

Conclusions

This book presented research in a number of areas related to the proposed systems approach to the philosophy and fundamentals of Islamic law. The following is a summary of my own research findings in this work, which range from theoretical conclusions to *fiqhī* opinions. I decided to divide these findings according to the various themes they fell under.

Classic Conceptions and Classifications of Maqāṣid

Traditional and contemporary definitions and classifications of *maqāṣid* were given a special attention in this book. Jurists used the term '*maqāṣid*' to refer to purposes, objectives, principles, intents, goals, ends, and telos. Also, *maqāṣid* was often used as alternative expressions to 'interests' (*maṣāliḥ*). *Maqāṣid* were previously classified in various ways, according to a number of dimensions, namely, levels of necessity, scope of the rulings aiming to achieve purposes, scope of people included in purposes, and levels of universality of objectives, which I found quite similar to the twentieth century's Abraham Maslow's hierarchy of human objectives.

On the other hand, contemporary legal theorists criticised traditional classification of necessities (*ḍarūrāt*) for a number of reasons, including their individualistic scope, not including universal norms/values, and being based exclusively on surveys of *fiqhī* literature rather than original scripts. Thus, contemporary scholarship introduced new classifications of *al-maqāṣid* based on avoiding the above limitations. These new *maqāṣid* were representations of each scholar's own viewpoint for reform and 'modernisation' in the Islamic law. Thus, the

'structure' of *al-maqāṣid* is best described as a multi-dimensional structure, in which levels of necessity, scope of rulings, scope of people, and levels of universality are all valid dimensions that represent valid viewpoints and classifications.

Moreover, I agree with al-Tahir ibn Ashur that the *maqāṣid* of 'freedom' (*ḥurriyyah*), which was proposed by a number of contemporary writers and jurists, is different from the purpose of 'freedom' (*ḥurriyyah* or *ʿitq*), mentioned in traditional schools, which only meant freedom from slavery (defined in the historic sense), rather than freedom (or liberty) in the contemporary sense. However, the basic meaning of freedom is part and parcel of a number of Islamic concepts that were expressed in different terms.

This book also presented a historical survey of the theory of *maqāṣid al-sharīʿah*, starting with the post-prophetic era and until modern times. The following is a summary of this survey, starting with the companions' *ijtihād*, especially Omar's, until al-Shāṭibī, who developed the theory to its classic form.

'Umar's *ijtihād*' is proof that the companions did not always apply what *uṣūlīs* later called *dilālah al-lafẓ* (the implication of the term), and that they frequently applied what this book called '*dilālah al-maqāṣid*.' However, the idea of *maqāṣid* was not the subject of separate monographs or special attention until the end of the third Islamic century, when the first known volume, in which the term '*al-maqāṣid*' was used in the title of a monograph on prayers written by al-Tirmidhī al-Ḥakīm. On the other hand, the first known book on the *maqāṣid* of worldly dealings (*muʿāmalāt*) is Abū Zayd al-Balkhī's *al-Ibānah ʿalil al-dīyanah* (Revealing Purposes in Religious Practices). The oldest manuscript that I found in the Egyptian Dār al-Kutub on the topic of *al-maqāṣid* was al-Qaffāl's *Mahāsin al-Sharāʿi* (The Beauties of the Laws). This book calls for more attention to be given to this manuscript being an important step in the development of *al-maqāṣid* theory. Finally, contrary to the view that research on *maqāṣid al-sharīʿah* was restricted to the Sunni schools of law until the twentieth century, Ibn Babaweah al-Sadouk al-Qummi's '*ʿilal al-Sharāʿi*' (The Reasons behind the Rulings) is the earliest Shia book on *maqāṣid*.

