

NOTES ON ZAHIRI LEGAL THEORY

نبذ في أصول أهل الظاهر

Notes on Zahiri Legal Theory

ʿAbd al-Raḥmān Zaʿtarī · The Electric Collective for Rigorous Islamic Science

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Editorial preface

This edition

This edition translates the entire contribution posted on 15 September 2008 under the forum title Al-Kawkab al-Zahir fi Usul Ahl al-Zahir 2. It is a compact memorandum on knowledge, language, necessary implication, conflicting texts, analogy and contrary implication. The compiler expressly invites criticism and says the notes were collected earlier. It is not represented as the complete Al-Kawkab series: the July instalment credits Muhammad al-Rayhan and is a different textual contribution. The English title is editorial. This is a working translation draft, not a claim of scholarly review. The author's reasoning, unusual formulations and polemics are retained as his own. Inclusion does not imply agreement with every claim, political judgement or assessment of other people. Allegations are not presented as independently established facts. The collective's own statement of method must not be substituted for the author's.

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Dates below identify the surviving publication witnesses, not automatically the date of composition. Where the text says it was written earlier, that distinction is retained. A poster is not automatically the author of what he posts. Earlier attributions and quoted writers are identified where the witness supplies them; an unavailable earlier page is not treated as independently verified.

1. **Notes on Zahiri Legal Theory**. 15 September 2008 (forum timestamp: 21:13:58, +03:00). Posted by Abd al-Rahman Zatari. His opening identifies this as his earlier compilation from Ibn Hazm, Ibn Aqil, Ibn Arabi and al-Shawkani. No earlier composition date is supplied. Read the surviving source.

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Notes on Zahiri Legal Theory

ʿAbd al-Raḥmān Zaʿtarī · Arabic–English parallel edition

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[الكوكب الزاهر في أصول أهل الظاهر: نبذ في الأصول]

السلام عليكم ورحمة الله وبركاته : هذه نبذ من اصول أهل الظاهر جمعتها قديما من كلام ابن حزم وابن عقيل وابن عربي والشوكاني...

وكنت آمل أن تكون محررة أكثر مما هي عليه الآن لكن الظروف لا تسمح فآثرت عرضها عليكم أيها المشايخ الأفاضل للنقد والتقويم والإضافة وجزاكم الله خيرا..

لا طريق إلى العلم أبدا إلا :

1. بما أوجبته بديهة العقل وأوائل الحس .
2. مقدمات راجعة إلى بديهة العقل وأوائل الحس.

وبهذه المقدمات الصحيحة علمنا صحة نبوة نبينا محمد صلى الله عليه وسلم وعلمنا أن القرآن هو عهد الله إلينا فكان في القرآن وجوب أشياء ألزمنها والإنتهاء عن أشياء منعنا منها .

وتيقنا صحة كل ذلك بنقل الكواف مما ظهر من المعجزات , فلما أخذنا بالقرآن وجدناه مصححا لحجج العقول التي نتيقن بها صحة الأخبار من زيفها يقول تعالى :" ولقد ذرأنا لجهنم كثيرا من الجن والإنس لهم قلوب لا يعقلون بها ولهم آذان لا يسمعون بها أولئك كالأنعام بل هم أضل أزلئك هم الغافلون" وقال تعالى حاكيا عن مثل أولئك المنكرين لحجج العقول : "وقالوا لو كنا نسمع أو نعقل ما كنا من أصحاب السعير".

[Notes on Zahiri Legal Theory][1]

Peace be upon you, and Allah's mercy and blessings. These are some notes on the principles of the people of the apparent meaning which I compiled long ago from the writings of Ibn Hazm, Ibn Aqil, Ibn Arabi, al-Shawkani and others.

I had hoped to put them into a more carefully worked-out form than their present state, but circumstances do not permit it. I therefore preferred to present them to you, honoured shaykhs, for criticism, correction and additions. May Allah reward you with good.

There is no path to knowledge except through:

1. What immediate rational apprehension and the primary deliverances of the senses establish.
2. Premises which ultimately rest on immediate rational apprehension and the primary deliverances of the senses.

Through these sound premises we came to know the truth of the prophethood of our Prophet Muhammed ﷺ, and we knew that the Qur'an is Allah's covenant with us. In the Qur'an we found obligations which bind us, and prohibitions against things from which we must refrain.

