

The Notion of Higher Objectives Prior to al-Shāṭibī

Although this study is devoted to the theory of *al-maqāṣid* as formulated by Abū Ishāq al-Shāṭibī, there is benefit to be had from reviewing what was written prior to al-Shāṭibī's time on the objectives of Islamic Law. Specifically, such a review will stand to benefit us in the following ways:

1. By providing an objective historical introduction to al-Shāṭibī's theory. In other words, before delving in detail with him into issues relating to the objectives of Islamic Law, we will be enabled to approach the topic gradually by way of certain introductions relating to the topic at hand.
2. By shedding light on the steps which were taken before al-Shāṭibī toward uncovering the objectives of Islamic Law and revealing their overall importance, a process which will allow us to place everything in its proper perspective and give everyone his due.
3. By placing a finger, as it were, on the roots and sources of al-Shāṭibī's theory, which will then help us to perceive the extent to which both tradition and originality contributed to its final form.

In order to achieve the second and third benefits, it will be necessary throughout this study to engage in frequent, if brief, comparisons between al-Shāṭibī and other thinkers, which I will attempt to clarify and summarize in the latter parts of the book.

The natural sphere for attention to the objectives of Islamic Law is that of Islamic jurisprudence (*fiqh**) and its fundamentals (*uṣūl al-fiqh**); concern for these objectives is evidenced in the work of both *fuqahā*'* and *uṣūliyyūn*, the former group's emphasis being upon detail and practical application, and the latter's on theorization and the laying of foundations. It follows, then, that al-Shāṭibī would have drawn on the work of both these groups, building on the foundations they had laid and treading the paths they had forged. It likewise follows that in the following pages we will need to lend attention to the work of both these groups of scholars; hence, I have divided the present chapter into two sections: (1) The notion of 'objectives' as treated by the *uṣūliyyūn*, and (2) The notion of 'objectives' in the Malikite school. My choice of the phrase 'in the Malikite school' rather than 'in the writings of jurists' is based, firstly, on the fact that the *fiqh*-related aspect of al-Shāṭibī's thought is restricted, for the most part, to the Malikite school and Malikite *fiqh*, or jurisprudence; and secondly, on the special relationship which can be observed between the Malikite school and the theme of the objectives of Islamic Law.

After considerable hesitation, I have chosen to begin with the *uṣūliyyūn*, that is, scholars of *uṣūl al-fiqh*, and this despite the fact that the science of *fiqh* preceded that of *uṣūl al-fiqh*. Similarly, I have made this choice despite my conviction that the *fuqahā*' demonstrate greater awareness of and concern for the objectives of Islamic Law than do the *uṣūliyyūn*. This choice is based on the fact that it was the *uṣūliyyūn*, rather than the *fuqahā*', who first brought to light and drew attention to the objectives of Islamic Law. For while the *fuqahā*' were engaged in building up the edifice of Islamic jurisprudence and applying its objectives in the practical sphere, the *uṣūliyyūn* were highlighting the features of this edifice and describing its foundations and supports.

We can thus assume that al-Shāṭibī's attention was first drawn to the objectives of Islamic Law through the writings of the *uṣūliyyūn*. Indeed, whoever reads any of the classic works on *uṣūl al-fiqh*, or even any of their abridged versions or marginal glosses, will come across the notion of *maqāṣid al-Shari'ah* and realize that they help to

make this or that clearer or more precise, to determine which of two rulings or points of view has more evidence in its favor, etc., whereas one might study scores of books on the topic and master the contents of scores of fiqh-related categories, yet without discovering that there is a 'spirit' which flows throughout the categories and particulars of Islamic jurisprudence, a spirit which benefits, directs and informs them. This 'spirit' is the objectives of the Lawgiver in establishing the Law. Moreover, even if, after long experience with such texts, one were to make such a discovery, it would remain sufficiently cryptic and fragmented that he or she would need several further rounds of study and investigation to gain a firm grasp of it.

On the basis of this assumption, then, I have deemed it preferable to begin with the *uṣūliyyūn*, a preference which is further supported by the fact that overall treatments or discussions of *maqāṣid* are the province, not of the *faqīh*, that is, the scholar of fiqh, but of the *uṣūlī*,* that is, the scholar of *uṣūl al-fiqh*. In addition, it might be noted that by beginning with the *uṣūliyyūn*, we are beginning with the global, foundational aspect of the objectives of Islamic Law, after which we may move more easily into the realm of detail and illustrative examples. Such a choice remains, of course, simply a matter of organization and structure.

[I]

The Notion of Higher Objectives as Treated by the *Uṣūliyyūn*

Before making mention of the most 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 thereof – including, to begin with, al-Juwaynī and al-Ghazālī – I would like to point out that the scholars of whom I make mention were undoubtedly preceded by still others, not only in their awareness of the objectives of Islamic Law but, in addition, in the great academic strides which they took in jurisprudence and its principles as a whole. Even so, I

have limited myself to particular examples of *uṣūliyyūn* who have discussed the objectives of Islamic Law, and this for the following reasons:

1. These thinkers absorbed and brought together in their writings a vast number of views, interpretations and theories which had gained circulation before them.
2. A large number of the writings dealing with the principles of jurisprudence during the 3rd and 4th Centuries AH are no longer extant.
3. My concern in this and other chapters is with what has been actually written down concerning the objectives of Islamic Law. As for that which was not committed to writing, it does not fall within the purview of this study unless there is some reference to it in the works to be discussed.
4. The material to be treated here includes only that which I have gained access to or of which I have knowledge. Indeed, the topic of concern here spans a period of several centuries, a thorough treatment of which requires extensive effort.

Earlier Links

Before examining the traditional *uṣūl*-related chain of transmission, which goes back in clear, continuous succession from al-Ghazālī and his shaykh, al-Juwaynī, to Ibn al-Subkī and his shaykh, al-Subkī senior, it is important that we pause to introduce and draw attention to still earlier links in the same chain of knowledge and learning. Of these links, I will limit myself to some of the most renowned scholars and *uṣūliyyūn* who had a clear impact on the topic at hand, or who exerted a major influence over those who succeeded them in the discussion of *maqāṣid al-Sharī'ah*. Given our awareness of such thinkers, we have no choice but to assume that what was said by later scholars concerning the objectives of Islamic Law may well have been stated earlier, or at the very least, prepared for, by their predecessors.

Al-Ḥakīm al-Tirmidhī (Abū ʿAbd Allāh Muḥammad Ibn ʿAlī)

There has been no little disagreement concerning al-Ḥakīm al-Tirmidhī's date of death; it is agreed that he lived during the 3rd Century AH, though the question remains as to whether he lived only till the latter part of the 3rd Century or whether he survived into the early part of the 4th Century.

Al-Ḥakīm al-Tirmidhī may have been neither a jurist (faqīh) nor a scholar of the principles of jurisprudence (*uṣūlī*) in the specialized sense of these terms; rather, he was known as a Sufi and a philosopher (hence the epithet *al-ḥakīm*, 'the sage'). Nevertheless, he deserves mention in this context; indeed, he must be mentioned as one of the foremost scholars who concerned themselves with the objectives of Islamic Law, albeit in his own distinctive way. Al-Ḥakīm al-Tirmidhī is among the scholars who devoted the most careful attention to 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* and may, in addition, have been the first to write a book specially devoted to this topic. He included the term *maqāṣid* in the title to his book, *al-Ṣalāh wa Maqāṣiduhā* (Ritual Prayer and Its Objectives), which is, fortunately, extant and in print.¹ Though it tends in its analyses of the bases of legal rulings toward an approach which is more experiential and figurative than it is precise and academic, this book nevertheless goes to the heart of our topic of investigation. The following are examples of al-Tirmidhī al-Ḥakīm's analysis and explanation of the objectives of prayer, both its verbal content and its physical gestures.

By the remembrance of God the heart is refreshed² and softened, but by the remembrance of one's passions and appetites it grows hard and dry. The heart may be likened to a tree which derives its moisture and suppleness from water: If it is too preoccupied with its appetites to remember God, it is as if it had been deprived of water. As a consequence, its roots dry up and its branches wither. If it is not watered, it will be beset by the summer heat and its branches will become dry and brittle; then, if you draw one of its branches toward you, it will fail to

bend and, instead, break off. Such a tree is good for nothing but to be cut down and become fuel for the fire. So also will the heart grow dry and brittle if it lacks the remembrance of God: It will be afflicted by the heat of the soul and the pleasures of the appetites, as a result of which one's bodily members will be too brittle to bend to God's will and will cease obeying Him. If you bend them they will break, and will be good for nothing but to become tinder for the Great Fire.³

He then continues,

Every prayer is an act of repentance, while the period between one prayer and the next is a time of heedlessness and alienation, of lapses and sins. By virtue of heedlessness one grows distant from his Lord, and when he grows distant he is filled with wantonness and pride, since he lacks reverence and fear. By virtue of alienation he becomes a stranger; by virtue of his lapses he falls and his foot slips and breaks; and by virtue of sins, he removes himself from a place of safety and is taken captive by the enemy.

