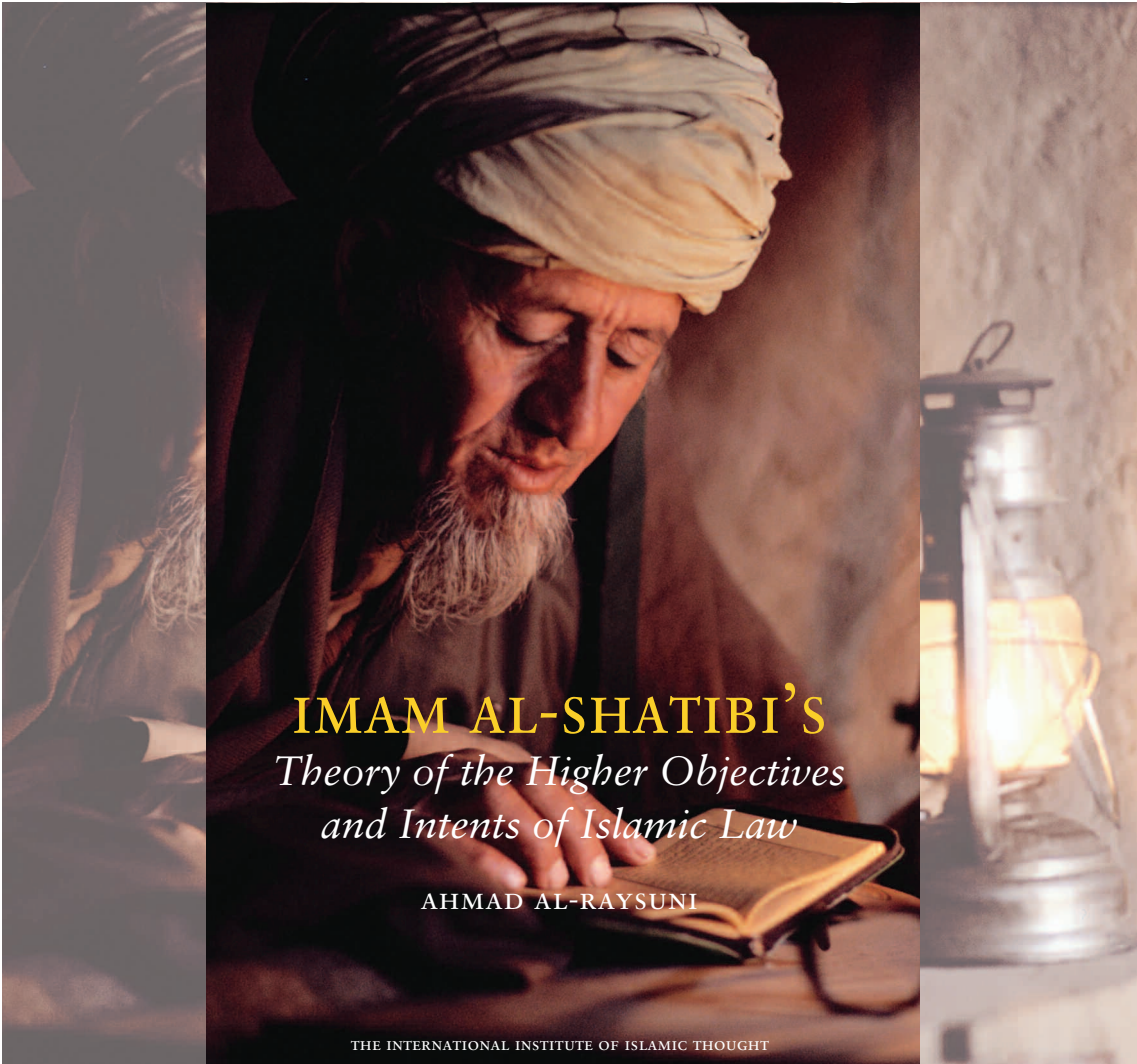


Imam Al-Shatibi's

Theory of the Higher Objectives and
Intents of Islamic Law



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*Theory of the Higher Objectives
and Intents of Islamic Law*

AHMAD AL-RAYSUNI

THE INTERNATIONAL INSTITUTE OF ISLAMIC THOUGHT

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IMAM AL-SHATIBI'S
Theory of the Higher
Objectives *and* Intents
of Islamic Law

Ahmad al-Raysuni

Original Edition Translated from Arabic by Nancy Roberts

Abridged by Alison Lake

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IIIT Books-In-Brief Series

The IIIT Books-In-Brief Series is a valuable collection of the Institute's key publications written in condensed form designed to give readers a core understanding of the main contents of the original. Produced in a short, easy to read, time-saving format, these companion synopses offer a close, carefully written overview of the larger publication and it is hoped will stimulate readers into further exploration of the original.

Originally written in Arabic, the English translation of Dr. Ahmad al-Raysuni's **Imam al-Shatibi's Theory of the Higher Objectives and Intents of Islamic Law** was published in complete form in 2005 and reprinted in 2011.

With the end of the early Islamic period, Muslim scholars came to sense that a rift had begun to emerge between the teachings and principles of Islam and Muslims' daily reality and practices. The most important means by which scholars sought to restore the intimate contact between Muslims and the Qur'an was to study the objectives of Islam, the causes behind Islamic legal rulings and the intentions and goals underlying the Shari'ah, or Islamic Law. They made it clear that every legal ruling in Islam has a function which it performs, an aim which it realizes, a cause, be it explicit or implicit, and an intention which it seeks to fulfill, and all of this in order to realize benefit to human beings or to ward off harm or corruption. They showed how these intentions, and higher objectives might at times be contained explicitly in the texts of the Qur'an and the Sunnah, while at other times, scholars might bring them to light by means of independent reasoning based on their understanding of the Qur'an and the Sunnah within a framework of time and space.

This book represents a pioneering contribution presenting a comprehensive theory of the objectives of Islamic Law in its various aspects, as

well as a painstaking study of objectives-based thought as pioneered by the father of objectives-based jurisprudence, Imam Abu Ishaq al-Shatibi; in addition, the author presents us with an important study of al-Shatibi himself which offers a wealth of new, beneficial information about the life, thought and method of this venerable imam.

