

and putting it to use. This is what the Law does when it works to set our minds in motion and release them from their bonds, freeing them from the delusions and superstitions which impede sound thinking. The Law feeds our minds with its values and precepts, then gives them free rein to work and purify themselves. This is an additional aspect of preservation of the faculty of human reason; after all, the Law's preservation of human reason is not limited to outward measures such as prohibiting intoxicants and imposing penalties for partaking of them. How many a person's mind has been lost without his or her ever having touched a drop of liquor? Indeed, people's minds are lost through ignorance, lethargy, idleness and blind imitation.

Consequently, putting the mind to use and giving it a wide berth is not merely an aid toward the assessment and preservation of human interests; rather, it is, itself, one of the most vital human interests, since the mind's proper use ensures its preservation, and its preservation is one of the agreed-upon essentials.

### [ III ]

#### By What Means May The Lawgiver's Objectives/Intents Be Known?

As we have mentioned, al-Shāṭibī makes statements throughout *al-Muwāfaqāt* and *al-I'tisām* on the matter of how the objectives of the Law may be ascertained. Moreover, these statements, scattered though they may be, are no less important than what al-Shāṭibī has to say in the Conclusion which he has devoted to this theme. In what follows I shall attempt to gather together and comment on these scattered references so as to synthesize them with the contents of the aforementioned Conclusion.

##### 1. *Understanding Objectives in Light of the Requirements of the Arabic Language*

As was seen earlier, the second category of the Lawgiver's objectives

according to al-Shāṭibī's division is that of, "the Lawgiver's higher objective in establishing the Law for people's understanding." The questions relating to this category have to do with the manner in which the Lawgiver's higher objectives<sup>212</sup> may be ascertained, a theme to which we now return.

Al-Shāṭibī opens his discussion of the first question relating to this category with the words, "This blessed Law is conveyed in the Arabic language, and there is no place therein for foreign tongues." In so saying, al-Shāṭibī does not mean to raise the issue of whether the Qur'an contains terms of non-Arabic origin. He explains, "Rather, what we intend to discuss here is the fact that the Qur'an was revealed in the language of the Arabs, as a result of which any attempt to understand it must approach it by means of this language...Whoever wishes to understand it well must do so through the Arabic tongue, apart from which there is no way to pursue this end. This, then, is what is meant by this question."

Hence, the higher objectives of the Law must be viewed in light of the Arabic language in which this Law has been conveyed, and in light of the Arabs' accustomed ways of expressing themselves. We find, for example, that

In their language, [the Arabs] often address others in general statements which are to be taken at face value. In addition, they may speak in general terms which, in one respect, bear a universal message, and in another respect, a particular message addressed to a specific group or individual. At other times they may speak in general terms which are actually addressed to particular individuals, or in terms which bear one meaning on the literal level, and another on the non-literal level. All of this may be discerned from the beginning, the middle, or the end of their words [that is to say, based on the surrounding context]. They employ speech whose opening words help to clarify what will be said at the end, or whose closing words serve to clarify what was said in the beginning. They speak of things which may be understood either through the explicit meaning of their words or by way of allusion. They refer to a single thing by many names, and to many things by a single name. All of these [rhetorical] styles are familiar to them, and neither

they themselves nor those who have grown familiar with their manner of verbal expression would call any of them into question. This being the case, then, the Qur'an – in terms of both meaning and style – can be expected to reflect these same features.<sup>213</sup>

Al-Shāṭibī's writings contain frequent affirmations of the importance of respecting and abiding by the limits and rules of the Arabic language if one is to understand the objectives behind Islamic legal texts. Indeed, he stresses this notion at every available opportunity, since "it is the Arabic tongue which translates the higher objectives of the Lawgiver."<sup>214</sup> Hence, he states:

No one can truly understand it [the Law] but those who have a true understanding of the Arabic language, since both follow a single pattern, the only exception to this generalization being the inimitability which is unique to the Qur'an in particular. Whoever is a beginner in his understanding of the Arabic language will likewise be a beginner in his understanding of the Law; similarly, whoever has attained an intermediate understanding of the former will be capable of an intermediate understanding of the latter...<sup>215</sup>

And so on and so forth. Thus, the more accomplished one is in the Arabic language, the more accurately one will perceive the objectives of the Law. In keeping with this perspective, al-Shāṭibī holds that among the major causes behind heresy and deviation from the (Islamic) religion are: (1) ignorance, and (2) an overly sanguine view of human reason and perceptive powers. He states, "As for the matter of ignorance, it sometimes has to do with the tools by means of which the objectives of the Law are understood, while at other times it has to do with the objectives [themselves]."<sup>216</sup> The tools, or tool, by means of which the objectives of the Law are determined is the Arabic language; "hence, whoever studies or expounds the Law in its roots or its branches must not speak of such things unless he is an Arab, or as the Arabs..."<sup>217</sup> If these conditions are fulfilled, then it is permissible for such a person to look into the Qur'an<sup>218</sup> and derive its meanings and objectives. However,

when deriving conclusions and evidence therefrom, [one must adhere to] the Arabs' recognized linguistic approach to determining its meanings and, in particular, the purposes of its various forms of address. There are many people who interpret Qur'anic textual evidence based on the understanding it yields to human reason alone, and not based on the agreed-upon styles of expression which it reflects. However, this approach brings great harm, and is a departure from the Lawgiver's intent.<sup>219</sup>

## *2. Legal Commands and Prohibitions: Between Ta'leel and Literalism*

Commands and prohibitions, viewed linguistically, are intended to communicate a request or demand. A command is a request that a certain action be performed, while a prohibition is a request that an action not be performed. Hence, the party who issues a command intends that the action be performed, while the party who issues a prohibition intends that the action not be performed.