We attained certainty about all of this through the transmission of the multitudes concerning the miracles that appeared. When we then took up the Qur'an, we found it confirming the rational proofs through which we distinguish true reports from false ones. The Exalted says: 'We have created for Hell many of the jinn and humankind: they have hearts with which they do not reason, and ears with which they do not hear. They are like cattle; indeed, they are further astray. Those are the heedless.' And the Exalted

[1] **Translator's note (L0):** Source contribution 1578; the editorial preface links the surviving page. Displayed publication date: 15 September 2008 (forum timestamp: 21:13:58, +03:00). Posted by Abd al-Rahman Zatari. His opening identifies this as his earlier compilation from Ibn Hazm, Ibn Aqil, Ibn Arabi and al-Shawkani. No earlier composition date is supplied.

relates the words of those who reject rational proofs: ‘Had we listened or reasoned, we would not have been among the inhabitants of the Blaze.’[2][3]

L8 Allah has made binding upon us obedience to what is in His Book, to what trustworthy transmitters report from His Messenger, and to what has come from His Messenger through recurrent mass transmission upon which the scholars of the Muslims agree. We examined these sources and found that some contain propositions which, when brought together, yield a ruling explicitly stated in meaning. This appears to be a fourth aspect, although it does not fall outside the three sources already mentioned. An example is his saying ﷺ: ‘Every intoxicant is wine, and every wine is forbidden.’ This yields: every intoxicant is forbidden. Its meaning is thus explicitly stated, plainly and necessarily.[4]

L9 Another example is His saying, exalted is He: ‘His parents inherit from him; his mother receives a third.’ By the reason through which we know things as they are, we know with certainty that any whole consists of a third and two thirds. If the mother has only a third and she and the father are the only heirs, the father has the two thirds. This is necessary knowledge from which reason cannot escape. We found it explicitly stated in meaning, even though it was not explicitly stated in words. To dispel every doubt, I say that adhering to the apparent meaning is not an unthinking fixation on the surface of the letters. It is to ascertain the proposition itself. The meaning borne by a text may be clearly understood from the words expressing it, according to familiar linguistic usage or in a more specific sense; or it may be understood through rational indications and their necessary implications and requirements—that is, its meaning may be grasped only through close

ولقد ألزمنا الله تعالى طاعة ما في كتابه وطاعة ما رواه الثقات عن رسوله وطاعة ما جاء به عن رسوله بتواتر أجمع عليه علماء المسلمين , فنظرنا فيها فوجدناها منها جملا إذا اجتمعت قام منها حكم منصوص على معناه فكان ذلك كأنه وجه رابع إلا أنه غير خارج عن الأصول الثلاثة التي ذكرنا وذلك نحو قوله عليه السلام : "كل مسكر خمر وكل خمر حرام" فأنتج ذلك كل مسكر حرام .فهذا منصوص على معناه نصا جليا ضروريا.

ومثل قوله تعالى : " وورثه أبواه فلأمه الثلث " وقد تيقنا بالعقل الذي به علمنا الأشياء على ما هي عليه أن كل معدود فهو ثلث وثلثان , فإذا كان للأم الثلث فقط وهي بالأب وارثان فقط فالثلثان للأب هذا علم ضروري لا محيد عنه للعقل ووجدنا ذلك منصوصا على المعنى وإن لم ينص على اللفظ, وحتى تنجلي كل شبهة أقول إن الوقوف على الظاهر ليس جمودا على ظواهر الحروف بل هو تحقيق للقضية إذ إن المعنى المحمول في النص قد يكون مفهوما بوضوح من ألفاظه المظهرة للمعنى لما هو متعارف عليه لغويا أو بمعنى أخص أو يكون مفهوما بدلائل العقل ولوازمه ومقتضياته أي المعنى لا يدرك إلا بلطف . أما استكراه الألفاظ على معاني لاتقلها العبارة من قريب أو من بعيد فإن مسلك عبد لكل زندقة .

[2] **Translator’s note (L7):** The first quotation is the post’s wording, which differs from Qur’an 7:179 and omits its clause about eyes; it is not silently corrected here. The second quotation refers to Qur’an 67:10.

[3] **Qur’an references (L7):** Qur’an 7:179 (Al-A’raf); Qur’an 67:10 (Al-Mulk).