Abridged Edition of Ahmad al-Raysuni's Original

*IMAM AL-SHATIBI'S THEORY OF THE HIGHER OBJECTIVES AND
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INTRODUCTION

Author Dr. Ahmad Raysuni is a prominent scholar and specialist in the field of *Maqāṣid al-Shariʿah* (the higher objectives and intents of Islamic Law). Knowledge of *al-maqāṣid*, translated here as “higher objectives” or “intents,” is a prerequisite to address and resolve contemporary issues challenging Islamic thought. Such knowledge can assist in developing an objectives-based fiqh, and helps us understand and appreciate the concept of divine wisdom underlying Islamic rulings.

In the early Islamic period, scholars saw a rift between the teachings and principles of Islam and Muslims’ daily life and practices. To help humans achieve benefits and avoid harm or corruption, they elucidated Islam’s objectives and legal rulings, as well as the intentions, goals, and functions of Shariʿah, or Islamic Law. These scholars showed how these intentions, higher objectives, and causes are contained explicitly in the texts of the Qur’an and the Sunnah or illuminated by comprehensive ijtihad (independent reasoning). Today, a dynamic, purposeful awareness of these major objectives will only become possible through ongoing academic efforts to clarify them.

The Sunnah inspires solutions, laws, practical concepts, and social systems to achieve the objectives of Islam and to enlighten the Ummah. This book presents a distinctive model relevant to methods of understanding, drawing upon the Qur’an and the Sunnah and their inspiration and guidance. Imam Abū Ishāq al-Shāṭibī (d. 790 AH/1388 CE), the subject of this book, illustrated and inspired studies on the principles and objectives of Islamic Law. His methods produce a sound, well-founded understanding of the Qur’an and the Sunnah.

An interest-based interpretation should be the foundation for our understanding of such texts’ meanings and the rulings we derive from

them. This book highlights the importance of relying on legislative universals and allowing these universals to mediate our understanding and use of particular texts. Since the universal principles and objectives of Islamic Law are unshakable foundations for every act of *ijtihad* and for Islamic thought, the importance of these principles and objectives must be re-established.

A salient manifestation of the crisis of the Muslim mind is its imbalance of standards and priorities. Our academic and practical lives have been afflicted by many such imbalances and reversals in values and priorities. Attention is given to appearances and formalities while objectives and essences are overlooked. Particulars rule the day while universals are, for all practical purposes, forgotten. This is an issue with major importance for Muslim scholars and thinkers and those who invite others to embrace the Islamic faith. The solution is to reorder priorities and rebuild Muslims' system of standards and values.

The author presents a comprehensive theory of the objectives of Islamic Law in its various aspects and studies objectives-based thought as pioneered by the father of objectives-based jurisprudence, Abū Ishāq al-Shāṭibī. The author extracts "objectives-related principles" from al-Shāṭibī's writings and shows how we can discern the objectives of the Lawgiver. We urgently need the ability to engage in objectives-based *ijtihad* and objectives-based jurisprudence. This book shows examples of "living jurisprudence" along with the principles and norms that form its basis. Islamic jurisprudence can establish legal norms for a contemporary Islamic life.

Author's Preface

Maqāṣid and the Theory of Higher Objectives

Tunisian scholar Muhammad al-Tahir ibn Ashur defined the general higher objectives of Islamic Law as "the meanings and wise purposes on the part of the Lawgiver which can be discerned in most or all of the situations to which the Law applies..." He mentioned general objectives of the Law, such as preservation of order, achievement of benefit, prevention of harm or corruption, and establishment of equality among people.

Moroccan writer Allal al-Fasi called *maqāṣid al-Shari'ah* "...the underlying reasons which the Lawgiver has placed within each of its

rulings.” *Al-maqāṣid* are the purposes the Law was established to fulfill for the benefit of humankind, divided into general objectives the Law works to achieve in most areas of legislation; specific objectives of those *maqāṣid* the Law seeks to achieve in a specific area, or in a limited number of comparable areas of Islamic Law; and particular objectives the Lawgiver intends through each particular legal ruling.

Scholars of jurisprudence have devoted the most attention to this final category of objectives. They also refer to these objectives by using other terms such as ‘wise purpose’ (*ḥikmah*), ‘basis’ (*‘illah*), or ‘meaning’ (*ma’na*). *Ḥikmah* is used synonymously with ‘intention’ or *qaṣd*, although jurists use the former more frequently than the latter. When jurists and others use *ḥikmah* they are referring to the Lawgiver’s intention.

‘Basis’ (*‘illah*) refers to the Lawgiver’s intention and is synonymous with ‘wise purpose.’ It primarily refers to the observable, identifiable condition or situation upon which legal rulings are based, since the ‘wise purpose’ behind a given ruling is usually linked to an observable, identifiable situation or condition. The Lawgiver links the relevant rulings to observable, identifiable indications in order to avoid ambiguity and confusion in the Law.

Al-Shāṭibī defined and used *‘illah* with its original, most accurate meaning of “wise purposes and benefits associated with commands or rulings,” calling it “the benefit itself or the harm itself – not its probable cause or occasion – be it observable and identifiable or not.” He interpreted *‘illah* to mean the benefit a ruling aims to achieve or the harm it aims to prevent. This interpretation is consistent with the term’s original usage and is most apt for those engaged in the study of the objectives of Islamic Law since the study of these objectives is the study of the true bases for legal rulings. Out of this original meaning of the term *‘illah* grew the companion term *ta‘līl*, in its general sense of interpreting the rulings of Islamic Law in terms of the benefits they bring and the harm they prevent. Like early scholars, al-Shāṭibī frequently used ‘meanings’ to speak of the objectives of Islamic Law until ‘meanings’ was gradually replaced by ‘basis’ (*‘illah*), ‘wise purpose’ (*ḥikmah*), and ‘intent’ (*maqṣūd*).

The concept of ‘objectives theory’ denotes a system or overall framework that gives order to Islamic legal rulings and their supporting evidence, giving them a single dimension and uniform meaning. The

objectives theory encompasses juristic theories, juristic principles, and particular rulings. Sound, rational investigation generates the theory of objectives and is based in the belief in the Law of God as a law of wisdom, mercy, justice, and equity. An inductive analysis of the details of Islamic Law supports the theory of higher objectives. In addition, the theory of objectives finds powerful support in those texts that are recognized as definitive.