In this discussion I am bringing together two of the four ways in which, in al-Shāṭibī's view, the Lawgiver's objectives may be determined, namely, (1) consideration of primary, explicit commands and prohibitions, and (2) consideration of the bases for commands and prohibitions. When he describes the commands or prohibitions by means of which we may ascertain the Lawgiver's objectives as 'primary,' al-Shāṭibī is speaking of that which the Lawgiver enjoins or forbids in and of itself, and not in order to support some other command or prohibition. In other words, that which is enjoined or forbidden reflects a primary intention rather than a secondary one.<sup>220</sup>

This distinction may be seen in the words of God Almighty, "O you who have attained to faith! When the call to prayer is sounded on the day of congregation, hasten to the remembrance of God, and leave all worldly commerce: this is for your own good, if you but knew it" (Qur'an, 62:9). The first command mentioned here, namely, "hasten to the remembrance of God," is a primary command reflecting a primary intention, since it communicates the Lawgiver's intention to move people to carry out what has been commanded. As

for the second command, namely, "leave all worldly commerce" (which is, at the same time, prohibitive), it is not primary; rather, it is a secondary command whose purpose is to support or reinforce the first one. As such, then, it reflects a 'secondary intention.' Consequently, it would not be valid to employ such a command as evidence that the Lawgiver intends to forbid worldly commerce, whereas the first command, by contrast, does convey the Lawgiver's intention and serves as evidence thereof.

As for the description of a command or prohibition as 'explicit,' it is intended to distinguish it from that which is implicit, since whatever is implicit reflects a secondary intention rather than a primary one, and serves to support and confirm those commands and prohibitions which are explicit. Implicit commands encompasses those actions without which explicitly stated obligations cannot be fulfilled. Everything which meets this description is a means rather than an end and as such, reflects a secondary intention rather than a primary one. The command to perform the pilgrimage to Makkah, for example, is explicit, while the command to do whatever is necessary to make the pilgrimage possible is implicit; hence, the former command conveys a primary intention, while the latter conveys a secondary intention.

If commands and prohibitions are primary and explicit, they indicate the Lawgiver's intention: Commands indicate the intention that the actions commanded be performed, while prohibitions indicate the intention that the actions prohibited not be performed. Al-Shāṭibī states, "This is a literal, general aspect, both for those who consider nothing but the command or the prohibition itself, and for those who give consideration to bases (*ʿilal*) and human interests, the latter of which is the established, legitimate approach."<sup>221</sup> In other words, the process of looking at a command or prohibition alone and viewing it as an expression of the Lawgiver's intent is common to both literalists and those who engage in *taʿlil*, that is, those who seek to ascertain the basis for commands and prohibitions. As for the literalist, this is his sole concern, which presents no problem. And as for the one who engages in *taʿlil*, it may be said that even if he examines the bases and interests underlying legal rulings, these bases and

interests are nevertheless rooted in the commands and prohibitions in question; hence, even considering nothing but commands and prohibitions themselves serves to fulfill the purposes and interests on account of which they were issued.

This does not mean, however, that one should not heed the bases for legal rulings and rely on them in determining the Lawmaker's intentions and understanding the apparent meanings of texts. Rather, al-Shāṭibī states,

If the *‘illah* is known, it should be heeded, for whenever it is known, it will be possible to determine what is required by the command or prohibition in question, as well as what is, and is not, its intent. If, on the other hand, the *‘illah* is not known, one must cease making definitive pronouncements to the effect that the Lawgiver intends this or that...<sup>222</sup>

Al-Shāṭibī discusses this issue in greater detail in the section devoted to commands and prohibitions in his ‘The Book of Rulings’ where, after a long, engaging discussion, he concludes that it is necessary to respect and observe the apparent meanings of texts, yet without excess or rigidity, and without disregarding established bases and interests. He states,

Slavish, excessive adherence to texts’ apparent meanings is a far cry from faithfulness to the Lawgiver’s intention; however, disregard for these meanings is likewise a type of immoderation. Thus, if one conducts himself in accordance with what he understands to be the basis for this or that command or prohibition, he will be proceeding along the right path and be in harmony with the Lawgiver’s intention in every respect.<sup>223</sup>

