

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a) ms اذا وردت اذا وردت

b) ms اذ لا فرق اذ لا فرق

c) ms محكوم به

بتآخير حلول النجاسة عن الحال التي اخبر المخبر الآخر فيها بالطهارة لأن المخبر بالطهارة يزعم انه طاهر في الحال و ان ما اخبر به ثابت الحكم ، و المخبر بالنجاسة يقول هو نجس في الحال لا يجوز استعماله فتناول اخبارهما عينا واحدة بحكمين متضادين فتعارض موجب خبريهما عند استواء حالهما فسقطا كأن لم يردا و بقي الشيء على ما كان عليه حكم الاباحة • و يكون هذا نظير شاهدين شهدا على رجل انه قتل عمرا[a] يوم النحر بالكوفة و شهد اخران انه قتل زيدا يوم النحر بمكة فتبطل شهادة الفريقين لتضاد هما اذ قد علمنا كذب احد هما و كل واحد منهما يثبت كونه بالموضع الآخر • و ذلك متناف متضاد ، لا يصح اثباته ، و ليس احد الفريقين اولى بقبول شهادته من الآخر فسقطت شهادتهما جميعا •

فقد تبيّن بما ذكرنا أن مسئلة السائل عما وصفنا ليست /من/ تعارض الخبرين المتضادين اللذين يجوز على كل واحد منهما أن يكون هو الناسخ لصاحبه في شيء[b] و انما تظهر المسئلة التي سأل عنها السائل أن يرد خبران متضادان في عين واحدة يخبر كل واحد منهما عنه بحال يضاد ما اخبر عنه به صاحبه فنحتاج حينئذ فيه الى اعتبار آخر نحو ما روى أن النبي عليه السلام تزوّج ميمونة و هو محرم و ما روى انه

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a) ms عمروا

b) ms التاريخ

(I07)
تزوجّها و هو حلال و كان ذلك تزويجا واحدا ٠

و نحو ما روى أن زوج بريرة كان حرا فخيّرها رسول الله صلى الله عليه و سلم حين
(I08a)
اعتقت و روى +انه كان عبدا ٠ fo.I4Ib.

و ما روى أن النبي صلى الله عليه و سلم صلى في الكعبة حين دخلها و روى انـــه
(I09b)
5 لم يصل فيها ٠

و ليس ذلك من الناسخ و المنسوخ في شيء و له شروط اخر سنذكرها ، ان شاء الله
(II0)
تعالى ، اذا انتهينا الى موضع الكلام في الخبرين المتضادين ٠

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a) ms عبد

b) ms يد خلها

فصل

من هذا قال ابوبكر رحمه الله : و امّا اذا ورد خبران في احد هما ايجاب شيء و في الآخر حظر و هما ممـــايجوز أن يكون احد هما ناسخا للآخر على حسب ما قدمنـا فان ما ورد فيه ذلك لا يخلو من أن يكون كان /من/ حيز المباح قبل ورود السمـــع او من حيز المحظـــــور ، فـان كان قبل ورود السمع من حيز المحظـــور الذى يجوز استباحته على حسب مجيء السمع بها فقد علمنا يقينا ورود الايجـــاب على الحظر و ازالته لحكمه و جائز أن يكون خبر الحظر واردا على جهة التاكيـــــد لما كان عليه حاله قبل ورود السمع فالحكم في مثله ينبغى أن يكون للايجـــــاب للعلّة التي وصفنا • و ان كان ذلك الشيء في الاصل قبل ورود السمع مـــــن حيز المباح فليس ورود الحظر بأن يكون طاريا على اباحة الاصل باولى من ورود خبر الايجاب عليها و اذا لم يكن معنا تاريخ فليس احد الخبرين باولى بالحكم من الآخر فالواجب حينئذ طلب الدليل التام من حكم الخبرين و الاستدلال بالاصول عليـــه فان لم يكن في الاصول ما يشهد لثبوت حكم احد الخبرين دون الآخر فانه يحتمـل أن يقال ان الواجب في مثله أن يتعارضا و أن يسقطا، و يصيران كأنهما لم يـــــردا

a) ms after ما see لا

و يحتمل أن يقال ان الواجب الامتناع من الفعل لانه غير جائز لنا الاقدام على فعله على انه طاعة و لم يثبت ذلك عندنا · و غير جائز ايضا فعله على وجه الاباحـــــة لانّ الخبرين قد اخرجاه من حيز الاباحة و الحقاه بحكم الحظر و الايجـــــاب · و الاحتياط في مثله الكف عن الاقدام لانه ليس بمباح فنفعل على وجه الاباحـــــة و لا نعلمه واجبا و لا مندوبا اليه فنفعله على هذا الوجه فالاحتياط اجتنابـــــه اذا لم يثبت ايجابه ·

و على انا بحمد الله لم نجد خبرين احد هما يحظر و الآخر يوجب الا والدلائـــــل قائمة على ثبوت احد هما دون الآخر امّا من جهة العلم بتاريخهما او قيام دلائـــل من الاصول على الثابت منهما · و انما تكلّمنا على حال عدم الدليل على ثبـــوت حكمهما و تساويهما في موجب لفظهما ليستويا في الكلام في المسئلة حسب مـــــا يقتضيه اقسام الاحتمال ·

و مما يستدلّ به على الناسخ أن يرد خبران متضادان[a] مع احتمال نسخ احد همـــا بالآخر فيختلف اهل العلم في الناسخ منهما بعد اتفاق الجميع على نسخ بعـــض احكام احد هما فيدلّ ذلك من امره على انه + متقدّم[b] عن الخبر الذى لم يتّفق علـــى fo.I42a.

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a) ms يتضادان

b) ms متاخر but cf.p.III,l.8.

نسخ شيء منه فواجب أن يكون ما اتّفق على نسخ بعضه منسوخا بالآخر بدلالة الاتفاق على ان بعض ما فيه قد نسخ بالآخر صار متاخرا عنه في وجوب نسخ بعضه . و ذلك نحو ما روى أن النبي عليه السلام كان يرفع يديه اذا ركع و اذا رفع و اذا سجد و اذا رفع راسه من السجود و اذا نهض الى القيام (I) . و روى عن عبد الله ابن مسعود و البراء بن عازب أن النبي صلى الله عليه و سلم كان لا يرفع يديه الا /عند / التكبيرة الاولى (2) . و قد اتّفق الجميع على ترك الرفع عند السجود و عند رفع راسه منه و اذا نهض الى القيام ، فظهر أن خبر رفع اليدين في هذه الاحوال متقدّم لخبر الترك فوجب أن يجعل منسوخا به و ذلك لانه لم يثبت ها هنا خبر يوجب نسخ الرفع عند السجود و بعده الا الخبر الذى روى فيه ترك الرفع في الركوع و في سائر احوال الصلاة الا عند الافتتاح . و اذا ثبت أن هذا هو الناسخ للرفع عند السجود صار متاخرا عنه في التاريخ فوجب أن ينسخ الرفع عند الركوع اذ ليس في لفظه و ما يقتضيه عمومه فرق بين الرفع عند الركوع و عند السجود (3) .

و نظيره ايضا ما روى أن النبي صلى الله عليه و سلم" اقنت في المغرب و العشاء

(4) (5)
و الفجر و في سائر الصلوات ،، و روى عنه ترك القنوت في سائر الصلوات • و اتّفق
الجميع على تركه في المغرب و العشاء و الظهر و العصر فثبت أن خبر الترك متاخر
عنه فوجب أن يكون ناسخا لجميعه اذ كان قد قضى عليه و اوجب نسخ بعضـــه •

و غير جائز أن يقال ان فعل القنوت في المغرب و العشاء لم ينسخ بهذا الخبـــر
لأنه ليس معنا خبر غيره يوجب نسخه فوجب أن نحكم بأنه هو الناسخ له دون غيـره
كما انا اذا /كانت/ الامّة مجمعة على معنى مذكور في القران او السنة وجب أن
(6)
نحكم بأن الاجماع حصل عن القران و السنة كذلك ماوصفنا •

و مثله ما روى عن النبي عليه السلام في صفة صلاة الكسوف انه ركع ركوعين ثـم سجد
و روى انه ركع ثلاث ركوعات[a] ثـم سجد و روى انه ركع اربع ركوعات[b] ثـم سجـــــد
(7)
و روى انه صلى كهيئة صلاتنا و انه قال : " صلّوا كاحدث صلاة صليتموها ،، و قـــد
اتّفق الجميع على انه لا يركع في ركعة أكثر من ركوعين فصار ما زاد على الركوعيـــن
منسوخاً بخبرنا ،فعلمنا انه متاخر ، فوجب أن يكون متاخرا عن الركوعين ايضا ناسخا
(8)
لهما كنسخه لما زاد عليها •

و مما يستدلّ به على النسخ ايضا أن يكون احد [+]الحكمين متفقا على استعمالـــه fo.I42b.

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a) ms ركعات

b) ms ركعات

و الآخر مختلفا في استعماله فالواجب فيما كان هذا سبيله أن يقضى فيه بالمتفق عليه على المختلف فيه فيصير ناسخا له ان اقتضى لفظه رفع جميعه و ان اقتضى رفع بعضه كان ناسخا لذلك البعض • وذلك نحو قوله تعالى : (واستشهدوا شهيدين من رجالكم) الآية • روى عن النبي عليه السلام " انه قضى بشاهد و يمين ،، فلو ثبت الخبر على الوجه الذى يدعيه المخالف لكانت الآية ناسخة له لاتفاق الجميع على بيان حكمها و الاختلاف في ثبوت حكم الخبر • و نحو قول النبي عليه السلام" التمر بالتمر مثلا بمثل ،، و نهيه عن المزابنة • فهذان الخبران متفق على استعمالهما و خبر الخرص و العرايا مختلف فيهما فهما منسوخان بهما • ولذلك نظائر كثيرة قد ذكرنا بعضها فيما سلف من القول في العام و الخاص • و أمّا الاستدلال على الناسخ من الخبرين بالقياس و النظر فهو ما ذكرنا عن عيسى ابن ابان رحمه الله تعالى فيما روى عن النبي عليه السلام أنه قال : " توضؤا مما مسّت النار ،، ثم صلى و لم يتوضأ • و روى فيه عن السلف اختلاف فكان ترك الوضوء منه اشبه بالسنة لانّا لم نر الوضوء في السنة القائمة الافي الانجاس الخارجة • وكذلك ما روى في الوضوء من مسّ الذكر و قد روى فيه" انه لا وضوء فيه ،، و وجدنا

لمس ما هو أنجس من الذكر فلا يجب فيه الوضوء فكان الامر فيه عندنا أن لا وضوء فيه (I3) a .

و استدلّ عيسى بشاهد الاصول لاحد الخبرين و معاضدة القياس له على ثبات حكمه دون الآخر .

قال ابوبكر رحمه الله : و من نظائر ذلك ما روى عن النبي عليه السلام أنه قال في المحرم الذى وقصت به ناقته فمات: " لا تخمّروا رأسه فانه يبعث يوم القيامة ملبّيا " (I4) ،

و روى عن ابن عباس رضى الله عنه أنه قال : " غطّوا رووس موتاكم و لا تشبهوا باليهود " (I5) b ،

و روى عنه عليه السلام أنه قال : " اذا مات المرء انقطع عمله الا من ثلاث صدقة جارية و علم يعمل به بعد موته و ولد صالح يدعو له " (I6) c ، فكان النظر معاضد d الهذين e الخبرين منافيا لخبر النفي عن تغطيه رأس المحرم لاتفاق الناس على ان من مات محرما لا يوقف به بعرفة و لا بالمزدلفة و لا يطاف به و لا يفعل به سائر افعال المناسك فدلّ على انقطاع احرامه و على ان خبر النهى عن تخمير رأسه منسوخ بالخبرين اللذين ذكرنا .

و كذلك ما روى عنه عليه السلام " ان المستحاضة تتوضأ لكل صلاة " (I7) ، و روى انها تتوضأ لوقت كل صلاة فكان الخبر الذى ذكرنا فيه اعتبار الوقت اولى من قبل انا قد وجدنا في الاصول طهارة مقدرة لوقت و هو + المسح على الخفين و ليس فيها طهارة مقدرة fo.I43a.

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a) ms نجس

b) ms عطروا

c) ms يدعوا

d) ms الناظر

e) ms معاضد

(I8)
بفعل الصلاة •

(I9)
و نظيره ايضا ما روى من الاخبار المتضادة في صلاة الكسوف ، فقلنا ان خبر نا اولى لاتفاق الجميع على ان سائر الصلوات ليس فيها الجمع[a] بين ركوعين من غير سجـــود بينهما فكانت الاصول شاهدة بخبرنا فدل على انه ناسخ لسائر الاخبار التـــــى تخالفه • و نظائر ذلك كثيرة و فيما ذكرنا تنبيه على ما تركنا و قد تقدّم ذكر الدلالة على ان شهادة الاصول تحكم احد الخبرين فوجب كونه اولى مما تنافيه الاصول في مواضع فكرهنا اعادته مخافة التطويل •

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a) ms الجميع

فصل

من هذا الباب قال ابوبكر: قد بيّنا فيما سلف من هذا الباب ان الزيادة في النص اذا وردت بعد استقرار حكمه منفردا عنها كان نسخا (I). و ان الزيادة ان وردت متصلة بالنص معطوفة عليه كاتصال الاستثناء بالجملة فانهما جميعا مستعملان فيكون النص مستعملا بالزيادة الواردة معه وغير جائز في مثله افراد احد هما عن الآخر كما لا يجوز افراد الجملة عن الاستثناء .

و نذكر الآن حكم الزيادة اذا وردت و قد ورد النص منفردا عنها و لا يعلم تاريخهما نقول ان الزيادة ان كانت وردت من جهة يثبت النص بمثلها فان طريقه الاستدلال بالاصول فان شهدت الاصول من عمل السلف او النظر على ثبوتهما معا اثبتناهما و ان شهدت /على ثبوته/ منفردا[a] عنها اثبتناه دونها فان لم تكن في الاصول دلالة على اسقاط حكم الزيادة و اثبات النص دونها فالواجب أن يحكم في ذلك بورود هما معا و يكونان بمنزلة الخاص و العام اذا وردا و لا يعلم تاريخهما و لا في الاصول دلالة على وجوب القضاء باحد هما على الآخر فيكونان مستعملين جميعا . كذلك اذا وردت الزيادة و النص و لم يعلم تاريخهما و لا مع احد هما دلالة من الاصول و لا استعمال

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a) ms منفرد

الناسر بالنص[a] دون الزيادة فالحكم بورود هما معا واجب فيكون النص ثابتا بزيادته ٠

و امّا اذا كان ورود النص من جهة يوجب العلم بموجبه نحو أن يكون نص الكتاب

او سنة ثابتة بالنقل و كان ورود الزيادة من جهة اخبار الآحاد فانه لا يجـــوز

الحاقها بالنص الثابت بالكتاب او بالنقل المستفيض لأن الزيادة لو كانت ثابتـــة

5 موجودة لنقلها الينا من نقل النص اذ غير جائز أن يكون المراد اثبات النص معقودا

بالزيادة فيقتصر[b] النبي عليه السلام /على/ ابلاغ النص منفردا عنها[c] يجب[d] أن يذكرها

معه و لو ذكر هما معا لنقل الزيادة من نقل النص ٠

فان كان النص مذكورا في القران و الزيادة[+] واردة من جهة السنة فغير جائز أن يقتصر fo.I43b.