The motions of prayer reflect different states in which the servant finds himself or herself. By standing [in preparation for prayer] one ceases to be a fugitive; this is because, when one's bodily members are free to do as they please, the spirit of servanthood is weakened and one flees from one's Master. However, when one stands in His presence, one gathers one's members together again and places oneself in the position of a servant. By facing the *qiblah*, one ceases turning away from and spurning [God]. By uttering the words, '*Allāhu akbar*' [God is Greatest], one abandons arrogant pride. By uttering words of praise to God, one abandons heedlessness. By reciting passages from the Qur'an, one surrenders oneself anew and renews one's acceptance of the covenant which binds one to God. Through the act of bowing, one is delivered from alienation. By prostrating, one is delivered from guilt, by coming up again into a sitting position to utter the confessions of faith, one is delivered from perdition, and by uttering the closing phrase, '*Al-salāmu 'alaykum wa rahmatu Allāh*' [May peace be upon you, and the mercy of God], one is delivered from the supreme peril.⁴

He then proceeds, in the remaining chapters of the book, to detail all of these symbolic meanings.

Al-Hakīm al-Tirmidhī wrote another book which appears to be based on the same model as his book on prayer and its objectives, namely, *al-Ḥajj wa Asrāruhu* (The Pilgrimage and Its Secrets). This latter book appears not to have been edited and published; however, we have been assured that it exists in manuscript form.⁵

However, perhaps the most important of al-Tirmidhī's writings relating to our topic is the book referred to variously as *al-ʿIlal*, *ʿIlal al-Shariʿah*, and *ʿIlal al-ʿUbūdiyyah*, which Muhammad Uthman al-Khasht describes as an attempt by al-Tirmidhī “to identify the bases of Islamic religious obligations through a process of reasoning.”⁶ Al-Khasht may have relied for this information on the passage in *Dāʿirat al-Maʿārif al-Islāmiyyah* which states that, “In his books *ʿIlal al-ʿUbūdiyyah*, *Sharḥ al-Ṣalāh* and *al-Ḥajj wa Asrāruhu*, al-Tirmidhī wished to offer a rational explanation for the legal obligations in Islam.”⁷

Sadly, the book *ʿIlal al-ʿUbūdiyyah*, which al-Subkī refers to as *ʿIlal al-Shariʿah*, is mentioned nowhere among the sources I consulted as being extant. All that is said about it is that it – together with his book *Khatm al-Wilāyah*⁸ – was the cause of the persecution to which he was subjected and his banishment from Tirmidh.⁹ It may be for this reason that it was destroyed at an early date.

Among the works which confirm al-Tirmidhī's pioneering role in general is his book entitled *al-Furūq*, about which al-Subkī states, “There is nothing comparable to it on this subject. In it he distinguishes between terms such as *al-mudārāh* and *al-mudāhanah* (flattery, fawning); *al-muḥājjah* and *al-muḥādalah* (argument, dispute); *al-munāzarah* and *al-mughālabah* (debate, contest); and *al-intiṣār* and *al-intiqām* (victory, retaliation), as well as other semantically similar terms.”¹⁰ It appears that al-Qarāfī took the idea for his own book, as well as its title, from this work of al-Tirmidhī's!

Abū Maṣṣūr al-Māturīdī (d. 333 AH/944 AC)

Imam al-Māturīdī needs no introduction; suffice it to say that large

numbers of Muslim scholars and lay people are associated to this day with his school of theology. Virtually all of the Ḥanafites pledge allegiance to this theological school, as do other people of learning.

Of concern to me here, however, is that this illustrious Sunni imam composed works on the principles of jurisprudence which are now lost. Given al-Māturīdī's standing and religious leadership, we hold such works of his in the highest esteem, especially in view of the early period in which he composed them. The most important of these works may be his book *Ma'kbadh al-Sharā'i'* (The Sources of Religious Laws). According to one student of Abū Maṣṣūr's life and the academic contributions which he left to posterity, this book – as well as other works of his on the principles of jurisprudence – is counted among al-Māturīdī's lost writings. After discussing the writings of al-Māturīdī, particularly his commentary entitled, *Ta'wīlāt Abl al-Sunnah*, Fath Allah Khalif states, "Time has preserved this commentary for us, as well as his books *al-Tawḥīd* and *al-Maqālāt*. As for his other books, however, they have all been lost."¹¹

Abū Bakr al-Qaffāl al-Shāshī (al-Qaffāl al-Kabīr)
(d. 365 AH/975 AC)

A prominent early scholar of *uṣūl al-fiqh*, al-Shāshī was the undisputed religious authority among the Shafi'ites of his day. His writings include *Uṣūl al-Fiqh* (Fundamentals of Jurisprudence) and *Maḥāsin al-Sharī'ah* (Beauties of the Shari'ah), the latter of which in particular bears a clear link to the theme of *maqāshid*, since one can only highlight the beauties of Islamic Law by revealing its wise purposes and objectives. This book's importance is confirmed by the fact that Ibn al-Qayyim mentions it and speaks highly of it.¹² This fact also makes it appear likely that this book remained extant at least until the time of Ibn al-Qayyim.

Abū Bakr al-Abharī (d. 375 AH/985 AC)

The most significant thing which will be noted by whoever studies the biography¹³ of al-Abharī is that he combined a thorough grasp of jurisprudence with an equally thorough, well-founded knowledge

of its principles, and is known to have written in both fields. Al-Khaṭīb al-Baghdādī says of him, “Among his writings are those in which he explains and defends the Malikite school’s teachings by refuting those who disagree with them.”¹⁴ His writings on the principles of jurisprudence include *Kitāb al-Uṣūl*, *Kitāb al-Ijmāʿ* *Ahl al-Madīnah*, as well as, in my estimation, his book *Masʿalat al-Jawāb wa al-Dalāʾil wa al-ʿIlal*. If this book was, as it appears to have been, on the fundamentals of jurisprudence, then the word *ʿilal* has its own special significance for our topic.

Another notable aspect of al-Abharī’s biography is the tremendous esteem which he enjoyed among scholars of virtually all schools of jurisprudence. In fact, it has been said of him – among other things – that whenever a disagreement arose between the Shafīʿites and the Ḥanafites concerning the statements made by their respective imams, they would consult him and defer to his point of view.¹⁵ As for the Malikites, he was their undisputed imam.

However, what most arrested my attention in relation to this man was the multitude of outstanding *fuqahāʾ* and *uṣūliyyūn* who were influenced by his thought, scholars who themselves exercised far-reaching influence both in their own generations and in the generations which succeeded them. Indeed, al-Qāḍī ʿIyāḍ states, “None of the scholars in all of Iraq – after Ismāʿīl al-Qāḍī – produced the likes of what was produced by Abū Bakr al-Abharī.”¹⁶

Al-Abharī’s most renowned disciples include Imam al-Aṣīlī, Ibn Khuwayyiz Mindād, al-Ḥasan ibn al-Qaṣṣār, al-Qāḍī ʿAbd al-Wahhāb and al-Qāḍī Abū Bakr ibn al-Ṭayyib al-Bāqillānī the last of whom is the best known and most important to our study.

Al-Bāqillānī (d. 403 AH/III2 AC)

Titled ‘*Shaykh al-Sunnah wa Lisān al-Ummah*,’ that is, ‘the Shaykh of the Sunnah and Spokesman for the Muslim Nation,’ al-Bāqillānī was the religious leader of his day,¹⁷ and is looked upon as having been the reformer of the 4th Century of Islam. Such indications alone should suffice as evidence of the man’s stature as well as the life of academic endeavor which he led in a variety of fields. However, what

is of particular concern to us is his standing as an *uṣūlī*, that is, a scholar of the principles of jurisprudence. To al-Bāqillānī may be attributed the second turning point in the history of the discipline known as *uṣūl al-fiqh*, the first such turning point having been brought about by Imam al-Shāfi‘ī. For while al-Shāfi‘ī ushered *uṣūl al-fiqh* into the phase of written compilation, al-Bāqillānī took the discipline a step further into the phase of comprehensive expansion and of intermingling and interaction with the discipline of theology,¹⁸ a development which was attended by both benefit and harm.