### 3. Primary and Secondary Objectives of the Law

This division of the objectives of the Law is employed by al-Shāṭibī in numerous places throughout *al-Muwāfaqāt*. Sometimes he uses the terms ‘primary objective’ (*al-qaṣd al-awwal*) and ‘secondary

objective' (*al-qaṣd al-thānī*), while at other times he uses a synonymous set of terms, namely, 'principal objective' (*al-qaṣd al-aṣlī*) and 'subsidiary objective' (*al-qaṣd al-taba'ī*). What this division indicates is that legal rulings have fundamental objectives which may be viewed as their primary or supreme purpose, as well as secondary objectives which are subordinate and complementary to those purposes which are more primary and fundamental. Al-Shāṭibī expounds this topic, saying,

An example of this may be seen in marriage, which is legitimate for the primary purpose of procreation. This purpose is followed by things such as the desire to find reassurance and repose in another's presence, partnership as a couple, cooperation in the pursuit of worldly and otherworldly interests, including the enjoyment of licit pleasures and looking upon the beauty which God the Creator has placed in the female sex, receiving benefit from the woman's wealth or from the care and nurture she provides for her husband, the children she or someone else has born to him or his brothers, protection against the temptation to fulfill sexual desires in an illicit manner or look upon someone lustfully, ever more gratitude for God's blessings, and the like. All such things are part of what the Lawmaker intended in sanctioning marriage; some of them receive direct or indirect mention in the Law, while others may be inferred based on other evidence and reflection on those things which do receive explicit mention.

After all, secondary objectives such as these serve to support the primary objective [of marriage], promote its wise purpose, and provide motivation to seek and perpetuate it. They nurture the ongoing sympathy, communication and compassion by means of which the Lawgiver's primary purpose of procreation is fulfilled. And in this we find evidence that whatever is not stated explicitly but which may thus be inferred is likewise intended by the Lawgiver.<sup>224</sup>

In the context of discussing the various types of legal rulings on actions, al-Shāṭibī notes the relationship among the various types of rulings, and in particular, the relationship between recommended

and obligatory, and between undesirable and forbidden. On this topic he states,

If you consider the matter, you will find that the undesirable is to the forbidden as the recommended is to the obligatory. [Moreover], the most important obligations are intended [for their own sake], whereas other obligations are a means of achieving the same objective. Such secondary obligations include, for example, the performance of ablutions in order to attain ritual purity, concealing one's private parts, facing the qiblah, as well as issuing the call to prayer in order to inform worshippers that the time period for a given prayer has begun, all of which are expressions of the Islamic faith which serve to support and fulfill the objective of ritual prayer.<sup>225</sup>

The duty of ritual prayer vis-a-vis the duties which serve to complete and support it is another example of the manner in which the Lawgiver gives consideration to what serves and supports His primary and most fundamental objectives. And in this one will find support for the affirmation that whatever serves and reinforces an intention of the Lawgiver is likewise His intention, albeit secondarily.

In his premises, al-Shāṭibī illustrates the same principle in his discussion of seeking knowledge and what should and should not be done by those who engage in this pursuit. Al-Shāṭibī considers that the pursuit of knowledge fulfills one of the Lawgiver's primary intentions, namely, that of (instilling within us an attitude of) unquestioning reverence; he also identifies secondary intentions which are fulfilled by this pursuit. He states,

The primary objective has already been mentioned; as for the secondary objectives, they include things which are mentioned by the majority of scholars, such as the fact that knowledge renders its possessor more virtuous and dignified, it gives his words greater influence and credibility, and it commands others' reverence and respect. The reason for this is that the scholar occupies the rank of a prophet among others, since scholars are the prophets' heirs. Also included here are all of the various noble deeds and traits which are attributed to scholars.

None of these things are among the objectives of knowledge as stipulated by the Law, just as they are not among the objectives of worship and devotion; nevertheless, they happen to be among the attainments enjoyed by both the scholar and the devout worshipper of God.<sup>226</sup>

Hence, despite the fact that these secondary objectives are not the original intention behind the pursuit of knowledge, they may nevertheless become legitimate, albeit secondary, objectives thereof, since

each of these outcomes will either be in the service of the original intention, or not be in its service. If a given outcome is in the service of the original intention, then its pursuit is valid; God Almighty speaks in praise of those who pray, saying, "O our Sustainer! Grant that our spouses and our offspring be a joy to our eyes, and cause us to be foremost among those who are conscious of Thee!" (Qur'an, 25:74); He likewise commends Abraham, upon him be peace, for his saying, "and grant me the power to convey the truth unto those who will come after me" (26:84). If, on the other hand, a given outcome is not in the service of the original intention, its pursuit will not be valid; examples of this include that of seeking knowledge for the sake of others' admiration and praise, in order to dispute with the foolish, to show oneself superior to other scholars, to win others' allegiance, to gain material advantage at others' expense, and the like.<sup>227</sup>