النبي صلى الله عليه و سلم على تلاوة الحكم المنزل في القران دون أن يقصها بذكر

IO الزيادة لأن حصول الفراغ من النص الذى يمكن استعماله بنفسه يلزمنا اعتقاد مقتضاه
(2)
من حكمه نحو قوله تعالى : (الزانية و الزاني فاجلدوا كل واحد منهما مائة جلدة)

فان كان حـــد[e] هذا بجلد و النفى او الجلد و الرجم فغير جائز أن يتلو النبي عليه

السلام الآية على الناس عارية عن ذكر النفى و الرجم[f] عقيبها لأن سكوته عن ذكـــــر

الزيادة معها يلزمنا اعتقاد موجبها ، لأن[g] المذكور فيها هو كمال الحد الواقـــــع

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a) ms بقبص

b) ms فبقر but cf. 1,8.

c) ms منها

d) ms فوجب

e) ms الحد

f) ms الجلد but cf. p.II8,l.3.

g) ms before لأن see و

موقع الجزاء عند ايقاعه و لو كان هناك معه نفى او رجم مستحق بالفعل لكان البلد a
بعض الحد • و غير جائز أن يكون مراده انه بعض الحد و انه جميعه فاذا اخـــلا
النبي عليه السلام التلاوة من ذكر النفى و الرجم عقيبها فقد اراد منا اعتقاد الجلـد
المذكور في الآية فغير جائز الحاق الزيادة به الا على وجه النسخ • الا ترى انـــه
لما قال عليه السلام : " اغد يا انيس على امرأة هذا فان اعترفت فارجمها (4) "، و لم يذكر
معه جلد كان ذلك ناسخا لما في حديث عبادة بن الصامت عن النبي عليه السلام من b
قوله : " و الثيب بالثيب الجلد و الرجم "، و كذلك انه /لما/ رجم ماعزا و لم يجلـده (ز) c
دلّ على انه نسخ الجلد مع الرجم • كذلك يجب أن يكون قوله تعالى : (الزانيـــة
و الزانى) عاريا عن ذكر النفى و الرجم موجبا لنسخ النفى المذكور في حديث عبـادة
" البكر بالبكر جلد مائة و تغريب عام "، فلو كانت هذه الزيادة ثابتة مع الاصل لذكرها
النبي صلى الله عليه و سلم عقيب التلاوة و لو ذكرها لنقلها الكافة التـــــــي
نقلت الاصل اذ غير جائز عليهم أن يعلموا الجلد و النفى جميعا فينقلوا الجلـــد
دون النفى كما لا يجوز أن ينقلوا بعض الحد دون بعض و قد سمعوا النبي صلى الله
عليه و سلم يذكر الجميع فما عدمنا نقل الكافة للزيادة حسب نقلهـــــــــا d

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a) ms الجواز

b) ms نسخا

c) ms below the line.

d) ms فيما

للنص علمنا انه لم يكن من النبي عليه السلام عقيب التلاوة ذكر الزيادة اذ كان السامعون
للآية معتقدين /وجوب/ نقل الزيادة المذكورة مع الاصل و غير جائز عليهم[a] التبعيض و ترك النقل
فيما كان هذا وصفه فامتنع من اجل ذلك الحاق الزيادة بالنص من جهة توجب العلم
بنقل الكافة اياها . فلا يخلو حينئذ الزيادة الواردة من جهة الآحاد ان كانت ثابتة
[b]
من أن تكون قبل النص او بعده ، فان كانت قبل النص فقد نسخها النص المطلق عاريا
من ذكر الزيادة و ان كانت بعده فهذا توجب نسخ الآية و غير جائز نسخ الآية بخبر
(6)
لا يوجب العلم .
(7)
و من نحو ذلك قوله تبارك و تعالى[+]: (فتحرير رقبة من قبل أن يتماسا) شرط الايمان fo.I44a.
في الرقبة يوجب نسخ ما في الآية على الوجه الذي بيّنا . و من جهة اخرى أن النبي
عليه السلام لما سئله المظاهر عن حكمه فانزل الله آية الظهار قال له النبي عليه السلام :
" اعتق رقبة ،، و كذلك قال للذى سأله عن الافطار في شهر رمضان : " اعتق رقبـــة ،،
و لم يشترط فيها الايمان مع علمه بجهل السائل بالحكم فلا تكون زيادة شرط الايمان
[c]
فيها الا على وجه النسخ . و هذا يمنع استعمال القياس و الحاق شرط الايمان بها
[d]
من وجهين : احدهما أن نسخ الآية لا يجوز بالقياس و الثاني أن القياس لو اوجب

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a) ms عليها
b) ms بعده
c) ms above the line.
d) ms الاية الاية

شرط الايمان فيها لاخبره النبي عليه السلام بذلك لئلا يعتقد السائـــل[a] غيره و لئلا يقدم في الحال على تنفيذها في رقبة كافرة اذ قد امره بعتقها في الحال • الا ترى انه لما قال عليه السلام: " اغد يا /ا/ نيس على امرأة هذا فان إعترفت فارجمها "، عقلنا من هذا انه لا شيء عليها غير الرجم اذا كان مأمورا في الحال بتنفيذ هذا الحكـــم و امضائه على هذا الوجه ، فوجب أن يكون هو الحد لا غير ، كذلك امره السائـــــل برقبة مطلقة في الحال اية[b] رقبة كانت يقتضى أن تكون هي الواجبة كافرة كانت او مسلمة • (3)

و امّا اذا كان ثبوت النص من جهة اخبار الآحاد فانه جائز الحاق[c] الزيادة به بخبر الواحد على الوجه الذى يجوز نسخه به على الاعتبار الذى ذكرنا في الخبرين المتضادين اذا لم يعلم تاريخهما ، و لم يرد مع النص في خطاب واحد ، فليست هذه زيادة في النص على الحقيقة بل الجملة كلها هي النص فجميعها ثابت الحكم •

و امّا القياس فلانه لا يجوز وقوع النسخ به و هذا مالا نعلم فيه خلافا بين السلف و الخلف ممن يعتدّ بقوله • وحكى لي عـــن بعض اذناب[d] المتأخرين انه كان يجيز نسخ القران قياسا على نص في القران و كذلك نسخ السنة قياسا على سنة اخرى • و الذى يحكى عنه هذا القول خامل غير معروف من اهل العلم و خلافه في ذلك كخلاف رجل مـــن

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a) ms المسول

b) ms اى

c) ms الحال

d) ms before اذناب see من

العامّة لا يعتد به لو خالف على اهل عصره فكيف به اذا خالف على السلف و الخلف جميعا من اهل الاعصار المتقدمة (9). و هو مع ذلك قول مخالف المأثور عن رسول الله صلى الله عليه و سلم في اباحة الاجتهاد عند عدم النص. فمنه ما روى بالنقل الشائع الذى تلقّاه الناس بالقبول أن النبي صلى الله عليه و سلم قال لمعاذ حين بعثه الى

5 اليمن: " بم تحكم ،، قال: " بكتاب الله ،، قال+: " فان لم تجد ،، قال: "بسنة رسول fo.I44b.
الله ،، /قال: "فان لم تجد ،، / قال: " اجتهد رأيّ ،، قال: " الحمد لله الذى
(IO)
وفق رسول رسوله لما يحبّه رسول الله صلى الله عليه و سلم ،،. فاخبر صلى الله عليه و سلم ان جواز الاجتهاد مقصور على عدم النص المتوارث من الصدر الاوّل و من بعدهم من فقهاء سائر الاعصار اذا ابتلوا بحادثة طلب حكمها من النص ثم اذا عدم النص

IO فزعوا الى الاجتهاد و القياس و لا يسوّغون لاحد الاجتهاد و استعمال القياس مع النص. الا ترى الى ما روى عن جماعة من الصحابة" من اتاه منكم امر ليس في كتاب الله و لا سنة رسوله فليجتهد رأيه ،، و كان عمر رضى الله عنه اذا نزل به نازلة من امـــر الاحكام سأل الصحابة " هل فيكم من يحفظ عن رسول الله صلى الله عليه و سلم فيها شيئا ؟ ،، فاذا روى له فيها قبله و لم يفته بعد الى مشاورة و لا اجتهاد و اذا عدم

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a) ms عد

حكمها في الكتاب و السنة فزع الى مشاورة الصحابة و الى اجتهاد الرأى فيهـــــا ٠

و كذ لك كان امر سائر الصحابة و التابعين و من بعد هم ، انما كانوا يفزعون الـــــى

النظر و الاستد لال عند عدم النصوص، و لم يحك عن احد منهم مقابلة النص بالقياس

و لا معارضته بالاجتهاد ٠

و مما يدلّ على صحة ما قلنا أن نص القران و السنة الثابتة من طريق التواتر يوجبان

العلـــــــــم[a] بما تضمناه و القياس الشرعي لا يفضى الى العلم بموجبه ، و انما

هو غالب الظن ، فغير جائز رفع ما اوجب العلم بما لا يوجبه ٠ و قد بيّنا ذ لك فيما

سلف من القول بتخصيص النص بالقياس(II) ٠

فان قال قائل يلزمك على هذا أن لا تزيل الاباحة الثابتة في الاصل من غير جهـــة

الشرع بالقياس و خبر الواحد لأن ثبوتها من طريق الد لائل العقلية الموجبة للعلم ٠

قيل /له/ هذا غلط من قبل ان العقل و ان دلّ على اباحة اشياء في الجملة فانـا

متى قصد نا الى استباحة شيء منها بعينه فانما نستحقه من طريق الاجتهاد و غالب

الظن ٠ الاترى انه لو غلب ظننا أن علينا في تناوله ضررا أكثر مما نرجو من نفعـــه

لم يجز لنا تناوله و هذا الضرب[b] من الاستباحة طريقه غلبة الظن لا حقيقة العلـــم

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a) ms before العلم see رفع ما اوجب but cf. p.I73, l.2.

b) ms الضرر

لأن الاباحة لما كانت معقودة بأن لا يلحقنا به ضررا أكثر مما نرجو من نفعه و كان
هذا المعنى موقوفا على غلبة الظن بطـــل (I2) قول القائل أن الاستباحة شيء بعينه
قبل ورود الشرع من طريق يوجب العلم بحقيقته و ان كان ثبوت استباحة هذه الاشياء
في الجملة من طريق يوجب العلم و هذا نظير ما نقول انه قد ثبت من طريق يوجب
العلم قبول[a] شهادة شاهدين عدلين[+] في الديون بقوله تعالى : (و استشهدوا fo.I45a.
شهيدين من رجالكم) (I3) ثـم اذا اردنا قبول شهادة شاهدين باعيانهما كان طريق
قبولها الاجتهاد و غلبة الظن لا من جهة تفضى الى العلم بصحة مقالتهما[b] فكذلك ما
وصفنا .

و ايضا فان النسخ لما كان بيانا لمقدار مدّة الحكم و كان لا سبيل الى اثبات المقادير
من طريق المقاييس كتوقيت مقدار فرض الصوم و ركعات الظهر لم يجز اثبات النسخ f.
بالقياس لما فيه من تقدير مدّة الفرض .

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a) ms فنقول

b) ms مقابلها

باب القول في نسخ بعضه ببعض و ما لا ينسخ

قال ابوبكر رحمه الله : قد ثبت نسخ القران بقران مثله و قد تقدّم بيانه و كذلك نسخ السنة بسنة مثلها و قد تقدّم ذكره • و جائز عندنا نسخ السنة بالقران و نسخ القران بالسنة الثابتة من طريق التواتر • و لا يجوز نسخ القران و لا نسخ السنة الثابتة من جهة التواتر بخبر الواحد • و يجوز/نسخ / ما ثبت بخبر الواحد بمثله و بما هو أكثر منه • و جملة الامر فيه ان ما ثبت من طريق يوجب العلم فجائز نسخه بما يوجب العلم ، و لا[a] يجوز نسخه بما لا يوجب العلم • و ما ثبت من طريق لا يوجب العلم و انما يوجب العمل فجائز نسخه بمثله و بما هو أكثر منه مما يوجب العلم •

فصل

و الدليل على جواز نسخ السنة بالقران قوله تعالى : (و نزّلنا عليك الكتاب تبيانا لكل شيء[I]) فاذا كان النسخ بيانا لمدّة الحكم على ما بيّنّا اقتضى عموم الكتاب جواز نسخ السنة به • و ايضا لما جاز نسخ السنة بوحي ليس بقران وجب أن يجوز نسخها ايضا بوحي هو قران لأنهما جميعا وحي من الله تعالى[2] • و ايضا لا خلاف بين السلف[b] في جواز نسخ السنة بالقران لأن الروايات قد تظاهرت عنهم في اشياء من

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a) ms before لا see ما

b) ms من

السنن ذكروا انها منسوخة بالقران ٠

منها /ما/ روى في شان القبلة أن النبي صلى الله عليه و سلم /حين/ قدم المدينة صلى بضعة عشر شهرا الى بيت المقدس ثم انزل الله تعالى (فولّ وجهك شطر المسجد الحرام) و نسخ به التوجّه الى بيت المقدس ٠ و روى ابن رافع " أن النبي صلى الله عليه و سلم امر بقتل الكلاب ،، فقال الناس: " يا رسول الله ما يحل لنا من هذه الامّة التي امرت بقتلها ،، فانزل الله تعالى (يسئلونك ما ذا احلّ لهم قل احلّ لكم الطيّبات و ما علمتم من الجوارح مكلبين) ٠ قال ابوبكر: فاخبر أن نسخ قتل الكلاب كان بالآية ٠ و روى انهم كانوا يشربون الخمر حتى نزل قوله تعالى : (يسئلونك عن الخمر و الميسر قل فيهما اثم كبير و منافع للناس) ثم انزل (يا ايّها الذين آمنوا انما الخمر و الميسر و الانصاب و الازلام رجس من عمل الشيطان فاجتنبوه)+ f٥٠I45b٠ و روى انه قد كان الاكل و الشرب و الجماع محظورا عليهم في ليالى الصوم بعد النوم فانزل الله تعالى (و كلوا و اشربوا حتى يتبيّن لكم الخيط الابيض من الخيط الاسود من الفجر) فنسخ الحظر المتقدّم ٠ و روى أن النبي صلى الله عليه و سلم صالح قريشا على انه يردّ اليهم من جاءه من نسائهم بغير اذن وليها فنسخ ذلك بقوله تعالى :

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a) ms الاية

(فان علمتموهن مؤمنات فلا ترجعوهن الى الكفار (I3) (I4) الاية • روى عن جماعة من السلف ان ردّه (I5) (I6) عليه السلام زينب الى ابى العاص b منسوخ بقوله تعالى : (لا هن حل لهم) • a

و قال قتاده : كان ردّه اياّها اليه قبل ان تنزل سورة برأة فرأى أن هذا الحكم منسوخ بسورة برأة يعني و الله أعلم قوله تعالى : (اقتلوا المشركين (I7) (I8)) • و روى أن النـــــاس

5 كانوا يدخلون على النبي عليه السلام و نساؤه عنده فانزل الله اّية الحجاب بعد ان كن غير محجبات • و منها تبنّي النبي عليه السلام زيد بن حارثة و تبنّي ابى حذيفة (I9) سالما نسخه قوله تعالى : (ما كان محمد ابا احد من رجالكم (20)) و قوله تعالى : (ادعوهم لابائهم هو أقسط عند الله (2I) (22)) • و كان النبي عليه السلام امر هم في حجة الوداع بفسخ الحج و قال عمر بن الخطاب: ذلك منسوخ بقوله تعالى : (و اتّموا الحج و العمرة لله (23) (24))

