4

Overall Evaluation of al-Shāṭibī's Theory

[I]

Al-Shāṭibī's Theory Between Imitation and Originality

The originality for which al-Shāṭibī is responsible in the fundamentals of jurisprudence in general, and in the study of the objectives of the Law in particular, is beyond dispute; indeed, all those familiar with his writings hail his unique contributions to the field. However, at the same time, no one would go so far as to claim that al-Shāṭibī created his theory ex nihilo, that is, that he brought it into existence without antecedents; after all, this would not be in the nature of things. On the contrary he must have benefited from those who went before him and built upon their discoveries and conclusions. Indeed, al-Shāṭibī exhibited both conformity and creativity, he imitated and innovated, he took and gave; and this is all that could be asked of anyone, even the most gifted and knowledgeable. As for the degree to which he may have surpassed others, this can only be gauged by the extent and value of the originality he introduced.

Traditional Elements of al-Shāṭibī's Theory

Let us begin with those aspects of al-Shāṭibī's theory which reflect

conformity and imitation, since it is these which constitute its foundation and point of departure. Indeed, al-Shāṭibī himself took pride in the fact that the creativity and originality which had been made possible for him reflect truths which have been "confirmed by the verses of the Qur'an and the accounts passed down through the Prophetic Sunnah, whose strongholds have been guarded by our most virtuous ancestors, whose contours have been shaped by the most learned of scholars, and whose foundations have been laid by the insights of the most discerning."[1]

Foremost among these individuals were the Companions of the Prophet, "who knew the objectives of the Law and carried them out, who lay the Law's foundations and established its fundamentals, pondering the words of the Qur'an and doing their utmost to live out its principles and accomplish its objectives. In so doing, they became the elite of the elite, the prime of the prime, and stars by whose light people with discerning hearts would be guided."[2] Thus, al-Shāṭibī acknowledges what has already been affirmed by the verses of the Qur'an and the prophetic hadiths, guided (in his mission) by the example set by the Prophet's most admirable Companions, filling out the details of the features which had first been sketched out by leading thinkers, and building upon foundations which had been laid by farsighted scholars of *uṣūl al-fiqh*.

I prefaced this study of al-Shāṭibī's theory with an overview of the notion of objectives as it was understood among *uṣūl* scholars who had preceded him,[3] and as it is understood by the Malikite school.[4] A review of these two sections and a comparison of their contents with the sections which follow them brings to light a number of similarities and commonalities between al-Shāṭibī and his predecessors. It thus reveals the many ways in which al-Shāṭibī was influenced by and benefited from those who went before him. In what follows I will present a brief overview of these influences.

Al-Shāṭibī's Debt to the *Uṣūliyyūn*

We have seen how *uṣūliyyūn* from the time of al-Juwaynī and al-Ghazālī began to classify human interests into the three categories of

'essentials,' 'exigencies' and 'embellishments,' in addition to limiting the category of essentials to five, namely, religion, human life, the human faculty of reason, progeny and material wealth. These classifications are adopted by al-Shāṭibī without modification; nor does he make any objection to the proposal by certain *uṣūliyyūn* that a sixth 'essential,' namely, that of honor,[5] be added as well. Al-Shāṭibī states repeatedly throughout his writings that these essentials have been preserved in all divinely revealed religions and laws, a thought which was originally expressed by al-Ghazālī and which was adopted by the majority of *uṣūliyyūn* thereafter.

It will be noted that the examples which al-Shāṭibī cites in illustration of the three categories of 'essentials,' 'exigencies' and 'embellishments' and the preservation of the five essentials are, for the most part, the same ones cited by his predecessors, and particularly al-Ghazālī. Of all the *uṣūliyyūn* who preceded al-Shāṭibī, al-Ghazālī is the one he mentions with the greatest frequency. Al-Rāzī comes in a distant second,[6] followed by al-Juwaynī, al-Qarāfī, and Ibn ʿAbd al-Salām.

As for al-Juwaynī, who is the earliest of these thinkers, we have noted the pioneering role he performed in laying the groundwork for the formulation of the theory of objectives. Al-Shāṭibī, together with others, is indebted to al-Juwaynī for this contribution, both directly and indirectly. Moreover, in addition to the overall manner in which he benefited from al-Juwaynī's ideas relating to the objectives of the Law, we find that specific issues with which al-Shāṭibī deals can be traced back to al-Juwaynī's writings. One example of such an issue is the affirmation that the fundamentals of jurisprudence (*uṣūl al-fiqh*) are definitive rather than speculative in nature. It is this premise with which al-Shāṭibī opens *al-Muwāfaqāt*, and it is likewise found in the opening pages of al-Juwaynī's *al-Burhān*. Another example of specific issues which manifest al-Shāṭibī's debt to al-Juwaynī is the notion that legal rulings vary according to whether they are being viewed on the communal level or the individual level. As we saw earlier, a particular action may be permissible on the individual level, but obligatory or recommended on the communal level.[7] Based on this perspective, al-Shāṭibī affirms in his *Kitāb al-*

Maqāṣid that, taken as a whole, either the exigencies or the embellishments might be viewed as equivalent to one of the essentials.[8]

Al-Juwaynī expresses a similar point of view when he states, for example, that selling may be viewed as an essential on the communal level since, "if people did not exchange with one another what is in their possession, this would lead to an obvious need. The practice of buying and selling, then, rests upon the necessity which results from [the nature of this] type [of transaction] and the existence of the community."[9] In other words, on the individual level, selling is classified among the exigencies, whereas on the collective or communal level, it is classified as an essential. This notion is polished, clarified, developed and expanded by al-Shāṭibī; hence, whereas in al-Juwaynī's writings it is a mere seed, in al-Shāṭibī's writings it becomes a full-grown plant.

Al-Juwaynī makes an insightful observation concerning the complementary relationship between the obligations imposed by the Law and natural human propensities in the achievement of benefit and the prevention of harm. Specifically, he says, we find that those things which human beings crave instinctively and feel compelled to seek – such as food and drink, material possessions, sexual union, and prestigious positions – are rarely encouraged or enjoined by the Law. On the contrary, we find that the Law places restrictions on such things in order to prevent instinctive impulsiveness from leading us into excess. With regard to those things to which human beings have a natural aversion, we find that the Law allows people to avoid them in keeping with their natural inclinations.[10] However, it affirms and stresses its requirement of things which people find burdensome and tend to neglect, such as worship, giving others their due, and jihad. Here again, what is merely a passing thought for al-Juwaynī[11] is developed by al-Shāṭibī who, as is his custom, draws illustrative examples thereof from the various areas of Islamic Law, then sets them forth in the form of clear, precise rules.[12]

As for al-Shāṭibī's debt to al-Ghazālī, it is transparent and explicit. Indeed, al-Ghazālī's influence on al-Shāṭibī is attested to by so many citations in both *al-Muwāfaqāt* and *al-Iʿtiṣām* that al-Ghazālī may well be considered one of al-Shāṭibī's foremost shaykhs despite

the span of three centuries which separates the two men's earthly lives. And even without such attestation, it would be sufficient to note that the most significant principles, examples and terms reiterated by *uṣūliyyūn* in relation to the objectives of the Law find their origin in al-Ghazālī; these, then, became the raw material which al-Shāṭibī adopted and built upon. And not only this – despite its relevance to our topic – but on the nearly forty occasions when al-Shāṭibī mentions al-Ghazālī in various parts of *al-Muwāfaqāt*, he does so in a tone of support and agreement. Hence, al-Shāṭibī relies upon al-Ghazālī and cites his views as support for his own, whereas his mention of other *uṣūliyyūn* – and most particularly, al-Rāzī – is frequently accompanied by words of criticism and objection.