When treating the topic of *ʿazīmah*, that is, namely the original, established intention behind a given action commanded by the Law, and *rukḥṣah*, or the type of allowance which is granted in connection with certain actions commanded by the Law for the purpose of alleviating hardship, al-Shāṭibī views the *ʿazīmah* as embodying the Lawgiver's primary intention, while the *rukḥṣah* embodies a secondary intention.<sup>228</sup> The reason for this is that the *ʿazīmah* represents the fundamental, universal interest served by the divine legislation, while a *rukḥṣah* is something which was instituted in situations involving hardship for the purpose of alleviating it, and as such, it serves a particular, contingent interest. Consequently, states al-Shāṭibī, "Hence, the *ʿazīmah*, that is, the original established objec-

tive of a given action commanded by the Law, applies under normal conditions, while a *rukhsah*, or allowance, will apply when such normal conditions are violated.”<sup>229</sup>

As we saw earlier in our presentation of al-Shāṭibī’s theory of objectives, he considers the primary objectives to be equivalent to the five essentials, in relation to which no consideration is given to human beings’ desires and inclinations (in the sense that human beings are obliged to preserve these essentials whether they want to or not). Secondary objectives, by contrast, are those in relation to which human desires and inclinations may be given consideration, and as a result of which they encompass human interests on the level of exigencies and embellishments as well.<sup>230</sup> It is clear that al-Shāṭibī is speaking here of the general objectives of Islamic Law, whereas the examples which have been presented thus far have to do with particular objectives relating to this or that ruling. However, on both levels, the general and the particular, we find both primary, fundamental objectives and secondary, auxiliary objectives, a fact which reflects the coordination and symmetry which mark Imam Abū Ishāq’s perspective on Islamic Law in both its universals and its particulars.

This rule – according to which whatever strengthens, reinforces or supports an intention of the Law is thereby also to be considered one of the Lawmaker’s intentions – is one on which al-Shāṭibī relies with great frequency. However, one is surprised to note that despite the fact that al-Shāṭibī himself has established this rule, he himself undermines it in his discussion of the first of the two sources from which we may derive the objectives of the Lawgiver.<sup>231</sup> Specifically, al-Shāṭibī limits the commands and prohibitions on the basis of which we may ascertain the Lawgiver’s intentions to those which are explicit. In so doing, he excludes implicit commands and prohibitions,

such as the prohibition against anything contrary to that which has been enjoined,<sup>232</sup> that is, prohibitions which are implied by commands and commands which are implied by prohibitions. If we acknowledge such implicit commands and prohibitions, they must be

viewed as reflecting not primary intentions, but secondary ones. If, on the other hand, we do not acknowledge them, this points more clearly to an absence of intention. The same may be said with respect to the enjoining of those things without which one's obligations cannot be fulfilled. There is disagreement concerning whether, or to what extent, such implicit commands and prohibitions provide evidence of the Lawgiver's intention; hence, they are not included in the present discussion, and the commands and prohibitions of concern to us have been restricted to those which are explicit in nature.<sup>233</sup>

It is clear that al-Shāṭibī is casting doubt on, if not denying, the affirmation that implicit, or indirect, commands and prohibitions are evidence of an intention on the part of the Lawgiver, and this despite his having stated repeatedly that whatever complements, reinforces or supports a primary objective of the Lawgiver is likewise included among the divine objectives, albeit in a secondary or subordinate sense. For what matters is that they, too, are "intended." This latter position is the valid one; otherwise, how can we conceive of the fulfillment of a legal objective while at the same time doubting the principles that: (1) those things without which explicit obligations cannot be fulfilled are themselves obligatory, and (2) the enjoinder of any action is a prohibition against its opposite? After all, how could the Lawgiver intend something without also intending those things without which His intention cannot be realized? And how could He intend a given outcome or action while, at the same time, permitting its opposite which He forbids and rejects? It nevertheless appears that al-Shāṭibī – the shaykh of objectives – refrains from lending full support to these two principles despite their reasonableness, despite the fact that they serve as aids to the realization of secondary objectives and as protectors of principle objectives, and despite the fact that the majority of uṣūl scholars have adopted them.

In his book *Miftāḥ al-Wuṣūl*, his shaykh al-Tilmisānī asks, "Does the enjoinder of something require a means [of fulfilling] what has been enjoined, or does it not? This is the meaning of the question: Are those things without which explicitly stated obligations cannot be fulfilled, themselves obligatory, or are they not? Scholars of *uṣūl*

*al-fiqh* have differed on this matter, though the majority of them hold that a command necessitates everything upon which the command's fulfillment depends." Al-Tilmisānī then continues in his discussion of whether the enjoinder of an action is also a prohibition of its opposite, saying, "The majority of jurists and scholars of *uṣūl al-fiqh* are of the view that the enjoinder of an action is likewise a prohibition of its opposite."<sup>234</sup> This is confirmed by Muḥammad Ṣiddīq Ḥasan Khān Bahādir, a late scholar of *uṣūl al-fiqh*, who makes mention of those who have differed with the majority view on this matter. He states,

The majority of Ḥanafite and Shafi'ite *uṣūl* scholars, as well as later thinkers, have adopted the view that if a given action is enjoined, this command is a prohibition against whatever specific action would be the opposite of the action enjoined. This view applies, moreover, whether the opposite is a single action – as in a situation where faith is enjoined, which would be a prohibition against unbelief, or as in the case of the command to move, which would be a prohibition against remaining motionless – or multiple actions, as in a situation where one has been commanded to stand up, in which case the command to stand up would be a prohibition against sitting, reclining, prostrating and the like.