IO و نظائر ذلك كثيرة •

f

و قد اعترض بعض المخالفين على هذا و زعم أن النبي صلى الله عليه و سلم قد كان يقف من تاويل مجمل الكتاب على ما لا يشركه في الوقوف عليه احد من امّته فليست له سنة لا كتاب فيها الا و قد يحتمل أن تكون لها في الكتاب جملة تدل عليها فخصّ رسوله بعلم ذلك فلم يثبت أن اّية نسخت سنة لانّ تلك السنة قد تكون مأخوذة مـــن

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a) ms انه رد

b) ms على

جملة الكتاب و ان خفى علينا علم ذلك ٠

قال ابوبكر: و هذا الكلام بيّن الانحلال ظاهر السقوط و ذلك لأن تجويز ما ذكر يمنع وجود نسخ القران بالقران و نسخ السنة بالسنة ٠ و ذلك أن كل آيتين ظاهرهما النسخ فجائز أن تكون نسخ احدٍ[a] يهما انما كان بسنة الرسول و ان لم ينقل الينا لا بالقران و ان القران انما نزل بعد ذلك بحكم قد سنّه الرسول صلى الله عليه و سلم و نسخ به القران ٠ و كل سنتين كان ظاهر هما النسخ فجائز أن تكون نسخ المنسوخة[b] منهما انما كان بحكم اوجبتْه[c] جملة من القران نحو قوله: (و ما اتاكم الرسول فخذوه و ما نهاكم عنه فانتهوا)[25] و قوله تعالى: (فاتّبعوه)[26] و قوله تعالى: (اطيعو الله و اطيعوا الرسول)[27] ٠ و على ان هذا يوجب أن لا يكون للنبي عليه السلام سنة رأسا و أن يكون كلما سنّه فهو بيان لجملة مذكورة في القران قد علم النبي عليه السلام[+] تفسيرها دوننا لما خصّه الله تعالى به من النبوّة و العلم بتاويل الآية التي لا يشركه فيه غيره ٠ و بطلان هذا القول معلوم من اتفاق الامّة لأنها قد عقلت أن في الشريعة احكاما مأخوذة من الكتاب و احكاما ليست من الكتاب مأخوذة من السنة ٠ فان قيل[e] ان قول هذا القائل الذى عارضت بما[f] حكيت يردّه[g] ظاهر الكتاب لأن الله تعالى

f

fo.I46a.

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a) ms احدا
b) ms المنسوخ
c) ms اوجبه
d) ms و below the line.
e) ms قال
f) ms به ما
g) ms يرد

قال : (ما ننسخ من آية او ننسها نأت بخير منها او مثلها)(28) و قال تعالى : (و اذا بدلنا آية مكان آية)(29) فقد اتّضح الكتاب بأن بعضه نسخ بعضا ٠

قيل له نقول لك انما اتّضح الكتاب بوجود النسخ في القران و لا دلالة فيه على انه نسخه بقران مثله او بخير لانّه لا يمتنع أن يكون مراده (ما ننسخ من آية)بسنـــة يوحى بها اليك (نأت بخير منها) ٠ وكذلك قوله تعالى : (و اذا بدلنا آية مكان آية)(30)

بأن ينسخها بوحي ليس بقران ثـم تنزل آية اخرى مكانها و ان لم تكن ناسخة لهـا فلا يمكن لقائل بما وصفنا الانفصال ممن نفى نسخ الكتاب الا بالكتاب و نسخ السنة الا بالسنـة ٠

فان قال قد اتّفق اهل العلم على جواز نسخ الكتاب بالكتاب و نسخ السنة بالسنة ٠ قيل له الذين اتّفقوا على ذلك هم الذين اتّفقوا على جواز نسخ السنة بالكتاب ٠

فان قال قائل الشافعى يخالف في ذلك ٠

قيل له من تقدّم الشافعى قد اجازوا ذلك فكيف يكون الشافعى خلافا عليهم و هـو لا يمكنه أن يحكى هذا القول عن احد ممن تقدّمه و قد حكينا نحن عن خلق مـــن السلف جوازه ٠ فان جاز أن يكون الشافعى خلافا على من تقدّمه من اهل العلـم

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a) ms بغيره

b) ms لم

c) ms القائل

d) ms بالسنة

e) ms بالكتاب

f) ms كان

جاز أن يكون هذا القائل الذى حكينا قوله و عارضنا به قول الشافعى خلافا علينا و على الشافعى جميعا ٠

ثم قال هذا القائل من خالف في هذا /ما/ اورد آية نسخت عنده سنة[a] الا و قد وجدنا لها جملة في الكتاب نحو ما ادّعوه من نسخ استقبال بيت المقدس و استحلال الخمر و تحريم المباشرة و الاكل و الشرب بعد النوم في ليالى الصوم فقد يكون استقبال بيت المقدس مأخوذا من قوله تعالى : (اولئك الذين هدى الله فبهداهم اقتده)، و شرب[b] الخمر مأخوذ من قوله تعالى : (يسئلونك عن الخمر و الميسر قل فيهما اثم كبير و منافع للناس)[(3I)] ٠ و معلوم أن شربها[c] /كان/ يحل و فيه اثم و قد روى انهم كانوا يشربونها بعد نزول هذه الآية ثم نزل قوله تعالى : (انما الخمر والميسر)[(32)] الآية[(33)] ٠ و تحريم ما يحلّ للمفطر في ليالى الصوم قد يكون مأخوذا من جملة قوله : f

(يا ايّها الذين[+] آمنوا كتب عليكم الصيام كما كتب على الذين من قبلكم)[(34)] اىّ على الهيئة fo.I46b.

و كذلك ما اشبه[d] هذه الآيات قد يمكن /أن/ يحتج بها على ذلك٠ قال : و ان ورد f

ما لا يمكن فيه فقد يجوز أن يكون مأخوذا من الكتاب و ان خفى علينا علمه ٠

فيقال بم تنفصل من[e] قال لك أن هذا القول يؤدّى /الى/ أن لا يكون في

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a) ms لسنة

b) ms اشرب

c) ms after شربها see لا

d) ms اشبه cf. p.I34,1.3.

e) ms فيمن

شريعة الرسول عليه السلام ناسخ و لا منسوخ لأن قوله تعالى : (اولئك الذين هدى الله فبهداهم اقتده) (35) فيه الامر بالاقتداء بالانبياء المتقدمين في شرائعهم و جائز أن يكون جميع ما شرعه الله تعالى في كتابه و سنة الرسول صلى الله عليه و سلم كان من شرائع الانبياء المتقدمة و ان معنى الناسخ و المنسوخ انه كان في a شريعة من قبلنا بقاء الحكم المنسوخ فيهم هذه المدة من الزمان ثم نقلوا الى الحكم الثاني فلا شيء في هذه القضية من حظر و ايجاب او اباحة الا و قد كان مثله من شريعة من قبلنا على الوجه الذى ثبت في شريعتنا و انما صار كذلك في شريعتنا (اولئك الذين هدى الله فبهداهم اقتده) (36) b .

فان قال لا يجب ذلك لانا قد علمنا كون اشياء مباحة في شريعة من قبلنا حظرت في شريعتنا كالخمر و نحوها و كون اشياء محظورة في شريعتهم اباحتها شريعتنا كقوله f تعالى : (و على الذين هادوا حرمنا كل ذى ظفر و من البقر و الغنم حرمنا عليهم شحومهما) (37) . f

قيل له يقول لك هذا القائل ليس بشيء مما حظر بعد الاباحة و ابيح بعد الحظر الا و قد كان في شريعة من كان من قبلنا كذلك مدة من الزمان فيتعبد النبي عليه

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a) ms قبلها

b) ms الئك

السلام بالاقتداء بهم في الحكم في المدّة التي كان فيها الحظر او الاباحة ، ثـــم يقال له ما انكرت أن تكون هذه الآية دالة على جواز نسخ السنة بالقران لأنـــــه ليس يمتنع أن يكون قد كان في شريعة من قبلنا أن سنن الانبياء قد كان يجـــــوز نسخها بالكتاب المنزل عليهم من الله تعالى اذ ليس نص و لا اجماع يمنع من ذلك

(38) a
ثـم قال تعالى : (اولئك الذين هدى الله فبهداهم اقتده) فينتظم جواز نسخ السنه بالكتاب كما كان في شريعة الانبياء المتقدمين (39) .

و امّا قوله في حظر الاكل و الشرب و الجماع في ليالى الصوم و نسخه بقوله تعالـــى : (كتب عليكم الصيام كما كتب على الذين من قبلكم) (40) و انه جائز أن يكون ذلك فـــي الشرائع المتقدمة فانتظمت الآية اثباته علينا على هذا الوجه فانه يلزمنا أن لا نجعل هذا الحكم منسوخا بقوله تعالى+: (فالآن باشروهن و ابتغوا ما كتب الله لكـــم) (4I) fo.I47a.

و انه انما زال بعد ثبوته في المدّة التي كان بقى فيها لأنه كذلك كان في شريعة من كان قبلنا من الانبياء فلا يكون في ذلك من شريعتنا ناسخ و لا منسوخ كما لو قال : (كتب عليكم الصيام b كما كتب على الذين من قبلكم) (42) ثـم قال : ان النص c حظر عليهم الاكل و الشرب و المباشرة في ليالى الصوم بعد النوم مقدار سنة واحدة ثـم كان بعد

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a) ms جوان

b) ms الصيام missing

c) ms الذين

السنة اباحة[a] جميع ذلك فالاكل بعد النوم و قبله لم يكن فيه نسخ شيء و انما كان يكون في ايجاب حكم الى وقت معلوم و لا يمكنه مع ذلك الانفصال ممن يتحامى[b] اهل الملة /في أ/ لا / وجود ناسخ و لا منسوخ في القران لأن ما يبقى من ذلك انما يسلك فيه هذه الطريقة و يجرى على هذا المنهاج في نفى النسخ . و هذا قول ظاهـــر الفساد و على انه انما ذكر انه كتب علينا الصيام و الصيام لا يكون بالليل و ان حظر الاكل فيه بعد النوم فكيف تناول الليل و قد تبيّن في سياق الآية في قوله تعالى : (ايا ما معدودات)[43] فاخبر أن الصوم الذى كتب علينا[c] لا يتناول الليل قط فسقـــط قوله ان ما ينسخ من ذلك قد كان موجبا بالآية قبل نسخها .

و أمّا قوله في شرب الخمر انه كان مباحا بقوله تعالى : (و منافع للناس)[44] و انه قـــد قرنها بالاثـم بقوله تعالى : (قل فيهما اثـم كبير)[45] ثـم قال تعالى : (و اثمهما أكبر من نفعهما)[46] و هذا اللفظ قد اقتضى تحريمها لأن الاثـم كله محرم بقوله تعالى : (قل انما حرّم ربى الفواحش ما ظهر منها و ما بطن و الاثـــم)[47]، و ذكره للمنافـــع[f] التي فيها لا يدلّ على الاباحة لأن سائر المحظورات قد يمكن الانتفاع بها فـــي امور الدنيا مع بقاء الحظر .

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a) ms اباحته

b) ms يتحام

c) ms فل

و امّا قوله فانهم قد كانوا يشربونها بعد نزول الآية فلا د لالة فيه على الاباحة لأنّه ليس فيه انهم كانوا يشربونها مع علم النبي عليه السلام بشربهم اياها و اقراره اياهم عليه (43) • و جائز أن يكون قد كان يشربه من لم يعلم بالحظر و ظنّ أن الآية لم توجب تحريمها •

5 فان قال قائل ليس في تحريم الخمر بعد اباحتها د لالة على ما ذكرت لأن اباحتها قبل نزول الآية كانت من طريق العقل في كون الاشياء مباحة في الاصل قبل ورود الشرع و مثل هذا لا يطلق فيه اسم النسخ و لا يمتنع ورود الكتاب بحظرها و لا يدلّ على جواز نسخ السنة بالقران لأن موضع الخلاف بينك و بينهم انما هو فيما ثبت حكمه بالسنة هل يجوز نزول القران بزواله و نسخه ام لا ؟

IO قيل له هذا غلط من وجهين+ : احد هما انهم قد كانوا يشربونها في اوّل الاسلام fo.I47b. مع علم النبي عليه السلام بذلك فصار /ك/اقراره ايّاهم عليه (49) و قد وردت الآية بعد ذلك بنسخه على الوجه الذى ذكرنا فثبت نسخ السنة بالقران • و الوجه الآخر[a] د لالتنا على ان ما استد للنا به عليه قائمة لأن هذا كلام في الاسم لا في المعنى • و اذا جاز أن يزيل الله حكما اقام عليه الد لالة في الاصل من طريق العقل بالقران جاز

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a) ms و الوجه الاخر و الوجه الاخر

أن يزيل به ما حكم به على لسان الرسول عليه السلام لأن الجميع من عنده فجهة الاستدلال بالآية صحيحة على ما ذكرنا ٠

و أمّا قول هذا الرجل و كذلك ما اشبه هذه الآيات قد يمكن تحريمها على ذلك و ان ورد ما لا يمكن فيه فقد يجوز أن يكون ماخوذا من الكتاب و ان خفى علينا علمه ٠

فانه يقال هل يجوز عندك أن يكون لله تعالى مرادا فى حكم يشتمل عليه لفظ مذكور في الكتاب فيخفى علمه على جميع الامّة ؟ فان قال : نعم ، جوّز أن يكون ها هنا احكام جائزة في الكتاب و السنة قد اخفى علمها عن الامّة فاخطاؤها و حكموا بغيرها و هذا يوجب جواز اجتماعهم على الخطاؤ قد علمنا أن وقوع ذلك مأمون فيهم ٠ و ان قال : لا يجوز ذلك ٠ قيل له فلم اجزت أن ترد آية تشتمل على حكم مذكور فيها ثم ينسخ ذلك الحكم فلا يعلم الناسربالحكم المنسوخ من الكتاب فهذا يقتضى أن يكون ذلك الحكم قد ذهب عن الامّة لأن مخالفيك يقولون ليس في الكتاب حكم قد خفى علينا في المعنى الذى اختلفنا فيه ٠ و انما الكتاب في مثل ذلك ورد في نسخ السنة و تزعم انت انك لا تقف عليه و لا تعلمه و تجوز أن يكون هناك حكم قد خفى عنك فقد اداك هذا الى خفاء الحكم عن الامّة باسرها ٠ و لئن جاز هذا ليجوز أن يقال

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a) ms ماخوذ

b) ms فاخطاها

ان في كتا ب الله تعالى احكاما كثيرة نحن متعبّدون بها لم تفق [a] الامّة على شـــيء منها و هذا قول ظاهر السقوط ٠

و يقال له فعلى هذا يجوز أن يقال كل [b] ما سنّه النبي عليه السلام فهو مما اوجبته جملة مذكورة في الكتاب و لم نقف عليها ٠ و كذلك ما نسخه النبي عليه السلام بعد بيان حكمه من سنة يجوز أن يكون بما اوجبته جملة في الكتاب لم نقف على معناها ٠ و يجب على هذا القول أن لا يكون للنبي عليه السلام سنن بوحي /منفردة/ عن القران و هذا قول ساقط مردود ٠ و على انه لو جاز أن يكون في كتاب الله تعالى احكام تخفى على الامّة لما صح الرّد الى كتاب الله تعالى و لبطل الاستدلال و النظر [+] لأنّا متى اردنا ٢٥.I٤٨a. ردّ الحادثة الى اصل و جوّزنا مع ذلك أن يكون في الاصل ما قد خفى علينا حكمه لم نأمن أن يكون اصل هذه الحادثة هو الذى قد خفى علينا حكمه من الكتاب و هذا يؤدّى الى بطلان القياس فكفى بقاعدة تؤدّى الباني عليها الى هذه الجهالات فسادا من ابطال نسخ الكتاب و السنة و من انه لو ثبت النسخ فيهما لم يثبت نسخ الكتاب بالكتاب و لا السنة بالسنة و الى تجويز خفاء حكم مذكور في الكتاب على الامّـــــة لا [c] نعلمه و لا نقف عليه و الى تجويز أن لا يكون للنبي عليه السلام سنة و أن جميع ما