[4] **Hadith references (L8):** Compare Sahih Muslim 2003a.

discernment. As for forcing words to carry meanings which their expression will not bear, whether remotely or directly, that is a road to every heresy.[5][6]

L10 Understood in this way, Allah's religion is complete: no event in any age escapes it. Among the marks of this religion's greatness is that the general scope of its wording suffices for every purpose and meets every need, solely through what is apparent in its language and what is apparent to reason. There is no intermediary in understanding revelation except reason. Nor is there any way to displace what reason necessarily establishes concerning things occupying the ranks in which their Creator, mighty and majestic, has placed them.

L11 It is obligatory to construe speech according to the apparent meaning assigned to it in the language. One may not go beyond that except through an explicit text or consensus. Whoever does otherwise corrupts all realities, all revealed laws and all rational understanding. There is no way to transfer an expression from the meaning it was assigned to convey; to do so is to follow falsehood, abandon truth, depart from the Sunnah and join the ranks of the Rafidah. All proofs invalidate transferring a word from its linguistic place; no proof validates it at all. We understand these general expressions through the language in which the Book was sent down to our Prophet Muhammed ﷺ: Arabic. We therefore know that when he specifies, in the Qur'an or in his own speech, a name with a particular ruling, that ruling must apply only to what that name entails. It must not be extended beyond the place where the Messenger of Allah ﷺ put it, nor may anything entailed by that name and falling under it be excluded from the ruling. To add to this is to add to religion: that is analogy. To subtract from it is to subtract from religion: that is specification. All of this is forbidden.[7]

فكان دين الله بهذا التوضيح كاملا لا تعزب عنه حادثة من الحوادث في أي عصر من الأعصار ...فكان من عظمة هذا الدين أن كانت عمومات ألفاظه كافية في كل الأغراض موفية لكل المآرب بظواهرها اللفظية وظواهرها العقلية فقط إذلا وسيط في فهم الشرع إلا العقل ،ولا سبيل إلى نقل موجب العقل من موضعه من كون الأشياء على مراتبها التي رتبها عليها بارئها عز وجل.

وحمل الكلام على ظاهره الذي وضع له في اللغة فرض لا يجوز تعديه إلا بنص أو إجماع ومن فعل غير ذلك فقد أفسد الحقائق كلها والشرائع كلها ، والمعقول كله ، ولا سبيل إلى نقل مقتضى اللفظ عن موضعه الذي رتب للعبارة عنه ، وإلا ركب الباطل ، وترك الحق وفارق السنة والتحق بركب الرافضة. وجميع الدلائل تبطل نقل اللفظ عن موضعه في اللغة ، ولا دليل يصححه أصلاً , وهذه العمومات نفهمهما باللغة التي نزل بها الكتاب على نبينا محمد عليه السلام وهي العربية فعلمنا حينئذ أنه عليه السلام إذا نص في القرآن أو في كلامه على اسم ما بحكم ما فواجب ألا يوقع ذلك الحكم إلا على ما اقتضاه ذلك الاسم فقط ، ولا يتعدى به الموضع الذي وضعه رسول الله صلى الله عليه وسلم فيه ، وألا يخرج عن ذلك الحكم شيء مما يقتضيه الاسم ويقع عليه ، فالزيادة على ذلك زيادة في الدين ، وهو القياس ، والنقص منه نقص من الدين ، وهو التخصيص ، وكل ذلك حرام.

[5] **Translator's note (L9):** The final Arabic clause is textually damaged (فإن مسلك عبد لكل زندقة). The English renders its apparent argumentative sense; no emendation is inserted into the Arabic witness. The inheritance example refers to Qur'an 4:11.

[6] **Qur'an references (L9):** Qur'an 4:11 (An-Nisa).

[7] **Translator's note (L11):** Specification means restricting a general expression to some of its instances. The author's categorical wording is retained alongside his later allowance for an exception established by another text; it has not been harmonised editorially.

وإن الواجب – كما قلنا- حمل الأمور على معهودها في اللغة ، ما لم يمنع من ذلك نص أو إجماع أو ضرورة . وأكثر الأسماء الشرعية موضوعة من عند الله تعالى على مسميات لم يعرفها العرب قط ، هذا أمر لا يجهله أحد من أهل الأرض ، فصح بهذا أن الأسماء تنقل في الشريعة عن موضوعها في اللغة ، ولا يجوز أن تحال اللغة فتنقل لفظ المستقبل إلى معنى الماضي إلا بنص آخر جلي وارد بذلك أو بإجماع متيقن أن المراد به غير ظاهره أو ضرورة .