Resting on this foundation, the theory of objectives governs the details of Islamic Law, giving direction to every understanding and independent interpretation. The point of departure in this process is the unqualified recognition that the Law was established to achieve benefit for people and protect them from harm in this world and the next. The theory of objectives defines the scale of benefits in Islam, from the ‘essential’ (*ḍarūriyyah*), to the ‘necessary’ (*ḥājīyyah*), to the ‘complementary’ (*takmīliyyah*). Research into the objectives of Islamic Law has to this day not matched or surpassed what al-Shāṭibī achieved in this sphere.

The Notion of Higher Objectives Prior to al-Shāṭibī

A review of writings on the objectives of Islamic Law prior to al-Shāṭibī’s time provides an objective historical introduction to al-Shāṭibī’s theory. This review shows steps taken before al-Shāṭibī to uncover the objectives of Islamic Law, reveal their overall importance, and mark the roots and sources of his theory.

The natural sphere for attention to the objectives of Islamic Law is Islamic jurisprudence (*fiqh*) and its fundamentals (*uṣūl al-fiqh*); concern for these objectives is evidenced in the work of *fuqahā’* (those focused on detail and practical application) and *uṣūliyyūn* (those who theorized and laid foundations). Al-Shāṭibī drew on the work of both groups, which focused on the notion of ‘objectives’ as treated by the *uṣūliyyūn* and in the Malikite school. The *fiqh*-related aspect of al-Shāṭibī’s thought is mostly restricted to the Malikite school and the theme of the objectives of Islamic Law. While the *fuqahā’* demonstrate greater awareness and concern for the objectives of Islamic Law, the *uṣūliyyūn* first illuminated and drew attention to them.

Al-Juwaynī and al-Ghazālī were conspicuous links in the chain of

thinkers who contributed to the study of *uṣūl al-fiqh* by broaching the subject of *al-maqāṣid* and clarifying some aspects. *Uṣūliyyūn* absorbed prior interpretations and theories in their writings. The traditional *uṣūl*-related chain of transmission originates in clear, continuous succession from al-Ghazālī. In the 3rd century AH, Sufi philosopher al-Ḥakīm al-Tirmidhī focused on the objectives of Islamic Law, unearthing the bases for Islamic legal rulings and searching for their hidden wisdom. He was one of the first scholars to employ the term *maqāṣid*. Al-Tirmidhī identified the bases of Islamic religious obligations through reasoning.

Early scholars of *uṣūl al-fiqh* incorporated theology into the study of jurisprudence. The following prominent *uṣūliyyūn* dealt with objectives in Islamic Law. Al-Juwaynī (d. 478 AH) wrote *al-Burhān* (The Proof), the starting point for all writing on *uṣūl al-fiqh* and greatest influence on his disciple, Imam Abū Ḥāmid al-Ghazālī. Al-Juwaynī's most important contribution to discussion of the objectives of the Law is his division of legal fundamentals into bases and objectives of Islamic Law: essentials that prevent harm to the innocent; general needs not in the essentials category; those associated with acquiring noble traits and abandoning their opposites, such as issues of ritual purity; those limited to actions deemed 'recommended' to encourage virtues or noble deeds; and those lacking a clear interpretation or aim.

Al-Juwaynī then combined the Lawgiver's objectives into 'essentials,' 'needs,' and 'enhancements,' a division that became the foundation of all discussion of *maqāṣid*. He first referred to the five major essentials in Islamic Law: religion, human life, the faculty of reason, progeny, and wealth.

Imam al-Ghazālī (d. 505 AH) pioneered *uṣūl al-fiqh* and the study of the objectives of Islamic Law. He explored approaches to *ta'līl*, or interpretation of legal rulings in terms of their underlying foundations or bases (*ʿilal*). He defined interests recognized explicitly in Islamic Law as "...the preservation of the Lawgiver's objective..." Al-Ghazālī defined the central objectives of Islamic Law around which all legitimate intents and interests revolved, categorizing them as 'spiritual' (or 'religious') or 'worldly.' He concluded, "Whatever curbs shameful deeds is, therefore, something which encompasses all interests relating to religion, and could be associated with worldly interests as well." Rather than emphasize spiritual interests over worldly interests, al-Ghazālī placed 'preservation of religion' at the top of the list of the Law's essential objectives.

Following al-Juwaynī, al-Ghazālī categorized the interests preserved by Islamic Law according to their degree of urgency and clarity, classifying them as ‘essentials,’ ‘needs,’ and ‘enhancements.’ He defined the parameters for the *uṣūliyyūn* who succeeded him until the time of Imam al-Shāṭibī, who represents the third turning point in the history of *uṣūl al-fiqh*. Al-Ghazālī influenced subsequent important 13th and 14th century scholars, such as Fakhr al-Dīn al-Rāzī, Sayf al-Dīn al-Āmidī, Ibn al-Hājib, al-Bayḍāwī, al-Isnawī, Ibn al-Subkī, Izz al-Dīn ibn ‘Abd al-Salām, and Ibn Taymiyah. These scholars applied al-Ghazālī’s principles to their Islamic legal analyses and implications for society. Ibn Taymiyah believed the *uṣūliyyūn*’s five objectives limited the essentials of Islamic Law and did not encompass the Law’s most sublime or significant purposes.

Knowing the objectives of the Malikite school helps us better grasp the foundations and origins of al-Shāṭibī’s theory. The Malikite school, which influenced al-Shāṭibī’s work, is distinct from other schools of Islamic jurisprudence by its particular interest in and consideration for the objectives of Islamic Law. Al-Shāṭibī was part of this insular Islamic environment that was the least open to interaction with other Islamic schools of jurisprudence.

Imam Mālik ibn Anas inherited the school as a complete, mature system. Mālik counted himself as one of the school’s followers who had inherited it from the Companions of the Prophet (ṢAAS)* in collective succession, in the form of narratives and practical applications. He issued independent interpretations and judgments and absorbed the knowledge of the scholars of Madinah within its framework.