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a) ms تفرق

b) ms كلما

c) ms before لا see و

سنّة فهو في القران و الى بطلان ردّ الحادثة الى الكتاب لجواز أن يكون اصلها مما
لم تقف عليه الامّة • و ذكر هذا الرجل وجها ثالثا في زعمه /في نسخ a / هذه الآيات
قد ذكره الشافعى فسنذكره عند حكايتنا بقوله في هذا الباب •

و على ان الآى التي احتججنا بها انما يطلب لها تاويل يوافق المذهب من اقـــام
الدلالة على صحة المقالة في الاصل فامّا من لم يعتقد قوله بحجة و لا شبهة فلا يلجاء
فيه الى دلالة من عقل و لا شرع ثـم استعمل مطلب تأويل الآى الموجبة لفساد مقالته
و حملها على وجوه تناقض الاصول و تنافيها كان قوله ساقطا مطروحا •

فان قال قائل الدليل على صحة مقالتنا قوله تعالى : (لتبيّن للناس ما نزّل اليهـــم) (50)
فاخبر أن النبي عليه السلام بعث مبيّنا فلا يكون الكتاب اذا مبيّنا لقوله • و قوله تعالى :
(ما ننسخ من آية او ننسها نأت بخير منها او مثلها) (51) يدلّ على انه انما ينسخ آيـــة
مثلها و كذلك قوله تعالى : (و اذا بدلنا آية مكان آية) (52) •

قيل له لا يخلو قوله تعالى : (لتبيّن للناس ما نزّل اليهم) (53) من احد وجهين : امّـــا
أن يكون المراد به اظهاره و ترك كتمانه فيتناول جميع القران ما افتقر منه الى بيان و ما
لم يفتقر فيكون في معنى قوله تعالى : (يا ايّها الرسول بلّغ ما انزل اليك من ربك) (54) b ،

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a) ms صريح

b) ms لمعنى

او يكون المراد منه ما احتاج منه الى البيان من الرسول دون غيره • فان كان المراد به الوجه الاوّل فليس يمتنع أن ينزل الله تعالى النسخ للسنة فيبيّنه باظهاره اياه ، فهذا يكون[a] دلالة على جواز نسخ السنة بالقران أقرب منه الى أن يمنع منه • و ان كان المراد[b] الوجه الثاني فليس يمتنع ان يكون فيه دلالة ايضا على ما ذكرنا لانه ليس في لزوم النبي عليه السلام بيان مجمل الكتاب ما ينفى نسخ السنة بحكم في القران غير مفتقر الى بيان النبي عليه السلام لأنه لو نصّ عليه السلام على هذا الوجه بأن يقول لتبيّن مجمل الكتاب لم يرد بذلك أن يكون ما احتاج الى البيان منه ناسخا /ل/سنته و ايضا فاذا كان ما[+] يحصل من بيان النبي عليه السلام فالله تعالى المتولى لسنته بوحى من (55) عنده و لم يكن قوله تعالى : (لتبيّن للناس ما نزّل اليهم) مانعا أن يكون ما حصل من البيان فهو من عند الله و هو المتولى لذلك منه • و لم يمتنع ايضا أن يبيّن مدّة السنة فينسخها بالخير[c] كما تولّى فيبيّنها[d] على لسان الرسول عليه السلام• و ايضا ليس[f] في أن النبي عليه السلام يبيّن القران ما يمنع أن يكون القران يبيّن السنة ايضا كما أن القران يبيّن القران و لم يمنع ذلك نسخه به و كما أن السنة تبيّن السنة و تنسخها ايضا فليس اذا في وصف النبي عليه السلام بتبيين القران ما يمنع

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a) ms before يكون see لا

b) ms فلا دلالة فيه

c) ms بالكبر

d) ms يسنها

أن ينسخ سنته بالقـران و ايضا فالذى قال[a] (56) : (لتبيّن للناس ما نزّل اليهم) هو الذى
قال[b] (57) : (و نزّلنا عليك الكتاب تبيانا لكل شيء) فهلا اجزت لعمومه تبيين مدّة السنة اذا
لم يكن في قوله (58) : (لتبيّن للناس ما نزّل اليهم) ما يوجب تخصيصه • الا ترى انه يصـ
أن يقول (59) : (لتبيّن للناس ما نزّل اليهم) فليبيّن الكتاب ما سنّة اذ ليس بيان مجمل الكتاب
سنة النبي عليه السلام و انما يبيّن النبي عليه السلام ان الله تعالى قال كذا و ان مراده
بما قال كذا فلا يسمّى هذا سنة فلم يعترض على قوله تعالى : (ونزّلنا عليك[c] الكتاب[d] تبيانا
لكل شيء) (60) في ايجاب تخصيصه •

و امّا قوله تعالى : (ما ننسخ من آية او ننسها نأت بخير منها او مثلها) (6I) فليس له تعلق
بما ذكرنا لأنه أكثر ما فيه انه اذا نسخ آية اتى بخير منها او مثلها و لا دلالة فيـــه
أن السنة لا تنسخ[e] (62) بها • وكذلك قوله تعالى : (و اذا بدلنا آية مكان آية) انـــه
لا يمنع أن يبدل آية مكان سنة و انما ذكر حكاية قول الكفار عند نسخ آية بآية مثلهـا
و لم ينف نسخ السنة بآية •

و قال الشافعى في كتاب الرسالة[f] : و /هكذا/ سنة رسول الله ، لا ينسخها الا سنـة
/ل/رسول الله • و لو احدث الله لنبيّه في امر سنّ فيه غير ما سنّ رسول اللـــه

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a) ms after قال see تعالى
b) ms انزلنا
c) ms بعد
d) ms انزلنا
e) ms after تنسخ see السنة
f) see Risāla p.I08. لرسوله

صلى الله عليه و سلم لسنّ فيما احدث الله اليه حتى يبيّن للناس ان له سنة ناسخة للتي قبلها مما يخالفها و هذا مذكور في السنة عن رسول الله صلى الله عليه و سلم[a] فان قال قائل : فقد[b] وجدنا الدلالة على ان القران ينسخ القران ، لانّه لا مثل لـه[c] فاوجدنا ذلك[d] في السنة ؟

قال الشافعى : فيما وصفت من فرض الله على الناس اتباع امر رسول الله صلى اللـه عليه و سلم : دليل على أن سنة رسول الله صلى الله عليه و سلم انما قبلت عن اللـه فمن اتّبعها[e] فبكتاب الله تبعها[f] ، و لا نجد خبرا الزمه الله عز و جل خلقه نصا بيّنا[g] الا كتابه ثـم سنة نبيّه عليه السلام . فاذا كانت السنة كما وصفت لا شبه لها[h] مـن قول خلق من خلق الله تعالى ـ : لم يجز أن ينسخها الا مثلها ، و لا مثل لها غير سنة رسول الله صلى الله عليه و سلم .

قال ابوبكر رحمه الله تعالى[+]: هذا الفصل من كلامه يشتمل على ضروب من الاختلال ، fo.I49a. منها قوله : "ان السنة لا ينسخها الا سنة رسول الله ،، فمنع من[i] ذلك نسخ السنة الا بالسنة مثلها ثـم نقض ذلك بقوله في سياق كلامه : " و لو احدث الله عز و جـل لنبيّه في امر سنّ فيه : غير ما سنّ رسول الله ـ : لسنّ فيما احدث الله اليه ، حتـى

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a) see Risāla p.I08. في سنته صلى الله عليه و سلم
b) ms قد but cf. Risāla p.I08. i) ms فمن
c) see Risāla p.I08. للقران
d) ms فاوجبنا but cf. Risāla p.I08.
e) ms قبلها but cf. Ibid. p.I09.
f) ms يتبعها but cf. Ibid.
g) ms مبينا but cf. Ibid.
h) ms له but cf. Ibid.

يبيّن للناس أن له سنة ناسخة ،، فاجاز بذلك أن ينسخ الله سنة نبيّه بالقران ، و هذا ينقض قوله بدءًا ان السنة لا ينسخها الا سنة ٠

فان قال قائل لم يقل ان احدث الله ذلك بقران منزل[a] و يحتمل أن يكون مراده أنه ينسخه بوحي ليس بقران ٠

قيل له فاذا يكون ما احدث الله به[b] /من الاحكام هي من سنن النبي عليه السلام/[c] ، لأن ما نزل به وحي غير قران ، فما معنى قوله : "لسنّ فيما احدث الله ،، فالذى احدث الله /من/[d] السنة سنة لا يفزع في وقوع النسخ بها الى سنة اخرى ٠ و على أن الشافعى قد ابطل تأويل هذا القائل بقوله بعد ذلك في هذا الفصل ٠

فان قال /قائل/[e] : هل تنسخ السنة بالقران ؟

قيل له لو نسخت السنة بالقران كانت للنبي عليه السلام فيه سنة تبيّن أن سنته الاولى (64) منسوخة /بسنته الآخرة/ حتى تقوم الحجة على الناس، بأن الشيء ينسخ بمثله٠

فاجاز نسخها بالقران اذا بيّن النبي عليه السلام ما يبيّن أن السنة الاولى منسوخة ٠

و قوله : "لسنّ فيما احدث الله اليه حتى يبيّن للناس أن له سنة ناسخة للتي قبلها ،، كلام متناقض مستحيل ، لأنه اخبر ان الله نسخه بما احدثه من خلاف سنة النبي عليه

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a) ms منزلة

b) ms after به see النبي عليه السلام

c) ms These words appear after غير قران

d) ms يفرق

e) ms فهل but cf. Risāla, p.110.

السلام ، ثـم قال : " لسنّ فيما احدث الله اليه حتى يبيّن للناس انه له /سنة/ ناسخة للتي قبلها ،، فما قد[a] نسخه الله كيف يجوز أن ينسخه الله بعده و كيف يجوز نسخ المنسوخ • و من جهة اخرى ما قد نسخه الله تعالى كيف يجوز من النبي عليه السلام الاخبار عنه بأن سنته نسخته ، فيكون فيه الاخبار عن الشيء بخلاف ما هو عليه حاشا له من ذلك عليه السلام ، ثـم استدلّ على " ان السنة لا ينسخها الا سنة ،، بما ذكـر من امر الله الناس باتباع نبيّه عليه السلام و هذا لا دليل فيه على أن السنة لا ينسخها القران اذ ليس في الامر باتباع النبي عليه السلام تعلق بنسخ السنة بقران و لا غيـره لأنّا[b] انما امرنا باتباع سنة النبي عليه السلام /اذا/ لم تنسخ فاذا نسخها القران او[c] سنة له اخرى فنحن مأمورون حينئذ باعتقاد نسخها و زوال حكمها و قد امر الله باتباع كتابه بقوله تعالى : (اتّبعوا ما انزل اليكم من ربكم)[65] و لم يمنع /ذلك/جواز نسخه بالقران •

و امّا قوله : " ان السنة لا شبه لها من قول خلق من خلق الله ،، فليس يخلو مراده[d] في ذلك من احد معنيين[+] : امّا أن يريد أن نظمها معجز[e] غير مقدور للخلق او أن يكون مراده الحكم • فان كان مراده اللفظ فان احدا من المسلمين لا يقول ان كلام النبي عليه السلام معجز النظم[f] و ان كان عليه السلام أفصح الخلـــــــــق • fo.I49b.

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a) ms above the line.
b) ms لانا انا
c) ms و
d) ms له but cf. Risāla p.I09.
e) ms يعجز
f) ms بالنظم

و لو كان كلامه معجزا لكان مساويا للقران في اعجاز النظم و هذا خلف من القول

لأن القران هو المختص باعجاز النظم دون سائر الكلام • و لو كان كلام النبي عليه

السلام معجزا لتحدّى به العرب كما تحدّاهم بالقران (66) ولايستغنى[a] الناس عن طلب السنة

لمبانيته لكلام غيره من البشر في اعجاز نظمه كما بان القران في سائر الكلام بالنظم

المعجز و التأليف البديع الذى ليس في وسع احد من الخلق الاتيان بمثله فبطل

هذا القسم • و ان كان مراده الحكم الثابت من جهة السنة فان احدا من المسلمين

لا يقول ان لغير النبي عليه السلام من الخلق أن يشرع الشرائع و يبدع الاحكام فلا

معنى لذكره هاهنا اذ ليس هو موضع الخلاف لأن كلامنا انما هو في نسخ السنة بالقران

الذى لا شبه له من قول احد من الخلق، لا في نسخها بما له شبه كلام من كلام المخلوقين.

و على أنه لو ثبت أن السنة لا شبه لها من قول احد من المخلوقين، على اىّ وجه حصل

معنى كلامه لما دلّ على ان القران لا ينسخها، لأن القران لا شبه له من قول احد من

المخلوق و ينسخها القران الذى لا شبه قول المخلوقين[b] فلم يحصل له من كلامه في

هذا الفصل وجه الدلالة على منع نسخ السنة بالقران •

قال الشافعى بعد ذلك : " و لو جاز أن يقال : قد سنّ رسول الله صلى الله عليه

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a) ms لا تستغنى

b) ms المخلقين

و سلم و نسخت سنته بالقران و لا يؤثر عن النبي عليه السلام السنة الناسخة ــ : جاز

أن يقال فيما حرّم /رسول / الله تعالى من البيوع كلها : قد يحتمل أن يكون حرّمها
(67)
قبل أن ينزل عليه (و احلّ الله البيع و حرّم الربا) و فيمن رجم من الزناة : قد يحتمل

أن يكون الرجم قبل نزول قوله تعالى : (الزانية و الزانى فاجلدوا كل واحد منهما
(68) (69)
مائة جلدة) " .

قال ابوبكر: و هذا الفصل نظير ما تقدّم لأنه قال : " و نسخت سنته بالقران و لا يؤثر
عن النبي عليه السلام / السنة / الناسخة " فاطلق نسخها بالقران ثم اوجب نسخها
بعد ذلك بالسنة . و معلوم أن ما نسخ القران يستحيل نسخه بالسنة لامتناع جواز
نسخ المنسوخ .

و امّا قوله : " لو جاز أن ينسخ الله سنته بالقران و لا يؤثر عن النبي عليه السلام السنة
الناسخة ــ : جاز أن يقال فيما حرّم /رسول / الله من البيوع" الى آخر ما ذكر ،
فان هذه القضية ان صحت منعت نسخ القران بالقران و نسخ السنة بالسنة الا أن
يكون مع الناسخ منهما سنة تبيّن النسخ . فاذ قد وجدنا في القران و السنن ناسخا
و منسوخا من غير أن يكون مع الناسخ منهما سنة تبيّن الناسخ من المنسوخ fo.I50a.

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a) see Risāla p.III
b) Ibid.
c) ms
d) see Risāla p.III
e) ms
f) ms after نسخ see من
g) ms يستحيل يستحيل first يستحيل crossed out.