However, al-Juwaynī, al-Ghazālī and Ibn al-Ḥājjib all held that the command to undertake a given action is not a prohibition against its opposite. This, they say, is not logically required. A number of Ḥanafites, Shafi'ites and later scholars have held that the command to perform a given action is a prohibition against a single unspecified opposite among a number of possible opposites. Moreover, among those who hold that the command to perform a particular action is a prohibition against its opposite, there are some who generalize this statement, saying that it is a prohibition against the action's opposite in cases in which the action commanded is either obligatory (*wājib*) or recommended (*mandūb*); according to this view, if the action commanded is obligatory, the implicit prohibition against the action's opposite is a complete prohibition, whereas if the action commanded is

recommended, the implied prohibition against its opposite is simply the declaration of the action's opposite to be undesirable. Others, by contrast, have restricted the above statement to apply only to commands to perform obligatory actions while excluding actions which are simply recommended. In addition, there are those who hold that just as a command to perform a given action is a prohibition against its opposite, a prohibition against a given action is a command to perform its opposite.<sup>235</sup>

The following are examples which illustrate these twin principles, namely, that the command to perform an action is a prohibition against its opposite, and that the prohibition against an action is a command to perform its opposite:

- God Almighty's words, "it is not lawful for them to conceal what God may have created in their wombs, if they believe in God and the Last Day" (Qur'an, 2:228). These words are both a prohibition against concealment and, at the same time, a command to declare the truth openly.
- "O you who have attained to faith! Do not raise your voices above the voice of the Prophet" (49:2), where the prohibition against raising one's voice is, simultaneously, a command to lower it.
- "Tell the believing men to lower their gaze..." (24:30), in which there is both a command to lower one's gaze and a prohibition against looking at women in an unseemly manner.

Similarly in relation to the principle which states that "those things without which explicitly stated obligations cannot be fulfilled are themselves obligations,"<sup>236</sup> it may be said that the command to engage in jihad is a command to make whatever preparations it requires, that the command to seek knowledge is a command to do whatever is necessary in order to engage in its pursuit, that the command to perform the pilgrimage to Makkah is a command to do whatever is needed in order to complete the journey, and so forth. Consequently, al-Maqqarī states in Rule 133, "Anything without which it is

impossible to achieve the required end, is itself required.” And in fact, were it not for the reservations which al-Shāṭibī expresses concerning this principle – out of deference for al-Juwaynī and Abū Ḥāmid al-Ghazālī – we could have contented ourselves with al-Shāṭibī’s repeated affirmation of the fact that whatever serves to reinforce or support what is intended, is itself intended.

#### 4. *Silence on the Part of the Lawgiver*

It is a recognized fact that the Lawgiver may remain silent on certain matters or rulings due to the absence of any occasion or cause for further declarations. As a result, the door is opened to independent reasoning and interpretation and analogical deduction. However, it is not this situation which I wish to discuss here. Rather, what I mean here by “silence” is the Lawgiver’s having refrained from issuing a ruling or laying down legislation in the first place. Al-Shāṭibī states,

Despite the existence of that which would require it and the emergence of a relevant judicial case, no judgement on it is affirmed beyond what already exists. This type of silence is like a statement to the effect that the Lawgiver’s intention is for there to be neither increase nor decrease. In other words, if a situation requiring a practical ruling exists, and if, despite this, no ruling is issued in response, this is tantamount to an explicit statement that the addition of anything to what already exists would be an unacceptable innovation and a violation of what the Lawgiver intends. Hence, we may understand the divine intention to be that we stop at the presently existing limits just as they are.<sup>237</sup>

This approach to discerning the objectives of the Lawgiver pertains particularly to the realm of worship, and even more particularly, to the matter of innovation in this realm. By stating this rule, al-Shāṭibī seeks to strike a blow at religious innovations and to hinder their advance into the realm of worship: its forms of expression, its limits, and worship-related practices in emulation of the Prophet’s example. In his book *al-I’tiṣām*, al-Shāṭibī relies upon this rule in

arguing against innovations and innovators. In his lengthy response to his shaykh, Abū Saʿīd ibn Lubb,<sup>238</sup> al-Shāṭibī reiterates<sup>239</sup> almost verbatim a statement which also appears in *al-Muwāfaqāt*.