It is thus no surprise to find that al-Shāṭibī commends certain of al-Ghazālī's writings and views in a way in which he praises no other scholar (with the exception of Imam Mālik, of course). The following examples indicate the extent of al-Shāṭibī's reliance on al-Ghazāli:

- In his discussions of causes and outcomes, al-Shāṭibī speaks of human beings' obligation, when dealing with worldly causes, to ponder a given action's results and ultimate consequences. In this context he tells us that "al-Ghazālī approved this principle in his book *Iḥyā' ʿUlūm al-Dīn* and sufficient other works [that we are justified in advocating this position]."[13]

- When discussing the terms 'valid' and 'invalid' and their meaning to scholars of jurisprudence, al-Shāṭibī touches upon these terms' otherworldly dimension, which has to do with whether or not a given action is acceptable to God and merits reward from Him. Then he states, "Although this use of terminology might be considered strange by scholars of jurisprudence, it is nevertheless mentioned by scholars who concern themselves with moral purification (*al-takhalluq*),[14] such as al-Ghazālī and others. This dimension was likewise recognized by our earliest Muslim forebears. Consider what al-Ghazālī has to say concerning this in his *al-Niyyah wa al-Ikhlas* (Book of Intention and Sincerity)."[15]

- In the context of his castigation of those who interpolate irrelevant sciences into the interpretation of the Qur'an, claiming that this helps toward an understanding of its objectives, al-Shāṭibī refers to the position taken by Ibn Rushd the grandson, according to whom the philosophical disciplines are indispensable for a true understanding of the Law and its objectives. After criticizing Ibn Rushd the grandson with unaccustomed ferocity, al-Shāṭibī writes, "No one can instruct you in such matters as well as one who, like Abū Ḥāmid al-Ghazālī, is thoroughly versed therein, and who has dealt with them clearly and exhaustively in various parts of his books."[16]

- Like a number of other scholars, al-Shāṭibī holds that if corruption were to run so rampant on earth that it became impossible for people to earn a living or get enough to eat by legitimate means, then it would be permissible for people to earn what they needed to survive in whatever ways were available; it would thus be permissible for them to increase their means to the extent required for them to live, but not to the point of opulence and ease. He then continues, saying, "In his book, *Iḥyā' ʿUlūm al-Dīn*, al-Ghazālī presents a thorough discussion of this issue; he also makes mention of it in his *uṣūl*-related works such as *al-Mankhūl* and *Shifā' al-Ghalīl*."[17]

Such references – which represent only a tiny sample of what one will find in al-Shāṭibī's books – indicate both the high esteem in which he held al-Ghazālī and his thorough acquaintance with al-Ghazālī's writings. As was indicated in my discussion of sources of benefit and harm, al-Shāṭibī was also influenced in a visible way by ʿIzz al-Dīn ibn ʿAbd al-Salām and his disciple, al-Qarāfī, particularly in relation to sources of benefit and harm and questions pertaining to hardship. We find, for example, that both Ibn ʿAbd al-Salām and al-Qarāfī[18] divide hardships into two categories:

(1) Hardships which are inseparable from the fulfillment of a given religious obligation, such as the hardship involved in performing regular and total ritual ablutions in cold weather, rising early to perform the dawn prayer, the rigors entailed by fasting and performing

the pilgrimage to Makkah, etc. Ibn ʿAbd al-Salām states, "None of these hardships would exempt an individual from the performance of acts of worship or obedience; nor are they meant to be alleviated."[19]

(2) Hardships which may or may not accompany the fulfillment of a religious obligation. This second category is further divided into three subcategories: (a) severe hardships, (b) mild hardships, and (c) moderate hardships. The first of these types is taken into account by the Lawgiver, who calls for them to be alleviated accordingly. The second type is given no consideration, while the third type is subject to inquiry and independent judgment on the basis of which it may be decided whether it belongs to the first or second of these three subcategories. Al-Shāṭibī adopts this same division, though in his own way,[20] that is, by means of his accustomed additions and revisions, as well as his incorporation of it into his theory of objectives.

Ibn ʿAbd al-Salām touches upon the subject of human beings' inborn qualities, his view being that such qualities merit neither reward nor punishment. He states, "Inborn qualities – such as pleasant appearance, medium height and build, good morals, courage and generosity – are not acquired by human effort. Hence, they merit no reward despite their excellence and desirability."[21]

The same applies, moreover, to objectionable qualities, such as lack of intelligence, ill-temperedness, cowardice, stinginess, harshness, rudeness, a propensity for vice and a tendency to find virtue burdensome; hence, in and of themselves, they merit no punishment. Al-Shāṭibī also deals with this issue; however, he expands and deepens the discussion of it, identifying with the utmost precision which of the aforementioned characteristics merits praise and reward, and which of them merits condemnation and punishment. In other words, he identifies which obligations relevant to these characteristics are intended by the Lawgiver, and which are not.[22]

Al-Shāṭibī's Debt to the Malikite School

It should also be noted that what enabled al-Shāṭibī to benefit fully from earlier scholars' illuminations and inspirations concerning the

objectives and wise purposes of the Law, then to develop and build upon these inspirations until he had given us a fully integrated theory with extensions into all the varied domains of Islamic Law, was his thorough grounding in Malikite principles and fundamentals. For a proper appreciation of the extent to which al-Shāṭibī's theory is indebted to his Malikite upbringing, one would do well to review my earlier discussion of the link between the Malikite school and the objectives of the Law.[23]

The Malikite school, as we have seen, is the school of human interest and *istiṣlāḥ*, of interest-based *istiḥsān* and interest-based interpretation of Islamic texts. It is the school which insists most uncompromisingly on warding off potential sources of harm, prohibiting anything which has the potential of leading to such harm, and uprooting harm's causes. It is the Malikite school which focuses attention on human objectives and intentions and refuses to stop at mere appearances and words. Moreover, it is – of all the schools of Islamic jurisprudence – the one which most consistently seeks to identify the bases of legal rulings having to do with daily customs and transactions; in other words, it is the school which devotes itself most fully to revealing the objectives of the Lawgiver and building upon them. And it is these Malikite principles, all of which are reflected in the theory of objectives, which helped to develop and nurture the objectives-based mindset which al-Shāṭibī manifests so clearly.

Now, having noted the sources from which al-Shāṭibī drew and the various ways in which he was influenced by and conformed to earlier thinkers in his theory, I would like to touch upon some of what has been said and rumored concerning the roots of al-Shāṭibī's theory and the ways in which he derived it therefrom. We have, for example, the claim put forward first by Abd al-Majid Turki, then by Muhammad Abid al-Jabiri, according to which al-Shāṭibī, in what he had to say on the subject of the objectives of the Law, was completing what had been said earlier by Ibn Rushd and following in his footsteps. In the context of a seminar held at the College of Arts in Rabat on the occasion of eight centuries having passed since Ibn Rushd's death, Turki stated,

> It behooves us to draw attention to his [Ibn Rushd's] enrichment of juristic thought in such a way that – as we see it – he laid the groundwork for later developments and, indeed, for the birth of a new academic discipline which was to emerge two centuries after his death. The thinker responsible for this newly founded discipline's emergence, namely, al-Shāṭibī of Andalusia, chose to refer to it as 'the science of the objectives of the Law' [*ʿilm maqāṣid al-Sharīʿah*].[24]

To begin with, I do not know what Turki means by saying that al-Shāṭibī "chose to refer to it [i.e., to the newly founded discipline] as 'the science of the objectives of the Law.'" The appellation "objectives of the Law" had long been in use when al-Shāṭibī appeared on the scene, evidence for which I have provided in sufficiency. And as for the term "the science of the objectives of the Law," al-Shāṭibī never used it at all. Rather, the first person to use this term – and this quite recently – was Ibn Ashur, as will be seen in the conclusion to this book.

The evidence which Turki adduces for his claim that Ibn Rushd laid the groundwork for al-Shāṭibī's establishment of the objectives of the Law (as a new discipline) is that Ibn Rushd worked to "rationalize" Islamic jurisprudence and raise it to the level of "objectivity" (!?). Concerning this point he says,

> ... this effort to create an integrated system founded upon reason, and this concern to seek objectivity and certainty, were to prepare the way – as we see it – for the emergence of a new academic discipline at the hands of al-Shāṭibī...[And it is this which leads me to] grant Ibn Rushd a place in the discovery of a new science, that is, the science of the objectives of the Law.