The transformation witnessed by the field of *uṣūl al-fiqh* thanks to al-Bāqillānī’s influence is evidenced by the following:

(1) His voluminous work entitled *al-Taqrīb wa al-Irshād fī Tartīb Turuq al-Ijtihād*, the sheer size of which is evidenced by the fact that al-Bāqillānī himself abridged it twice, first under the title *al-Irshād al-Mutawassit*, then under the title *al-Irshād al-Ṣaghīr*. Muhammad Hasan Hitu quotes¹⁹ Ibn al-Subkī as stating that *al-Taqrīb* is “the most momentous book ever written on the principles of jurisprudence. The version which has come down to us is *al-Mukhtaṣar al-Ṣaghīr*,²⁰ which consists of four volumes, as compared with the twelve volumes which are said to have made up the original, unabridged version.” This is a major expansion in the realm of written works on the principles of jurisprudence, and even in succeeding eras one rarely finds anything comparable. Other books written by al-Bāqillānī include *al-Muqni‘ fī Uṣūl al-Fiqh*, *al-Aḥkām wa al-‘Ilal* and *Kitāb al-Bayān ‘an Farā’id al-Dīn wa Sharā’i‘ al-Islām*, all of which bear a connection to the study of the objectives of the Law and may well have influenced what was written thereafter on this subject.

(2) Evidence of the major influence exerted by al-Bāqillānī both in his own and succeeding generations may be seen in the fact that his views on principles of jurisprudence continued to preoccupy the *uṣūliyyūn* and hold sway over their writings. Al-Juwaynī summarized al-Bāqillānī’s *al-Taqrīb* in a book which he entitled *al-Talkhīṣ*. Moreover, wherever al-Juwaynī discusses any topic of moment in *al-*

Burhān, one can sense al-Bāqillānī's presence, that is, one can feel al-Bāqillānī's stated convictions hovering about al-Juwaynī's words, as it were – supporting, disagreeing, clarifying, or correcting as the case may be. Al-Bāqillānī's influence can likewise be perceived in other 5th Century writings, such as those of al-Shīrāzī, al-Ghazālī and others, as well as in the works which appeared in the centuries that followed.

(3) Quoting from al-Zarkashī's *al-Baḥr al-Muḥīṭ* (in manuscript form), Mustafā Abd al-Razzaq describes the development of writing on the topic of *uṣūl al-fiqh* after the time of al-Shāfi'ī. He states, "Those who succeeded him undertook to explain and clarify, simplify and comment, until the appearance of the Sunnites' Abū Bakr ibn al-Ṭayyib, and the Mu'tazilites', 'Abd al-Jabbār, who proceeded to expand terminology and decipher symbols: detailing that which had been stated in general terms and resolving ambiguities such that others began to follow their example."²¹ Moreover, if we know that al-Bāqillānī preceded 'Abd al-Jabbār (d. 415 AH/1024 AC) and that he instituted a far greater expansion of *uṣūl al-fiqh* than did 'Abd al-Jabbār, we will realize that the transformation to which al-Zarkashī refers applies more fittingly, and more completely, to al-Bāqillānī than it does to any other. Abd al-Razzaq states that "from the 4th Century AH, scholastic theologians took over the discipline of *uṣūl al-fiqh*. Consequently, their methods gained ascendancy over that of the jurists and, due to the intimate contact between the science of *uṣūl al-fiqh* on one hand, and logic and philosophy on the other, the effects of the latter two disciplines crept into the former."²² Yet just as the expansion of *uṣūl al-fiqh* may be attributed more accurately and fully to al-Bāqillānī than to 'Abd al-Jabbār, the influence spoken of by Abd al-Razzaq was more relevant to al-Bāqillānī than it was to 'Abd al-Jabbār; for there can be no doubt that al-Bāqillānī lived during the 4th Century AH, whereas 'Abd al-Jabbār also lived a good part of his life during the 5th Century AH.

This said, we now move to the most prominent links in the chain of *uṣūliyyūn* who dealt, to one extent or another, with the objectives of Islamic Law. In the pages which follow, I will aim to present these

scholars' most significant contributions to this discipline based on the information at my disposal.

The Imam of the Two Sacred Shrines (d. 478 AH/1085 AC)

Abū al-Maʿālī ʿAbd al-Malik ibn ʿAbd Allāh al-Juwaynī, also known as the Imam of the Two Sacred Shrines, represents a prominent way station along the path charted by the discipline of *uṣūl al-fiqh*. This is a known fact among those familiar with the history of this science; hence, it requires no more proof than *al-Burhān* (The Proof) itself.²³ Indeed, *al-Burhān* became the starting point for all writing on *uṣūl al-fiqh* by those who succeeded al-Juwaynī, just as al-Shāfiʿī's *Risālah* had been the starting point for writings in this field during the 3rd and 4th Centuries AH and continued in this capacity until the days of al-Juwaynī, whose father (d. 438 AH/1046 AC) was among those who wrote commentaries on *al-Risālah*.

Suffice it as evidence of al-Juwaynī's stature in the sphere of *uṣūl al-fiqh* that it was he who exercised the greatest, most profound influence on his disciple, Imam Abu Ḥāmid al-Ghazālī. For although al-Ghazālī surpassed his shaykh in both fame and distinction, the first of al-Ghazālī's works on the subject of *uṣūl al-fiqh*, namely, *al-Mankhūl*, nevertheless consists of nothing but faithful summaries of al-Juwaynī's views.²⁴ In relation to the topic of our study, namely, the objectives of Islamic Law, al-Juwaynī performed a pioneering role which is unrivaled to this day; hence, even the leading role performed by al-Ghazālī in this sphere depended to a large degree on that of his shaykh, al-Juwaynī.

The trail blazed by al-Juwaynī in the realm of *maqāṣid* becomes manifest, first of all, in the frequency with which he draws attention to this theme. In his book, *al-Burhān*, he uses the terms *al-maqāṣid*, *al-maqṣūd*, and *al-qaṣd* scores of times, in addition to which he often refers to the same concepts by the use of the terms *gharaḍ* and its plural *aghrāḍ*, etc. An example of this phenomenon is al-Juwaynī's explanation of the obligatory rites relating to ritual purity and the purpose behind them, after which he moves on to the subject of waterless ablutions (*al-tayammum*), the purpose of which might be

difficult to identify. Speaking in the language of the jurists he says,

Waterless ablutions were established as a substitute [for ablutions with water], the purpose of which does not reside in the act itself. Whoever reflects carefully and thoroughly on the matter will realize that the purpose behind waterless ablutions is to perpetuate the habit of performing the duties associated with ritual purity. After all, journeys are regularly occurring events in people's lives,²⁵ during which it is not unusual for water to be in short supply. Now, if someone were to perform canonical prayers having performed neither the rites required to achieve ritual purity nor any sort of substitute rite, he would grow accustomed to praying in such a state; after all, whatever you accustom yourself to will become your habit. This, in turn, might lead you to succumb easily to your own inclinations and to neglect the rites required of you by the Law and the purposes for which they were instituted.²⁶

In a refutation of al-Ka'bi al-Mu'tazili, who was well known for his rejection of the legal category referred to as 'permissible', that is (*mubāḥ*),²⁷ al-Juwayni stresses the importance of making allowance for the objectives of the Law: "Whoever fails to comprehend the objectives which underlie the [divine] commands and prohibitions has likewise failed to perceive the basis for the establishment of the Law."²⁸

Nevertheless, the most important contribution which al-Juwayni made toward drawing attention to and provoking discussion of the objectives of the Law may be found in the section of his chapter on analogy entitled, "Categories of Bases and Principles."²⁹ In this section al-Juwayni first presents various scholars' views on which legal rulings in Islam may be understood in terms of their underlying bases, or *'ilal*, and which of them may not, after which he mentions examples of these scholars' interpretations of various rulings and the manner in which such interpretations influence the process of drawing analogies among rulings. Then he says, "What has been stated by these [scholars] constitutes the fundamentals of the Law, which we divide into five categories."³⁰ It is clear from this statement that the

five-fold division being spoken of by al-Juwaynī is his own and that it had never been proposed before. It should be borne in mind that al-Juwaynī introduced this division of the bases and objectives of Islamic Law in order to help distinguish between cases in which it is valid to draw an analogy between one ruling and another and those in which it is not valid to do so. As for the five categories of legal bases (*‘ilal*) – or interpretations founded thereon – they are listed as follows:

Category 1: Those which have to do with ‘the essentials,’ such as the law of retribution for murder, which is interpreted on the basis of the fact that its purpose is to prevent the shedding of innocent blood and to deter against assaults on innocent lives.³¹

Category 2: Those which have to do with general needs yet do not fall within the category of essentials. These include, for example, covenants of protection concluded among individuals.³²

Category 3: Those which – like the rites required in order to achieve a state of ritual purity – have to do with that which is neither essential nor a general need, but rather, with acquiring noble traits and abandoning their opposites.³³

Category 4: Those which have to do with neither an ‘essential’ nor a general need, but which are still less urgent than Category 3 in that they are limited to actions which are deemed ‘recommended’ (*al-mandūbāt*).³⁴ These are, in essence, like Category 3 above in that their beneficial purpose is to encourage virtues or noble deeds which are not explicitly commanded in any text of the Law, but which are recommended.³⁵