Regarding the history of the *darūrāt* terminology, the earliest known theoretical classification was introduced by al-‘Āmirī al-Faylasūf in his, *al-I‘lām bi-Manāqib al-Islām* (Awareness of the Traits of Islam). Then, Al-Juwaynī coined the various terms of ‘necessities’ that are used until today. Al-Juwaynī’s ‘*Ghiāth al-Umam*’ (The Salvage of the Nations) is another important contribution to *al-maqāṣid* theory and an early project for the ‘re-construction’ of the whole Islamic law based on its *maqāṣid*. Abū Hāmid al-Ghazālī, al-Juwaynī’s student, did not give independent legitimacy (that is, *ḥujjiyyah*) to any of his proposed *maqāṣid/maṣālih*, perhaps, under the influence of his Shāfi‘ī school. Yet, al-Ghazālī made an important contribution by using the *maqāṣid* as ratio legis (‘*illah*’), despite its alleged ‘non-exactness.’ Finally, the most significant development of the *maqāṣid* theory was al-Shāṭibī’s ‘*al-Muwāfaqāt fī Uṣūl al-Sharī‘ah*’ (Congruences in the Fundamentals of the Revealed Law). I accounted for three ways in which al-Shāṭibī developed the theory of *maqāṣid*, namely, from ‘unrestricted interests’ to ‘fundamental of law,’ from ‘wisdoms behind the ruling’ to ‘bases for the ruling,’ and lastly, from ‘uncertainty’ (*ẓanniyyah*) to ‘certainty’ (*qat‘iyyah*).

Contemporary Conceptions of Maqāṣid and Their Significance

This book surveyed the evolution of *al-maqāṣid* theories and conceptions, and argued that current conceptions are closer to addressing current issues than classic conceptions. It was shown how the ‘preservation of offspring’ evolved into ‘care for the family’ and proposals for a civil ‘Islamic social system,’ how the ‘preservation of mind’ evolved into ‘propagation of scientific thinking,’ ‘travelling for the pursuit of knowledge,’ ‘suppressing the herd mentality,’ and even ‘avoiding brain drain,’ and how the ‘preservation of honor’ evolved into ‘preservation of human dignity’ and ‘protection of human rights.’ I suggested that a *maqāṣid*-based approach to the issue of human rights could support the Universal Islamic Declaration of Human Rights and the view that Islam could add ‘new positive dimensions to human rights.’

On the other hand, the ‘preservation of religion’ was shown to have evolved to ‘freedom of belief’ in contemporary expressions, and the

'preservation of wealth' was shown to have evolved to 'economic development' and 'diminishing the difference between economic levels.' This book suggested 'human development' as a contemporary expression of *maṣlahah*, which could be measured empirically via the UN 'human development targets.'

Multi-Disciplinarity

The multi-disciplinary research experience of this work lead me to conclude that 'disciplinisation' should not be an obstacle in the way of using relevant concepts from 'different' fields in research endeavors. Nor should it be a way of monopolising sources of reference in any discipline in order to restrain creativity and control new ideas. In terms of developing the discipline of the theory/fundamentals of Islamic law, it is necessary to be open to relevant ideas from other disciplines. Otherwise, the Islamic legal theory will remain strictly within the boundaries of traditional literature and its manuscripts, and the outcome rulings of Islamic law will remain largely 'outdated.'

Systems Analysis

Historically, the general orientation of philosophical analysis was partial rather than holistic and mainly focused on static relationships between decomposed elements, unlike systems analysis which is a holistic and dynamic approach. Systems analysis is based on the definition of systems, i.e., the analyst assumes that the analysed entity is 'a system,' and proceeds to identify its features, as defined in systems theory. However, current systems-based methods are still based on the simple definition of systems as 'sets of interacting units,' and, hence, is missing a variety of system features that could be of use to analysis. Moreover, many hierarchy-based theories are primarily oriented to the physical world of matter and, hence, not applicable to investigation in the realm of ideas and law. Also, many systems-based classifications are still binary and one-dimensional, contrary to the multidimensional feature of systems that was proposed by systems theorists.

To remedy the above limitations, this book suggested a number of basic systems features and utilised them in the analysis of the 'system'

of Islamic law, namely, the cognitive nature of systems, wholeness, openness, interrelated hierarchy, multi-dimensionality, and purposefulness, the latter being the core system feature in this work.