Unfortunately, the 'evidence' which Turki offers us in support of granting Ibn Rushd a place in the discovery of "the science of the higher objectives of the Law" is nothing but a set of vague claims. What, for example, is the "integrated system" which Ibn Rushd put forward, or attempted to put forward? What is the meaning of these new terms, which are foreigners to the field being spoken of? What

is meant, exactly, by saying that the construction of this juristic system was "founded upon reason"? Is Ibn Rushd being singled out among jurisprudents for credit in this regard? Is "the concern to seek objectivity and certainty" likewise peculiar to Ibn Rushd? Lastly, if we grant the replies given to such questions – though nothing relating thereto can be taken for granted – does it follow necessarily that Ibn Rushd discovered the science of the objectives of the Law? And is this supposed necessity born out by the facts?

In support of his claim, Turki cites one other argument which bears some connection to the subject of objectives, but which can only be viewed as a basis for his claim by virtue of forcing the evidence to fit the desired conclusion. He states,

> Allow us to note that in his book, *Bidāyat al-Mujtahid*, Ibn Rushd employs the term *maṣlaḥī*, or 'interest-based,' which he counterpoises with the term *ʿibādī*, or 'that which calls for unquestioning submission.' [Ibn Rushd states,][25] "It is not impossible for interests which are comprehensible to human reason to serve as the bases for obligatory acts of worship. In such cases the Law has allowed for two different objectives:[26] one of them *maṣlaḥī*, and the other *ʿibādī*. By *maṣlaḥī*, I am referring to objectives having to do with tangible realities, and by *ʿibādī*, I am referring to objectives having to do with the purification of one's soul."

If the only place in which Turki has discovered the term *maṣlaḥī* and its use in the interpretation of legal rulings is Ibn Rushd's *Bidāyat al-Mujtahid*, then perhaps in the end,[27] he will discover that the use of such terminology is well-established in books on Islamic jurisprudence, particularly those by Malikite scholars, and was widespread among scholars of *uṣūl al-fiqh*, both before and after Ibn Rushd's time. We have cited sufficient examples of this phenomenon that there is no need to reiterate or add to them at this point.

However, what never ceases to amaze me is the way in which some researchers arrive at judgments, form theories, and interpret phenomena and developments based on nothing but (a few terms) which they pick out, then repeat, placing them in boldface type and

underlining them, then insisting that their listeners or readers believe in the conclusions they have based on these words, despite the fact that such conclusions would not be supported even by scores of similar terms! If it were academically justifiable for us to claim that Ibn Rushd pioneered and influenced al-Shāṭibī in the area of the objectives of the Law based on the mere fact that he used the term *maṣlaḥī* it would make more sense for us to base the same claim on his use of terms such as *maqṣid al-sharᶜ* or *maqṣūd al-sharᶜ* (the intent of the Law), both of which are terms which are used by virtually every scholar of jurisprudence and its fundamentals who has ever written. (See Chapter One.) Ibn Rushd makes repeated use of the term *maqṣūd al-shāriᶜ*, that is, the objective of the Lawgiver, and other similar phrases; however, he employs them only in passing, and in contexts which are unrelated to our topic, namely, the objectives of the Law.

Specifically, Ibn Rushd's use of terms such as *maqṣūd al-shāriᶜ* and the like occurs in his discussion of issues relating to doctrine. Thus, in the context of his denial and criticism of invalid interpretations which had been introduced into Islamic doctrine by certain groups of scholastic theologians, he states, "If careful thought is given to all of them [i.e., these interpretations], as well as to the objective of the Law (*maqṣid al-sharᶜ*), it will become apparent that most of them are recently introduced teachings and heretical interpretations. [In investigating such teachings,] I bring to mind those doctrines which are required by the Law, that is, those without which the Law cannot be fulfilled, and in this way I inquire into the objective of the Lawgiver (*maqṣid al-shāriᶜ*)."[28]

When discussing the teachings of scholastic theologians on the divine attributes, Ibn Rushd divides them into three schools: (1) Those who hold that the divine attributes are identical with the divine essence, and that there is no multiplicity and (2) those who hold that there is multiplicity. Ibn Rushd further divides this second group into two subgroups, namely: (a) those who see this multiplicity as self-subsistent and (b) those who see it as subsisting in other than itself. Then he adds, "Yet all of this is far from the objective of the Law. Hence, what the general populace needs to know concerning these attributes is simply what the Law declares concerning them,

namely, that they exist, without detailing the matter any further."[29] Similarly with respect to knowledge, Ibn Rushd declares that "the aim of knowledge as it pertains to the general populace is simply action, and whatever is more beneficial in action is more worthy of being known. As for the aim of knowledge with respect to scholars, it is both knowledge and action."[30] On page 49 of his book, *Faṣl al-Maqāl*, Ibn Rushd states, "You should know that the objective of the Law is simply to teach true knowledge and correct action."

It is on texts such as these – or, more precisely, on phrases such as these – that al-Jabiri depends when he states, "al-Shāṭibī took this idea from Ibn Rushd, who had employed it in the area of doctrine, then transferred it to the realm of *uṣūl*, that is, the fundamentals of jurisprudence"![31] Thus it is that a prominent researcher and well-known thinker can, with utter confidence and ease – that is to say, without reservations, the proposal of alternative interpretations, proofs, or a search for supporting evidence – make the definitive declaration that al-Shāṭibī took the notion of objectives from Ibn Rushd!

Al-Jabiri declares that those who read al-Shāṭibī

> will not be able to understand his purposes or perceive the various innovative aspects of his thought unless they meet two conditions. The first condition is that they be well-read, not only in the field of jurisprudence and its fundamentals, but, in addition, in the various branches of Arab culture and civilization, including Qur'anic interpretation, hadith, jurisprudence and its fundamentals, scholastic theology, logic, philosophy and Sufism...[32]

If al-Jabiri held himself to the same requirements he imposes on others who read al-Shāṭibī, and particularly, the requirement that one be well-read in the areas of jurisprudence and its fundamentals – which constitute the most natural, fertile soil for a theory such as al-Shāṭibī's – he would not be so enthralled by certain terms used by Ibn Rushd in the realm of Islamic doctrine that he makes them into a key to the interpretation of what al-Shāṭibī has to say about the objectives of the Law. Nor would he, in his unbounded enthusiasm,

consider al-Shāṭibī's discourse on the objectives of the Law to be "entirely new."[33]

What bears noting at this juncture, however, is that al-Shāṭibī hardly mentions Ibn Rushd the grandson. Rather, the Ibn Rushd to whom he makes repeated reference, from whom he quotes and upon whom he relies, is Ibn Rushd the grandfather; indeed, it is Ibn Rushd the grandfather to whom both al-Shāṭibī and others are referring when (particularly in the area of jurisprudence) they use the name 'Ibn Rushd' without further qualification. Hence, in view of the fact that al-Shāṭibī did, in fact, rely upon and cite the writings of Ibn Rushd the grandfather on numerous occasions, it would be of far greater benefit and more in keeping with the nature of things if those who apply themselves to searching for the roots of al-Shāṭibī's theory were to direct their attention instead toward Ibn Rushd the grandfather and the huge legacy he has left us in the realm of Islamic jurisprudence. After all, Ibn Rushd the grandfather was Andalusia's leading scholar of jurisprudence and that age's authority in the minute details, mysteries and sublets of the Malikite school. Indeed, what he offered to Malikite jurisprudence in his book entitled, *al-Bayān wa al-Taḥṣīl*[34] placed all those who came after him in his debt.