Category 5: Those for which no clear interpretation or aim can be found, whether on the basis of essentials, needs, or virtuous traits and actions. Concerning this category al-Juwaynī states, “This is very difficult to imagine.”³⁶ In other words, this type of ruling in Islamic Law is quite rare, since nearly all of its rulings have clear objectives and discernible benefits. Hence, even though the example which he cites of this type of ruling – i.e., the type which cannot be interpreted in terms of its bases or objectives – is certain physical forms of worship “which are not associated with any particular aim,

be it the achievement of benefit or the prevention of harm,”³⁷ he soon goes on to point out that these forms of worship may be interpreted in terms of what might be thought of as universal objectives. In other words, they may be seen as training us in subservience to God Almighty and in the renewal of our covenant with Him through sacred invocation – which serves, in turn, to prevent us from engaging in shameful and unjust deeds, reduces our tendency to go to excess in satisfying worldly desires, and reminds us of the importance of preparing ourselves for the life to come. Of these objectives al-Juwaynī states, “These are universal objectives which we must recognize as underlying the Lawgiver’s commands to engage in physical expressions of worship.” As evidence in favor of this assertion, al-Juwaynī cites texts from the Qur’an such as God’s declaration that “prayer restrains from shameful and unjust deeds” (29:45).³⁸

Once these five categories have been accounted for, all that remains are some of the Law’s detailed rulings which are difficult to interpret in terms of particular bases or objectives and which cannot be used as the basis for analogies with other rulings, such as the postures of prayer and the number of genuflections to be performed in each prayer, or the specification of the fasting month and when it begins.³⁹

Returning to the five-fold division of legal bases and objectives, we have seen that, based on the words of al-Juwaynī himself, Categories 3 and 4 may be combined into one. This is confirmed by the fact that when he mentions Category 5, he stipulates that it is included in neither ‘essentials,’ ‘needs,’ nor ‘enhancements.’ Hence, he limits the other categories to three.

When we come to Category 5 we find that al-Juwaynī has divided it implicitly into rulings which can be interpreted in terms of universal objectives, and those which cannot be interpreted at all. It follows, then, that any ruling which is subject to interpretation in terms of the objectives and bases of the Law must be subsumed under one of the first three categories; in other words, it must be included either among ‘essentials,’ ‘needs,’ or ‘enhancements.’ As for that which cannot be interpreted in terms of any basis or aim, it falls outside the

purview of this discussion, which has to do with the bases (*‘ilal*) of Islamic legal rulings. What we are left with, then, is three categories.

Hence, it was al-Juwaynī who first introduced the three-fold division of the Lawgiver’s objectives into ‘essentials,’ ‘needs,’ and thirdly ‘enhancements,’ a division which has become the foundation of all discussion of *maqāṣid*. It was likewise al-Juwaynī who first made reference to what are referred to as the major essentials in Islamic Law and which will be enumerated below as the five essentials: religion, human life, the faculty of reason, progeny, and wealth. In this connection he states,

Islamic Law is comprised of that which is commanded, that which is prohibited, and that which is permitted. That which is commanded includes, for the most part, acts of worship. As for those acts which are prohibited, the Law has laid down deterrents for the most serious of them. Generally speaking, human life is preserved through the law of retribution, chastity is preserved through the punishments laid down [for related transgressions], and people’s possessions are protected from thieves by cutting off [their hands].⁴⁰

Abū Ḥāmid al-Ghazālī (d. 505 AH/1111 AC)

Imam al-Ghazālī, as I have mentioned, was in many ways an extension of his shaykh, al-Juwaynī. He was thoroughly imbued with al-Juwaynī’s thought and views and was influenced significantly by his method and choices. Despite this, however, he did not stop at the limits at which his had stopped, whether in the field of *uṣūl al-fiqh* in general or in the study of the objectives of Islamic Law in particular. Rather, he revised and amended, added and developed, thereby becoming a contributor and pioneer in his own right, with a position of distinction both in the history of *uṣūl al-fiqh* and in the study of the objectives of Islamic Law. Al-Ghazālī’s distinctive position with respect to his was fully recognized by the latter. In the context of arguing in favor of the Shafī‘ite school over other schools,⁴¹ al-Juwaynī wrote,

Although the forerunner has the right to establish, create and lay

groundwork, the critic who succeeds him has the right to complete and perfect. Every subject, when first introduced, may exhibit some degree of ambiguity and confusion in its principles, after which there is a gradual move toward refinement and clarity. Consequently, it is not the founder, but the successor who becomes more worthy of a following, since it is he who unites the various schools around what his predecessor established. This phenomenon may be observed clearly, both in trades and crafts and in academic disciplines.⁴²

Although al-Ghazālī offered little that was new in his first work on *uṣūl al-fiqh*, namely, *al-Mankhūl min Taʿlīqāt al-Uṣūl*, he progressed clearly in the realms of revision and development in his book entitled *Shifāʾ al-Ghalīl fī Bayān al-Shabah wa al-Mukhīl wa Masālik al-Taʿlīl*, after which he made even more distinctive, mature contributions in *al-Mustaṣfā min ʿIlm al-Uṣūl*. In *Shifāʾ al-Ghalīl*, al-Ghazālī mentions the objectives of Islamic Law in the context of his discussion of what is known as *maslak al-munāsabah*,* or ‘the appropriateness approach’ which constitutes one of a number of approaches to *taʿlīl*, or interpretation of legal rulings in terms of their underlying foundations or bases (*ʿilal*).

This approach is based on the understanding of legal rulings in terms of the benefit which they achieve or the harm which they prevent. Al-Ghazālī states, “Appropriate meanings [objectives] are what point to the various aspects of interests and their indications, [where]...‘interest’ is based on the achievement of a benefit or the prevention of harm. Similarly, it may be said that ‘appropriateness’ is based on consideration of an intended outcome.”⁴³ Hence, the interest-related occasions on the basis of which it is valid to undertake *taʿlīl* are those which involve consideration for one or more of the Lawgiver’s objectives: “That which does not reflect consideration for an outcome intended [by the Lawgiver] is not appropriate, while that which evidences consideration for such an intended outcome is appropriate.”⁴⁴

This condition which al-Ghazālī stipulates for the permissibility of engaging in interest-based, or appropriateness-based, interpretation of legal rulings, and which must entail consideration for one or more

of the Lawgiver's objectives, is stated even more explicitly in *al-Mustaṣfā* in the context of his treatment of the validity of *istiṣlāḥ*,* or the practice of basing legal rulings on consideration for *al-maṣāliḥ al-mursalah*,* or unrestricted interests. Al-Ghazālī defines interests recognized explicitly in Islamic Law as follows: "By 'interest' we mean the preservation of the Lawgiver's objective..."⁴⁵ At the conclusion to his study, al-Ghazālī returns to the theme of unrestricted interests in what may be viewed as the definitive statement on the validity of *istiṣlāḥ*. Al-Ghazālī states,

Every interest which is not based on the preservation of an objective which may be understood from the Qur'an, the Sunnah, and the consensus of the Muslim community,⁴⁶ but which is, rather, a foreign interest which is inconsistent with the comportment called for by Islamic Law, is invalid and unacceptable. As for an interest which is based on the preservation of a legitimate objective which is known to be the intent of the Qur'an, the Sunnah and the consensus of the Muslim community, it is not outside the purview of these principles; however, it is not referred to as an analogy but rather as an unrestricted interest.⁴⁷

He then continues,

Moreover, if we interpret 'interest' to mean the preservation of the Law's intent, then there is no basis for disagreement over whether it is to be observed; on the contrary, it must be stated unequivocally to have an authoritative claim over us.⁴⁸

In both *Shifā' al-Ghalīl* and *al-Mustaṣfā*, al-Ghazālī spells out for us the central objectives of Islamic Law around which all legitimate intents and interests revolve. In the first book he divides the objectives of the Law into the dual categories of 'spiritual' (or 'religious') and 'worldly.'⁴⁹ In addition, he asserts that "it is known for a certainty that preservation of human life, the faculty of reason, chastity and material possessions are the intent of the Law,"⁵⁰ after which he cites evidence for each of these objectives. Hence:

- The aim of preserving human life is evidenced by the law of retribution in the event of murder.
- The aim of preserving the faculty of reason is evidenced by the prohibition against partaking of alcoholic beverages.
- The aim of preserving chastity is evidenced by the prohibition against adultery and fornication and the punishment prescribed for them.
- The aim of preserving people's wealth is evidenced by the prohibition against taking others' possessions, the command to offer a guarantee (*Ḍamān**), and amputation of the thief's hand.