Classifying Theological Schools Regarding 'Causation'

This book also surveyed the various positions that schools of Islamic theology (*al-madhāhib al-kalāmiyyah*) took regarding the applicability of the 'principle of causation' (*al-sababiyyah*) to God. Muʿtazilīs and Shia judged that divine actions 'must' have causes/purposes, based on the principle of embellishment and repugnance (*al-tahsīn wa al-taqbīh*). Ashʿarites and Salafīs judged that divine actions are above causes and purposes, and that without the sharīʿah, actions are equally 'embellished' and 'repugnant.' Finally, Maturidites attempted to strike a middle ground between the above two opinions by judging that divine actions have causes/purposes out of God's grace, not out of the principle of *al-tahsīn wa al-taqbīh*.

Criticising 'causation,' however, does not entail the deconstruction of theology, as many systems theorists claimed. This book argues that there is no association between the concept of God and the idea of 'causation' except in the minds of theologians who used 'the principle of causation' to prove the existence of God. Thus, the 'principle of holism' could provide an alternative and updated argument for the existence of God and other classic theological proofs. Therefore, a systems approach is useful for contemporary renewal proposals in theology as well.

What is 'Islamic Law'?

This book called for a clear distinction between a number of terms, all of which have been used synonymously with 'Islamic law' in literature written in the English language, namely, *fiqh*, *sharīʿah*, *qanūn*, and *ʿurf*. The term 'fiqh' is understood to represent the 'cognitive' part of the Islamic law, while the term 'sharīʿah' represents the 'heavenly' part of this law (from the believers's perspective). Blurring the line between *fiqh* and *sharīʿah* gives way to claims of 'divinity' and 'sanctity' in human juridical *ijtihād*, and contributes to violence based on mutual

accusations of heresy and resistance of renewal in the Islamic law. On the other hand, *qanūn* and *urf* represent specific legal systems and customs, respectively.

The Evolution of Traditional Schools of Islamic Law

This book summarised the factors that led to the formation of ‘supporters of opinion’ (*ahl al-ra’ī*) and the ‘supporters of narration’ (*ahl al-athar*) tendencies as follows: political/sectarian conflicts, migration of the companions, and personalities of the imams of the time. *Ahl al-ra’ī* tendency was not restricted to Iraq because the Ḥijāzī school, especially in Madinah, also practiced *al-ra’ī* through the method of interest/*maṣlahah*, especially in the fiqh of Mālik and his students. Nor was the difference between *ahl al-ra’ī* and *ahl al-athar* a matter of ‘traditionists’ versus ‘liberals,’ because both schools represented alternative methodologies of authenticating and applying the scripts.

I also criticised the traditional ‘feature-based’ classification of schools of Islamic law, which misses the similarity between ‘evidences’ that have different names in different schools and the differences between ‘evidences’ that have similar names. Traditional classifications also did not account for other non-binary features, such as historical and geographical factors.

Then, tracing ‘chains of studentship’ proves that, generation after generation, schools of law grew more isolated, and that the ‘era of declination’ started when jurists started to be trained in one *madhhab* only and call the imam and his students’s opinions ‘scripts,’ and when their books become exceedingly abstract and complex.

Fundamental Sources/Scripts

There is a general agreement in all existing schools of Islamic law over the contents of the Qur’an, as it exists today. ‘Abdullāh ibn Mas‘ūd’s version, which is endorsed by the Ḥanafī School for the purposes of the law, did not produce significantly different opinions from the rest of the schools of law. Significant differences, especially between Sunni and Shia schools, remain in the area of *kalām* and political positions over the companions’ civil war, rather than sources and rulings in the Islamic law.

Schools of law differed over what to be included in the Prophet's 'conveying of the divine message.' This book argues that narrations such as 'pollenating of the palm trees' and '*al-ghīlah*' keep what is to be included in the category of the 'worldly affairs of the Prophet,' an open question. Similarly, the view that classifies the Prophet's worldly actions contrary to his 'acts of worship' (*ibādāt*), which are defined as actions that 'cannot be rationalised,' also keeps the question on how to define *ibādāt* open.