As for Ibn Rushd the grandson, he does not appear to have exerted any influence on al-Shāṭibī's writings, and perhaps the only occasion when al-Shāṭibī mentions him is in the context of his discussion of the various disciplines which had been added to (the study of) the Qur'an. Hence, in the course of a digression in which he criticizes those who introduce into Qur'anic interpretation sciences which they claim to be necessary for an understanding of the word of God, he states,

> In his book entitled, *Faṣl al-Maqāl fī mā Bayn al-Shariᶜah wa al-Ḥikmah min al-Ittiṣāl*, the wise Ibn Rushd claims that philosophy is required for a correct understanding of the meaning of Islamic Law. However, if someone were to put forward an opposing claim, he would not be far from the mark. A middle ground between these two opposing positions may be sought in what the righteous ancestors had to say con-

> cerning such sciences. Did they make use of them, or did they disregard and remain ignorant of them? Whatever the case may be, they are known to have had a solid understanding of the Qur'an, testimony to which is born by both the Prophet and many others; hence [the hadith], "let a person look to see where he is placing his foot..."[35]

Lastly, let no one think that I am seeking to detract from the place occupied by Ibn Rushd the grandson or to discredit his scholarship and thought. On the contrary, I hold him in the highest esteem; in fact, I consider myself to be among his greatest admirers. However, I want to place things in their proper perspective, especially given the fact that the matter has to do with research methodology, means of adducing proof, and the manner in which the researcher arrives at judgments on things.

Another claim put forward in this connection is that made by Sad Muhammad al-Shannawi, according to whom al-Shāṭibī was influenced by such thinkers as Ibn Taymiyah and Ibn al-Qayyim. Indeed, al-Shannawi states,

> Imam al-Shāṭibī was influenced by the writings of his forebears, including al-ʿIzz ibn ʿAbd al-Salām, Ibn Taymiyah, Ibn al-Qayyim and al-Qarāfī. Consequently, we find his book to be a combination and analysis of these valuable points of view, essential elements of which include the theory of unrestricted interests and the practice of basing legal rulings of all kinds on them, as well as the distinctiveness of Islamic legislation in this respect.[36]

Most unfortunately, however, this statement does not contain a single affirmation whose validity can be taken for granted.

1. Its author has not adduced a single piece of evidence – nor even a hypothesis – to show that al-Shāṭibī was influenced by either Ibn Taymiyah or Ibn al-Qayyim. I myself can assure him that neither of these two thinkers is mentioned anywhere in any of al-Shāṭibī's extant writings. Moreover, despite the fact that these two thinkers were well-known in the East during and after al-Shāṭibī's time, we

nevertheless find no evidence that either they or their views exerted any influence in North Africa or Andalusia during that era. In general, Ḥanbalite jurisprudence, writings and names were the least mentioned and the least influential in this (latter) region. There is a single instance in which I found al-Shāṭibī to write, "A certain Ḥanbalite has stated...,"[37] and this in connection with unfounded claims of consensus which had been used by some as a way of cutting off discussion of certain matters. How-ever, I consider it unlikely that al-Shāṭibī would have based this directly on some Ḥanbalite writing, and even more unlikely that he would have been acquainted with some of the writings of Ibn Taymiyah or Ibn al-Qayyim, especially in view of the fact that, unlike Ibn al-ʿArabī, al-Ṭarṭūsī[38] and his shaykh Abū ʿAbd Allāh al-Maqqarī,[39] for example, al-Shāṭibī was not among those who journeyed to the East.

2. Al-Shannawi's claim that legal rulings "of all kinds" are based on unrestricted interests is highly irresponsible. For Islamic legal rulings "of all kinds" are based upon recognized legal evidence, which includes the Qur'an, the Sunnah, consensus and analogical deduction; hence, unrestricted interests are only one among a number of different types of evidence upon which rulings are based. Moreover, as many will be aware, those who recognize unrestricted interests employ them as the basis for only one kind of ijtihad-related ruling.

3. I do not know what is meant by the phrase, "the distinctiveness of Islamic legislation in this respect" (i.e., in respect to its consideration for unrestricted interests). This strikes me as a strange thing to say. ("And if someone were to put forward an opposing claim, he would not be far from the mark...")[40] For what we know of the laws of nations both ancient and modern is that they are based fundamentally upon unrestricted interests, since all of their interests are 'unrestricted.' In fact, the interests of non-Muslim nations are more 'unrestricted' than those of Muslims. After all, the notion of unrestricted interests – if we adopt it in the first place – is not what sets Muslims apart from others; on the

> contrary, it is common to Muslims and non-Muslims. As for what distinguishes our Islamic legislation from other types of legislation, it lies in other principles, such as those which relate to written texts. In sum, then, Islamic legislation is not distinguished by the principle of unrestricted interests; on the contrary, it is distinguished by its narrowing of the sphere of unrestricted interests and the limitations it places on the freedom to act on the basis of them.

Lastly, we come to a statement by Muhammad Abu al-Ajfan, who has benefited me greatly through his books and letters. Abu al-Ajfan speaks of al-Shāṭibī's academic contributions, foremost among them being his contribution to study of the objectives of the Law. He states "In this manner, he [al-Shāṭibī] adds significant building blocks to an edifice which had [already] been constructed by researchers into the higher objectives of the Law."[41] Among such researchers, Abu al-Ajfan makes mention of Ibn ʿAbd al-Salām, al-Qarāfī, Ibn al-Qayyim and al-Maqqarī the grandfather who, according to Abu al-Ajfan, was "among al-Shāṭibī's shaykhs who influen-ced the formation of his personality and who released the flow of his genius and talent."[42]

I would have preferred to overlook this sweeping judgment on al-Maqqarī's influence on al-Shāṭibī despite his Abu al-Ajfan's penchant for hyperbole. However, the fact that this statement comes in the context of a discussion of al-Shāṭibī's contribution to the building up of the objectives of the Law brings out this tendency with special force. This is confirmed by the fact that Abu al-Ajfan lists al-Maqqarī alongside the scholars who constructed the edifice of the objectives of the Law, which is a second exaggeration even greater than the one that preceded it.

Abu al-Ajfan may have been influenced in this connection – as he himself once indicated in a correspondence between us – by his late shaykh Ibn ʿĀshūr.[43] However, the relevant statement made by Ibn ʿĀshūr does not yield this sense. In the course of discussing al-Maqqarī's rules and his method of deriving principles of jurisprudence, Ibn ʿĀshūr states, "This advanced, independent interpretation-based methodology became the base for the ladder along which

Abū Isḥāq al-Shāṭibī ascended until at last he reached the heights of definitive principles."[44] (However, in spite of Ibn ʿĀshūr's positive estimation of al-Maqqarī's methodology), al-Maqqarī's treatment of the objectives of the Law in *Qawāʿid al-Fiqh* – his most important book and the most relevant to our topic – does not go beyond what was then current in most books dealing with the fundamentals of jurisprudence. We find, for example, that according to his Rule 1134, (1) the human interests recognized by Islamic Law may be divided into three classes, namely, essentials, exigencies and embellishments, (2) the first of these three is to be given priority over the second in the event that the two conflict, while the second is to be given priority over the third should the two conflict, and (3) the priority given to the prevention of harm is commensurate with the class of interests with which it is associated; in other words, prevention of harm as it relates to essentials merits higher priority than that associated with exigencies, just as that associated with exigencies should receive higher priority than that associated with embellishments. In Rule 1188, al-Maqqarī states that "all of the divinely revealed Laws are consistent in their sanctification of the five universals, namely, the faculty of reason, human life, progeny, honor, and material wealth, with some of them adding a sixth, namely, religion."[45] In Rule 1006, he states, "One of the objectives of the Law is the preservation of people's material wealth, which necessitates the prohibition against the squandering of such wealth and sales which involve uncertainty and risk." And in Rule 831 he states, "Another objective of the Law is to reconcile people who are at odds and to settle their disputes."