Al-Ghazālī then adds, “The Lawgiver draws attention to the interests of religion in His declaration in the Qur’an that ‘prayer restrains from shameful and unjust deeds’ (29:45). Whatever curbs shameful deeds is, therefore, something which encompasses all interests relating to religion, and could be associated with worldly interests as well.”⁵¹

In *al-Mustaṣfā*, al-Ghazālī repeats these overall objectives of the Law, but in a more precise, refined form. In this book he does not divide the Law's objectives into the ‘spiritual’ and the ‘worldly,’ perhaps because he senses the possibility that there are some who might object that all of the objectives of the Law are at once worldly and spiritual. Indeed, al-Ghazālī himself alludes to this notion at the end of the statement quoted above. The prohibition against shameful and unjust deeds, for example, is itself a prohibition against killing, drunkenness, sexual misconduct and theft; as such, it aims to preserve interests which are both spiritual and worldly.

Therefore, rather than placing so-called spiritual interests over against so-called worldly interests, al-Ghazālī places ‘preservation of religion’ at the top of the list of the Law's essential objectives. What is meant here by the interest referred to as ‘religion’ – or the necessity of religion – is the source of religious devotion and practice represented by faith in God, worship of God, and affirmation of God's oneness. Evidence of this may be seen in his statement, “Examples of this [i.e., the preservation of religion] include the Law's ruling that the apostate⁵² is to be put to death and that the innovator who calls

others to embrace his innovation is to be punished, since such people and their actions cause others to forfeit their religion.”⁵³

In this manner, al-Ghazālī managed to avoid objections to the problematic division of the interests underlying the Law into ‘spiritual’ and ‘worldly.’ In addition, he came to eschew the use of the term ‘chastity’⁵⁴ which he had used in *Shifā’ al-Ghalīl* in favor of the clearer and more precise term, ‘progeny.’ Given this revision, the formulation of the basic objectives of the Law came to be as follows: “The Law’s intention for human beings is fivefold, namely, to preserve their religion, their lives, their faculty of reasoning, their progeny, and their material wealth.”⁵⁵

Among the views whose origin we find in *Shifā’ al-Ghalīl* and which al-Ghazālī rendered more precise in *al-Mustasfā* are those relating to the preservation of these same five essentials in previous laws. In his discussion of the preservation of human life in *Shifā’ al-Ghalīl*, for example, he states, “According to those who affirm the human mind’s ability to distinguish between good and evil – [a reference to the Mu‘tazilites] – it would be unthinkable for any [human] law to lack [measures by means of which to preserve human life].”⁵⁶ However, not long after making this statement, al-Ghazālī himself adopts the Mu‘tazilites’ belief in “the human mind’s ability to distinguish between good and evil.” Hence, in speaking of the preservation of the faculty of reasoning and the consequent prohibition against alcoholic beverages, he states,

This, similarly, is something which would be denied neither by discerning individuals nor by any law which affirms consideration for human welfare in the realms of spirit and body. For no religion has ever permitted the use of intoxicants, although some may have permitted an amount less than that which would produce actual intoxication. And the same may be said concerning the objectives of preserving chastity, material wealth and the like.⁵⁷

Then, in a sweeping, definitive statement concerning the five ‘essentials,’ al-Ghazālī declares in *al-Mustasfā* that “it is unthinkable that any religion, or any law which is intended to reform humanity,

should fail to include this [i.e., means by which to preserve these five entities]. Consequently, there is no disagreement among various laws as to the necessity of prohibiting disbelief, murder, sexual contact outside the bonds of marriage, theft, and the drinking of intoxicants.”⁵⁸

Al-Ghazālī following the manner of his shaykh, al-Juwaynī, categorizes the interests preserved by Islamic Law according to their degree of urgency and clarity. On this basis, then, some interests are classified as ‘essentials,’ others as ‘needs,’ and others as ‘enhancements.’ Each class, moreover, has certain complements.⁵⁹ This classification as presented by Imam al-Ghazālī is characterized by a high degree of clarity and stability. He highlights the contrasts and interrelationships among the three classes, giving abundant examples of each class and its complements. However, the matter of classifying legal rulings within the three classes, and particularly within the two classes of ‘needs’ and ‘enhancements,’ is a task which involves a good measure of independent reasoning and approximation.

The steps which al-Ghazālī took and the principles which he refined and clarified with respect to the objectives of Islamic Law came to define 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*. Perhaps one of the things which have immortalized al-Ghazālī’s writings on the objectives of Islamic Law and which caused *uṣūliyyūn* for several centuries thereafter to do no more than repeat what he had said is that his writings were a crowning, as it were, of the insights into this topic which had preceded him. Al-Ghazālī’s writings were, in addition, a crystallization of the steps he himself had taken, and it is for this reason that they were marked, particularly in his final book, *al-Mustaṣfā*, by such a distinctive degree of refinement, focus and clarity.

Fakhr al-Dīn al-Rāzī (d. 606 AH/1209 AC)

In his book entitled, *al-Maḥṣūl*, al-Rāzī includes all that was written before it by al-Juwaynī and al-Ghazālī. This comes as no surprise, since his book is simply a summarization of the books *al-Muṭamad*

by Abū al-Ḥusayn al-Baṣrī, *al-Burhān* by al-Juwaynī and *al-Mustaṣfā* by al-Ghazālī. However, an impressive feat recorded in al-Rāzī's biography is that he had memorized both *al-Mu'tamad* and *al-Mustaṣfā* in their entirety!⁶⁰ He devoted long years to the defense of *ta'līl*, that is, the practice of tracing legal rulings back to their bases and causes, at a time when the notion of *ta'līl* had begun to suffer decline and doubts were being cast on its usefulness and importance.

Al-Rāzī did not adhere to the order which al-Ghazālī had established for the five 'essentials'; in fact, he did not adhere to any particular order. At times he would list them, for example, as: human life, material wealth, progeny (*al-nasab*), religion, and the faculty of reason.⁶¹ At other times, he would list them as: human life, the faculty of reason, religion, material wealth, and progeny.⁶² Note also that he refers to 'progeny' with the word *al-nasab* rather than the word *nasl* despite the fact that the latter is more accurate, for it is the preservation of one's progeny which may be classified as one of the 'essentials' under the Law; as for the preservation of *nasab*, or family lineage, it is complementary to the preservation of progeny.

Sayf al-Dīn al-Āmidī (d. 631 AH/1233 AC)

Al-Āmidī's book, *al-Iḥkām fī Uṣūl al-Aḥkām* is still another summarization of the three aforementioned books: Abū al-Ḥusayn al-Baṣrī's *al-Mu'tamad*, al-Juwaynī's *al-Burhān*, and al-Ghazālī's *al-Mustaṣfā*. However, what al-Āmidī offers which is new and of benefit in this work is that he introduces *maqāṣid al-Sharī'ah* into decisions involving the choice of one ruling over another and, specifically, into the process of deciding between conflicting analogies, a practice which was to become an approved custom among those *uṣūliyyūn* who succeeded him.

Al-Āmidī stipulates that legal objectives which are classified as 'essentials' must be given priority over those classified as 'needs,' which in turn are to be given priority over those classified as 'enhancements.' Similarly, primary interests are to be given priority over their complements, while the complements to 'essentials' are to be given priority over the complements to 'needs,' and so forth.⁶³ Then,

and perhaps for the first time, he proceeds to clarify the means by which the five ‘essentials’ are to be arranged and which of them are to be given priority over others based on this arrangement. In addition, al-Āmidī offers a defense of the arrangement he has chosen. When al-Āmidī first makes mention of the five ‘essentials,’ he lists them in the same order adopted by al-Ghazālī, saying, “...The five objectives which are recognized by virtually every religion and law are: religion, human life, the faculty of reason, progeny and material wealth.”⁶⁴

When detailing his argument concerning which essentials are to be given priority over others, he chooses to give the preservation of progeny and human life priority over the preservation of the faculty of reason. The reason he offers for this is that the preservation of the faculty of reason is simply an outcome of the preservation of human life and progeny, and it is through the preservation of the former two that the faculty of human reason is itself preserved, whereas if human life and progeny were forfeited, so also would be the faculty of reason. As for the preservation of the faculty of reason, it does not necessarily entail the preservation of human life and progeny, whereas its existence cannot be conceived of without the latter two entities.⁶⁵ Al-Āmidī writes at length in defense of giving priority to the preservation of religion over the preservation of human life. He states,

Whatever is intended to preserve the root of religion should be given priority over all else, since [the Islamic] religion’s aim and ultimate outcome is the attainment of eternal happiness in the presence of the Lord of the worlds. All other objectives, including the preservation of human life, the faculty of reason, material wealth and anything else, are in the service of this overriding interest. As God Almighty declares, “I have not created the invisible beings and men to any end other than that they may [know and] worship Me” (Qur’an, 51:56).⁶⁶

Al-Āmidī then offers a detailed refutation of arguments offered in favor of giving priority to the preservation of human life over the preservation of religion.