Linguistic Evidences

Classifications of levels of clarity, such as *muḥkam*, *naṣṣ*, and *zāhir* proved to be largely 'arbitrary,' given all the differences over what entails specification, interpretation, and abrogation for the vast majority of scripts and narrations. The method of 'contrary implication' is also criticised being equivalent to a strict 'exclusive-OR' logical tool that does not allow variations in rulings based on the situation. Thus, the method of 'contrary implication' contributes to an increase in the number of 'opposition' (*ta'arud*) cases and related cancellation and abrogation decisions. The analysis also showed that due to the priority given to linguistic implications, jurists resorted to the fundamentals of 'specificity' and 'qualification' more than the fundamentals of 'social justice' and 'common good.'

Rational Evidences

The rest of the *uṣūlī* evidences were analysed in terms of the differences of opinion over their legitimacy, as well as their similarities and agreement with *al-maqāsid*. The following are my main findings in this area in a point form.

1. There is no 'consensus' over any definition of 'consensus' (*ijmā'*).
2. There is a difference between '*illah*, *ḥikmah*, and *maqṣid* in analogical reasoning.
3. Every school of law that rejected the fundamental method of '*maṣlaḥah*' replaced it with some alternative evidence, except for the Zāhirī school.

4. 'Blocking the means' is a consequentialist approach that could be misused by some pessimistic jurists or politically-motivated authorities.
5. Presumption of continuity (*istiṣhāb*) is a reasoning principle, rather than a 'source of legislation' in its own right.

Contemporary Theories in Islamic Law

After a survey of current classifications of Islamic 'tendencies' and 'ideologies,' this book concluded that these classifications still, for the most part, revolve around the 'classic' three-class typology of fundamentalism, modernism, and secularism. RAND's recent classification of 'tendencies' is an extensive study that deserves a special analysis. However, it is by and large based on positions from the United States foreign policies, does not capture basic theoretical differences over fundamentals of Islamic law, inaccurately includes 'secular philosophers' in traditionalism's 'sources of Islamic law,' misclassifies 'historicity' as a 'modernist' trend, and does not differentiate between various streams of 'Islamic modernism.'

The popular three-fold literalism-reformism-westernisation classifications, usually proposed by centrist reformists are pigeon-hole classifications that assume consistency in their ideal types, classify scholars rather than methods, inaccurately use 'westernisation' and 'modernisation' as synonyms, and inaccurately label some rational views of the Islamic law as secular.

A Proposed Classification for Theories of Islamic Law

This book proposed a shift in the 'levels of authority' from the usual binary categorisation of valid/invalid evidences into a multi-level 'spectrum' of validity of evidences and sources. Current sources in theories of Islamic law are identified as Qur'anic verses, prophetic narrations, traditional schools of Islamic law, *maṣāliḥ*, rational arguments, and modern international declarations of rights. The current major 'tendencies' in various contemporary theories of Islamic law are identified as traditionalism, modernism, and postmodernism. Each of the above 'tendencies,' the book illustrates, is the result of a number of

theoretical ‘streams’ that contributed to it, which could also overlap on specific issues.

Traditionalism includes the streams of scholastic traditionalism, scholastic neo-traditionalism, neo-literalism, and ideology-oriented theories. Scholastic traditionalism holds one of the traditional schools of Islamic law as the ultimate source of law and allows *ijtihād* only if there is no previous ruling in the chosen *madhhab*. Scholastic neo-traditionalism is open to more than one school of law for reference on valid rulings, and not restricted to one school. There are various degrees of this openness, from openness to all schools of law to openness to one circle of either Sunni or Shia schools. Neo-literalism is both a Sunni and Shia phenomenon, which differs from classic literalism in its complete dependence on the hadith collections approved only in one school of law. However, neo-literalism agrees with classic literalism in being against the idea of the purposes/*maqāṣid* as legitimate source of jurisprudence. Finally, ideology-oriented theories criticises modern ‘rationality’ and values for their biased ‘western-centricity.’

Then, Islamic modernism includes the ‘streams’ of apologetic reinterpretation, reformist reinterpretation, dialogue-oriented reinterpretation, interest-oriented theories, and *uṣūl* revision. Key contributors to Islamic modernism integrated their Islamic and western education into new proposals for Islamic reform and ‘re-interpretation.’