Al-Maqqarī may be said to have interspersed his rules with some of what was being reiterated on the subject of *maqāṣid al-Sharīʿah* in books on jurisprudence and its fundamentals. Moreover, given the attention and care which he devoted to the theme of objectives, al-Maqqarī's writings may have served as one of the early harbingers of the work which al-Shāṭibī[46] was destined to undertake. As for the methodological benefit to which Ibn ʿĀshūr draws attention, it may well be the most important thing which al-Shāṭibī derived from al-Maqarrī's rules,[47] bearing in mind that al-Maqqarī was preceded in

his effort in terms of both methodology and production (as evidenced by the fact that he draws copiously upon al-Qarāfī's *al-Furūq*), and that al-Shāṭibī studied both al-Qarāfī's *al-Furūq* and al-Maqqarī's *Qawāᶜid al-Fiqh*.

* * * * *

The foregoing discussion of al-Maqqarī and his influence on al-Shāṭibī in the realm of *maqāṣid al-Shariᶜah* leads me now to speak in more general terms of the extent to which al-Shāṭibī may have benefited in this same area from his other shaykhs and from his surroundings. In this connection, I have examined numerous fatwas issued by al-Shāṭibī's most prominent contemporaries, and particularly by his own shaykhs (a task in which I was assisted by al-Wansharīsī's *al-Miᶜyār*). Some of these fatwas I was able to locate in their biographies, particularly in *Nayl al-Ibtihāj*; however, I came across nothing of significance. We touched earlier upon some of al-Shāṭibī's extant correspondences; however, these, too, yield little of relevance. What adds further to the picture is that in his discussions of *al-maqāṣid*, al-Shāṭibī mentions none of his shaykhs or the scholars of his age. We have had occasion to observe some manifestations of tension and discord between al-Shāṭibī and the jurisprudents of his generation, and in fact, al-Shāṭibī was only in agreement with the most insignificant minority of them, among whom was al-Qabbāb, mufti and magistrate of Fez.

In addition, we find that al-Shāṭibī avoided relying upon the books of later scholars. When one of his companions once observed this fact and wrote to ask al-Shāṭibī about it, he replied,

> As for your observation that I do not rely on later writings, this is not based merely on my own opinion. Rather, I adopted this stance based on experience in comparing the books of earlier thinkers to those of later ones. By 'later,' I mean writers such as Ibn Bashīr, Ibn Shās, Ibn al-Ḥājib[48] and their successors. Moreover, a certain scholar of jurisprudence with whom I have had dealings instructed me to eschew books by later scholars. He uttered harsh words about such thinkers; however, they

> were words of wise counsel, and in fact, the laxness reflected in the practice of quoting from whatever book comes one's way cannot be tolerated by the religion of God.[49]

As for the person who gave al-Shāṭibī this counsel and used 'harsh language' concerning later scholars of jurisprudence, it was none other than his friend and shaykh, al-Qabbāb, who described Ibn Bashīr and Ibn Shās as having "corrupted jurisprudence."[50]

Consequently, al-Shāṭibī made it a policy to depend exclusively on earlier scholars; in fact, he began urging others to do the same, saying,

> Hence, the books, sayings and biographies of earlier scholars are more beneficial for those who wish to be prudent in their acquisition of knowledge, of whatever sort it happens to be, but especially knowledge of Islamic Law, which is the support most unfailing and most capable of protecting [them from unfounded claims].[51]

Al-Shāṭibī's uncompromising position on this point and his blanket judgment regarding all types of knowledge is clearly exaggerated and unfair.[52] Be that as it may, what concerns us here is simply to confirm that al-Shāṭibī drew primarily upon knowledge of the righteous ancestors, that is, the Companions of the Prophet, their followers, imams who had shown themselves worthy of emulation, and leading scholars of jurisprudence and its fundamentals.

Consequently his theory, and his thought as a whole, reflect sound understanding, accurate vision, and correct methodology. This is not, of course, to deny that he was receptive to guidance and warnings from later thinkers, nor that through them he passed into the 5th Century AH and the centuries preceding it. Indeed, he is certain to have received from his shaykhs what any disciple and student receives by way of preparation, training and guidance.

Innovative Aspects of al-Shāṭibī's Theory

Al-Shāṭibī's innovation in the twin realms of the fundamentals of

jurisprudence and the objectives of the Law is thus beyond dispute; indeed, all who are familiar with his work testify or make reference to his contribution. We find in *al-Muwāfaqāt* that al-Shāṭibī himself was, of all people, most aware of this fact, and the first to draw attention to his God-given creativity and innovation. As we have seen, he makes reference to these things when he speaks of the time "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..."[53]

Fearing lest his innovative ideas not be well received, al-Shāṭibī seeks to reassure his readers, saying,

> You may be inclined to repudiate this book, you may find it difficult to perceive its inventive and creative aspects, and you may have been beguiled – by the fact that nothing like this has ever been heard before, nor has anything like it ever been written in the realm of the traditional legal sciences – into believing that you would be better off not listening to what it has to say just as you would be better off steering clear of [unfounded] religious innovations. If so, then I urge you not to heed such doubts without putting them to the test, and not to forfeit potential benefits without forethought. For it is, thanks be to God, something which is confirmed by the verses of the Qur'an and the accounts passed down through the Prophetic Sunnah.[54]

So great, in fact, was al-Shāṭibī's concern that he not be misunderstood – given the rigidity, stagnation, repetition and rehashing which were so prevalent among scholars of his day – that he actually refrained from including some of the results of his research, contenting himself instead with allusions and indirect references to them. Thus, for example, he concludes *al-Muwāfaqāt* with the following provocative words:

> What I set out to accomplish, I have achieved, thanks be to God, and what was promised has been delivered. However, there remain things which it has not been possible to mention, and whose recipients – however great the thirst for such things – are few in number. Hence, fearing

> lest such readers not come to drink from their springs or be able to assemble their scattered pieces in the course of this investigation, I have checked my desire to set them forth clearly, and restrained my pen and fingers from declaring them in detail. Nevertheless, throughout the book one will find faint signals and rays emanating from their brilliant sun; and those who find their way to them may hope, by God's Grace, to arrive...

In his *Nayl al-Ibtihāj*, al-Tunbuktī hails *al-Muwāfaqāt* as "unparalleled." Such praise is based undoubtedly on the book's innovative aspects, the most important of which are those having to do with the objectives of the Law. Indeed, modern times have witnessed a steady stream of testimonies to and acclaim for al-Shāṭibī's innovativeness and creativity. Distinguished scholar Muhammad Rashid Rida, for example, declares *al-Muwāfaqāt* to be "peerless in its category" and "without precedent," while he describes its author as being "among the greatest innovators in Islam."[55] Similar applause is forthcoming from Rida in his book, *Tārīkh al-Ustādh al-Imām*, in which he counts al-Shāṭibī among the innovators of the 8th Century AH.[56]

Rida is followed in this by ʿAbd al-Mutaʿāl al-Ṣaʿīdī in his book, *al-Mujaddidūn fil-Islām min al-Qarn al-Awwal ilā al-Rābiʿ ʿAshar*. After summarizing what ʿAbd Allāh Darrāz has to say concerning the importance of the objectives of the Law and al-Shāṭibī's place of distinction in bringing them to light,[57] al-Ṣaʿīdī states, "This is a highly valuable aspect of innovation ..."[58] He then continues,

> The reason that so much credit is due to al-Shāṭibī – after Imam al-Shāfiʿī – is that he had led this modern age by granting consideration to what has come to be termed the spirit of the Shariʿah, or the spirit of the Law. He has done so by virtue of his profound concern for the higher objectives of Islamic Law and his approach to the science of the fundamentals of jurisprudence.[59]

On this basis, and although he ranks such figures as Ibn Khaldūn, Ibn Taymiyah and Ibn al-Qayyim above al-Shāṭibī[60], al-Ṣaʿīdī counts al-Shāṭibī among those who brought renewal to 8th Century Islam.