ثم نسخ
رسول الله
الزنا
لقول الله
فالمطلق

و من غير ذكر تاريخ في واحد منهما بل يكون استدراك حكم الناسخ من المنسوخ و تفصيل احدهما من الآخر و التمييز بينه و بينه موكولا الى الاستدلال بغيره كذلك يجوز نسخ السنة بالقران و يكون سبيل معرفة الناسخ من المنسوخ طلب تاريخ الحكم من سائر الاصول اذا لم يكن عندنا علم بتاريخهما و لا كان في لفظهما ما يدل على الناسخ منهما ·

(70)
و على /أن/ الشافعى قد نصّ على نسخ السنة بالقران في باب صلاة الخوف في كتاب الرسالة فقال بعد أن ذكر حديث ابى سعيد الخدرى(71) في تأخير النبي صلى الله عليه و سلم يوم الخندق بالصلوات حتى كان هوى من الليل : قضاهن قال ابوسعيد : و كان ذلك قبل أن تنزل صلاة الخوف ، ثم ذكر حديث يزيد بن رومان عن صالح بن خوّات(72) في صلاة الخوف · قال الشافعى : فنسخ الله تعالى تأخير الصلاة عن وقتها في الخوف الى أن يصلوها كما انزل و سنّ رسول الله صلى الله عليه و سلم في وقتها و نسخ سنته في تأخيرها بفرض الله تعالى في كتابه ثم بسنته صلاها في وقتها كما وصفت ·

فنصّ في هذا الموضع على نسخ السنة بالقران الا أنه وصله بما يستحيل كونه لأنّه قال : نسخها بفرض الله في كتابه ثم بسنته ، و ما قد نسخ بالكتاب/لا / يصح نسخه بعد ذلك لا بالسنة و لا بغيرها ·

باب القول في نسخ القران بالسنة

اختلف الناس في نسخ القران بالسنة فاجاز ها اصحابنا اذا جأت السنة مجيئا يوجب العلم و لم تكن من اخبار الآحاد • وكان ابو الحسن رحمه الله يحكى عن ابي يوسف أن السنة التي تجوز نسخ القران بها هي ما ورد من طريق التواتر و يوجب العلـــم (I)
نحو خبر المسح على الخفين • و منع الشافعى ذلك و اختلف اصحابه فقال بعضهم : a
هو جائز في العقل الا أن الشرع لم يرد به و لم يمنعه ايضا • و قال آخرون منهـــم : (2)
قد منع الشرع جوازه •

و الدليل على جوازه قول الله تعالى : (لتبيّن للناس ما نزّل اليهم) (3) و النسخ بيان مدّة الحكم الذى كان /في/ توهمنا بقاءه على حسب ما تقدّم وصفنا له فانتظم قولـــه : (لتبيّن للناس ما نزّل اليهم) (4) سائر وجوه البيان فلما كان النسخ ضربا من البيان وجب أن تستوعبه الآية • (5)

فان قال قائل المراد به اظهار ما انزل و تبليغه •

قيل له هذا احد ما تناوله اللفظ و لم ينف غيره من سائر ضروب البيان ، الاترى أنه قد دلّ على جواز تخصيصه+ بالسنة اذ كان ضربا من البيان ، و لم يكن استعمال b اللفظ fo.I50b. :

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a) ms الفعل

b) ms استمال

على الامر باظهاره[a] و ترك كتمانه مانعا من دخول بيان التخصيص تحته كذلك بيـــان

مدّة الحكم الذى هو النسخ واجب[b] أن يتناوله اللفظ.

فان قيل اذا كانت السنة تبيّن القران استحال أن تنسخه لانّه لا يجوز أن ينسخ الشيء

ما يبيّنه .

قيل أن هذه دعوى ليس عليها دلالة و هو موضع الخلاف بيننا و بينكم فكأنك انما جعلت

موضع الخلاف دلالة على المسئلة . و على أن النسخ ضرب من البيان فلا يمتنع وقوعـــه

بالسنة كما أن القران يبيّن القران بقوله تعالى : (و نزلنا عليك الكتاب تبيانا لكل شيء[c]) (6) (7)

و لم يمتنع نسخه به . دليل آخر و هو قوله تعالى : (و انك لتهدى الى صراط مستقيم

صراط الله) ، و قال تعالى : (و ما ينطق عن الهوى ان هو الا وحي يوحى) ، فلمـــا (8) (9)

كان الناسخ بحكم القران صراط الله وجب أن يصح بالسنة لاخبار الله تعالى بأنه يهدى

الى صراط الله . و لأن السنة لما كانت وحيا[d] من الله تعالى جاز أن ينسخ بها وحـــي

و هو قران كما جاز نسخ القران بالقران من حيث انهما[e] وحي من الله تعالى . و ايضـا (10)

فان نسخ القران يكون من وجهين : احدهما نسخ التلاوة و الثاني نسخ الحكم . و قد

جاز عند الجميع نسخ التلاوة لا بقران على ما بيّنا على ما سلف لأن نسخ التـــــلاوة

---

a) ms بالظاهر

b) ms و احبار

c) ms انزلنا

d) ms واجبا

e) ms هما

يكون بالانساء تارة و بالامر بالاعراض عن كتبها و حفظها الخرى (II) و كلا الوجهين من ذلك
a
يجوز وقوعه بغير قران • الا ترى أن نسخ التلاوة قد وجد في زمان النبي عليه السلام
و ليس معنا قران موجود نسخت به ، فلما جاز نسخ التلاوة لا بقران وجب أن يجوز
نسخ الحكم ، لانه احد وجهى نسخ القران ، و أن التلاوة يتعلق بها حكم /استحقاق/
b (I2)
في جواز الصلاة بها من الثواب اذا كانت قرانا و لا يستحق بغيره ؛ فدلّ ذلك من
وجهين على نسخ حكم القران بالسنة • احدهما أن نسخ التلاوة لا محالة يقتضى
نسخ حكم ، و الثاني انه قد ثبت/نسخ لفظ/قران منسوخ بغير قران فوجب مثله في حكم
يتضمّنه لفظ القران • دليل آخر و هو أن الاصل في الناسخ و المنسوخ ان ما صح
(I3) c
اجتماعه في خطاب واحد جاز النسخ به على حسب ما تقدّم القول فيه • فلما لم يمنع
احد من تجويز/مجيء/ سنة النبي عليه السلام عقيب تلاوة القران موجبة لتوقيت حكمه
ان مراد الله في فعل ذلك الى وقت كذا ، ثم ليس عليكم فعله بعده ، و انما عليكم
بعد مضى المدّة d عبادة اخرى ، كما جاز ان يقول الزكاة واجبة بعد الحول ، و الحج
واجب في وقت دون وقت ، و كذلك سائر الفروض ، وجب ان/لا / يمتنع ابهام القول في حكم
القران ، ثم ترد سنة+ الرسول عليه السلام بزوال ذلك و وجوب ضدّه كما ا. Io.I5Ia

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a) ms و below the line.

b) ms جوان

c) ms after القول see ما

d) ms above the line.

جاز وجود ذلك منه عقيب نزول القران • و دليل آخر و هو اتفاق الجميع على جواز تخصيص القران بالسنة و التخصيص انما هو بيان الحكم في بعض المسميات فلا يمتنع على ذلك نسخه بالسنة اذ كان النسخ تخصيصا بالوقت دون وقت على الوجه الذى بيّنا و المعنى الجامع بينهما أن كل واحد وارد على وجه التخصيص •

فان قيل يلزمك على هذا تجويز[a] نسخ القران بخبر الواحد و بالقياس كما جوّزت تخصيصه بخبر الواحد و بالقياس •

قيل له امّا في تجويز تخصيص[b] القران بخبر الواحد و بالقياس شرائط قد بيّنا بعضها فيما سلف • (I4) و جملته أن ما كان منه ظاهر المعنى بيّن المراد لم يجز تخصيصه بخبر الواحد و لا بالقياس الا أن يختلف السلف فيه و يسوّغوا الاجتهاد في تركه أو يتّفقوا على خصوصه فيكون العلم بموجب عمومه من طريق الاجتهاد فيجوز تركه بخبر الواحد و بالقياس • و امّا ما لم يكن بهذا الوصف و موجب حكمه ثابت من طريق يوجب العلم فلا يجوز تخصيصه بخبر الواحد و لا بالقياس و كذلك لا يجوز نسخه بذلك اذا كان موجبه ثابتا من طريق يوجب العلم فانما يجوز التخصيص بما يجوز النسخ في مثله •

فان قال : الفرق بين التخصيص و النسخ انه يبقى مع[c] التخصيص من حكم اللفظ

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a) ms يجوز but cf. 1,7.

b) ms تخصيصه

c) ms موسع but cf. p.I49, l.I.

ما يصح استعماله و لا يبقى مع النسخ حكم يستعمل ٠

قيل له هذا فرق من وجه آخر لا يمتنع الجمع بينهما من الوجه الذى ذكرنا و على أن النسخ لا يصح الا و قد مضى من وقت الحكم ما يصح استعماله فيه و ذلك الوقت هو بمنزلة ما يبقى من حكم الاسم بعد التخصيص، و لا فرق بينهما من هذه الجهة ،

فثبت بما ذكرنا جواز نسخ القران بالسنة ٠

و امّا من نفى جوازه من المخالفين بما ادّعى فيه من ورود السمع فانه احتج فيه بقول الله تعالى : (ما ننسخ من آية او ننسها نأت بخير منها او مثلها) (I5) ٠ قال : و السنة لا تكون خيرا من القران و لا مثله بوجه ٠

فنقول و بالله التوفيق انه لا دلالة في هذه الآية على ما ذكر بل فيها الدلالة على جواز نسخ القران بالسنة من وجوه : نذكرها ان شاء الله تعالى فنبدأ ببيان وجه الدلالة من هذه الآية على صحة قولنا ثم نشرع في الابانة على فساد استدلالهم بها على ما ادّعوه ٠ فامّا وجه الدلالة منها على صحة قولنا من[a] وجهين : احدهما أن قوله تعالى : (خير[b] منها) لا يخلو من أن يكون المراد خيرا منها من /حيث/ نظمها و صورتها و حروفها او خيرا[c] منها لنا في باب أنه أصلح لنا و أنفع ٠ فامّا[+] الوجه fo.I5Ib.

---

a) ms لمن

b) ms خيرا

c) ms خير

الاوّل ففاسد لأن احدا لا يقول ان هذه الآية خير[a] من هذه الآية في نفسها فثبت،
الوجه الثانى و لم يمتنع أن يكون حكم يثبت من جهة السنة أصلح لنا و أنفع منه لـو
نزل به قران و من اجل ذلك انزل الله ببعض الاحكام قرانا و انزل ببعضها وحيـا
ليس بقران على حسب ما علمه /خيرا / لمصالحنا • و اذا كان المراد بالاية ما وصفنا
(I6)
5 فقد دلّت على جواز نسخها بالسنة لجواز اطلاقها أنها خير[b] لنا من الوجه الذى ذكرنا •
و الوجه الثاني أن قوله : (مثلها) لا يخلو من أن يكون المراد المماثلة بينهما من جميع[c]
الجهات/او بعضها / و قد يصح اطلاق المثل اذا تماثلا من بعض الوجوه كما قال تعالى :
(I7)
(و حور عين كامثال اللؤلؤ المكنون) فاطلق اسم المماثلة لتماثلها في بعض الوجوه
اذ معلوم أن الحور العين غير مماثلة للؤلؤ من جميع الجهات و انما مثلهن به من
IOجهة الصفاء و النقاء و نحو ذلك ، والله أعلم ، فمتى استحق اسم المماثلة من وجـه
فهو داخل تحت الآية • و قد تكون السنة مثل الآية من جهة النفع و الصلاح و مـن
جهة انهما جميعا وحي من الله تعالى فوجب أن يجوز نسخه بها لعموم اللفظ •
قال : فان قال قائل لا يطلق اسم المماثلة على الحقيقة الا فيما يكون /مماثلا / له من
جميع جهاته فاذا لم يكن كذلك فانما يقال هو مثله على التقييد •

---

a) ms خيرا

b) ms خيرا

c) ms بعض

قيل له لم يرد بالمثل هاهنا ما ذكرت لما بيّنا ، فثبت أنه اراد المماثلة من بعض الوجوه ،

فقد دلّت الآية في هذين الوجهين على جواز نسخ القران بالسنة ٠

و امّا ما قلنا /من/ انه لا دلالة فيها على ما ذهبوا اليه من[a] جهة ان الذى في الآيــة

انه اذا نسخ آية اتى بخير منها و لم يذكر الناسخ لها و انما قلنا انه ياتى بخير مـــن

المنسوخ او مثله ، و ليس يمتنع أن تنسخ الآية بالسنة ، ثــم ياتى بآية اخرى مثلها و لا

تكون هي الناسخة اذا لم يقل (من آية ـــ نأت) بما ينسخها خيرا منها ٠ و يدلّ على

ذلك (نأت بخير منها) راجع الى الحكم و التلاوة و نسخ التلاوة لا يكون بآية مثلها بل

بغير قران[d] ثــم ياتى بآية خير[e] منها ليست هي الناسخة للتلاوة فكذلك هذا في الحكم ٠

و ايضا فان الذى تقتضى حقيقة اللفظ هو نسخ التلاوة و النظم دون الحكم لأن الآيـــة

في الحقيقة اسم للنظم ٠ الا ترى أن الآية قد تكون باقية و الحكم منسوخ و قد تنســـخ

الآية و الحكم باق فدلّ على أن الآية اسم للرسم و النظم دون الحكم و أن لا يدخـــل

الحكم فيه الا بدلالة ٠ و ايضا لا يخلو قوله تعالى : (ما ننسخ من آية) من اوجه ثلاثة :

امّا أن يريد نسخ التلاوة دون الحكم ،او نسخ[+] الحكم دون التلاوة ، او نسخهما معا ٠ fo.I52a.

فان كان المراد نسخ التلاوة دون الحكم لم يعترض على موضع الخلاف بيننا في نسخ الحكم.