Among the new points offered by al-Āmidī is the explicit declaration that the ‘essentials’ are limited to these five. He states, “The limitation of the essentials to these five categories is based on the observation of reality and the awareness that there is, for the most part, no essential aim beyond them.”⁶⁷ Following al-Āmidī, the *uṣūliyyūn* began to state explicitly that the ‘essentials’ were to be limited to these five and that an inductive reading of the Law would support this conclusion, whereas Imam al-Ghazālī, who had first named these essentials, limited their number only implicitly.

Be that as it may, the limitation of the essentials to the aforementioned five, despite the virtual consensus which supports it, is in need of reconsideration and review. And although this is not the place to discuss this point, occasions for such discussion will present themselves later in this study.

In the generations which followed al-Rāzī and al-Āmidī, the hands of the clock came to a standstill, as it were, and the traditionalist writings⁶⁸ on *uṣūl al-fiqh* came to be little more than abridgments of what had been written previously, commentaries on the abridgments, summaries of the commentaries, then commentaries on the summaries.

One writer might take it upon himself to compose some of the above in the form of poetry, after which another, or possibly the same writer, might volunteer to transform the poetry into prose, and so on until the time of *Jamʿ al-Jawāmiʿ* (Compendium of Compendiums)⁶⁹ or, more properly speaking, the *jamʿ al-mawānīʿ* (that is, the “compendium of hindrances”), by which I mean the impediments which came to be placed in the way of renewal, change, revision, academic progress, or even direct interaction with the writings of early scholars. Hence, after the appearance of *Jamʿ al-Jawāmiʿ*, nothing remained but to preserve it and write marginal glosses on it!

Ibn al-Hājib (d. 646 AH/1248 AC)

Remaining within al-Āmidī’s orbit, Ibn al-Hājib states,

The objectives of the Law are of two types: those which are essential in

and of themselves and which merit the highest priority, such as the five objectives which are reflected in every religion – the preservation of religion, human life, the faculty of reason, progeny and material wealth – and those which are non-essential, i.e., those for which there is no intrinsic need, such as selling and entering into covenants of protection.⁷⁰

In discussing the process of assigning priority to some objectives or rulings over others, Ibn al-Ḥāḥib stipulates that the ‘essentials’ should be given priority over ‘needs,’ thereby remaining in line with the views expressed previously by al-Āmidī. He then goes on to discuss the assignment of priority among the ‘essentials’ themselves, stipulating that the need to preserve (the Islamic) religion should be given priority over all the remaining essentials. He then adds, “Some might propose the very opposite arrangement, that is, giving priority to human beings’ right – due to the harm they suffer – over God’s right due to the fact that God in His Sublimity is incapable of suffering harm.”⁷¹ However, Ibn al-Ḥāḥib then refutes this alternative view using the very same arguments put forward by al-Āmidī; he also follows al-Āmidī in giving priority to the preservation of progeny over the preservation of the faculty of reason.

Al-Bayḍāwī (d. 685 AH/1286 AC)

Like al-Rāzī, al-Bayḍāwī divides the objectives into ‘other-worldly’ and ‘this-worldly.’ Other-worldly objectives include things such as purification of the soul, while this-worldly objectives are of three types: (1) essential, “such as the preservation of human life through the law of retribution, preservation of [the Islamic] religion through armed conflict, preservation of the faculty of reason through the prohibition against intoxicants, the preservation of material wealth through various kinds of legal guarantees, and the preservation of progeny by carrying out the penalties associated with sexual misconduct,”⁷² (2) interest-related, such as the assignment of a legal guardian over a minor; and (3) enhancement-related, such as the prohibition of rubbish, filth and the like in public places.

Al-Isnawī (d. 772 AH/1370 AC)

Al-Isnawī makes no comment on this arrangement of the essentials; instead, he simply adheres to it in his commentary on the passage above.⁷³ However, in another passage he mentions them in the following order: "... religion, human life, the faculty of reason, material wealth and progeny..."⁷⁴ And in connection with the question of assigning priority to some objectives over others, he restricts himself without comment to the approach taken by al-Āmidī and Ibn al-Ḥājjib.⁷⁵

Hence, the *uṣūliyyūn* either vacillated between al-Ghazālī's and al-Āmidī's arrangements of the five essentials or simply followed no particular order at all. Al-Ghazālī and al-Āmidī agreed on giving priority to religion over human life and on giving lower priority to material wealth, while they disagreed over whether to give progeny priority over the faculty of reason, or vice-versa. However, given that al-Ghazālī offered no explanation or defense of his arrangement, the most reasonable of the two views is that put forward by al-Āmidī.

This said, allow me to deal with certain statements which I feel are in need of correction. Specifically, I am referring to statements made by Wahbah al-Zuhayli and Muhammad Said al-Buti. Al-Zuhayli states, "The Malikites and the Shafī'ites arrange these five fundamentals or essentials as follows: religion, human life, the faculty of reason, progeny and material wealth, whereas the Ḥanafites place them in the following order: religion, human life, progeny (or family lineage, *nasab*), the faculty of reason, and material wealth."⁷⁶

The fact is, however, that there is no justification for associating a given arrangement for these essentials with this or that school of jurisprudence. Hence, the attribution of this or that arrangement, whatever it happens to be, to the Ḥanafites is a baseless invention; after all, the Ḥanafites have nothing to do with this issue, nor, for that matter, do the Malikites, even if Ibn al-Ḥājjib, himself a Maliki, adopted al-Āmidī's arrangement, which was adopted by numerous other scholars as well.

Al-Zuhayli bases his statement above on a Ḥanafite reference work, namely, *Musallam al-Thubūt*. However, this reference is not

authoritative in the least, and this for two reasons: Firstly, because its author, Muḥibb Allāh ibn ʿAbd al-Shakūr, was a very late thinker (d. 1119 AH/1707 AC), and secondly, because he did not establish this order on his own, nor did he propose it as something which represents the Ḥanafite school. Rather, he was simply following the *uṣūliyyūn* of the Shafiʿite tradition. It is a known fact that *Musallam al-Thubūt* is a work which combines the Shafiʿite and Ḥanafite approaches and points of view. Moreover, when the author mentions the five essentials for the first time, he mentions them in the order supported by al-Ghazālī, who was a Shafiʿite; that is, he gives the faculty of reason priority over progeny/family lineage.⁷⁷ However, when he mentions them in the context of decisions concerning which essentials to give priority over others, he chooses – following al-ʿĀmidī, also a Shafiʿite – to place progeny over the faculty of reason.⁷⁸

Hence, both arrangements were laid down by *uṣūliyyūn* of the Shafiʿite school, after which they were followed by the Malikites and the Ḥanafites. The question of how to prioritize the five ‘essentials’ thus has nothing essentially to do with which school of jurisprudence one belongs to; rather, it is solely a matter of individual judgment and interpretation.

As for al-Buti, he adopts al-Ghazālī’s arrangement and justifies this choice from his point of view. He also provides a number of illustrative examples from the realm of jurisprudence, all of which is his prerogative. However, al-Buti goes one step too far when he states that “the arrangement of the essentials in this order is the subject of unanimous agreement.”⁷⁹ Given the foregoing discussion of the subject at hand, I see no need to explain why this statement is an exaggeration; hence, I will content myself with what has already been said.

Ibn al-Subkī (d. 771 AH/1369 AC)

Ibn al-Subkī mentions the five essentials in the same order in which al-Ghazālī lists them; however, like al-Rāzī and others, he replaces al-Ghazālī’s term *al-nasl* with the term *al-nasab*. In addition, he adds a sixth, saying, “That which may be deemed essential includes the

preservation of religion, human life, the faculty of reason, family lineage, material wealth, and honor.”⁸⁰ In a marginal gloss on this statement al-Banānī writes,

[honor] is added by al-Ṭūfī (d. 716 AH/1316 AC) in his *al-Muṣannaf*. In so doing, however, he links it with the preceding by means of the Arabic particle *wāw*, which indicates that it is to be subsumed under the category of material wealth. All of the preceding items in the list, by contrast, are linked with the particle *fā’*, which makes clear that the category of ‘honor’ occupies a status subordinate to the others.⁸¹

Prior to al-Ṭūfī, the addition of honor to the five essentials is mentioned by al-Qarāfī (d. 684 AH/1285 AC). Speaking of others who preceded him, al-Qarāfī speaks of “...the five universals, namely, the preservation of human life, religion, progeny, the faculty of reason and material wealth, to which some have added, ‘honor’.”⁸² From this one may easily conclude that al-Qarāfī, by contrast with al-Subkī, had not adopted this addition himself.