Mustafa al-Zarqa describes *al-Muwāfaqāt* as "the most illustrious book we have had occasion to read in the area of the fundamentals of jurisprudence and the objectives of the Law. In it, its distinguished author may God have mercy on him, displays marvels of sound thought, keen insight into Islamic jurisprudence and original style."[61] In a similar vein, Mustafa Said al-Khinn writes about al-Shāṭibī, saying, "In this book of his, the author has trodden a singular path on which no one has gone before him," the secret of its uniqueness lying in the fact that al-Shāṭibī "presents the fundamentals of jurisprudence as viewed through the lens of *maqāṣid al-Sharīʿah*."[62]

My intention in citing these testimonies, as well as others yet to come, is not to prove al-Shāṭibī's inventiveness. Rather, I have cited them "in order that my heart may be set fully at rest,"[63] as well as to set at rest the hearts of my readers. In other words, to speak of al-Shāṭibī as an innovator requires a thorough familiarity with a voluminous heritage of writings and academic efforts in the realm of Islamic Law in all of its aspects, and, more specifically, in the fundamentals of Islamic jurisprudence. Such a familiarity requires vast reading and painstaking scrutiny of the writings of all those who went before al-Shāṭibī – a task which, needless to say, exceeds the capacities of any one individual even if he or she were to devote his or her entire lifetime to the effort, especially in view of the fact that most of the writings of relevance are still in manuscript form and unavailable, no longer in existence, or as yet undiscovered. This being the case, a single researcher's testimony will not suffice, and no one – least of all myself – should be allowed to limit himself to his own efforts in the reading, examination, and comparison of texts. Rather, in order for the outcome of the endeavor to be credible and for all to be assured of its reliability, it is essential that all of these testimonies be brought together in order to arrive at a indisputable consensus.

At the same time, however, I can augment these attestations to al-Shāṭibī's unique contribution by highlighting, detailing and clarifying the various aspects of his creativity and inventiveness. Some of these aspects have been pointed out and elucidated in earlier sections of this book; however, this was in the form of scattered references

which, taken alone, are not sufficient. In what follows, therefore, we will examine the most significant distinguishing features of al-Shāṭibī's innovative treatment of the objectives of the Law and his construction and exposition of the theory of objectives.

1. The Great Expansion

What I have termed 'the great expansion' is the most visible and widely recognized feature which sets al-Shāṭibī apart from those who wrote about the objectives of the Law before him. Al-Shāṭibī's predecessors treated the subject by way of references and isolated phrases which, if one gathered them all together, might come to several pages total for each writer. When al-Shāṭibī came along, however, he made 'The Book of Higher Objectives' the largest section of his *al-Muwāfaqāt*. In this way, the objectives of the Law became a visible, recognizable entity; no longer could they be disregarded, forgotten, or belittled.

Prior to this, by contrast, the theme of *maqāṣid al-Sharīʿah* had hardly received attention from anyone but major scholars who were well-versed in Islamic Law and its related sciences. And even these individuals only realized the significance of *maqāṣid al-Sharīʿah* within the framework of their own research, drawing upon the enlightenment which it provided in their scholarship and independent interpretations. In their dealings with the general populace, however, they contented themselves with explanations of brief principles and scattered allusions.

This issue is touched upon by one of the most prominent scholars of *maqāṣid*, namely, Ibn ʿĀshūr, who cites examples of objectives-based interpretations and references found in the writings of some early scholars, but which remained vague and scattered and in need of someone who could compile them in an organized fashion and bring out their meaning and importance. He then continues,

> These scholars were followed by singular individuals who appear to me to have been deeply committed to this effort, such as Egyptian Shafiʿite scholar ʿIzz al-Dīn ʿAbd al-ʿAzīz ibn ʿAbd al-Salām in his *Qawāʿid [al-*

> *Aḥkām fī Iṣlāḥ al-Anām]* and the Egyptian Malikite scholar Shihāb al-Dīn Aḥmad ibn Idrīs al-Qarāfī in his book *al-Furūq*. These two men attempted on more than one occasion to establish [the science of] the higher objectives of the Law; however, the remarkable man who finally committed this art to writing was the Malikite scholar Abū Isḥāq Ibrāhīm ibn Mūsā al-Shāṭibī, whose example I seek to follow.[64]

In the course of comparing the concern demonstrated by al-Shāṭibī for the objectives of the Law with that demonstrated by his predecessors, ʿAbd Allāh Darrāz notes in his introduction to *al-Muwāfaqāt* that those who went before al-Shāṭibī did not go beyond mere references to the objectives of the Law in the context of other discussions. Then he continues, saying,

> And thus it was that the field of the fundamentals of jurisprudence continued to suffer a great lack...until God Almighty prepared Abū Isḥāq al-Shāṭibī in the 8th Century AD to redress this need and to construct this mighty edifice.[65]

Hence, the difference between the space devoted to the higher objectives of the Law by previous *uṣūl* scholars and that devoted to them by al-Shāṭibī is likened by Darrāz to the difference between a 'reference' and an 'edifice.'

Employing another analogy which communicates the same message, Mustafa al-Zarqa describes the ample space which was devoted by al-Shāṭibī to the objectives of the Law by comparison with that devoted to them by his predecessors, saying, "Hence, to the science of *uṣūl al-fiqh* and its writings, he [al-Shāṭibī] added a creative exposition of the objectives of the Law, a topic which had previously received only scant attention in *uṣūl*-related writings despite its tremendous importance for the derivation of legal rulings. Imam Abū Ḥāmid al-Ghazālī had, prior to this time, planted the seed of this theme's development in his *al-Mustaṣfā*,[66] after which al-Shāṭibī cultivated this seed with such care in his *al-Muwāfaqāt* that it grew into a luxuriant, shady garden."[67]

Ujayl al-Namashi expresses the view that the discussion of *maqāṣid*

al-Shariʿah began with al-Ghazālī in his *Shifā' al-Ghalīl*. Then he states, "However, the person who brought this science to completion, filling out its details and establishing its principles, was Imam al-Shāṭibī. Indeed, what al-Shāṭibī accomplished is no less significant than what al-Shāfiʿī accomplished in his book, *al-Risālah*, where he committed knowledge to writing, opened its doors and compiled the rules upon which the derivation [of legal rulings] is based."[68] Further testimony to this point is added by Umar al-Jaydi, according to whom al-Shāṭibī stated in *al-Muwāfaqāt*

> "what no one had ever stated before him, the result being that al-Shāṭibī may rightly be viewed as the first scholar to establish the science of *maqāṣid al-Shariʿah*." Then, after making reference to the contributions of some of al-Shāṭibī's predecessors, al-Jaydi states, "However, al-Shāṭibī expanded the discussion of these points in a way which is both unprecedented and unrivaled...And in so doing, al-Shāṭibī made a contribution similar to that made by al-Shāfiʿī to the study of the fundamentals of jurisprudence."[69]

The importance of this aspect of al-Shāṭibī's contribution – that is, the great expansion in the amount of space devoted to the higher objectives of the Law – has nothing to do, per se, with the notability or originality of what he wrote. Rather, it consists in the mere fact of his having initiated such an expansion and devoted an entire book to this theme,[70] a book of several hundred pages which revolves in its entirety around a concern for the objectives of the Law and an examination of this theme from all of its various angles. For this in and of itself is a new type of endeavor of the utmost importance for drawing attention to the objectives of the Law and for encouraging Muslim scholars to observe them and give them the consideration they deserve. Given the fact that very few scholars and their students have yet to undertake a thorough, painstaking study of *al-Muwāfaqāt* and to benefit fully therefrom, I believe that this visible, quantitative aspect of al-Shāṭibī's work remains, to this day, a particularly exciting and salutary initiative. After all, have we not been instructed to judge things (at least in part) based on their outward, visible aspects?