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a) ms لمن

b) ms تسمع

c) ms اخر

d) ms بقرانه but cf. p.I52,l.I.

e) ms خيرا

و لم يختلف أن نسخ التلاوة يكون بغير قران • و ان كان المراد نسخ الحكم د ون التلاوة لم يمتنع نسخه بالسنة لجواز أن يكون حكم السنة خيرا لنا من حكم القران في باب أنه أصلح لنا و أنفع لأن اسم الخير لا يطلق في مثل هذا الا باضمار اضافتـه الى ما يحصل له لأنك لا تقول ان هذا خير من هذا الا و مرادك أنه خير لمن تعبّد به او جعل له او ما جرى مجرى ذلك • و ان كان المراد نسخ التلاوة و الحكم معا فان نسخ التلاوة قد يجوز عند الجميع بغير قران بأن ينسى الله من يحفظها او يامر على لسان رسوله بالاعراض عنها فتنسى (I8) • و قد بيّنا أن الآية لم تمنع نسخ الحكم على الانفراد بالسنة و كذلك لا تمتنع نسخهما معا بالسنة •

فان قال قائل ما انكرت أن يجوز أن يكون المراد بقوله : (خير منها او مثلها) أن يكون خيرا من الاولى من جهة ما تستحقّ من زيادة الثواب بتلاوتها كما روى أن (قل هو الله احد) (I9) تعدل ثلث القران و أن (قل يا ايّها الكافرون) (20) تعدل ربع القران يعني فيما تستحقّ بتلاوتها من الثواب زيادة على ما تستحقّ بغيرها • و اذا كان قوله : (خير منها او مثلها) (2I) يحتمل أن يكون هذا معناه لم يكن لنا أن نعدل به عن قران مثله الى غيره مما ليس بقران من جهة ما ذكرتم أن القران لا يكون بعضه خيرا من بعض•

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a) ms نات

b) ms انه

c) ms و تكون

d) ms خيرا

e) ms خير

الجواب أن هذا لا يعترض على شيء مما قدّمنا و لا يمنع جواز نسخ القران بالسنة على الوجه الذى بيّنّا من وجوه : احدها انا اذا سلمنا له ما ادعّى من ذلك في كون التلاوة خيرا له لما يستحقّ بها[a] من زيادة الثواب[b] فقد ثبت أن في الآية ضمير ليس بمذكور في اللفظ و هو ثوابها خير لنا فحينئذ لا يكون خصمنا اولى بصرف معنا ها اليه منا الى الحكم و ما لنا فيه من النفع و الصلاح • و وجه آخر و هو أنه قد ثبت أن المراد بقوله : (خير منها) أنه خير لنا و أصلح امّا من جهة استحقاق زيادة الثواب و امّا من جهة النفع و الصلاح ثم لم يختلف حينئذ الحكم الثابت بالسنة و الحكم الثابت بالقران اذ[c] كان هذا الاطلاق يجوز أن يتناول كل واحد منهما على حياله بأنه خير لنا في باب أنه أصلح لنا فليس اذا فيما ذكره هذا القائل ما يمنع[d] كون الثاني خيرا من الاوّل على الوجه الذى بيّنّا • و ايضا فاذا كان جائزا أن يكون حكم السنة خيرا لنا من حكم /و/ لو كان في القران و جاز هذا الاطلاق فيه كما جاز فيما ذكره من استحقاق +زيادة الثواب كان اقل احواله تجويز الامرين من نسخها بقران مثلها او خير منها من جهة الثواب و من نسخها بالسنة من جهة ما يكون خيرا لنا في باب[e] النفع و الصلاح • و ايضا فان الذى تقتضيه حقيقة اللفظ

ro.I52b.

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a) ms خير

b) ms لم

c) ms ان

d) ms جايز

e) ms water stained.

نسخ النظم و التلاوة لأن الآية اسم للنظم و الرسم لا للحكم و لا دلالة فيه على نسخ الحكم اذ جائز بقاء الحكم مع نسخ التلاوة • و اذا كان كذلك صار تقدير الآيـــة ما ننسخ من نظم آية و رسمها نأت بخير منها او مثلها فلا يعترض على موضع الخلاف لأن الخلاف بيننا انما هو في نسخ حكم الآية بالسنة لا في نسخ النظم و التلاوة اذ لا خلاف بين من يجيز نسخ التلاوة /في / أن[a] جائز وقوعه بغير قران لما بيّناه فيمـا سلف • و ايضا فليس في قوله تعالى : (نأت بخير منها او مثلها) دلالة على / أن / المأتى به هو الناسخ لها اذ لم يقل (نأت) بما ينسخها خيرامنها او مثلها • و من ادّعى أن المراد به[b] (نأت) بناسخ خير منها لم نسلم له دعواه الا بدلالة و سقـــط استدلاله بالآية على موضع الخلاف بيننا اذ ليس احد الخصمين باولى بما ادّعاه من احد وجهى الاحتمال من الآخر بل لو قلنا ان الاظهر و الذى يقتضيه فحوى الخطاب نسخ الآية بأى وجه كان من وجوه النسخ قرانا و غير قران ثـم ياتى بعد ذلك (بخير منها او مثلها) كان قولا سديدا و أشبه بالصواب من قول مخالفنا •

(22)
فان قال : قوله تعالى في سياق الآية : (الم تعلم ان الله على كل شيء قدير) يدلّ على أن المراد نسخ الآية بقران معجز لا يقدر احد غير الله على الاتيان بمثلـــه

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a) ms اذ

b) ms above the line.

فثبت أنه منع نسخها بالسنة ٠

قيل له /ان/ سلمنا لك ما ادّعيت لم يعترض على موضع الخلاف و ذلك لأنه يقتضى نسخ التلاوة و النظم لا يقدر عليه احد غير الله و هذا ما لا خلاف فيه بيننا فما الدلالة منها اذ كان هكذا على امتناع جواز نسخ الحكم /بالحكم/ الذى تضمنته السنة؟ و من وجه آخر لا دلالة فيه على ما وصفت لأنه ليس في الآية أن الذى هو (خير منها او مثلها) هو الناسخ لها فاذا لم يكن ذلك في الآية لم يجز لاحد أن يدعيه الا بدلالة من غيرها فلا يمتنع حينئذ أن يكون المراد نسخ حكم[a] القران او تلاوته بوحي من عنده ليس بقران و ياتى مع[b] ذلك بقران (خير منها او مثلها) على حسب ما يحتمله اللفظ و يجوز فيه فلا يدلّ ذلك على أن الناسخ يجب أن يكون قرانا و ان كان الذى ياتى بعد النسخ يكون قرانا اذا فبيّنت الآية ذلك ٠ و وجه آخر و هو أنه جائز أن يكون الذى ياتى به حكما من جهة وحي ليس بقران و يصح الوصف له من اجل ذلك /ب/ (انه على كل شيء قدير) لأن الحكم الذى هو أصلح لا يعلمه احد غير الله الذى على كل شيء قدير[+] fo.Ij3a. فلا دلالة فيه على أن الذى ياتى به بعد النسخ قران معجز ٠

فان قيل قال الله تعالى : (قال[c] الذين لا يرجون لقاءنا ائت بقران غير هذا اوبدّله

---

a) ms الحكم but ال crossed out.

b) ms خيرا

c) ms before قال see و

قل ما يكون لي أن ابدّله من تلقاء نفسى ان اتّبع الا ما يوحى الىّ (23)) سألوه تبديل الآية نفسها و قد اخبر أنه لا يبدّله من تلقاء نفسه و لو جاز نسخه بالسنة لكان قد بدّله من تلقاء نفسه ·

قيل له هذا الاستدلال فاسد من وجوه : احدها أنهم كانوا اذا سألوه تبديل الآية نفسها لم يعترض ذلك على الحكم و كلامنا انما هو في الحكم الذى يثبت بالقران هل يجوز نسخه بالسنة او لا ؟ و على أنه لا يخلو من أن يكونوا a سألوه تبديل النظم و الرسم او تبديل الحكم او تبديلهما جميعا · فان كانوا سألوه تبديل النظم ، و هو الذى يقتضيه ظاهر اللفظ ، فلا دلالة فيه على موضع الخلاف من المسئلة لما بيّنا و لأن احدا غير الله لا يقدر على تبديل نظم القران الى نظم آخر معجز فلا معنى للاشتغال بهذا الوجه في موضع الخلاف · و ان كانوا سألوه تبديل الحكم دون النظم لم يعترض ايضا على قولنا لأن أكثر ما فيه نفى تبديله من تلقاء نفسه ، و نحن لا نقول أنه يبدّله من تلقاء نفسه ، و انما يبدّله الله بوحي من عنده امّا بالقران او غير قران (24) ·

و يدلّ على ذلك قوله في سياق الخطاب: (ان اتّبع الا ما يوحى الىّ) لا يختص بالقران دون غيره فهذا يدلّ على جواز تبديل حكمه بوحي ليس بقران · و على أنه لا يجوز لنا

---

a) ms يكون

b) ms تنزيل

حمل المعنى على الحكم لأن الذى يقتضيه ظاهر اللفظ نسخ النظم و الرسم اذ كان المعنى الذى من اجله كان قرانا وجوده على ضرب من النظم • وان كانوا سألـــوه تبديل النظم و الحكم معا فلا دلالة فيه ايضا على ما اختلفنا فيه لأنا لم نقل أنـــه[a] يبدّل شيئا منه من تلقاء نفسه و انما قلنا انما يتّبع ما يوحى اليه و ما يوحى اليه قـد[b] يكون قرانا و غير قران •

فان قال قائل قال الله تعالى : (و اذا بدّلنا آية مكان آية والله أعلم بما ينزل قالوا انما انت مفتر) (25) و هذا يدلّ على أنه انما نسخ الآية بآية مثلها قطعا لحجج الكفار و ابطالا لدعواهم أنه افتراها و أنه اتى بها من قبل نفسه •

قيل له و ما فى قوله تعالى : (و اذا بدّلنا آية مكان آية) ما يوجب ان حكم القران لا ينسخ بالسنة و انما أكثرما فيه الاخبار بأنه اذا بدّل آية مكان آية قال الكفار: (انما انت مفتر) و لم يقل أنه لا ينسخها بالسنة • و امّا قوله : انما بدّل آية مكان آيـــة قطعا لحجج الكفار و بطلانا لدعواهم فانه قد اخبر الله تعالى أنهم لم ينتهوا عـن قولهم هذا تبديل آية مكان آية و لم يمتنع قولهم ذلك من نسخ آية باخرى و كذلك لا يمنع نسخها بالسنة[+] و ان قال الكفار ذلك • و على أن[c] قوله : (و اذا بدّلنا آيـــة fo.153b.

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a) ms ننقل

b) ms قران

c) ms above the line.

مكان آية) انما يتناول نفس المتلو لا الحكم و ليس تبديل المتلو ما يوجب تبديل الحكم
(26)
و الاختلاف بيننا في الحكم لا في المتلو فليس ما ذكروه /ي/تعلق بموضع الخلاف ٠

فان قيل لو نسخها بالسنة لارتاب الكفار و قالوا انه من عنده ٠

قيل له قد ارتاب الكفار مع نسخها بآية اخرى و لم يمتنع من ارتيابهم من نسخها بانه

من غيرها فلذلك لا يمنع نسخها بالسنة ٠

قد دللنا على جواز نسخ القران بالسنة بما قدّمنا و أنه ليس في العقل و لا في السمع
b
ما يمنع من ذلك ٠ و ندلّ الآن على بطلان قول من زعم أنه لم يجد نسخ القران بالسنة

بعد موافقته ايّانا على تجويزه ٠ فنقول ان اصحابنا قد ذكروا احكاما في القران لم

يثبت نسخها الا بالسنة ٠

(27) c
منها قوله تعالى : (واللاتي يأتين الفاحشة من نسائكم فاستشهدوا عليهن اربعة منكم)

الى قوله تعالى : (توابارحيما) ٠ فاتّفق السلف من اهل العلم بالتفسير منهم ابن

عباس و غيره أن حد الزانيين المحصن و غير المحصن كان الحبس و الاذى المذكورين
d
في هذه الآية ثم نسخ ذلك عنهما بالجلد لغير المحصن و الرجم للمحصن ٠

قال ابوبكر: و الموجب لذلك حديث عبادة بن الصامت عن النبي عليه السلام

---

a) ms المتلوا

b) ms يجز

c) ms وا outer left-hand margin.

d) ms عنها

" البكر بالبكر جلد مائة و تغريب عام و الثيب بالثيب/الجلد و/ الرجم "، و الدليل (23)
على أن الحبس و الاذى نسخا بالخبر قول النبي عليه السلام : " خذوا عني قـــد
جعل الله لهن سبيلا "، فنبهنا على وجود السبيل الذى ذكر الله تعالى في قوله :
(او يجعل الله لهن سبيلا) و دل بقوله : "خذوا عني "، على معنيين : احد هما
a
الاخبار بالنسخ في الحال و أنه لم يتقدّم/نسخهما / قبل هذا الوقت . و الثانـي
أن هذا النسخ واقع لا بقران بل بسنّته عليه السلام (29) .

فان قال قائل انما نسخ ذلك بقوله تعالى : (الزانية و الزاني فاجلدوا كل واحد منهما
(30)
مائة جلدة) .

قيل له هذا غلط من وجهين : احد هما ان قوله : "خذوا عني "، قد افاد وقوع النسخ
بسنته لا بالقران و الثاني قوله : "قد جعل الله لهن سبيلا "، قد دلّ على أن آية
الجلد لم تكن نزلت و أن السبيل انما يثبت لهن في الحال لا في حال متقدمة و لو
كانت آية الجلد قد نزلت قبل ذلك لكان السبيل متقدما فلم يكن يصح الاخبار بأن
السبيل مأخوذ عنه (3I) و لا نبههم على حدوده b الاربع تقدم علمهم بها و تقريرها قبـل
ذلك عندهم . و على أنه لو كان الامر على ما ذكرت لكانت دلالة الخبر قائمة علـى

---

a) ms يتقد مهما

b) ms وجوده

وقوع نسخها بالسنة و هي أن آية الجلد معلوم أن حكمها مقصور على غير المحصن
a
و قد كان الحبس و الاذى حدا ثابتا على المحصن و غيره لأن احدا من السلف لم

يقل انه كان حدا لاحد الفريقين دون الآخر و كانت آية الجلد + ناسخة للحبس و الاذى fo.I54a.

من غير المحصن • و لو خلينا بعد ذلك و مقتضى حكم اية الحبس و الاذى و ايـــة
b
الجلد لاوجب ذلك بقاء حكم الحبس و الاذى في المحصنين و لا شيء نسخه عنهما الا ايجاب

الرجم و الرجم ثبت بالسنة • و على أنه ليس في آية الجلد ما يوجب نسخ الحبس

و الاذى لأنه لم يكن يمتنع اجتماعهما و ما يصحّ اجتماعه مع الاوّل لا يجوز وقوع النسخ

به فعلمنا أن النسخ وقع بغيره •

فان قيل ما انكرت أن لا يدلّ حديث عبادة في الجلد و الرجم على نسخ الحبس و الاذى
c
لأن الذى في الآية من ذلك موقت بقوله تعالى : (او يجعل الله لهن سبيلا) فانما

بيّـــن الرسول عليه السلام ذلك السبيل كما لو قال في الآية الى d سنة لم يكـــن

مضى السنة موجبا لنسخها ؟

قيل له ليس هذا كما ظننت لأن قوله : (او يجعل الله لهن سبيلا) ليس بتوقيت اذا

لم يكن يمتنع مع وجود هذا القول أن لا يجعل الله لهن سبيلا ابدا فيكون حد هما

---

a) ms لا

b) ms above the line.

c) ms missing.

d) ms اى

الحبس و الاذى على التأبيد و لو لم يعطف عليه قوله : (او يجعل الله لهن سبيلا) لكان معقولا من الآية ثبات حكمها الى أن ينسخها الله تعالى بغيرها من الاحكام و ذكر السبيل انما افاد تأكيد بقاء الحكم الى وقت وقوع النسخ • و على انا لـــو سلمنا لك ما ادعيت كانت دلالة الخبر قائمة على صحة ما ذكرنا و ذلك لان السبيل

a

مذكور في النساء خاصّة غير مذكور في الرجال لأن حد الرجل كان الاذى الى أن

(32)

يتوب بقوله تعالى : (فآذوهما فان تابا و اصلحا فاعرضوا عنهما) و هو منسوخ الآن برجم المحصن و جلد غير المحصن • و قد بيّنا أن ثبوت الرجم الناسخ لحكم الآية ثابت بالسنة فلا محالة قد اوجب نسخ القران بالسنة •

b

و قد قال بعض المخالفين : يحتمل أن يكون الحبس و الاذى كان في غير المحصن

(33)