ولا يجوز أن يفسر كلام الله تعالى إلا بكلامه أو بكلام رسوله صلى الله عليه وسلم أو بلغة العرب التي أخبر الله تعالى أنه أنزل بها القرآن .ولا يجوز أن نخبر عن مراد الله عز وجل ولا عن مراد رسول الله صلى الله عليه وسلم بغير خبر وارد عن الله تعالى بذلك ، أو عن رسوله صلى الله عليه وسلم.

فإن توهم التعارض بين نصين فلا يجوز العدول عن أحدهما إلى الآخر بل يجب استعمالهما معا .وبيان بعض ذلك :

1. أن يكون أحدهما أقل معاني فنستثني الأقل معاني من الأكثر معاني .
2. أن يكون أحد النصين موجبا بعض ما أوجبه النص الآخر أو حاضرا بعض ما حضره النص الأخر فلا تعارض هنا .
3. أن يكون أحد النصين فيه أمر بعمل ما , معلق بكيفية ما أو بزمان ما أو على شخص ما أو في مكان ما ويكون النص الآخر نهي عن عمل ما بعذر ما بكيفية ما...ويكون في كل من النصين حكمان فصاعدا ويكون الحكم الثاني الذي في النص الثاني عاما أيضا لبعض ما ذكر في هذا النص الآخر ولا شيئ آخر معه وهذا من أدق ما يمكن أن يعترض أهل العلم كما قال ابن حزم والبسط تجده في الإحكام يا طالب المعرفة.

L12 As we have said, matters must be understood according to their familiar linguistic usage, unless an explicit text, consensus or necessity prevents this. Most names used in revelation were assigned by Allah to things the Arabs had never previously known. No one on earth is ignorant of this. It is therefore established that revelation transfers names from their linguistic meanings. But one may not alter the language by making a future-tense expression mean the past, except through another clear, explicit text to that effect, certain consensus that something other than its apparent meaning is intended, or necessity.

L13 The speech of Allah Most High may be explained only by His own speech, by the speech of His Messenger ﷺ, or by the Arabic language in which Allah has told us He revealed the Qur'an. We may not make claims about what Allah, mighty and majestic, intended, or what the Messenger of Allah ﷺ intended, without a report from Allah or from His Messenger ﷺ establishing it.

L14 If two texts appear to conflict, one may not turn away from either in favour of the other: both must be put into effect. Some explanation follows:

L15 1. If one has a narrower range of meanings, we except that narrower range from the broader one.

L16 2. If one text makes obligatory some of what the other makes obligatory, or forbids some of what the other forbids, there is no conflict here.[8]

L17 3. One text may command an action subject to a particular manner, time, person or place, while the other prohibits an action under a particular excuse or manner, and so forth. Each text may contain two or more rulings; the second ruling in the second text may also apply generally to some of what is mentioned in the other text, and to nothing else. This is among the most subtle difficulties which may confront scholars, as Ibn Hazm said. The fuller treatment is in Al-Ihkam, seeker of knowledge.

[8] **Translator's note (L16):** The witness has حاضرا where the argument requires حاظرا, "forbidding"; the Arabic spelling is preserved. The same apparent spelling occurs in item 4.

L18 4. One text may forbid everything the other permits, or one may make something obligatory while the other removes that obligation entirely. Some of the people of the apparent meaning held that both should be set aside. Ibn Hazm held that we must examine which text agrees with the position we would have occupied had neither reached us: we set that one aside and take the other.

L19 5. A hadith may convey one ruling in a particular respect and another hadith a different ruling in that same respect. This is not a conflict—unless one of the two alternatives is expressly commanded. We then adopt that alternative, because doing so accepts an additional revealed requirement.

L20 6. When two reports address the same matter but one transmitter took part in the event himself, we take the report of the participant.

L21 7. When one of two reports was intended to explain a ruling and the other was not, we give precedence to the first.

L22 Assigning causal rationales to rulings is impermissible, because revelation is Allah's judgement, not reason's judgement. Whoever seeks the causes of rulings has asked the Lord about something concerning which he may not question Him. The Exalted says: 'He is not questioned about what He does, while they are questioned.' An exception is where the Lawgiver has expressly stated the cause; it has also been said: where it is clear and there is an evident likelihood that the Lawgiver intended it.[9][10]

L23 Analogy is also impermissible, because he ﷺ said: 'My community will divide into seventy-odd sects. Those who are the greatest trial for my community are people who measure matters by their own opinion, permitting the forbidden and forbidding the permitted.' As you see, analogy is doing what he ﷺ prohibited. It is also founded on assigning causal rationales. Such assignment is invalid; analogy is founded upon it; and what is built

4. أن يكون أحد النصين حاضرا لما أبيح في النص الآخر بأسره أو يكون أحدهما موجبا والآخر مسقطا لما وجب في هذا النص بأسره فذهب بعض أهل الظاهر إلى تركهما وذهب ابن حزم إلى أن الواجب أن ننظر إلى النص الوافق لما كنا عليه لو لم ثيرد واحد منهما فنتركه ونأخذ بالأخر.

