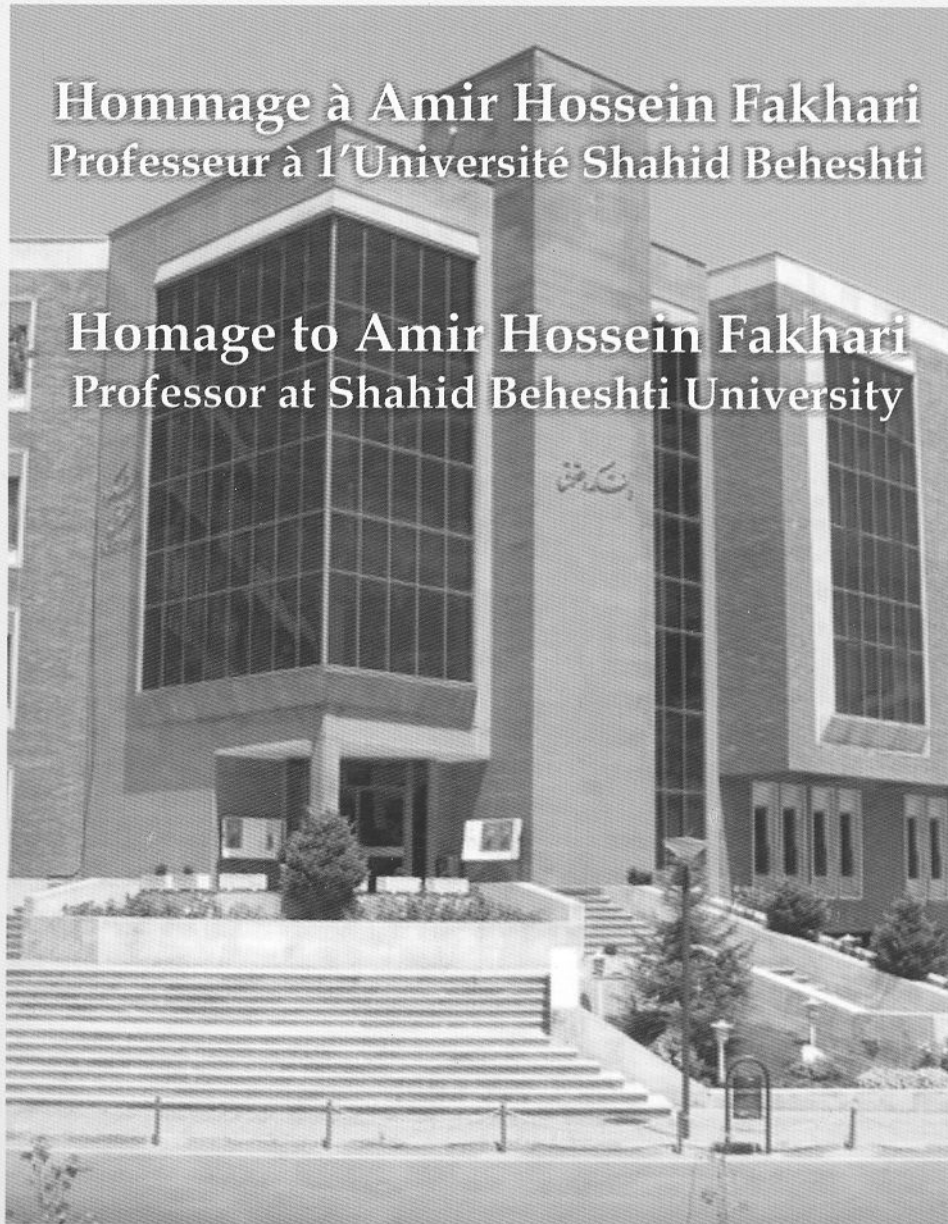




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The Jurisprudential Interpretation of the Verse 29 of Chapter 5 of the Holy Qur'an

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Persian text, pp. 133-162

Abstract

This article explains the jurisprudential points of the verse 29 of chapter 5 of the Holy Qur'an. Two basic jurisprudential points are often inferred from this verse. First, is the prohibition of taking control of the property of others for no lawful reason or unjust enrichment; and the second point is the validity of consensual commerce and its characteristics. These two jurisprudential points are applied to a variety of cases.

With respect to the first point, it is applied in cases where the consideration is legally unacceptable or highly unequal to the other consideration in a bilateral contract, or where the cause of the transaction is null and void, or where the transaction itself is of the kind that has been prohibited by the Holy Legislator like in the case of gambling.

As for the second point, the verse is interpreted as indicating the principle of consent in all transactions, the validity of all kinds of modern contracts and transactions as far as they are with consent and the presumption of irrevocability. This verse is also considered as indicating the characteristics and the necessary elements of a valid and obligatory transaction.

Indeed this verse is presumed to legislate comprehensively in the field of contracts and many legal rules could be inferred from it. This article tacitly criticizes such an approach, because whether this kind of verses are in such a position is subject to some doubts. These doubts become more serious according to the intentionalist approach which is the most dominant and accepted approach in Islamic hermeneutics.

Kew words

Legal Verses, Ownership without Cause, Unjust Enrichment, the Principle of pacta sunt servanda, Consent in transactions, Islamic Hermeneutics.