‘Umar ibn al-Khaṭṭāb was the initial link in the school of fiqh that prevailed in Madinah. The Malikite school is attributed to ‘Umar but originates beyond his interpretations and judgments to Islam itself. His stamp is evident on Mālik’s book *al-Muwatta’a*’ and its fiqh, legal rulings, fatwas, and established customs modeled after the Sunnah of the Messenger of God. Much of the conduct of the people of Madinah is rooted in the prophetic Sunnah and the traditions established by the rightly guided caliphs and in ‘Umar’s era. ‘Umar first introduced the principles of unrestricted interests (*al-maṣāliḥ al-mursalah*) and the prohibition of evasive legal devices (*sadd al-dharā’i*)’ in theory and practice.

* (ṢAAS) – *Ṣallā Allāhu ‘alayhi wa sallam*. ‘May the peace and blessings of God be upon him.’ Said whenever the name of the Prophet Muhammad is mentioned.

Ibn Taymiyah called the Madinah school superior, authoritative, and sound. He stated that whoever considers the fundamentals of Islam and the principles of Islamic Law will find the fundamentals of Mālik “and the inhabitants of Madinah were the soundest of all principles and rules.” Islam became established most fully and perfectly in the city of Madinah where Islam found stability and maturity, and where the practices established by the rightly guided caliphs became a model for inspiration. Islam spread to distant parts, where Muslim scholars received the Madinan heritage.

Following are the most important Malikite fundamentals of direct relevance to the objectives of Islamic Law. The practice of setting up the concept of benefit, or interest (*al-maṣlaḥah*) as a determining factor in Islamic legal rulings originated in the practice of the Companions and most notably ʿUmar. Al-Ghazālī stated, “The Companions, may God be pleased with them, are the Muslim nation’s model when it comes to the practice of *qiyās*, in connection with which it has been determined beyond any doubt that they relied on interests.”

Al-Ghazālī validated the practice of employing human interests as a source of evidence on which to base a legal ruling, since this was done by the Companions. He stipulated that the interest being considered resemble those interests explicitly recognized by the Lawgiver. Of greatest concern is the link between human interest and the objectives of the Lawgiver. The Lawgiver’s objectives may be summarized as ‘the achievement of benefits [interests] and the prevention of harm.’ This link is found consistently in all rulings of Islamic Law, and especially in the rulings regarding customs and daily transactions.

Any independent interpretation of the principles of jurisprudence must be based on *istiṣlāḥ*. An understanding of the relevant texts and conclusions drawn from them should be based on the principle that the objectives of such texts are to achieve benefit and prevent harm. It is a matter of bearing human interest or benefit in mind when seeking to understand any relevant text or when drawing an analogy between two rulings.

Malikite fundamentals are distinguished by their consideration for what are termed ‘unrestricted interests.’ The school is also more explicit in its consideration for human interests or benefits, in that these interests embody the overall aim or intent of Islamic Law, as well as the specific objective or intent behind each of this Law’s rulings, especially

in customs and transactions. In essence, the Lawgiver does not prohibit that which serves an overriding interest. The interest-based approach clearly has a long, established history in the Malikite tradition.

The theory of *istiḥsān* was fully developed within Islamic Law, further highlighted by the Prophet's own applications, then expanded with greater clarity when it became more needed after the divine revelation had ceased. This expansion and clarification occurred through exemplary practices of the rightly guided caliphs and, most notably, through the practices and teachings of 'Umar ibn al-Khaṭṭāb. Mālik understood and applied *istiḥsān* as a single, clearly defined meaning of consideration for human interests.

Abū Ḥanīfah achieved insight into the interest-based objectives of the Law of Islam, expressed through his interpretations of the Law, its rulings, and the notion of *istiḥsān*. The Ḥanafites could not agree on a single, unambiguous definition. Their concept of *istiḥsān* is an offshoot of the theory of human interests in Islamic Law.

If, in Mālik's view, *istiḥsān* constitutes nine-tenths of independent interpretation in the realm of fiqh, and if the meaning of *istiḥsān* is consideration for human interests and justice, then the jurist must never lose sight of the Lawgiver's intent to preserve human interests and justice. Similarly, if he finds harm being done, *istiḥsān* requires that he engage in independent interpretation and issue a fatwa to end such harm. Malikite *istiḥsān* means commitment to achieving human interests and averting harm, and adhering to the guiding rule of human interest in the absence of a legal text. In this scenario, the link between the Lawgiver's intentions and human interests is clear. Such interpretations draw a link between legal rulings and the human interests they are intended to preserve, while the relevant texts are understood in light of their objectives (*maqāṣid*) and bases (*'ilal*).

The Malikite school and others have also championed *sadd al-dharā'ī*, or the prohibition of evasive legal devices. This tool represents another aspect of consideration for the Lawgiver's intent to preserve human interests by achieving what is of benefit and averting what would cause harm or corruption. Modern writers have also treated this topic in works on *uṣūl al-fiqh*. It is based on the premise that the Lawgiver has instituted the precepts of the Law only to achieve the objectives of bringing benefit and averting harm and corruption. If rulings are used as a pretext for achieving different purposes from what was originally

legislated or to achieve something contrary to their true objectives, the Law cannot approve them.

Mālik, as confirmed later by al-Shāṭibī, was guided by the principle of *sadd al-dharāʿi*^c in most areas of fiqh, which was applicable to corruption and the Prophet’s statements against receiving gifts from leaders. The Malikites focused on areas of fiqh pertaining to sales, penalties, and marriage in preventing harm to innocent parties. A related aspect of the interest-oriented perspective of the Malikite school is based on the principle of “consideration for differing points of view” regarding sales, penalties, and marriage.

In the area of legal penalties, the Malikite school is the strictest school of jurisprudence and goes to the greatest lengths to deter would-be criminals and block all outlets to aggressors and corruptors. This predisposition is rooted in the fiqh, policies, and legal rulings of ʿUmar. Yet overall the Malikite school remains the pioneer of the schools in considering human objectives and basing rulings thereon. Al-Shāṭibī has made clear the relationship between human objectives and the objectives of the Lawgiver.

Another area of jurisprudence in which the Malikites consistently labor to apply the principle of objectives and intentions is with oaths and their associated obligations. They carefully consider the role of intention in such areas as marriage or criminal charges. Considering the objectives and intentions behind people’s actions and words rather than taking them at face value was the approach of ʿUmar and the Prophet’s Companions. Further, the Malikite school shows special concern about prohibiting evasive legal devices and curbing corrupt intentions.