It should also be noted that the space which al-Shāṭibī devotes to the objectives of the Law is not limited to 'The Book of Higher Objectives' alone. Rather, as we have seen,[71] the theme of *maqāṣid al-Sharīʿah* holds sway over all parts of both *al-Muwāfaqāt* and al-Shāṭibī's other writings as well. This is an entirely new step for the field of *uṣūl al-fiqh* and its related writings; for while the higher objectives of the Law were once no more than a specific point which might be mentioned or referred to on this or that occasion in the context of *uṣūl*-related discussions, al-Shāṭibī caused them to become a spirit which flows through most aspects of this discipline. This same spirit likewise flows with clarity and force through the discipline and world of jurisprudence by virtue of the fact that the objectives of the Law have now been introduced into the realm of *fiqh*-related independent reasoning, whether for the purpose of understanding and interpreting a text and deriving rulings therefrom, or for the purpose of arriving at a ruling on a situation about which no specific text exists, a theme to which I will return in the next and final section, God willing.

2. Human Objectives

The attention which al-Shāṭibī devotes to human objectives reveals still another aspect of the inspiration and creativity which mark his theory. The higher objectives of the Lawgiver can only be fulfilled by correcting the objectives of those answerable to the Law; hence, it is precisely al-Shāṭibī's concern for the objectives of the Lawgiver which leads him to conclude his discussion thereof with a discussion of human objectives as well. In so doing – that is to say, by appending an analysis of human objectives to his analysis of the objectives of the Law and explicating the necessary, integral connection between them – al-Shāṭibī has introduced an entirely new element into this type of discussion.

Muslim theologians, educators, jurisprudents and scholars who concern themselves with moral purification (*al-takhalluq*) have dealt with the theme of human objectives under the rubric of intentions. In expression of this concern, Andalusian Malikite scholar Ibn Abū

Jamrah writes, "Would that there were scholars of jurisprudence whose only concern and responsibility was to instruct people in matters pertaining to the intentions with which they undertake their various tasks. For many people have been devastated by the lack of this very thing."[72]

There can be no doubt that al-Shāṭibī benefited from and built upon what had been written by other scholars on the subject of intentions and objectives. However, he was particularly indebted in this area to his own Malikite school which, as we have made clear in earlier sections, concerns itself not only with human objectives as they pertain to Islamic forms of worship but, in addition, places paramount importance upon the human objectives which underlie all of our words, actions, transactions and behaviors.

In sum, al-Shāṭibī demonstrates unparalleled originality in the way in which he links and integrates divine and human objectives in his 'The Book of Higher Objectives,' and his treatment of human objectives based on an examination of those of the Lawgiver.

3. By What Means May the Lawgiver's Higher Objectives Be Known?[73]

Like his integration of divine and human objectives, al-Shāṭibī's treatment of the question of how the Lawgiver's higher objectives may be known is an entirely new addition to the field of *uṣūl al-fiqh*. Despite its newness, it is of the utmost significance and seriousness, since everything which is said about objectives, every expansion in the discussion thereof and every new discovery of universals pertaining thereto is dependent upon the establishment of a precise, suitable method for ascertaining the objectives of the Lawgiver. This fact can help us to realize the momentousness of the service which al-Shāṭibī was rendering when he introduced this theme. As I see it, the mere fact of al-Shāṭibī's having raised this question in a discussion devoted specially to this theme is of even greater importance than what he wrote therein, however important it may be. His deliberate, independent treatment of this topic parallels his treatment of the larger theme of objectives in a separate book ('The Book of Higher

Objectives'); at the same time, what he has to say about the manner in which the Lawgiver's objectives may be determined in a variety of situations is analogous to the objectives-inspired observations which he makes elsewhere in his writings.

If, by devoting an entire book to the theme of higher objectives, al-Shāṭibī was bringing this area of inquiry a significant step forward, then by devoting a separate discussion to the question of "how the Lawgiver's higher objectives may be known" and placing it among his other objectives-related discussions, he was taking a further creative step and introducing renewal in the broadest sense of this term. By means of this discussion in particular, al-Shāṭibī opened the door for scholars to enter truly into the world of objectives and mine its hidden treasures. At the same time, this theme still calls for further discussion, expansion and definition; in response to this need, it has been discussed by Ibn ʿĀshūr, who offers new observations and cites relevant examples; contributions have likewise been forthcoming from Abd al-Majid al-Najjar in an article devoted specially to this topic.[74]

4. A Wealth of Principles

Al-Shāṭibī had a passionate concern for the compilation and precise formulation of comprehensive rules. Such comprehensive rules or principles in any discipline or science are, of course, the underpinnings upon which the science in question rests and by means of which it is regulated; it is within the framework of such principles that its particulars are ordered and its theories developed. In this, then, we have further evidence of al-Shāṭibī's having been a seminal thinker, who formulated literally scores of principles which encapsulate the numerous aspects of the objectives theory and light the path ahead for us.

Of these principles I have compiled a number which I find to be the clearest and most fully developed and have ordered them within the categories to which they apply, namely: (1) the higher objectives of the Lawgiver, (2) human objectives, and (3) how the objectives of the Lawgiver may be known. For the most part, the principles are

worded as al-Shāṭibī originally formulated them. In some cases I have paraphrased them by way of joining two or more principles into one, completion, or abridgement; however, the modification remains minimal and has no impact on the principles' original meaning.

Each principle below is followed by numbers representing the part and page number from which it is taken in *al-Muwāfaqāt*, with additional page numbers indicating repetitions and clarifications. If the number of the part in which the principle is found is preceded by the letter *I*, this is a reference to *al-Iʿtiṣām*.

Maqāṣid-Related Principles

a) Higher Objectives of the Lawgiver

1. Divinely revealed laws were all established in order to preserve human interests both in this world and the next (2:6).
2. An inductive reading of the texts of Islamic Law, including those with both universal and particular import, demonstrates definitively that the Lawgiver's intention is to preserve interests on three levels, namely, essentials, exigencies and embellishments (2:49-51).
3. Interests classified as essentials (*al-ḍarūriyyāt*) are those which are necessary for the achievement of human beings' spiritual and material well-being and in the absence of which people's earthly interests will suffer harm, thereby leading to corruption, disorder and the loss of life in this world, and in the next world, to the loss of ultimate spiritual well-being and felicity (2:8).
4. Exigencies (*al-ḥājiyyāt*) are those things which are required for ease and comfort and the elimination of distress and hardship, though their absence does not necessarily result in overall corruption or serious harm (2:11).
5. The term 'embellishments' (*al-taḥsīniyyāt*) refers to the adoption of suitable, worthy customs and habits and virtual morals and the avoidance of dishonorable (practices and) conditions which would be unacceptable to those with sound minds and perceptive faculties (2:11).

6. There are five essentials, namely, religion, human life, progeny, material wealth, and the faculty of reason (2:10).
7. The Muslim nation, indeed, all religions, agree unanimously on the necessity of preserving these five essentials (1:38 and 2:255); and the same applies to exigencies and embellishments (3:117).
8. The five aforementioned necessities are rooted in the Qur'an and detailed in the Prophetic Sunnah (4:27).
9. The essential objectives of the Law serve as the foundation for exigencies and embellishments (2:16).
10. Each of the three aforementioned types of interests (essentials, exigencies and embellishments) has complements; however, the absence of such complements will not undermine the fundamental wise purpose which underlies them (2:12).
11. Each complement, insofar as it is a complement, is bound by a condition, namely, that its presence must not have the effect of nullifying the interest with which it is associated (2:13).
12. Taken as a whole, either the exigencies or the embellishments might be viewed as equivalent to one of the essentials (2:23).
13. None of the universal principles pertaining to the essentials, exigencies or embellishments has been abrogated; rather, anything which has been abrogated is on the level of particulars (3:105, 117).
14. An action which has more beneficial effects than harmful effects, then it is this benefit which is taken into consideration by the Law, and it is for the sake of its attainment that human beings are urged or commanded to engage in said action. And conversely, an action which has more harmful effects than beneficial ones, it is this harm which is taken into consideration by the Law, and it is for the sake of its elimination that the Law prohibits the action concerned (2:26-27).
15. It may be understood based on the precepts which the Lawgiver has established that the significance of a given act of obedience or disobedience increases in proportion to the benefit or harm which results therefrom. Moreover, the greatest benefits are associated with the preservation of the five essentials recognized by every (divinely revealed) religion, while the most serious

harm is that which results from the violation of these same essentials (2:298-299).