At the same time, this approach (to discerning the objectives of the Law) is more restricted in scope than other approaches and is, therefore, the one of least importance. Consequently, we find that Ibn Ashur disregards it entirely even when he is summarizing what al-Shāṭibī has to say about the means of ascertaining the objectives of the Law. Ibn Ashur's summary is sufficiently brief that I have chosen to quote it here. He states,

The Lawgiver's objective may be ascertained in a number of ways. One of these ways is to derive them from primary, explicit commands and prohibitions. A command is a command due to the fact that it requires an action; hence, says al-Shāṭibī, the performance of the action commanded is the Lawgiver's intention or objective. Similarly, a prohibition is a prohibition due to the fact that it requires that an action be refrained from or discontinued. The second way is to consider the bases (*'ilal*) which underlie commands and prohibitions, such as procreation as the basis for the sanctioning of marriage, and financial benefit as the basis for the sanctioning of buying and selling. As for the third way of determining the Lawgiver's objectives or intentions, it is to recognize that in issuing rulings, the Lawgiver has both primary objectives and secondary objectives; of these, some are stated directly and others indirectly, while still others may be inferred from intentions which receive explicit mention. Whatever is not stated explicitly but may thus be inferred is likewise intended by the Lawgiver. And this is the sum of what he has to say on this matter.<sup>240</sup>

It has been suggested by Abd al-Majid al-Najjar<sup>241</sup> that the reason for Ibn Ashur's failure to mention al-Shāṭibī's fourth way of ascertaining the Lawmaker's objectives is that he took no notice of it due to its placement near the end of al-Shāṭibī's discussion of this topic. This is unlikely, however, especially given that Ibn Ashur was himself in the process of writing on the subject of the objectives of the Law and, indeed, on the same issue, namely, 'means of ascer-

taining [the Lawgiver's objectives].’ Hence, it would not be reasonable to conclude that Ibn Ashur did not finish reading al-Shāṭibī’s ‘The Book of Higher Objectives’ and its conclusion. Rather, what is more likely to have happened is that he omitted it deliberately, not deeming it of sufficient importance to discuss.

### 5. *Induction*

Given its significance, this method should, by all rights, have been placed first in al-Shāṭibī’s list of ways to ascertain the objectives of the Lawgiver. Strangely, however, al-Shāṭibī makes no mention of it whatsoever with the four methods to which he devotes the conclusion of his *Kitāb al-Maqāṣid*. Hence, he gives it neither first place, nor even fifth!

Ever since my first reading of al-Shāṭibī’s conclusion, I have been at a loss to explain his failure to mention induction as one of the avenues leading to knowledge of the objectives of the Law. What makes this omission even more difficult to understand is that whatever one reads of al-Shāṭibī’s writings, one finds it to be replete with references to the practice of induction – whether by way of adducing support for a position or drawing attention to its value and importance.

Throughout the four parts of *al-Muwāfaqāt*, I have found on the order of one hundred such references. This being the case, then, how could al-Shāṭibī have neglected to identify induction as an independent means of determining the Lawgiver’s intention? Did he omit mention of it here because he considered his numerous references to it elsewhere to be sufficient? Or did he simply overlook it in the process of editing the final section of his *Kitāb al-Maqāṣid*? Or, alternatively, might it be due to his view on the subject at hand? I, personally, have yet to arrive at a satisfactory answer to such questions.

Be that as it may, it can nevertheless be stated with certainty that induction is, for al-Shāṭibī, one of the most crucial, powerful tools with which to identify the objectives of the Law. The truth of this affirmation will become apparent from what follows.

### The Importance of Induction in al-Shāṭibī's View

In the first of the thirteen premises with which al-Shāṭibī introduces *al-Muwāfaqāt*, he declares that the fundamentals of jurisprudence (that is, the foundations and universals upon which it rests) must be characterized by definitive certainty which admits of no doubt. Evidence for this, he says, may be found in an “inductive reading which yields complete certainty,”<sup>242</sup> since the universals of Islamic Law are not based on a single piece of evidence, but upon many such pieces which, when taken together, convey a single message which is thereby invested with complete certitude. Moreover, he states, “The fact that some particulars do not conform to the dictates of this or that universal does not mean that the universal in question is not truly universal. Rather, that which is predominant and accounts for the great majority of cases is viewed, in the context of the Law, as universal and definitive.”<sup>243</sup> Hence, al-Shāṭibī demonstrates special concern to marshal inductive evidence for what he says. Indeed, he views this as one of the most salient features of his book, saying, “The types of proof given consideration here have been gathered from a constellation of speculative evidence which is concatenated in such a way that it yields a single, definitive meaning.”<sup>244</sup> In pointing out this feature of his writing, al-Shāṭibī makes reference to “the source and manner of treating evidence in this book.”<sup>245</sup> Toward the end of *al-Muwāfaqāt*, al-Shāṭibī reminds his readers once again of this same feature, and this time in more explicit terms, saying,

...we have also explained the manner in which certainty is derived from that which is speculative,<sup>246</sup> and which – thanks be God – is the distinguishing mark of this book for those who give it careful thought.<sup>247</sup>

Among those who have, indeed, given careful thought to *al-Muwāfaqāt* and confirmed this unique characteristic of the book is ʿAbd Allāh Darrāz. In his painstaking, comprehensive study of this work by al-Shāṭibī, Darrāz speaks highly<sup>248</sup> of al-Shāṭibī's way of

investigating speculative evidence on the level of its signification, its

text or both, as well as its rational aspects. In so doing, he joins strength to strength, continuing with the inductive process until he arrives at what may be considered definitive certainty on the subject at hand. This is a unique feature of this book in its reasoning and argumentation. It is, moreover, a successful method by means of which he achieves what he has set out to do in all but the rarest instances, may God have abundant mercy upon him.<sup>249</sup>

Given this brief overview of the meaning of induction as applied and understood by al-Shāṭibī, its importance to him, and the degree to which he depended upon it, let us now return to our topic of main concern, namely, the use of induction to identify and confirm the objectives of the Law.