Al-Shāṭibī and His Theory

A biographer of Abū Ishāq al-Shāṭibī described him as “the venerable, learned, realized imam, the exemplar, who had memorized the entire Qur’an and who was qualified to engage in independent interpretation of Islamic Law and its sources...” Al-Shāṭibī grew up in Granada and was influenced by shaykhs from Granada and elsewhere. Al-Shāṭibī’s most important work is *al-Muwāfaqāt*, published 1302 AH/1884 CE, which addresses the higher objectives of Islamic Law and related rulings; categorization of legal evidence; using evidence in rulings on people’s actions; independent reasoning; and decisions regarding issues of conflict.

Al-Shāṭibī addressed topics of *bidaʿ* or (heretical) innovations, as well as *muhḍathāt*, or practices and beliefs foreign to the Qur'an, Sunnah, and practices or sayings of the Prophet's Companions. He used a staid methodology rooted in *uṣūl al-fiqh* to present a valuable discussion of principles of jurisprudence such as unrestricted interests (*al-maṣāliḥ al-mursalah*) and juristic preference (*istiḥsān*). In addition to analyzing the principles of jurisprudence and the objectives of the Law, al-Shāṭibī studied the application of the principles of jurisprudence.

We know al-Shāṭibī was a meticulous writer and scholar who conducted a deliberate, long-term investigation of his topics before writing and consulted with others concerning what he wrote. Al-Shāṭibī challenged commonly held concepts relating to sermons and the functions of the prayer leader, or imam, desiring to conduct himself in these realms in a manner consistent with knowledge and truth. In his fatwas, he championed the Sunnah and opposed certain customs and religious innovations that were unknown to the Prophet and his Companions but widespread during al-Shāṭibī's lifetime. Al-Shāṭibī's criticisms brought accusations and slanderous fabrications against him but he remained true to his convictions. In this atmosphere charged against him, he composed *al-ʿItisām*, which may be viewed as the most significant work ever written on the subject of religious innovations in Islam.

Al-Shāṭibī corresponded with various prominent shaykhs who addressed questions of a problematic nature and participated in discussions and consultations with leading figures of the Malikite school at that time. These questions of focus demonstrate al-Shāṭibī's interests and intellectual character and address some of the following issues.

Jurisprudents of the Malikite school will find that on any given issue there may be several conflicting opinions, all attributed to Imam Malik; indeed, there may be several conflicting statements, yet they base their fatwas on all of them despite the inconsistency among them. Moreover, scholars of *uṣūl al-fiqh* agree that if two conflicting statements are attributed to a single religious authority, and if it is not known which of the two statements preceded the other, neither can be used as legal evidence.

If there are incompatible accounts within the school of what was said by Mālik, then is it valid for someone to say, "This is the Malikite school's position on this matter," when he means that one of these accounts supports this position? Jurisprudents frequently refer to

statements found in Mālik's *al-Mudawwanah* or elsewhere and base their judgments on their understanding of them.

Mālik and his school have become well-known for 'consideration for opposing points of view,' a principle upon which certain Malikite fatwas are based. If, then, the ruling on a case or an action conflicts with the Malikite school's position but is consistent with the position of some other school or scholar, then a fatwa issued by a Malikite jurispudent, after the ruling has been issued or the action has been committed, may endorse said ruling or action and deem it valid in keeping with the view held by the opposing school.

Al-Ghazālī, Ibn Rushd, and others considered it a form of piety to eschew disputes over opposing viewpoints that fell into a judicial 'gray area' (*shubhab*). They believed that such matters concerning what is or is not permissible constitute a type of judicial 'gray area' (*shubhab*) which, according to one Prophetic tradition, we are urged to avoid. Yet in the realm of Islamic Law, those obscure matters are exceptions.

When we find that the practices commonly followed by people conflict with what is written in the Law and with the practices followed by the pious ancestors, scholars, and those qualified to engage in *ijtihād*, should we approve currently prevailing practices and abandon both the Law and the example set by our forebears? If so, then how will the Sunnah continue to be of any effect?

These questions raised by al-Shāṭibī reveal the extent of his commitment and loyalty to the requirements of legal evidence and to the premises rooted in the fundamentals of jurisprudence. To avoid disputes as an expression of piety, al-Shāṭibī formulated an important and sound rule that "If the application of a principle in its most inclusive sense leads to that which is inconsonant with the Law or reason, then it may not be viewed as fully sound or consistent, and must no longer be applied unconditionally."

The heart of this study is al-Shāṭibī's theory of *maqāṣid*. In his occasion-based analysis of Islamic Law, al-Shāṭibī argued that "[divinely revealed] laws have all been established to preserve human beings' interests..." He concluded the Law was established to serve human beings' interests, and that this type of occasion-based interpretation is ongoing regarding all details of the Law.

Al-Shāṭibī divided the higher objectives of the Law into higher objectives of the Lawgiver, and objectives of those accountable before the Law. He then subdivided the objectives of the Lawgiver into four types: the Lawgiver's higher objectives in establishing the Law; higher objectives in establishing the Law for people's understanding; higher objectives in establishing the Law as a standard of conduct; and higher objectives in bringing human beings under the Law's jurisdiction.

Al-Shāṭibī explained the Lawgiver's higher objectives in establishing the Law in three categories: essentials for the achievement of human beings' spiritual and material well-being; exigencies, or needs-related interests or objectives; and embellishments, which function to enhance and complete the fulfillment of essentials and exigencies. He stated that essential objectives consist of religion, human life, progeny, material wealth, and human reason. Islamic Law undertakes to preserve essential interests and others by legally preserving and nurturing their existence, then by protecting them from annihilation. The five essential interests are viewed as the roots or foundations of all other interests.

The interests served by the Law must not be employed to cancel each other out, nor should less essential interests be allowed to cancel out more essential ones. Instead, they have been established to reinforce, fulfill, and preserve each other. After declaring that "The essential objectives are the foundation for exigencies and embellishments," al-Shāṭibī set the following rules:

- The essentials are the foundation for exigencies and embellishments.
- Disorder in relation to the essentials will lead to complete disorder in the latter two.
- An imbalance in the realm of the exigencies and embellishments does not necessitate an imbalance in the essentials.
- A complete imbalance in the realm of embellishments or exigencies may lead to a partial imbalance in the realm of essentials.
- Exigencies and embellishments must be preserved for the sake of the essentials.