5. أن يرد حديث بحكم ما في وجه ما ويرد حديث آخر بحكم آخر في ذلك الوجه بعينه فهذا ليس تعارضا اللهم إذا أمر بأحد الوجهين فحينئذ نأخذ به لأنه أخذ بالشرع الزائد.

6. أن يرد خبران في نفس المسألة لكن أحد الراويين باشر الأمر بنفسه فحينئذ نأخذ برواية من باشر الأمر.

7. إذا جاء خبران قصد بأحدهما توضيح حكم والأخر لا فنقدم الأول.

ولا يجوز القول بالتعليل لأن الشرع حكم الله وليس حكم العقل , فمن طلب علل الأحكام فقد سأل الرب عما لايجوز له سؤاله عنه قال تعالى : "لا يسأل عما يفعل وهم يسألون" . إلا أن تكون العلة قد نص عليها الشارع وقيل أو كانت واضحة واحتمال أن تكون مقصودة للشارع ظاهر...

ولا يجوز القول بالقياس لقوله عليه السلام :" تفترق أمتي على بضع وسبعين فرقة أعظمها فتنة على أمتي قوم يقيسون الأمور برأيهم فيحلون الحرام ويحرمون الحلال " . فالقياس كما ترى فعل لما نهى عنه عليه السلام ثم إنه مبني على القول بالتعليل والتعليل باطل والقياس مبني على التعليل ومابني على باطل فهو باطل . إلا إذا كانت العلة منصوصة فقد اختلف أهل الظاهر في حكم القياس آنذاك والأكثر على أنه لا يجوز.

[9] **Translator's note (L22):** The phrase "it has also been said" introduces an additional view, not an unqualified attribution of that view to all Zahiris. The Quranic quotation is 21:23.

[10] **Qur'an references (L22):** Qur'an 21:23 (Al-Anbya).

upon invalidity is invalid. Where the cause is explicitly stated, however, the people of the apparent meaning have differed over the ruling on analogy in that case. Most hold that it is impermissible.[11]

L24 Nor is it lawful to invoke the indication of an address, or the contrary implication, for that is putting oneself forward before Allah and His Messenger. The Exalted has said: 'O you who believe, do not put yourselves forward before Allah and His Messenger.' To explain: the indication of an address takes the unmentioned case out of the ruling of the expressly mentioned case, out of its own ruling—as when he ﷺ expressly mentions grazing livestock, and it is then held that non-grazing livestock must have a different zakat ruling. All of this is error. Far exalted is Allah above intending to remove some of what He has specified for us from the general category He has specified, without explaining it to us! This is impossible. We ask Allah to pardon the Muslims.[12][13]

ولا يحل القول بدليل الخطاب أو مفهوم المخالفة إذ هو تقدم بين يدي الله ورسوله وقد قال تعالى :" يأيها الذين آمنوا لا تقدموا بين يدي الله ورسوله" بيان ذلك أن دليل الخطاب هو إخراج المسكوت عنه عن حكم المنصوص عليه عن حكم نفسه .كنصه عليه السلام على السائمة فوجب أن يكون غير السائمة بخلاف السائمة في الزكاة.وكل هذا خطأ وحاش لله تعالى أن يريد أن يخرج بعض ما نص لنا على حكمه عن الجملة التي نصها لناولا يبين ذلك!!! فهذا محال .ونسأل الله المسامحة للمسلمين.

[11] **Translator's note (L23):** This is the report invoked by the compiler against analogy. Its inclusion does not supply an independent hadith authentication.

[12] **Translator's note (L24):** The Quranic quotation refers to 49:1. Dalil al-khitab / mafhum al-mukhalafah is inference of a contrary ruling for an unmentioned case. The Arabic explanation contains a repeated phrase, "out of its ruling"; its awkwardness is retained.

[13] **Qur'an references (L24):** Qur'an 49:1 (Al-Hujurat).