16. Depending on the seriousness of the harm resulting (from a given action), there will be either latitude or strictness with respect to *sadd al-dharā'i*ᶜ, that is, the prohibition of evasive legal devices, or of anything which has the potential of leading to said action (*I*, 1:104).
17. The avoidance of that which is prohibited is treated by Islamic Law with greater urgency and seriousness than is the performance of that which is commanded; similarly, the Law places higher priority on the prevention of harm than it does on the achievement of benefit (4:272).
18. The desired or ideal response to legal rulings pertaining to acts of worship is that of unquestioning obedience without concern for their underlying purposes, whereas the desired or ideal response to legal rulings pertaining to daily transactions is that of attention to their underlying purposes (2:300 and *I*, 2:135).
19. The overall objective of rulings which call for unquestioning obedience is that human beings learn to submit to God's commands, to hold Him in awe and reverence, to extol His Majesty and to turn to Him (2:301).
20. The creation of the earthly realm is based on the bestowal of blessings on God's servants in order that they might receive them, enjoy them and give thanks to God for them, and that He, in turn, might reward them in the life to come; these two objectives are among the most prominent objectives of Islamic Law (2:321).
21. The objective underlying the establishment of the Law is to deliver human beings from enslavement to their selfish whims and desires in order that they might be God's servants by choice just as they are His servants out of necessity (2:168).
22. The Law was established in order to bring human beings' desires into subjection to the Lawgiver's objectives. At the same time, God has granted human beings sufficient latitude with respect to the satisfaction of their desires and the pursuit of enjoyment that (the situation in which they find themselves)

need not lead either to harm and corruption or to hardship (1:377).

23. The hardship involved in resisting one's desires is not among the types of hardship taken into consideration by the Law; hence, no allowances are provided in order to alleviate it (1:337 and 2:153).
24. If someone comes seeking a legal opinion on a particular matter, the practice of granting him or her a choice between two courses of action[75] is contrary to the objective of the Law, since it opens the door to the gratification of one's selfish desires, whereas the objective of the Lawgiver is to deliver us from them (4:262).
25. The Lawgiver does not command any action with the intention of causing us hardship or pain (2:121).
26. It is unanimously agreed that the Lawgiver intends for human beings to perform actions which entail a certain degree of effort and hardship. However, He does not intend the hardship for its own sake; rather, what He intends is the benefits which accrue to human beings as a result of performing such actions (2:123-124).
27. If the hardship entailed by a given requirement of the Law is so extreme that it undermines someone's spiritual integrity or material well-being, then the Law's objective is to eliminate it, other things being equal (2:156).
28. If the hardship being endured is not inordinate, then, although it is not the Lawgiver's objective as such for such hardship to occur, neither is it His objective to eliminate it (2:156).
29. *ʿAzīmah* (the original, established intention behind a given action commanded by the Law) is the rule, while *rukhṣah* (the type of allowance granted in connection with certain actions commanded by the Law for the purpose of alleviating hardship) is the exception; hence, the *ʿazīmah* embodies the Lawgiver's primary intention, while the *rukhṣah* embodies a secondary intention (1:351-353).
30. The hardships which underlie the granting of allowances (pl. *rukhaṣ*, sing. *rukhṣah*)[76] are not something which the Law-

maker intends in and of themselves; nor are they something which He intends to eliminate (1:350).

31. If it appears at first that the Lawgiver's intention or objective is to require of human beings that which is beyond their ability, it will become clear through further investigation that this is explainable on the basis of events or conditions which precede, accompany or follow the action in question (2:107).
32. The ideal which all legal rulings are intended to achieve is moderation, and this by steering a middle course between the two extremes of excessive austerity and excessive laxity. Hence, if one observes a tendency (in a legal ruling) toward one of these two extremes, this is due to the fact that the ruling in question is intended to counter an opposing tendency in human beings, be it actual or anticipated (2:163-167).
33. Among the Lawgiver's intentions with respect to (virtuous) actions is that human beings should persevere in them (2:242).

b) Human Objectives

34. Actions are as good as the intentions which underlie them; hence, human intentions are given consideration in (evaluating) conduct in the realms of both worship and daily transactions (2:323).
35. Objectives are the spirit of actions (2:344).
36. The Lawgiver's objective for human beings is for their intention in what they do to be in agreement with His intention in laying down legislation, and for them not to intend anything which would be in conflict with His intention (2:331).
37. If anyone seeks, by doing what the Law commands, to accomplish an end other than that for the sake of which such commands were given, his action is rendered invalid (2:333).
38. If anyone seeks to achieve an interest in a manner other than that sanctioned by the Law, he or she is actually working against the interest in question (1:349).
39. Seeking out hardship for its own sake is unacceptable, since it is in conflict with the Lawgiver's intent, and because God has not established self-torment as a means of drawing near to Him

or attaining to His presence (2:129 and 134, and *I*, 1:341).

40. One should not seek out hardship in view of the great reward which it brings. However, one may seek to perform an action which carries a great reward due to the hardship it involves, not for the sake of the hardship, but for the sake of the action itself (2:128).
41. When performing obligations relating to daily customs and transactions, it is sufficient, in order for the action to be valid, that one's aim in performing it not be in conflict with that of the Lawgiver; it is not necessary, however, that there be outward, visible conformity to the divine objective (1:257).
42. In financial matters, there is no distinction between the presence and absence of intention; hence, in the determination of penalties to be imposed for (having caused) financial loss or harm, an error is viewed as tantamount to a deliberate action (2:347).
43. When concerning oneself with causes, it is not necessary that one aim to achieve their associated outcomes; rather, all that is required of the individual is that he act in conformity with the relevant legal rulings (1:193).
44. Acting to bring about a cause is tantamount to bringing about its effect, whether one intended to bring it about or not (1:211).

c) How the Higher Objectives of the Lawgiver May Be Known

45. Identification of the higher objectives of the Lawgiver is not based on opinions and unfounded conjectures (1:80).
46. The enjoinment of an action necessitates that the Lawgiver's objective be the performance of the action enjoined, while the prohibition of an action necessitates that the(Lawgiver's) intention be the prevention of the action prohibited (2:393 and 3:122).
47. The basis for a legal ruling serves as evidence of the Lawgiver's relevant objective or intention; hence, whenever such a basis is known, it is to be heeded (2:394 and 3:154).
48. The commendation of an action is evidence that the Lawgiver intends for such an action to be performed, while the condemnation of an action indicates that the divine intention is for it

not to be performed (2:242).

49. Gratitude for blessings engenders an awareness of the (divine) intention that human beings receive such blessings, take pleasure in them, and give thanks for them (1:117 and 126).
50. Every principle which is in keeping with the actions of the Lawgiver and whose meaning is derived from sufficiently numerous and varied pieces of evidence that it may be affirmed with definitive certainty may be built upon and treated as authoritative even if it is not attested to by any specific text (1:39).
51. The establishment of causes necessitates that the One who established them (that is, God Almighty) intend their outcomes as well (1:194).
52. Whatever serves to complement and reinforce an objective of the Law may be viewed accordingly as an objective of the Law (2:397).
53. If the Lawgiver is silent on a given matter despite the existence of a situation which calls for a ruling thereon, this silence may be taken as evidence that the divine intention is for human beings to stop at the presently existing limits and legislation just as they are (2:410 and *I*, 1:361).
54. If we understand a legal ruling to have a particular wise purpose which will stand on its own, this does not necessarily preclude the same ruling's having numerous other wise purposes as well (2:311).

[II]

Higher Objectives / Intents and Ijtihad

Throughout the course of this book, in our presentation of al-Shāṭibī's theory of higher objectives, in our discussion of its extensions into and implications for various *uṣūl*-related discussions, in our treatment of its fundamental issues, as well as in the course of highlighting its innovative aspects, we have had occasion to elucidate