Al-Shāṭibī briefly treated the Lawgiver's higher objectives in establishing the Law for deeper understanding. Regarding objectives in establishing the Law as a standard of conduct, al-Shāṭibī discussed the Lawgiver's objectives in what He requires of those answerable before the Law, as well as distinctions between what the Lawgiver does and does not

intend in His requirements of humans. For example, he concluded that if the Lawgiver's objective is to alleviate hardships and difficulties entailed by what He requires of us, then the objective is to ensure that we persevere in doing good and maintain balance in fulfilling our duties and obligations.

Al-Shāṭibī stated that legislation in Islam was revealed “on the path of greatest moderation, and that which steers a middle course between the two extremes in unwavering measure...” Here we find most of the obligations required by the Law, such as the obligations relating to ritual prayer, fasting, and zakah, as well as the prohibition of most of what is forbidden, all of which represents a balance suited to the majority of human beings.

When discussing the Lawgiver's higher objectives in bringing human beings under the Law's jurisdiction, al-Shāṭibī said, “In relation to human beings, Islamic Law is an all-inclusive universal,” and “We must submit to [the Law's] authority everything which we experience, both inwardly and outwardly.” He demonstrated the Lawgiver's objective to deliver human beings from the tyranny of their worldly desires and bring them under the authority of the Law and its rulings.

In his treatment of the objectives of the Law, al-Shāṭibī likewise touches upon the objectives of human beings, which is another manifestation of his profound understanding and mastery of the theme. He affirms an intuitive religious truth that “Actions are inseparable from intentions, and objectives are to be taken in consideration when judging behavior...” Furthermore, “The Lawgiver's aim for human beings is for their intention in what they do to be in agreement with His intention in laying down legislation.”

Al-Shāṭibī concluded “...there is a need for a conclusion which serves to clarify this discussion of objectives still further and which defines precisely what is intended by it, God willing,” and asked, “How is one to distinguish what the Lawgiver intends from what He does not?” He identified the four bases for determining the Lawgiver's objectives: primary, explicit commands and prohibitions; consideration of the bases for commands and prohibitions; consideration of secondary objectives (in the service of the primary objectives); and silence of the Lawgiver in situations that appear to call for declaration and legislation.

Al-Shāṭibī's theory of objectives is present in the majority of his

writings, where one finds that ‘the objectives’ make his theory clearer and more comprehensible. He was primarily focused on *maqāsid al-Shari‘ah* and their outcomes. He bases his most powerful arguments on the premise that the fundamentals of jurisprudence are founded on the universals of the Law: “The Muslim community...[agrees] that the Law was established to preserve the five essentials, namely, religion, human life, progeny, material wealth and the human faculty of reason.”

The higher objectives of the Law and its principle foundations were secured in the Makkan Qur’an alongside the fundamentals and principles of Islamic doctrine. Al-Shāṭibī traced the five universals, or essentials, to their supporting evidence in the Makkan Qur’an. The preservation of the Islamic religion and the correction and consolidation of faith in the Makkan Qur’an is a matter so familiar and clear that it requires no evidence or examples to be cited in its support. Al-Shāṭibī presented the Makkan Qur’an’s legal principles and universals.

He used his ‘objectives-based’ perspective to draw connections among the various types of evidence in the Shari‘ah, including the Qur’an and the Sunnah, and among the various areas of legislation in their universals and their particulars. Just as he observed that the Madinan Qur’an in all its details was based upon the Makkan Qur’an with its universals, he observed that the Sunnah was based entirely upon the Qur’an. The Sunnah has shown which examples we should emulate based on the interpretation of general statements found in the Qur’an, none of which would be violated by the Sunnah.

Al-Shāṭibī used the notion of objectives and the division of legal rulings into the recognized categories of essentials, exigencies, and embellishments to support his view that the commands and prohibitions contained in Islamic Law are not all of a single order or equal importance. Believers and scholars should be aware of this order and gradation in the commands of the Law and its prohibitions.

Legal rulings are among the topics addressed in most writings on the subject of *uṣūl al-fiqh*, particularly since the 5th century AH. The description of an action as *mubāḥ*, or ‘permitted,’ is one of the action-related rulings, and most *uṣūliyyūn* addressed issues relating to the category. Al-Shāṭibī approached the issue from the perspective of his ‘objectives theory.’ The distinction he introduces among acts and omissions based on their particular and universal aspects is based on interests and objectives.

Regarding the interplay between causes, effects, and objectives, causes and effects are connected to both divine and human intentions, although they are most closely linked to human intentions. Al-Shāṭibī established principles and rulings in accordance with his objectives-based outlook. For example, the Lawgiver, in determining causes, has their effects as His intention. Human beings are held accountable for causes only and not for their effects. God takes responsibility for effects and the causal connection between them and their causes.

Al-Shāṭibī included texts that urge individuals to have concern for effects and consider them when establishing causes, saying, "...if one gives some thought to the ultimate consequences of his actions, this may give him pause before he does the things [he is contemplating]...." Hence, whatever serves human interests and divine objectives should be desired and sought, and whatever harms them should be censored and avoided.

Fundamental Issues in al-Shāṭibī's Theory

When focusing on certain fundamental aspects of the objectives theory, al-Shāṭibī referenced the notion of the Law's being subject in its entirety to *ta'līl*, the idea that all of it may be understood in light of its concern for human interests and the occasions that produced it. He continued by stating that virtually all rulings of the Law have been laid down for the sake of human interests. To clarify his stance on the matter of *ta'līl*, he distinguished between rulings pertaining to customs and daily transactions and rulings pertaining to acts of worship.

The first approach to legal rulings is supported by an inductive reading of the Law, which reveals that the Lawgiver's objective is to preserve human interests. Al-Shāṭibī's overall perspective on the matter of *ta'līl* is summarized by saying that he believes in the validity of interpreting Islamic Law in terms of its concern for human interests. Al-Shāṭibī and a majority of Maliki scholars held that the foundation for dealing with rulings relating to Islamic acts of worship is to refrain from *ta'līl*. Al-Shāṭibī did not deny that the overall rationale and objectives of the various forms of worship in Islam are provided in the texts where they are instituted. Yet he believed that such explanations remain obscure in their details. He concluded that the realm of worship and its various expressions is not closed to the practice of interest-based *ta'līl*.