Al-Shawkānī defends this addition to the five essentials, saying,

Some later scholars added a sixth, namely, the preservation of people’s honor. Most sensible people would be willing to give up their lives and their wealth before they would be willing to give up their honor. For whatever has been ransomed by that which is most essential is, necessarily, of the greatest importance. The Law has established a penalty for assaulting someone’s honor through slander and, indeed, one’s honor is more worthy of preservation than anything else. A person might be willing to pardon someone who had assaulted his physical person or his material possessions, but you would hardly find anyone who would be willing to pardon someone who had assaulted his honor. Thus someone has said:

*It is a small thing for our bodies to be afflicted
So long as our honor and our minds are spared.*⁸³

However, the fact is that by making honor into a sixth essential to be placed alongside that of religion, human life, progeny, the faculty

of reason, and material wealth, we diminish the value of these essentials for human life. In so doing, we reduce them to a level below that to which al-Ghazālī had lifted them through his focused, refined clarification of these major fundamentals. For while al-Ghazālī considered the preservation of human life to be an essential, some later scholars descended to the use of the term *al-nasab*, or ‘lineage’ (in place of the term *al-nasl*, or ‘progeny’), after which they descended even further to the addition of honor as one of the essentials! But are not the preservation of family lineage and the protection of people’s honor simply servants, as it were, to the preservation of progeny?

A further problem associated with this addition is that the preservation of people’s honor is not subject to precise measurement or definition: Where does it begin, and where does it end? And where is the dividing line between the preservation of honor and the preservation of *al-nasab*, or lineage? If it were permissible for us to add the essential of preserving lineage and honor, it would likewise be permissible for us to add – and with even greater reason – the essentials of faith, worship, a livelihood, food, as well as all manner of other genuine necessities which fall under the rubric of the five essentials and that which serves them.

Ibn Ashur takes issue with those who made the preservation of honor one of the essentials, considering it instead to fall in the category of ‘needs.’ Nor does he agree with making the preservation of lineage one of the essentials except insofar as it contributes to the preservation of progeny.⁸⁴ As I have indicated before, whatever fulfills such a role is merely a complement to that which is essential.

Let me turn now to some of those scholars who have broken free from this chain of imitation and repetition. What may have helped such thinkers to liberate and distinguish themselves is that they were not *uṣūliyyūn*, that is, specialists in the principles of Islamic Law, in the narrow sense of this appellation. Rather, they were both *uṣūliyyūn* and *fuqahā’* in the broader sense. I am not referring to the *uṣūliyyūn* of the Ḥanafite school – also known as *al-uṣūliyyūn al-fuqahā’* – whose method of writing on the subject of *uṣūl al-fiqh* is referred to as ‘the jurists’ method’ (*ṭarīqat al-fuqahā’*) or ‘the Ḥanafites’ method,’ as opposed to that of the scholastic theologians,

most of whom were Shafi'ites. In fact, the *uṣūliyyūn* of the Ḥanafite school were less mindful of the objectives of Islamic Law than were the scholastic theologians. I have reviewed a number of their writings, including both earlier and later scholars, but have found nothing of note on this score⁸⁵ despite the fact that among jurists, it is the Ḥanafites who have most frequently interpreted Islamic legal rulings – both those having to do with daily transactions and those dealing with forms of worship – in terms of their bases and objectives. In this regard, they concern themselves with the bases and objectives of the Law far more than Shafi'ite jurists; however, this applies to the realm of jurisprudence and its particulars.

As for the *uṣūliyyūn fuqahā'* whom I do wish to speak of here, they are, specifically: 'Izz al-Dīn 'Abd al-Salām and his student, al-Qarāfi, and Ibn Taymiyah and his student, Ibn al-Qayyim. These – alongside al-Shāṭibī – are some of the early scholars and thinkers who have stormed our modern age and whose ideas and books have gained wide recognition. Consequently – and thanks to the truthfulness, integrity, clarity and autonomy of their thinking and attitudes – they have come to have a powerful presence in modern writings, whether in the realm of jurisprudence, the principles of jurisprudence, the objectives of Islamic Law, or Islamic thought in general. Indeed, God grants His bounty to whomsoever He wills.

'Izz al-Dīn ibn 'Abd al-Salām (d. 660 AH/1261 AC)

Imam 'Izz al-Dīn ibn 'Abd al-Salām gained renown primarily through his remarkable book, *Qawā'id al-Aḥkām fī Maṣāliḥ al-Anām*. This book may be seen as being devoted almost entirely to the objectives of Islamic Law, whether one considers its forthright statements on the objectives underlying Islamic legal rulings, or the fact that discussions of benefits and sources of harm are, in effect, discussions of the objectives of Islamic Law, which can be summed up as the achievement of benefit and the prevention of harm.

Aḥmad Bābā al-Sūdānī al-Tunbuktī, author of *Nayl al-Ibtihāj*, mentions another, unknown, book on this subject by Ibn 'Abd al-Salām entitled *Kitāb al-Maṣāliḥ wa al-Mafāsīd*, adding that Imam

Ibn Marzūq the grandson (d. 842 AH/1438 AC) taught it to some of his students. One might have concluded that this book is, in fact, the same as *Qawā'id al-Aḥkām fī Maṣāliḥ al-Anām* except for the fact that al-Tunbuktī mentions both books side by side.⁸⁶ In addition, there is a book by 'Izz al-Dīn ibn 'Abd al-Salām which al-Subkī refers to as *Shajarat al-Ma'ārif* and which he describes as “very good,”⁸⁷ yet without saying anything about its content. However, some light is shed on the book's contents by Ibn Ashur. In his commentary on the Qur'anic verse which reads, “Behold, God enjoins justice and the doing of good, and generosity towards [one's] fellow-men, and He forbids all that is shameful and all that runs counter to reason, as well as envy; [and] He exhorts you [repeatedly] so that you might bear [all this] in mind” (16:90), he quotes from *al-Sīrah al-Ḥalabiyyah* the statement that “'Izz al-Dīn ibn 'Abd al-Salām wrote a book which he entitled *al-Shajarah* in which he explained that all legal rulings in all areas of jurisprudence are contained within this verse.”⁸⁸

What this means is that this book of Ibn 'Abd al-Salām's on jurisprudence and Islamic Law, indeed, on the foundations of jurisprudence and the philosophy of legislation, as well as the verse upon which he based the book, encompass all the objectives of Islamic Law. After all, this verse contains a command to pursue all that is beneficial and a prohibition against all manner of harmful practices, which is why Ibn Mas'ūd describes it as “the most inclusive verse in the entire Qur'an.”⁸⁹ It may be assumed, then, that Ibn 'Abd al-Salām strove in this book to connect Islamic legal rulings with their origins and objectives as expressed in this verse. In doing so, he performed a noble, unique service.

One might ask, therefore, whether these two books are still extant. It is a question to which I have no answer; hence, I leave it to specialists and enterprising researchers. Meanwhile, let us turn our attention once again to the book which we do have available to us, namely, *Qawā'id al-Aḥkām*, where we find the following passages dealing with the objectives of Islamic Law. From the book's opening pages we find the author stating, for example, that “most of the objectives of the Qur'an are expressed either through commands to

pursue that which is beneficial and the causes which contribute to it, or through prohibitions against the pursuit of what is harmful and the causes which contribute to it.”⁹⁰

Ibn ‘Abd al-Salām held that Islamic Law in its entirety may be interpreted in terms of the benefits which it brings and the harm which it prevents, including both those rulings which are explained explicitly in a given text, and those which are not. The rulings for which there are explicit explanations contain guidance concerning the meanings and objectives of those for which there is no such explicit clarification. The author explains this point, saying,

The entire Law consists of interests: either it prevents that which would cause harm, or achieves that which would bring benefit. Hence, when you hear God say, “O ye who have believed!”, reflect carefully on whatever admonition follows His summons, and you will be certain to find some good which He is urging you to do or some evil against which He is cautioning you. In His book God sets forth the sources of harm which certain rulings urge you to avoid and the benefits which other rulings urge you to pursue.⁹¹

Elsewhere Ibn ‘Abd al-Salam confirms this universal principle governing the interpretation of Islamic legal rulings, all of which are for the purpose of achieving people’s well-being. He states, “All divine commands and prohibitions are founded upon the [pursuit of] benefit for human beings both in this world and in the next. God Himself has no need of anyone’s worship. He is not benefited by the obedience of the obedient, nor is He harmed by the disobedience of the disobedient.”⁹² In addition, he defines what is meant by ‘benefit’ and ‘harm’ both in the afterlife and in our present, earthly existence. He writes,

The benefits of the afterlife include the attainment of reward and deliverance from chastisement, while the sources of harm include chastisement and the loss of reward. The benefits to be found in this world include everything termed ‘essentials’ or ‘needs’ under Islamic Law, or by their complements and auxiliaries. And as for this world’s

sources of harm, they include the occurrence of whatever is contrary to the aforementioned.⁹³

Ibn ʿAbd al-Salām defines the objective behind the various forms of worship as follows: “The objective of all the various forms of worship is to glorify God, to extol His Greatness, and to demonstrate reverence for Him, dependence upon Him, and complete trust in Him.”⁹⁴ As for the interpretations and specific objectives of legal rulings, the book is replete with them. Note, in particular, the chapter entitled, “A Principle Applying to Differences Among Rulings on Human Conduct Due to the Differences Among the Interests Concerned,”⁹⁵ where one finds a listing of scores of specific objectives, as well as the manner in which rulings interact with such objectives and the interests which the rulings are designed to preserve. Given that this book has now become widely available, I will limit myself to this degree of detail here, with further mention of some of its contents later in this study.