Mohammad Abduh and his main students, Rashid Rida and al-Tahir ibn Ashur, contributed to a new school of Qur’anic exegesis that is ‘coherent with modern science and rationality.’ This school, which is referred to here as ‘reformist re-interpretation,’ introduced ‘contextual interpretation’ as a new methodology of exegesis. On the other hand, an apologetic re-interpretation school merely justified specific status quo, usually based on some political orientation. However, I argued that worldly matters should not be given a sacred halo by forcefully reading them into the Qur’an or hadith.

Finally, *uṣūl* revisionism attempted to revise *uṣūl al-fiqh*, through questioning the notions of ‘consensus,’ ‘authenticity,’ and ‘abrogation,’ and introducing new interpretations of *maṣlaḥah* (interest).

Islamic postmodernism included streams of post-structuralism, historicism, critical legal studies, post-colonialism, neo-rationalism,

anti-rationalism, and secularism. The common method in all these postmodern approaches is 'deconstruction,' in a Derridean style. The post-structuralist stream aims to 'free people from the authority of the script,' and applies semiotic theory to the text of the Qur'an in order to 'separate the implication from the implied.' The historicist postmodern stream views the Qur'an and hadith as 'cultural products,' and suggests modern declarations of rights as sources for ethics and legislation. Neo-rationalists take a historicist approach to the Islamic law, and they refer to the conventional Mu'tazili/Rational school for a traditional reference for their views.

An Islamic version of Critical Legal Studies (CLS) aims to 'deconstruct' positions of 'power' that influenced the Islamic law, such as powerful Arabic tribes and 'male elitism.' There is a scholarly debate on whether jurists had 'served the interests of rulers' or 'protected the law from the rulers.' Islamic post-colonialism criticised classic orientalist approaches to the Islamic law, and called for approaches that are not based on 'essentialist fallacies (prejudices) about Islamic cultures.'

A Systems Approach to Theories of Islamic Law

Finally, this work presented a systems approach to the theories of Islamic law, in which the proposed systems features (cognitive nature of systems, wholeness, openness, interrelated hierarchy, multi-dimensionality, and purposefulness) are realised via specific theoretical suggestions. First, towards validating all 'cognitions,' this book argues that ijihad should not be viewed as embodying 'God's commands,' even if it were based on 'consensus' (ijmā') or analogical reasoning (*qiyās*). This position is similar to *al-muṣawwibah's* view, which is based on recognising the 'cognitive nature' of the Islamic law. Then, considering the Prophet's 'cognition' or 'intent' in his sayings and actions, this work utilised al-Qarāfi and Ibn Ashur's consideration of prophetic intents in order to expand the traditional messenger/human categorisation of prophetic actions. The additional category includes prophetic traditions with specific 'intents.'

Towards realising the feature of encouraging holistic views of the system of Islamic law, the book traced the impact of juridical thinking

that is based on the 'principle of causation.' Al-Rāzī's concerns with claiming 'certainty' in single evidences were useful. However, al-Rāzī did not address the prime problem of atomistic approaches, which is their lack of comprehensiveness in their causation basis. Therefore, a systems approach is useful for contemporary renewal proposals in theology as well.

Towards realising the features of openness and self-renewal in the system of Islamic law, this book suggests the change of rulings with the change of the jurist's worldview or cognitive culture as a mechanism of openness in the system of Islamic law, and philosophical openness, as a mechanism of self-renewal in the system of Islamic law. Traditionally, the practical implication of the evidence of *al-urf* is quite limited, and Islamic rulings continue to be based on Arabic customs. Thus, a 'jurist's worldview' is proposed as an expansion to *al-urf* consideration, in order to achieve the 'universality' purpose of the law. The necessary skill for *ijtihād*, which jurists called '*fiqh al-wāqī'* (understanding the status quo), was developed to mean a jurist's 'competent worldview,' hence, 'opening' the system of Islamic law to advances in natural and social sciences.

Regarding 'philosophical openness,' the book finds that the theory of Islamic law did not benefit from original contributions that Islamic medieval philosophers made to philosophy and logic, for example, Avicenna's 'time dependant' syllogism, al-Fārābī's theory of inductive argumentation, Ibn Rushd's openness to all philosophical investigation, and Ibn Ḥazm and Ibn Taymiyah's critiques of Aristotelian logic. Islamic law could achieve self-renewal through openness to (renewable) philosophical investigation.