Al-Shāṭibī wrote, “Rulings which pertain to daily transactions and customs, as well as many rulings which pertain to the realm of worship, have a recognized purpose, namely, to regulate the various aspects of human interests, for if they were left open to different interpretations, they would remain undefined and be the cause of disagreements and divisions.” Such specifications and criteria help to guide jurists engaged in independent reasoning for the purpose of arriving at a legal decision. Precise definition, codification, and specification are a recognized benefit.

He stated that Islamic Law is comprised of both a particular and a universal aspect, and that the universal interest served by the Law is “for every human being to be answerable to some specific precept of the Law...” As stated by al-Ghazālī, “Every ruling has an underlying wisdom and embodies a form of kindness and blessing for human beings.” *Taʿlīl* has its own methods and laws which must be followed in the discipline of *uṣūl al-fiqh*. No one is free to base *taʿlīl* on personal preference or conjecture, or lend authority to his own opinions and illusions when dealing with God’s Law.

The Prophet’s Companions engaged in *taʿlīl* based on their sound intuition and with unaffected, unarguable spontaneity, basing their independent interpretations on what they understood to be the bases and objectives of the Law. On the other hand, prominent scholars and theologians have denied the validity of using *taʿlīl* and used questionable logic. Al-Shāṭibī attributed to al-Rāzī alone a complete rejection of *taʿlīl*, although Ibn Ḥazm was a more significant critic.

The basis for divine precepts is the preservation of human interests, which developed in Islamic law. It is important to understand which judicial questions pertain to God’s actions and which pertain to divinely revealed law. Once again we see that the process of identifying the bases and wise purposes of legal rulings is associated with specific methods, limits, and criteria. All are expounded in the appropriate sections of books devoted to the fundamentals of jurisprudence and the jurisprudence of hadith, and applied in books on jurisprudence and commentaries on the Qur’an and the Sunnah.

We are called upon to inquire into the material and spiritual benefits and purposes that underlie the rulings of Islamic Law, and to achieve benefit and the least harm while doing so. Islam permits inquiry into the wise purpose of legal rulings using all methods of research and

knowledge God has made available to us. If, then, we arrive at a conclusion attested to by reliable evidence, we may accept it; if we do not, we surrender to God's wisdom in the matter.

When Muslim scholars assess benefit and harm they consider both this world and the next. The concept of benefit and harm employed by Muslim scholars includes other-worldly benefits, their causes and how they are attained; other-worldly types of harm, their causes and how they are attained; earthly benefits, their causes and how they are attained; and earthly types of harm, their causes and how they are attained. Al-Shāṭibī demonstrates that true interests serve not to destroy life but to support and nurture it. The Law has set limits and restrictions on the attainment and enjoyment of various types of benefits because humans may try to achieve a certain benefit that is associated with various sorts of harm, or which will cause them to forfeit other benefits of greater importance than the benefit they seek.

An overlap often occurs between benefit and harm because a given action may be a source of benefit in one respect and a source of harm in another. Therefore, a Law is needed to which people submit and under whose authority they place themselves. This is the 'universal' interest. Islamic Law also calls for the preservation of interests of all kinds and on all levels, and neglects nothing, great or small, in the realm of benefit and harm. The 'nullification' of certain interests is the preservation of human beings' true interest and only applies to limited cases and individuals. Al-Shāṭibī defined and analyzed the different types of interests and the best legal approach within Islamic Law to solving any relevant dispute.

Muslim scholars agree that Islamic Law calls for the preservation of the 'essentials,' 'exigencies,' and 'embellishments,' and that the interests most vital to preserve are religion, human life, the faculty of reason, progeny, and material wealth. There is also a consensus that "Whatever contributes to the preservation of these five essentials is a benefit, and everything which causes them to be forfeited is a source of harm, while its prevention is a benefit."

There is a universal question of whether human reason can determine if a given act is good and praiseworthy, or evil and blameworthy, or whether this can only be determined based on explicit declarations of the Law. This same question resembles what has been known in the realms of scholastic theology and the fundamentals of jurisprudence as the question of *al-tahṣīn wa al-taqbīḥ*, and al-Shāṭibī was influenced

by the Ash‘arite perspective on this question. He stated, “If textual and rational evidence are in mutual agreement concerning legal questions, the textual evidence must be given priority over the rational such that reason is given only the degree of latitude which the textual evidence allows.” In line with the Ash‘arite view, “Reason does not judge things to be either good or bad” or sources of either benefit or harm.

In opposition to the Ash‘arite view are two other theories: those of the Mu‘tazilites and the Maturidites. According to the Mu‘tazilites, goodness and evil are rationally discernible properties, and actions and omissions may rightly be described as beneficial or harmful before a legal ruling declares them so. The Mu‘tazilites go further to claim that without a legal ruling, sensible, rational human beings are held accountable to God by reason alone. Just as legal rulings may be confirmed by divine revelation, so also may they be confirmed by human reason. Yet unlike the Mu‘tazilites theory, the Ash‘arite theory has survived and spread.

It holds that the benefit or harm we attribute to things and actions is a fruit of the revelation of divine Laws, and that before these revelations and their associated rulings were received, there was no concept of either benefit or harm. The Qur’an informs us that it has declared lawful what is good and wholesome while declaring unlawful that which is baneful and injurious. In the early days of Islam, the Qur’an addressed its hearers with truth and commanded them to act justly, rebuking them for practices that were contrary to reason and condemning the falsehood in which they were living.

The Ash‘arites who have denied ‘goodness’ and ‘badness’ as rationally discernible properties inherent in things and actions have been carried along by the force of the longstanding, contentious debate between them and their Mu‘tazilite opponents. Debates show that reason leads to belief in the prophets and the message they have brought as the undeniable truth. Reason leads to the conviction that the content of Islamic Law preserves human interests in the most perfect manner. The affirmation that sources of benefit and harm can be discerned by human reason does not mean that human reason’s perception of things is perfect or complete. On the contrary, human reason is capable of realizing some things and not realizing others.

Al-Shāṭibī repeatedly addressed the inadequacy of the mind’s ability to discern sources of benefit and harm, stating that misdirected people

were “excused and warned, and God sent the prophets.” No matter how capable people are of reason, they need powerful religious motivations to reinforce their commitment on the practical level to preserving their interests and avoiding harm. Therefore, preservation of religion is the interest given highest priority in Islamic Law.