### *Induction and the Objectives of the Law*

From the opening pages of *al-Muwāfaqāt*, al-Shāṭibī draws a link between induction and the discovery of the objectives of the Law. In the course of relating the story of how he came to write *al-Muwāfaqāt*, he states,

When the secret which had been so well concealed manifested itself, and when God in His bounty granted me access and guidance to that which He willed to reveal thereof, I proceeded to record its wonders and gather together its scattered pieces from the most specific to the most general, citing the evidence thereof from the sources of Islamic rulings with attention to every detail. In so doing, I relied upon all-inclusive inferences rather than limiting myself to isolated particulars, demonstrating the textual and rational foundations [of Islamic rulings] to the extent that I was enabled by grace to elucidate the objectives of the Qur'an and the Sunnah.<sup>250</sup>

As we have seen, 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 gave rise to them – that is, on the notion of *ta'līl*, while the process of *ta'līl* is based on the conviction that Islamic Law may

be explained in terms of its preservation of human interests. Hence, the first step with which al-Shāṭibī commences his search for evidence in support of these two affirmations is an inductive reading of the Qur'an and the Sunnah on the basis of which he declares, "What we have induced from the Law is that it was established to preserve human interests."<sup>251</sup> Even the passages which al-Shāṭibī cites in support of the existence of *ta'ālil* in the details of the Law, he cites as inductive evidence which, when taken together, yields definitive knowledge. Hence, the evidence which al-Shāṭibī adduces is, from beginning to end, based on an inductive process.

Perhaps the most important theme to which al-Shāṭibī applies induction and in relation to which he demonstrates that induction is the most critical means of confirming the objectives of the Law is "the Lawgiver's intention to preserve [human interests as represented by] the threefold division consisting of essentials, exigencies and embellishments."<sup>252</sup> After all, the assertion that the Lawgiver's intention is to preserve these primary universals cannot be proven by citing a single text, nor even several texts which state this intention explicitly. For this premise is too important and too critical to be demonstrated by evidence which might be called into question, whether in relation to texts' reliability, their meaning, or the absence of conflicting evidence. Rather, it must be demonstrated beyond the shadow of a doubt; hence, it must be supported by irrefutable evidence, since it is the fundamental of fundamentals with respect to Islamic Law.<sup>253</sup>

So, then: What is the definitive means of achieving this end? Al-Shāṭibī states,

The evidence for this [affirmation] is established in another way which goes to the heart of the matter. These three foundations<sup>254</sup> firm grounding in the Law is questioned by no legal scholar qualified to engage in independent reasoning; nor would such a scholar question the affirmation that the Lawgiver intends for these foundations to be recognized and given consideration. Proof of this 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.

Such an inductive reading, since it looks to the overall, inner spirit of the Law rather than just its outward details or particulars, cannot be carried out on the basis of a single text or piece of evidence; rather, it requires the marshalling of numerous texts which embody a variety of objectives and which, when added one to another, yield a single conclusion upon which they all agree. It is through this same type of process that the general populace has come to be certain of Ḥātīm's generosity, 'Alī's courage and other aspects of our Islamic heritage. In demonstrating the Lawgiver's intention with respect to these foundations, people have not relied upon one specific instance of proof, nor on a particular aspect of the question at hand; rather, clarity has emerged for them from a constellation of proofs – including the straightforward, apparent meaning of texts, texts with general meanings and applications, those which are restricted to specific situations and individuals and those which apply universally, and particular details pertaining to a variety of entities, actions and events in every conceivable area and type of jurisprudence — with the result that they found all parts and aspects of the Law to revolve around the preservation of these [three] foundations. This result, moreover, is supported by what is added to it by way of factual and circumstantial evidence, both written and unwritten.<sup>255</sup>

By means of this inductive approach, al-Shāṭibī demonstrates (the Lawgiver's intention) to preserve the five essentials,<sup>256</sup> namely, religion, human life, the faculty of reason, progeny and material wealth. In his discussion of commands and prohibitions in *Kitāb al-Aḥkām* he notes that depending on the results yielded by an inductive reading, commands and prohibitions may either be taken at face value or viewed in terms of what they convey of the Lawgiver's intention.<sup>257</sup> Moreover, as we have seen, it is through an inductive reading of the Law that it becomes apparent that whatever serves to reinforce and support what is known to be an intention of the Lawgiver is, itself, a divine intention, if only secondarily.<sup>258</sup>