Towards achieving the feature of multi-dimensionality in the system of Islamic law, the roots of binary thinking that dominated schools of Islamic law were traced. First, the jurists' methods of '*tamyīz*' between concepts, whether essence- or description-based, always resulted in defining every concept in relation to some 'binary opposite.' For example, the quest for 'absolute certainty' (*yaqīn*) in juridical thinking, whether it takes the form of linguistic implication, historical authenticity, or logical implication, is unsubstantiated, and should be dealt with, theoretically speaking, according to a continuous

(probability) spectrum, rather than the binary certain/uncertain classification. The evidence for this from Islamic sources is that the Qur'anic logic for proving the existence of God also takes a 'continuous,' rather than 'binary,' approach to certainty. On the other hand, multi-dimensionality combined with a *maqāṣidī* approach, could offer a theoretical solution to the dilemmas of opposing evidences. Then, although post-modern approaches to the Islamic law raise important questions about binary 'centricity,' they themselves tend to use binary and uni-dimensional approaches. A multi-dimensional approach to the theory of the Islamic law avoids such reductionist methodologies.

Finally, a number of specific *uṣūlī* proposals were made towards supporting the feature of 'purposefulness' in the system of Islamic law, which is the most fundamental feature for systems thinking, as this book had argued. The following is a summary of these proposals in a point form:

1. Juridical authority (*hujjiyyah*) is given to *dilālah al-maqṣid* (the implication of the purpose).
2. The priority of *dilālah al-maqṣid*, relative to other implications, should be subject to the situation at hand and the importance of the *maqṣid* itself.
3. The purpose of an expression should decide the validity of its 'contrary implication.'
4. A scriptural expression of a higher purpose of the law, which is usually a 'general' and 'unqualified' expression, should not be 'specified' or 'qualified' by individual scripts.
5. Moral values should have the status of *ratio legis* for related rulings, in addition to the literal 'causes' that are 'extracted' via traditional methods.
6. 'Systematic coherence' is a proposed expansion of the classic 'content coherence' ('*adam shudhūdh al-matn*).
7. A *maqāṣid* approach could fill the gap of missing contexts in the narration of hadith.
8. *Al-maqāṣid*, in the sense of the 'intents' of the Prophet, could also be utilised in 'contextualising' narrations, based on Ibn Ashur's proposed prophetic 'intents,' namely, legislation, issuing edicts,

judgeship, leadership, guidance, conciliation, advice, counseling, and non-instruction.

9. A careful analysis of the 'exactness' of the *'illah* reveals that it is usually changeable and cannot be 'precisely defined,' as traditionally claimed.
10. The controversy over the independent legitimacy of *'maṣālih'* would cease to exist if they are related to 'purposefulness,' i.e., identified with *'maqāsid.'*
11. *Istiḥsān* is a form of adding 'purposefulness' to juridical reasoning. Nevertheless, schools of law that did not endorse *istiḥsān* had attempted to realise 'purposefulness' via other methods.
12. 'Considering the means' should not be restricted to the negative side of the 'consequentialist' approach.
13. Al-Qarāfi's expansion of 'blocking the means' to also include 'opening the means' is further expanded via a suggested 'continuous' measure of 'goodness' and 'repugnance' of ends.
14. Ibn Ashur's analysis of the effect of (Arabic) customs on narrations themselves enhances the purpose of universality in the Islamic law.
15. The principle of 'presumption of continuity' (*istiṣḥāb*) is presented as an implementation of higher purposes of Islamic law, such as justice, facilitation, and freedom of choice.

Thus, a *maqāsidī* approach takes the juridical issues to a higher philosophical ground, and hence, overcomes (historical) differences over politics between Islamic schools of law, and encourages a much-needed culture of conciliation and peaceful coexistence. Moreover, the realisation of purposes should be the core objective of all fundamental linguistic and rational methodologies of *ijtihād*, regardless of their various names and approaches. Therefore, the validity of any *ijtihād* should be determined based on its level of achieving 'purposefulness,' or realising *maqāsid al-sharī'ah*.