In the following areas, reason may be used to assess interests. Interest-based textual interpretation is well-established among most scholars of Islamic jurisprudence. Reason plays a role in identifying the interest the text is intended to achieve. Examples of this practice are innumerable in books on Islamic jurisprudence and texts deriving from the Qur’an and Sunnah. A rational assessment of what is good and bad is needed by appraising changing sources of benefit and harm and what they require via appropriate legal rulings. Constant overlapping and intermingling among sources of benefit and harm is a phenomenon that produces unending competition and conflict. Al-Shāṭibī formulated a law of great importance for such prioritizing in a number of situations where different people’s interests conflict.

“Islamic legal policy” is based primarily upon the preservation of unrestricted interests. The sphere of unrestricted interests expands with the increasing size and growing needs of the Muslim nation. Scholars of Islamic Law must prove themselves able to put each interest in its proper place, guided by the Law and its objectives. This is the proper way to preserve the interests of the Muslim nation.

Since the Qur’an was revealed in Arabic, the higher objectives of the Law must be viewed in light of the Arabic language in which this Law has been conveyed. Al-Shāṭibī’s writings contain frequent affirmations of the importance of respecting and following the limits and rules of the Arabic language if one is to understand the objectives behind Islamic legal texts. He said, “The Arabic tongue...translates the higher objectives of the Lawgiver.”

In the context of discussing the various types of legal rulings on actions, al-Shāṭibī noted the relationship among the various types of rulings, and in particular, the relationship between what is recommended and obligatory and between what is undesirable and forbidden. He considers the primary objectives to be equivalent to the five essentials. Secondary objectives, by contrast, relate to which human desires and inclinations may be considered, and encompass human interests on the level of exigencies and embellishments.

Induction was, for al-Shāṭibī, one of the most crucial and powerful tools to identify the objectives of the Law. He declared the fundamentals of jurisprudence must be characterized by definitive certainty, and that evidence for this may be found in an “inductive reading which yields complete certainty,” since the universals of Islamic Law are not based on a single piece of evidence but on many pieces. From the opening pages of *al-Muwāfaqāt*, al-Shāṭibī linked induction with the discovery of the objectives of the Law. All of the objectives of the Qur’an and the Sunnah rest on the notion of tracing the Law and its rulings to the bases which produced them, or on the notion of *taʿlīl*, while the process of *taʿlīl* is based on the conviction that Islamic Law may be explained in terms of its preservation of human interests.

Al-Shāṭibī began his search for evidence supporting these two affirmations with an inductive reading of the Qur’an and the Sunnah. The evidence that al-Shāṭibī adduced was based on an inductive process from beginning to end. He showed that induction is the most critical way to confirm the objectives of the Law because the Lawgiver’s intention is to preserve these primary universals. He wrote that proof “may be found through an inductive reading of the Law which involves an examination of those texts which are both universal and particular in import” and that “...inductive reading...looks to the overall, inner spirit of the Law rather than just its outward details or particulars.”

For al-Shāṭibī, induction is the most critical way to ascertain the objectives of the Law. Those objectives that are discernible through the inductive process are the major, universal objectives of Islamic Law, and around which most of al-Shāṭibī’s discussions revolve. Induction plays a role in most conclusions al-Shāṭibī reached concerning the universals of the Law or its overall objectives.

Overall Evaluation of al-Shāṭibī’s Theory

Al-Shāṭibī made significant original contributions to the fundamentals of jurisprudence and study of the objectives of the Law, and to the construction and exposition of the theory of objectives. He benefited from his forbears, building on their discoveries and conclusions. He was indebted to the *uṣūliyyūn* classification of human interests into the three categories of ‘essentials,’ ‘exigencies’ and ‘embellishments,’ in addition to their limiting the category of essentials to five. Al-Shāṭibī was greatly influenced by al-Juwaynī, al-Ghazālī, and the Malikite school of human interest, *istiṣlāḥ*, interest-based *istiḥsān*, and interest-

based interpretation of Islamic texts. The school is most devoted to revealing the objectives of the Lawgiver and building upon them.

Al-Shāṭibī emphasized the objectives of the Law so they became a visible, recognizable entity; no longer could they be disregarded, forgotten, or belittled. He initiated the great expansion in the amount of space devoted to the higher objectives of the Law. The theme of *maqāṣid al-Shari'ah* is present in most of his writings, prompting the objectives of the Law to be introduced into the realm of fiqh-related independent reasoning.

The attention al-Shāṭibī devoted to human objectives reveals another aspect of the inspiration and creativity that mark his theory. His concern for the objectives of the Lawgiver led him to conclude with a discussion of human objectives. He demonstrated unparalleled originality in how he linked and integrated divine and human objectives and in his treatment of human objectives based on an examination of those of the Lawgiver.

Al-Shāṭibī's analysis of how the Lawgiver's higher objectives may be known is an entirely new addition to the field of *uṣūl al-fiqh*. He compiled and precisely formulated comprehensive rules regarding the human objectives, the higher objectives of the Lawgiver, and how the objectives of the Lawgiver may be known. Al-Shāṭibī also influenced our understanding of Islamic Law and the application of independent reasoning, or *ijtihād*, to its rulings, as well as our ability to receive its guidance and live in accordance with its purposes.

Al-Shāṭibī has become a recognized authority on Islamic Law, a signpost along the path leading to its objectives and purposes, and a guide to its wise purposes and mysteries. Al-Shāṭibī has elevated the role and status of *maqāṣid al-Shari'ah* as they pertain to the practice of *ijtihād*.

Conclusion

Horizons for Further Research into *Maqāṣid al-Shari'ah*

Some of the major issues addressed here require further investigation. Hopefully those with a love of knowledge will be inspired to fill the gaps in what has been written in the twin realms of jurisprudence and

its fundamentals, thereby providing us with greater clarity concerning these matters of concern. We should ask how the higher objectives of the Law are to be ascertained. We should pursue more inductive reading of the rulings of the Law and derivation of their bases to expand the list of *maqāṣid al-Shari'ah*. We should rethink the matter of whether the 'essentials' of Islamic Law should be limited to the five recognized at present. We can work to establish criteria for an "objectives-based ijtihad," and pursue an overall study of the higher objectives of the Law in Islamic jurisprudence.

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