فنسخ بقوله تعالى : (الزانية و الزاني فاجلدوا) و لم يكن للمحصنين حكم ثابت فكان

c

موجب الرجم حدا مبتداء •

قال ابوبكر رحمه الله : و هذا غلط من قائله من وجهين : احدهما أن كل من روى عنه تأويل هذه الآية من السلف قد قال : ان ذلك كان حد الزانيين و لم يذكروا فرقـا بين المحصن و غيره و لو كان حدا لاحد الفريقين دون الآخر لنقل و لفرقوا بينهما ،

---

a) ms الرجال

b) ms النسخ

c) ms حد

اذ غير جائز أن يعلموه حدا لفريق دون فريق فينقلوا ما يوجب كونه حدا للفريقين جميعا ، فدلّ ذلك على سقوط قول هذا القائل • و الوجه الآخر أن قوله عليه السلام : "خذوا عني قد جعل الله لهن سبيلا ،، اخبار[+] بأن السبيل لجميع ما fo.I54b. تضمنته الآية التي فيها ذكر السبيل للفريقين فقد تضمّن ذلك منه كون الحبس و الاذى المذكورين في الآية حدا للفريقين من المحصنات و غير هن • لو لا ذلك لاقتصر بذكر السبيل على غير المحصنة فلما جمع[a] الفريقين من المحصنات و غير هن في بيان السبيل فقال : "البكر بالبكر جلد مائة و الثيب بالثيب الجلد و الرجم ،، دلّ ذلك على أن الحبس و الاذى المذكورين[b] في الآية نسخا بالخبر[c] عن الفريقين جميعا • و على أن الشافعي قد قال : نسخ الحبس و الاذى عن المحصنين بقول النبي عليه السلام : (34) "الثيب بالثيب الجلد و الرجم ،، فمن منع ذلك من اصحابه فانما ينفر بذلك قول صاحبه •

و قال قائل يحتمل أن يكون الحبس و الاذى منسوخين عن المحصن بالرجم الذى كان في آية من القران و قد نسخت تلاوته فلا يدلّ ما ذكرت على أنه منسوخ بالسنة •

و هذا غلط لأن النبي عليه السلام اخبر في حديث عبادة أن السبيل المذكور في الآية

---

a) ms جميع

b) ms المذكور

c) ms الخبر ناسخا للحكم

/ما / كان عقيبه /الا / ما اوجبه /هنا / بقوله : "خذ وا عني قد جعل الله لهن سبيلا ،،
فعلمنا أنهم نقلوا من الحبس و الاذى الى ما في هذا الحديث بلا واسطة حتم بينهما.(35)

و لا يقول احد من الناس ان ما روى في خبر عبادة من قوله : "خذ وا عني قد جعل الله لهن سبيلا ،، كان قرانا في وقت من الاوقات و كيف يكون قرانا مع اخباره عليه السلام بأنه مأخوذ عنه لا عن القران فدلّ على أن الحبس و الاذى منسوخان عن المحصن بالرجم المذكور في خبر عبادة الذى لم يكن قرانا قط . و لو كان قرانا منسوخ التلاوة لما قال عليه السلام : "خذ وا عني ،، و لكان السبيل الذى جعل لهن متقدما لهذا القران[b] المنسوخ التلاوة الثابت الحكم و في خبر عبادة ما ينفى هذا فدلّ على أن الحبس و الاذى منسوخان عن المحصن بالرجم الذى لم يكن ثبوته بقران نسخت تلاوته . و من جهة اخرى أنه لو ساغ هذا التاويل في ذلك لجاز أن يقال في كل سنة تثبت عن النبي عليه السلام انها من القران المنسوخ التلاوة فيوجب هذا أن لا يثبت للنبي عليه السلام سنة و لجاز أن يقال في جميع ما نسخ من القران و ما[c] وجد في القران ما يوجب نسخه انه انما نسخ بالقران المنسوخ التلاوة ، ثم نزلت الآية الاخرى بالحكم الآخر ، وهذا خلف من القول . و لجاز أن يقال ما نسخت سنة قط الا

---

a) ms وة outer left-hand margin.

b) ms after القران see بالقران

c) ms مما

بقران قد نسخت تلاوته فيوجب هذا بطلان قول مخالفينا ان السنة لا ينسخها القران ٠

فان قال قائل كيف يجوز أن يكون حديث عبادة ناسخا لحكم القران و هو من اخبار

الآحاد و من اصلكم أنه لا يجوز+ نسخ القران باخبار الآحاد ؟ fo.I55a.

فالجواب عن هذا من وجهين : احدهما و هو أن خبر عبادة و ان كان وروده من طريق

الآحاد فقد اجتمعت الامة على استعمال حكمه في ايجاب الرجم الا من شذّ عنها[a] ممن

لا يعتد /ب/ خلافه[b] من الخوارج (36) ٠ و ما كان هذا سبيله من اخبار الآحاد فهو

موجب للعلم في معنى الخبر المتواتر و يجوز نسخ القران به ٠ الا ترى أن قوله عليه

السلام : "لا وصيّة لوارث" (37) هو من اخبار الآحاد و قد اجاز اصحابنا نسخ القران به

لتلقّي الناس اياه بالقبول و اتفاقهم على استعمال حكمه ٠ و الوجه الآخر أن رجم

المحصن قد ثبت عن النبي عليه السلام باخبار متواترة منتشرة موجبة للعلم بمخبراتها

فانما اثبتنا الرجم بهذه الاخبار و بخبر عبادة و اثبتنا بها نسخ الحبس و الاذى عن

المحصنات فصار حظ خبر عبادة في اثبات تاريخ الرجم و انهم نقلوا من الحبس و الاذى

الى الرجم بلا واسطة حكم بينهما و لا نزول آية قبله اوجبت نسخهما (38) ٠ و قد يجوز

اثبات تاريخ الحكم بمثله و ان /لم/ يتعلق[c] به حكم النسخ اذا كان النسخ واقعا به

---

a) ms عليها

b) ms after خلافه see خلافا

c) ms تعلق

و بغيره مما يوجب العلم بخبره عند اجتماعهما ٠

و مما قيل انه نسخ من حكم القران بالسنة قوله تعالى : (كتب عليكم اذا حضر احدكم
(39)
الموت[a] ان ترك خيرا الوصيّة للوالدين و الاقربين حقا على المتقين) و قوله تعالى :
(40) b
(وصيّة لازواجهم متاعا الى الحول غير اخراج) فقد كانت الوصيّة لهم واجبة بهذه الآية
(4I)
لأن قوله تعالى : (كتب عليكم) معناه فرض عليكم كقوله : (كتب عليكم الصيام) و نحوه ٠

و ليس في القران ما يوجب نسخه فلم ينسخ الا بقول النبي عليه السلام : "لا وصيّة
(42)
لوارث ،، فزعم مخالفونا أن ذلك منسوخ بآية المواريث لقول النبي عليه السلام حين نزلت
(44) (43)
آية المواريث : "ان الله تعالى قد اعطى كل ذى حق حقه فلا وصيّة لوارث ،، فاخبر أن

الوصيّة للوارث منسوخة بآية المواريث كما لو قال : "لا وصيّة لوارث لأنه قد جعل لـــه

الميراث ،، كان معقولا أن الناسخ للوصيّة هو استحقاق الميراث لا قوله : "لا وصيّة لوارث ،،٠

و الجواب أن ما ذكروه في ذلك لا يوجب كون الميراث ناسخا للوصيّة و ذلك أنه لا يمتنع
(45)
اجتماع الميراث و الوصيّة في حال واحدة لشخص واحد ٠ و آية المواريث انما فيه ايجاب
(46)
الميراث بعد الوصيّة بقوله تعالى : (من بعد وصيّة يوصى بها او دين) فلو خلينـــا

و الآيتين لجمعنا لهما بين الميراث و الوصيّة لأن كل حكمين يجوز[+] اجتماعهما فـــي ٠Eo.I55b

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a) ms missing.

b) ms متاعلى

حال واحدة لشخص واحد فليس في ورود احدهما بعد الآخر ما يوجب نسخه على ما (47) a
بيّناه فيما سلف فوجب على هذا متى وجدنا حكمين قد نسخ احدهما عند ايجـــاب (48)
الآخر مما يصح اجتماعه أن نقول ان النسخ واقع بغيره لأنا لو خلينا و اياهما لمـا
اوجبنا نسخا • و قوله عليه السلام : "ان الله قد اعطى كل ذى حق حقه فلا وصيّـة
لوارث ،، لا يوجب ما ذكروه ،لأن آية الميراث اذا لم توجب نسخ الوصّية لما بيّنا فليس (49)
يجوز أن يقول النبي عليه السلام انها هي الناسخة لها •

و امّا قولهم ان هذا بمنزلة قوله لو قال : "لا وصيّة لوارث لأن الله تعالى قد اعطى كل
ذى حق حقه ،، فانا لو سلمنا لهم ذلك لم يدل على ما قالوا لأنه لا يمتنع أن يقول :
"لا وصيّة لوارث لأن الله قد اعطى الميراث ،، فنسخ وصيّته بوحى من عنده لا بآية
الميراث فاذا لم يكن هذا ممتنعا بل يكون سائغا جائزا لم يجز لنا أن نقول ان هذا
القول اقتضى كون الوصيّة منسوخة بالميراث• و انما معنى ذكره عليه السلام الميراث عند
ذكر نسخ الوصيّة انه ، و الله اعلم ، اراد أن يبيّن آية و ان حرم حظه من الوصيّة فانه قد
اعطى من حظ الميراث ما عسى أن يكون خيرا له من الوصيّة فاخبر عليه السلام انه لم يخله
في الحالين قبل نسخ الوصيّة و بعدها من حظ في مال الميّت فبان بما وصفنا انه ليس فيما

---

a) ms before على see و

اعترض به المخالف ما ينفى أن يكون الميراث منسوخا بقوله : "لا وصيّة لوارث،، .

و الذى عندى أن /فرضية/ الوصية للوالدين و الاقربين يجوز أن تكون منسوخة بقوله (50)
تعالى : (من بعد وصيّة يوصى بها او دين) فاجاز له وصيّة من اىّ وصيّة كانت و لمن
كانت لانه اطلقها بلفظ منكور ثم جعل باقى المال للورثة على السهام فلا يبقى بعد
ذلك وصيّة يستحقها الوالدان و الاقربون فتضمّنت هذه الآية نسخ ايجاب الوصيّة لهم
من هذه الجهة .

فان قال قائل ليس في قوله تعالى : (من بعد وصيّة يوصى بها او دين) نفى جواز نسخ الوصية للوالدين والاقربين اذا كان المذكور في الآية وصية منكورة غير مقصورة على قوم دون قوم فهي جائزة للوارث بظاهر الآية فلم ينسخ جوازها للوارث الا قوله عليه السلام : "لا وصية لوارث،، .

قيل الذى في القران ذكر ايجاب الوصية للوالدين و الاقربين بقوله : (كتب عليكم اذا حضر احدكم الموت) و ليس فيه ذكر جوازها الا عن الواجب و لم تقتض الآية جوازها على جهة الشرع بها و الوصيّة المذكورة في آية المواريث لما كانت مطلقة على وجه النكرة فقد تضمّنت +نسخ ايجابها . و امّا قوله عليه السلام : "لا وصيّة لوارث،، لم ينسخ به :o.I56a.

شيء من حكم الآية لأن الذى فيها الايجاب /و/قد نسخ بما ذكرنا و أمّا الجواز على غير وجه الايجاب فهو حكم آخر ليس له ذكر في الآية ٠

فان قال يحتمل أن يكون المراد بقوله تعالى : (من بعد وصّية يوصى بها او دين) الوصية التي اوجبها للوالدين و الاقربين بالاية الاخرى ٠

قيل له لو كان كذلك لقال من بعد الوصّية حتى يرجع اللفظ الى الوصّية المعهودة التي قد تقدّم ذكر ايجابها للوالدين و الاقربين اذ جعل باقى المال بعد هذه الوصّية للورثة ٠ و من اجل ذلك قلنا ان ايجاب الوصية للوالدين و الاقربين اذا لم يكونوا ورثة منسو خ[a] بقوله تعالى : (من بعد وصية توصون بها او دين) (5I) لأنه اقتضى جوازها لسائر الناس و جعل باقى المال بعد ها للورثة فتضمّن ذلك نسخ وجوبها للوالدين و الاقربين وارثين كانوا او غير وارثين ٠ و استدللنا بذلك على بطلان قول طاوس و مسروق و مسلم بن يسار في آخرين حين اثبتوا فرض الوصية للوالدين و الاقربين اذا لم يكونوا ورثة و لم يجوزوها للاجنبيين ما دام هؤلاء موجودين (52) ٠

و قد استدلّ الشافعى على جواز الوصية للاجنبي لأن النبي عليه السلام جعل للمعتقين[b] في المرض الثلث و لم يكن بينهم و بين الميّت قرابة فقد دلّ هذا على

---

a) ms منسوخة

b) ms مقيقين

بطلان ايجاب الوصية للوالدين و الاقربين • و هذا يقتضى منه اجازة نسخ الوصية
(53)
المذكورة للوالدين /و/ الاقربين اذا لم يكونوا ورثة بالخبر •

و مما قيل انه نسخ من القران بالسنة قول الله تعالى : (فولّ وجهك شطر المسجد
(54)
الحرام و حيث ما كنتم فولوا وجوهكم شطره) قالوا :فقد كان هذا حكما عاما مستقرا في
سائر الصلوات باجماع الامة ثم اباحت السنة ترك التوجه الى القبلة عند الخوف و في
السفر للراكب و هذا نسخ اذ غير جائز ورود دليل الخصوص بعد استقرار ذكر العموم
(55)
الا على وجه النسخ • قالوا :و الدليل على أن صلاة الخوف انما نزلت بعد ذلك ان
a
النبي عليه السلام اخّر الصلوات يوم الخندق و لم يصلّ صلاة الخوف لانّها لم تكن
(56)
نزلت • قالوا :و قد اعترف الشافعى بذلك في امر صلاة الخوف •

b
قال ابوبكر: و هذا عندى لا دليل فيه على وجود النسخ لانّه لا يمكن لاحد أن يدّعى
ان التوجه الى الكعبة قد كان واجبا في حال الخوف و في السفر على الراحلة
c
للمتنفّل ثم ابيح ترك التوجه اليها في هاتين الحالتين بل يجوز أن يقال لم يؤمروا
d
بدّيا بالتوجه الى الكعبة الا في حال الامن و في غير حال السفر /و الصلاة/ للمتنفل على .o.I56b
(57)
الراحلة مخصوصة من قوله تعالى : (فولّ وجهك شطر المسجد الحرام)و/ليس/لانّ النبي عليه

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a) ms اخر الصلوات اخر الصلوات

b) ms احد

c) ms اليهما

d) ms written as a catchword.