In the context of his war on religious innovations and his rebuttal of their defenders' premises in his book, *al-Itiṣām*, al-Shāṭibī states that unrestricted interests have nothing to do with the Islamic forms of worship and that worship-related legal rulings are to be accepted

without question, since they are based solely upon divine judgment and prerogative. In proof of this claim, al-Shāṭibī resorts to an inductive reading of a number of worship-related legal rulings which cannot be subjected to rational scrutiny and interest-based *ta'lil*. He then continues, saying,

This inductive reading yields a message concerning the objectives of the Law ... namely, that the Lawgiver's intention with respect to legal obligations of this sort is simply that human beings be held accountable for adhering to them and that they refrain from independent reasoning and interpretation, committing themselves instead to the One who established them and surrendering to Him therein.<sup>259</sup>

Then he adds, "It may thus be known concerning the Lawgiver's intention that He has left nothing in the realm of worship to human discretion. On the contrary, there is nothing for human beings to do but to respect the limits He has set."<sup>260</sup>

What has been presented thus far should, I think, be sufficient to make clear the degree to which al-Shāṭibī relies upon induction in general, and in determining the higher objectives of the Law in particular. Similarly, it helps to support the definitive statement made earlier that for al-Shāṭibī, induction is the most critical means of ascertaining the objectives of the Law despite the fact that he makes no direct mention of it in the conclusion which he devotes to this topic.

Moreover, if this is the place occupied by induction in al-Shāṭibī's scheme of thought, it remains for us to show how induction compares with the other methods by which the Lawgiver's objectives may be determined. It bears noting in this regard that those objectives which are discernible through the inductive process are the major, universal objectives of Islamic Law, and around which most of al-Shāṭibī's discussions revolve. Consequently, we find that induction plays a role in virtually all of the conclusions which al-Shāṭibī reaches concerning the universals of the Law or its overall objectives.

It may likewise be observed that those objectives which are determined inductively are characterized by definitive certainty. As we

have seen, al-Shāṭibī stresses the definitive nature of induction, whether it is ‘complete’ or ‘incomplete’ (that is, whether it is based on all cases, or on the majority of cases). In doing so, al-Shāṭibī disregards the position taken by numerous *uṣūl* scholars and logicians who – influenced by Aristotelian logic – hold that incomplete induction yields reasonable certainty, but not definitive knowledge.<sup>261</sup>

As for those objectives of the Law which are determined by means of the other methods described by al-Shāṭibī, they tend to be specific objectives having to do with this or that ruling, and this or that text. In addition, many of these objectives are determined with only a reasonable degree of certainty or probability rather than being considered definitive, as is the case with objectives which are derived from the apparent sense of commands and prohibitions or from bases or occasions (*‘ilal*) which have been identified through speculative methods, such as the ‘appropriateness approach’ (*maslak al-munāsabah*), for example.

Despite the fact that al-Shāṭibī makes direct mention of the four methods by which the Lawgiver’s intentions may be determined, he nevertheless relies more on induction than on any of these stated methods. As a consequence, the objectives which he identifies are characterized for the most part by full certainty. Rarely does he deal with specific objectives having to do with particular legal rulings and obligations, and when he does do so, he does so only incidentally.

Hence, one is at a loss to account for the unqualified judgments made by Abd al-Majid al-Najjar in the article referred to earlier,<sup>262</sup> where he states that in expounding the objectives of the Law, al-Shāṭibī “adopts an atomistic, reductionistic approach...,” on the basis of which he seeks to explain the fact that al-Shāṭibī limits himself to the use of methods appropriate to such an approach. He states,

When he comes to explain the methods of identifying objectives...they reveal themselves to be consistent with the approach he has employed throughout most of his study, which is predominantly atomistic insofar as it tends in the direction of searching for such objectives within the realm of isolated rulings rather than in the realm of universal, inclusive objectives, a phenomenon which manifests itself clearly in the final three methods [specified by al-Shāṭibī].

Al-Najjar appears to have based his article in general, and the judgments made in this paragraph in particular, on nothing but al-Shāṭibī's conclusion to 'The Book of Higher Objectives,' since it is to this conclusion that his judgments apply to a certain extent. However, as I have sought to make clear in the last few pages, the objectives which al-Shāṭibī elucidates are, for the most part, the universal, overall objectives for which he finds support by means of the inductive method, whereas specific, particular objectives are only discussed incidentally. I can only assume that al-Najjar has, at the very least, read al-Shāṭibī's *Kitāb al-Maqāṣid*. However, the effects of such reading are not apparent in this article, in which he focuses so completely on the conclusion to *Kitāb al-Maqāṣid* that he fails to note the most significant methods for determining objectives. In fact, al-Najjar fails to observe even the type of objectives with which al-Shāṭibī's book is filled despite the fact that an overview of al-Shāṭibī's subheadings alone<sup>263</sup> is sufficient to make clear that he is not concerned with particularistic objectives but, rather, with overall objectives and universals. The error in al-Najjar's judgments arises from his disregard for al-Shāṭibī's reliance upon induction, which he employs constantly throughout *al-Muwāfaqāt*. Unfortunately, al-Najjar allows this very error to become the basis for his comparisons between al-Shāṭibī's methods of identifying objectives and those of Ibn Ashur.

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