The mention of Ibn ʿAbd al-Salām leads naturally to the mention of his student, Shihāb al-Dīn al-Qarāfī. Heir to his teacher’s learning and thought, al-Qarāfī may be counted as one of Ibn ʿAbd al-Salām’s most praiseworthy achievements. However, whoever gives careful thought to what al-Qarāfī wrote concerning the objectives of Islamic Law and the interests which it serves will find that although he surpassed his shaykh in terms of fine-tuning, clarifying and organizing the principles and theories which his shaykh had formulated, he nevertheless hardly departed from the essentials of what his shaykh had taught. Hence, I will allow this brief mention of al-Qarāfī to suffice here.

Ibn Taymiyah (d. 728 AH/1327 AC)

Nearly everything ever written by Imam Taqī al-Dīn Aḥmad ibn Taymiyah has something to tell us about the Law and its rulings, including explanations of their wise purposes and objectives, the interests which they serve, and the sources of harm which they seek to avert. What I shall mention of his writings on the objectives of

Islamic Law will represent only a tiny fraction of what he produced, for this man's own rulings on legal questions and his writings on matters of Islamic jurisprudence were prodigious, indeed.

One notes in the writings of Ibn Taymiyah that he lays consistent stress on the fact "that Islamic Law came to realize and enhance human well-being, and to minimize and neutralize sources of harm and corruption. It gives priority to the greater of two goods and to the worse of two evils, realizing the greater of two benefits by forgoing the lesser of the two, and averting the greater of two evils by tolerating the lesser of them."⁹⁶ He then proceeds to detail numerous examples of legal rulings as applied to these overarching principles. God has commanded human beings to do their utmost to adhere to whatever is most beneficial and to shun whatever is most likely to lead to corruption or harm. This is the primary foundation for Islamic legislation. As Ibn Taymiyah states,

The focal point of Islamic Law may be found in the words of God Almighty, "Remain, then, conscious of God as best you can" (Qur'an, 64:16), which serves as the basis for interpreting God's words, "Be conscious of God with all the consciousness that is due to Him" (Qur'an, 3:102). Similarly, the Law rests upon the words of the Prophet, "If I give you a command, obey it to the best of your ability,"⁹⁷ and upon the principle that it is obligatory to realize and perfect human interests and to minimize and neutralize that which causes harm and corruption. If, then, there is a conflict between two interests, the realization of the greater interest should be given priority over realization of the lesser one; similarly, priority should be given to averting the greater of two evils while tolerating the lesser one.⁹⁸

Let us take a concrete example of what Ibn Taymiyah has to say about the objectives of Islamic Law, namely, his statement on the objectives underlying the various types of legal guardianship, including the caliphate, judgeships, and *hisbah*.⁹⁹ He states,

The most important thing is for you to know that all forms of legal guardianship in Islam were established with the aim of ensuring that

worship be devoted to God alone and that the word of God alone be supreme. For God, Glorious and Exalted is He, created human beings to fulfill this purpose. It was likewise with this purpose that He revealed the sacred scriptures and sent His messengers, and it was for this cause that the Apostle and Muslim believers strove...¹⁰⁰

Elsewhere he states, “The aim which all forms of legal guardianship are meant to serve is that of correcting and preserving human beings’ religion since, if this is denied them, they will suffer the most manifest loss, whereupon none of the blessings they have enjoyed in this world will be of any benefit to them; similarly, their aim is to preserve whatever worldly conditions are essential for [sound] religion to exist and thrive.”¹⁰¹

The objectives of the various forms of legal guardianship are simply an extension and offshoot of the function of prophethood. Hence, the objectives of legal guardianship in its various manifestations are the same as the objectives of prophethood in its various manifestations. We thus find Ibn Taymiyah drawing a connection between them in his statement that,

The aim is for all religion [i.e., worship] to be devoted to God alone, and for the word of God alone to be supreme. The phrase ‘word of God’ is an inclusive phrase which refers to all of the words contained in His book. Thus God declares, “Indeed, [even aforesaid] did We send forth Our apostles with all evidence of [this] truth; and through them We bestowed revelation from on high, and [thus gave you] a balance [wherewith to weigh right and wrong], so that men might behave with equity; and We bestowed [upon you] from on high [the ability to make use of] iron, in which there is awesome power...” (Qur’an, 57:25). Hence, the purpose for which God sent the apostles and revealed the sacred scriptures was for people to behave with equity, granting what is due to both God and other human beings.¹⁰²

Based on what is known about the objectives underlying the various types of legal guardianship and the specific features and duties which distinguish each type, decisions must be made concerning who

would be most qualified to assume each of them. "In such a situation, [the person responsible for making the appointments] should seek out those who fulfill most completely the necessary conditions, and if two candidates are before him, he must examine them to see which of the them comes closest to meeting the qualifications of the post."¹⁰³ When human rulers' objectives are in keeping with the objectives of the Law, they will conduct themselves in light of the guidance which the Law provides, and choose for the various (governmental) posts and types of legal guardianship those people who would be most able to achieve these positions' legitimate objectives. If, on the other hand, human rulers' objectives are at variance with the objectives of the Law, they will choose people who suit their own purposes. Concerning this Ibn Taymiyah states,

The most important thing in this connection is to know who is the most fit [to serve as a guardian], and this is only possible by determining the purpose behind the type of guardianship concerned and the means by which this purpose may be fulfilled. Once both the purpose and the means by which it can be fulfilled have been determined, the appointment will be made accordingly. Consequently, given that most rulers are under the sway of worldly objectives rather than the objectives of the [Islamic] religion, they give priority in filling positions of legal guardianship to those who will assist them in achieving these worldly objectives. After all, whoever seeks primacy for himself will grant preference to those who will establish his authority.¹⁰⁴

Ibn Taymiyah takes issue with the *uṣūliyyūn* for limiting the essentials of Islamic Law to the five which are now well known, holding that these five objectives do not encompass the Law's most sublime or significant purposes. In this connection he says,

There are those who, when they speak of 'appropriateness,' delve deep into the study of *uṣūl al-fiqh* and the interpretation of Islamic legal rulings based on occasions appropriate thereto. Such thinkers state that the Lawgiver's arrangement of the legal rulings in accordance with their appropriate occasions guarantees the realization of benefit and

the avoidance of harm for human beings, and that benefits are of two types: other-worldly and this-worldly. Among other-worldly interests they list those wise purposes having to do with self-discipline and the refinement of morals, while among this-worldly interests they list that which guarantees the prevention of bloodshed and protects people's material wealth, chastity, mental faculties and outward religion. However, they make no mention of forms of worship which are both outward and inward, such as those which lead to the development of experiential knowledge of God, His angels, His books and His apostles, as well as spiritual states and actions of the heart such as love and reverence for God, worshipping with complete devotion and sincerity, utter dependence upon Him and hope for His mercy and blessing, not to mention benefits of other types in both this world and the next. Similarly with respect to the Laws God has laid down concerning faithfulness to covenants, maintenance of family ties, respect for the rights of servants and neighbors, Muslims' rights in relation to one another, and other aspects of life in regard to which God has issued commands and prohibitions in order to maintain exemplary conditions and refined morals, it may be seen that these, too, are some of the benefits which have been brought by Islamic Law.¹⁰⁵

This passage raises numerous questions and issues; as such, it calls for extended discussion and commentary. However, in this introductory chapter I am seeking to present more than to comment or discuss. I made mention earlier of the possibility of rethinking the limitation of the essentials of Islamic Law to the existing five, a limitation which was supported by the prevailing views of *uṣūliyyūn* in the past, and my quotation of the passage above from Ibn Taymiyah is a further indication of this possibility.¹⁰⁶ However, this issue requires a special discussion of its own. In conclusion, what I said earlier about al-Qarāfi in relation to his shaykh, Ibn 'Abd al-Salām applies likewise to Ibn al-Qayyim (d. 751 AH/1350 AC) in relation to his shaykh, Ibn Taymiyah. Even so, there will be occasions in the pages below to draw attention to statements by these men as well and to become acquainted with their contributions to the topic of our study.