السلام لم يصلّ صلاة الخوف الا بعد مضى مدّة من لزوم فرض التوجه الى الكعبة ما يوجب أن يكون لزوم التوجه اليها قد كان عاما في سائر الصلوات ثم نسخ لأنه لا يمتنع أن تكون الصحابة قد علمت حين نزول الآية من خطاب النبي عليه السلام ما أوجب كون ذلك مقصورا على حال الامن و الاقامة دون حال الخوف و السفر ثم لم يبق فعلها غير متوجه الى الكعبة الا عند الحاجة • و على أن سياق قصة الامر بالتوجه الى الكعبة يدّل على انهم كانوا مأمورين بها في حال دون حال •

و امّا قوله تعالى : (فاينما تولوا فثم وجه الله) فظاهر الآية يقتضى جواز التوجه الى سائر الجهات الا انه لما كان قوله تعالى : (فول وجهك شطر المسجد الحرام) يقتضى لزوم التوجه اليها حتما كان قوله تعالى : (فاينما تولوا فثم وجه الله) مستعملا في حالتى الخوف و السفر للمتنفل على الراحلة اللتين صلى النبي عليه السلام فيهما الى غير الكعبة • و لا يجوز أن يقال في مثل هذا انه نسخ كما لا يقال في قوله تعالى : (حرمت عليكم امهاتكم) انه ناسخ لبعض ما انتظمه قوله تعالى : (فانكحوا ما طاب لكم من النساء) و ما جرى مجرى ذلك من الآى الخاصة و العامة • و على أنه لو كان نسخا لكان نسخا لكان نسخ القران بقران و هو قوله تعالى : (فاينما تولوا فثم وجه الله) •

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a) ms يتفق

b) ms فعلنا

c) ms حال

d) ms ناسخا

و قد روى عبد الملك بن ابى سليمان عن سعيد بن جبير عن ابن عمر قال : "كان رسول الله صلى الله عليه و سلم يصلى تطوعا حيث توجهت به راحلته و هو يأتى من مكة الى المدينة ،، قال ابن عمر: "وانا اصلى حيث توجهت بي راحلتي تطوعا ،، ثم تلا (64) (65) (و لله المشرق و المغرب فاينما تولوا فثم وجه الله) و قال في هذا نزلت هذه الآية

فاخبر ابن عمر أن هذه الآية هي التي اباحت الصلاة في هذه الحال الى غير الكعبة • فلا يخلو من أن يكون خصت الآية التي فيها الامر باستقبال الكعبة عاما او نسختها و اى الوجهين كان فلا دلالة فيه على نسخ القران بالسنة •

و امّا قول الشافعى و غيره ممن قال ذلك من اصحابنا ان صلاة الخوف لم تكن نزلت يوم الخندق و قد كانوا مأمورين في حال الخوف بالتوجه الى الكعبة فلذلك لم يصلها يومئذ لتعذر التوجه اليها فانه دعوى ليس عليها دليل • و قد ذكر محمد بن اسحٰق و الواقدى جميعا ان غزوة ذات الرقاع كانت قبل الخندق و لم يختلفوا أن النبي عليه السلام قد صلى بذات الرقاع صلاة الخوف • فثبت أن صلاة الخوف قد كانت نزلت قبل الخندق و انما ترك (66) + النبي صلى الله عليه و سلم صلاة الخوف يوم الخندق لأنه شغل fo.I57a. بالقتال عن الصلاة • و من اجل ذلك قلنا انه لا يجوز للمسايف و للمقاتل صلاة و انه يؤخرها

حتى ينقضى القتال • ولذلك قال النبي عليه السلام يومئذ : "ملأ الله قبورهم و بيوتهم نارا كما شغلونا عن الصلاة الوسطى"(67)

و مما قيل انه منسوخ من القران بالسنة قول الله تعالى : (و ان فاتكم شيء من ازواجكم الى الكفار فعاقبتم فاتوا الذين ذهبت ازواجهم مثل ما انفقوا)(68) • و هذا الحكم منسوخ عند الجميع ، وليس في القران ما يوجب نسخه ، فعلمنا أن نسخه كان بالسنة •

و مما نسخ منه ايضا بغير قران ما روى عطاء عن عبيد بن عمير عن عائشة رضى الله عنها في قوله تعالى : (لا يحلّ لك النساء من بعد)(69) قالت: ما توفى رسول الله صلى الله عليه و سلم حتى احلّ له أن يتزوّج من النساء ما شاء • و روى عنها حتى احلّ له نساء اهل الارض وليس في القران ما نسخه فثبت أنه نسخ بالسنة •(70)

فان قيل نسخه قوله تعالى : (انا احللنا لك ازواجك اللاتي اتيت اجورهن)(71) ؟

قيل لا دلالة في هذا على ما ذكرت لأن هذه الاباحة مقصورة على النساء المذكورات في الآية لأنه قال تعالى : (انا احللنا لك ازواجك اللاتي اتيت اجورهن و ما ملكت يمينك)(72) الى آخر الآية فلم يوجب نسخ قوله : (لا يحلّ لك النساء من بعد)(73) • و على أنه قد روى في التفسير أن قوله تعالى : (لا يحلّ لك النساء من بعد)(74) نزلت بعد قوله تعالى :

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a) ms after قيل see له

(75)
(انا احللنا لك ازواجك) •

فصل

و امّا نسخ حكم القران ، و ما ثبت من السنة من طريق التواتر ، بخبر الواحد فانه غير
a
جائز عندنا لأن خبر الواحد لا يوجب العلم ، و القران و ما ثبت بالتواتر يوجبان العلم
b (76)
بصحة ما تضمناه فغير جائز أن ينسخ ما كان هذا وصفه بما لا يوجب العلم •

فان قال قائل قد يجوز ترك ما يوجب العلم بما لا يوجبه لأن ما ثبت من اباحة الاشياء
c
في الاصل قبل ورود السمع قد وقع العلم بصحتها و يقبل مع ذلك خبر الواحد في
حظرها •

قيل له ليس كذلك لأن العقل و ان كان قد دلّ على اباحة اشياء في الجملة على حسب ما
d e (77)
تقدّم منا القول فيه فانا متى قصدنا الى استباحة شيء منها بعينه فانما طريق استباحته
f
الاجتهاد و غلبة الظن في أن لا يلحقنا به ضرر أكثر مما نرجو به من نفع • الا ترى
أن التصرف في التجارات و الخروج في الاسفار و شرب الادوية و اكل الاطعمة انما يصح
لنا منها استباحة ما لا يلحقنا به ضرر أكثر من النفع الذى نرجوه بها في غالب ظننا •
(78)
و قد بيّنا ذلك /فيما/ سلف و ذكرنا أن نظيره ما امر الله تعالى به في قبول شهادة

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a) ms يوجب
b) ms الر
c) ms المنع
d) ms الفعل but cf. p.I45, 1.6.
e) ms استباحة
f) ms نرجوا

شاهدين + مرضيين في الجملة و ذلك ثابت بما اوجب لنا العلم الحقيقي ثـم متى عيّنا to.I)7b.

شاهدين كان قبول شهادتهما على حسب ما يغلب في الظن من قبولها او ردّها فكيف ما
(79) a
وصفنا في كون الاشياء مباحة في الاصل على السبب •

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a) sic.

باب ذكر نسخ الناسخ من الاحكام

قال ابوبكر رحمه الله : قد يرد النسخ على الناسخ من الحكم و ذلك نحو قوله تعالى : (ما كان لنبي أن يكون له اسرى حتى يثخن في الارض)(I) . قال ابن عباس: نسخه قوله تعالى : (فاما منا بعد و اما فداءً)(2) /ثم/ نسخه قوله تعالى : (اقتلوا المشركين حيث وجدتموهم)(3) . قال ابوبكر: و يدلّ على ذلك انه قد روى أن سورة برأة من آخر ما نزل من القران(4) . و من نحو ذلك قوله تعالى : (و اللاتي يأتين الفاحشة من نسائكم فاستشهدوا عليهن اربعة منكم)(5) الى آخر القصة . ذكر ابن عباس أنه كان حد الزانيين بدءًا و أنه نسخ بالجلد و الرجم اللذين[a] نسخ بهما ذلك ما روى في حديث عبادة بن الصامت عن النبي صلى الله عليه و سلم أنه قال : " خذوا عني قد جعل الله لهن سبيلا البكر بالبكر جلد مائة و تغريب عام و الثيب بالثيب الجلد و الرجم "(6) ، و هذا الحد منسوخ عن غير المحصن بقوله تعالى : (الزانية و الزاني فاجلدوا كل واحد منهما مائة جلدة)(7) و عن المحصن برجمه ماعزا و الغامدية حين قال[b] : " و اغد يا /ا/ نيس على امرأة هذا فان اعترفت فارجمها "(8) ، فلم توجب الآية النفى و لم يوجب الخبر الجلد مع الرجم و كان ذلك بعد حديث عبادة لانهم نقلوا من الحبس و الاذى الى ما في

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a) sic.

b) ms جلد

حديث عبادة بلا واسطة لقوله : " خذوا عني قد جعل الله لهن سبيلا ،، ثم كان
(9)
نزول الآية و قصة ماعز بعد ذلك .

a
و نحو ذلك من السنة حيث اباحت الكلام في الصلاة في اوّل الاسلام ثم حظر ، ثم
٤٥ ابيح ، ثم حظر ، و ذلك لأن عبد الله بن مسعود رحمه الله ذكر أنه قدم من الحبشة ،
5 فروى انه كان بمكة ، و روى أن قدومه منها كان بعد الهجرة الى المدينة و النبي عليه
السلام كان يريد الخروج الى بدر ، قال : فسلّمت على النبي صلى الله عليه و سلم و هو
(I0)
يصلّى و قد كان يسلّم بعضنا على بعض في الصلاة ، قال : فلم يردّ عليّ السلام فأخذني
ما قدم و ما حدث فلما سلّم من صلاته قال عليه السلام : " ان الله يحدث من امره ما
(II)
يشاء و ان مما احدث أن لا تتكلموا في الصلاة ،، فثبت بذلك حظر الكلام في الصلاة
(I2)
I0 متقدّما ليوم بدر . و حديث ذى اليدين في اباحته ايضا قبل يوم بدر ثم روى عن
(I3)
زيد بن ارقم+ أنه قال : " كنا نتكلّم في الصلاة حتى نزل قوله تعالى : (و قوموا لله قانتين) f٥.I58a.
(I4)
فامرنا بالسكوت ،، فاخبر عن نفسه مشاهدة حال اباحة الكلام فيها و هو ممن لم يشهد
بدرا ، و لم يكن ممن يعقل لصغره ، او عسى /أن/ لم يكن ولد فثبت بذلك اباحته بعد
حظره ، ثم حظره بعد ذلك بسائر الاخبار المروية في حظره نحو حديث معاوية

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a) ms الاسلم

ابن الحكم السلمي أن النبي صلى الله عليه و سلم قال : "ان صلاتنا هذه لا تصلح
(I6) a (I5)
فيها شيء من كلام الآدميين ،، قال : فاتّفقوا ان آخر حكمه كان الحظر .

و من ذلك ايضا متعة النساء لأنه روى عن على بن ابى طالب: "ان النبي عليه السلام
b (I7)
اباحها ثم حرّمها يوم خيبر ،، و روى سبرة الجهني : "ان النبي عليه السلام اباحها
c (I8)
في حجة الوداع ثم حرّمها ،، ثم ابيحت بعد الحظر ، ثم حظرت بعد الاباحة ،
(I9)
فكان آخر امرها الحظر .

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a) ms before قال see و لأن النبي عليه السلام

b) ms شهرة but cf. Jaṣṣāṣ, aḥkām, vol.2, p.I77.

c) ms below the line.

باب آخر في النسخ

روى انهم كانوا يتوارثون بالحلف و بالهجرة في اوّل الاسلام دون[a] الرحم بعد قولـه تعالى : (و الذين عاقدت ايمانكم فاتوهم نصيبهم)(I) و قال تعالى : (و المؤمنون و المؤمنات بعضهم اولياء بعض)[b](2) و قال تعالى : (و الذين آمنوا و لم يهاجروا ما لكم من ولايتهم من شيء حتى يهاجروا)(3) . فقيل ان ذلك منسوخ بقوله تعالى : (و اولوا الارحام بعضهم اولى ببعض في كتاب الله من المؤمنين و المهاجرين)(4) .

و من الناس من لا يرى ذلك نسخا و يقول انما اخبر له أن وارثا[c] اولى من وارث . قال : فامّا الميراث بالحلف و المعاقدة فقائم ، لم ينسخ /ميراثهم/ لانّه اذا لم تكن له قرابة[d] استحقّ الحليف الميراث اذا كان عاقده و والاه على أن يرثه اذا مات . و روى عن عبد الله ابن مسعود أنه قال : " يا معشر همدان ما احد من العرب باولى من أن يموت الرجل منهم و لا يترك وارثا منكم فاذا كان كذلك فليضع احدكم ماله حيث شاء ".

و قال القائلون : بما وصفنا ان هذا ليس بنسخ لانّ ميراثه لم يسقط و ان كان غيره اولى به منه في هذه الحال كما أن الاخ من اهل الميراث و لا يرث مع الابن و لا يكون ميراثه منسوخا عند وجود الابن كذلك /من/ لم يكن له وارث من ذى رحم او ولاء فان لـــــه

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a) ms وان

b) ms after this verse see الا تفعلوه تكن فتنة في الارض و فساد كبير و الذين آمنوا ــــــــــ حتى يهاجروا which is the part of

c) ms حدث وارث

d) ms ثم نسخ

(5)
أن يضع ميراثه حيث شاء بحكم الآية التي فيها ايجاب التوارث بالمعاقدة ٠

قال ابوبكر: و الذى نقول في ذلك وجوب الارث بالمعاقدة منسوخ لا محالة في حال وجود ذى الرحم و ذلك لأن الله تعالى قد كان اوجبه للحليف مع وجود ذى الرحم و مع عدمهم و جعله اولى بهم فلما قال تعالى+ بعد ذلك : (و اولوا الارحام بعضهم fo.I58b.
(6) a
اولى ببعض في كتاب الله من المؤمنين و المهاجرين) فقد صرف عنهم في هذه الحال ما كان جعله لهم الى غيرهم من ذوى رحم النسب فاوجب ذلك نسخ ميراث الحليف و المعاقد في حال وجود ذوى الرحم ٠ و اذا لم يكن ذو رحم فحكم الارث قائم بينهما
b
على ما اقتضته الآية فكان النسخ انما ورد على احدى حالى ا ستحقاق الميراث بالمعاقدة و الحلف و هي حال وجود ذوى الرحم دون غيرها و بقى هذا الحكم في الحال التي
(7) c
لا يترك الميّت فيها ذا رحم على ما اوجبته الآية الموجبة لميراث الحليف و المعاقد ٠

(3)
و مما يشبه هذا و ليس بنسخ قوله تعالى : (ليستأذنكم الذين ملكت ايمانكم) الآية ٠

قال ابن عباس : كان الناس لم تكن لهم ستور فكان خادم الرجل يدخل اليه ، و هو مع اهله ، فامر الله بالاستئذان لذلك فلما اتى الله بالخير و اتخذوا الستور و الحجال رأى الناس أن ذلك قد كفاهم من الاستئذان ٠

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a) ms صرفت

b) ms الاستحقاق but لا crossed out.

c) ms المعاقدة

قال ابوبكر: فهذا يدلّ من قوله على ان مثل ذلك السبب لو عاد لعاد الحكم و ليس ذلك بنسخ لأن الحكم الاوّل باق و لم يسقط الا لحدوث سبب متى زال السبب عاد الحكم كالحائض لا صلاة عليها لاجل وجود الحيض الذى اذا زال لزمتها الصلاة ٠ و ليس ذلك بنسخ للصلاة عنها لان الصلاة انما /لا/ تجب في هذه الحال لحدوث سبب متى زال عاد حكم لزومها و لم تكن هناك حكم ثابت فنقلت عنه الى غيره ٠ و انما وردت الآية في ايجاب الاستئذان عند عدم الاسباب الساترة لهم عن اعين الداخلين اليهم من خدمهم و اولادهم فكان الامر بالاستئذان مقصورا على هذه الحالة و لم يكن قبله حكم ثابت نقلوا عنه بالآية الى غيره فمتى زال السبب الذى من اجله امروا بذلك

/ زال/ الحكم ٠

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a) ms الاستدلال