CONTENTS

List of Charts xi
Acknowledgements xvii
Foreword xix

INTRODUCTION xxi

In the Name of the 'Islamic Law'? xxi
Where is the 'Islamic Law'? xxii
Is There a Problem with the 'Islamic Law'? xxiii
Scope of Disciplines xxv
Abstract xxvii

1 MAQĀṢID AL-SHARĪᶜAH A CONTEMPORARY PERSPECTIVE 1

Overview
1.1. *Maqāṣid al-Sharīᶜah*: Early History of the Idea 1
What is *Maqāṣid*? 2
Dimensions of *Maqāṣid* 3
Al-Maqāṣid in the Companions' Ijtihad 9
Early Theories of *Maqāṣid* 13
1.2. *Al-Maqāsid* as a Developed Theory: 5–8 Centuries 16
The Emergence of a Philosophy for Islamic Law 16
Abū al-Maᶜālī al-Juwaynī 17
Abū Ḥāmid al-Ghazālī 18
Al-ᶜIzz ibn ᶜAbd al-Salām 18
Shihāb al-Dīn al-Qarāfī 19
Shams al-Dīn ibn al-Qayyim 20
Abū Isḥāq al-Shāṭibī 20

Obeikandl.com

1.3. Contemporary Conceptions of *Maqāṣid* 21
From 'Protection' and 'Preservation' to 'Development' & 'Rights' 21
'Human Development' as a *Maqāṣid* in its Own Right 24

2 SYSTEMS AS PHILOSOPHY & METHODOLOGY FOR ANALYSIS 26

Overview
2.1. Systems and Systems Philosophy 27
Teleology, Causality, and Irrationality 27
Towards an 'Islamic' Systems Philosophy 28
Are Systems 'Real' or Mental Creations? 30
2.2. A Systems Approach to Analysis 31
Traditions of 'Decompositional' Analysis 31
Systems Analysis 33
Theories of System Features 34
Theories of System Hierarchies 42
Proposed System Features 45
Cognitive Nature of the System of Islamic Law 45
Wholeness of the System of Islamic Law 46
Openness of the System of Islamic Law 47
Interrelated Hierarchy of the System of Islamic Law 48
Multi-Dimensionality of the System of Islamic Law 49
Purposefulness of the System of Islamic Law 51

3 ISLAMIC LAW, IMAMS, & SCHOOLS: A HISTORICAL SURVEY 56

Overview
3.1. What is 'Islamic Law'? 56
Fiqh and Shariᶜah 56
Qānūn and ᶜ*Urf* 57
The Importance of Differentiating between Fiqh and Shariᶜah 99
3.2. Schools of Islamic Law: A Brief History 60
Overview
Post-Prophetic Era 60

obeikandl.com

The Imams' Era 65
A Formal Critique of *Madhāhib* Categorisation 69
Chains of Studentship and Narration 71
The 'Era of Declination' 75

4 CLASSICAL THEORIES OF ISLAMIC LAW 76
Overview
4.1. Fundamental Sources/Scripts 76
Qur'an 77
Sunnah 79
4.2. Script-Based Linguistic Evidences 88
Overview
Clarity 89
Implication 93
The Ḥanafī Classification of Implications 94
The Shāfiʿī Classification of Implications 95
Contrary Implication 98
Scope 100
Generality 101
Qualification 102
Linguistic Evidence: The Impact of Greek Philosophy 105
4.3. Script-Based Rational Evidences 107
Overview
Consensus 109
Analogy 112
Interest 120
Juridical Preference 122
Blocking the Means 125
Previous Jurisprudence 127
A Companion's Opinion 128
Tradition of People of Madinah 129
Custom 130
Presumption of Continuity 131
Prioritisation of Evidences 132
4.4. Rulings 135

e-iqandi.com

Overview
Levels of Approval 136
Obligations and Prohibitions 136
Optional Levels 137
Declaratory Rulings 139
Legal Capacity 140

5 CONTEMPORARY THEORIES IN ISLAMIC LAW 143

Overview
5.1. Contemporary Classifications and Labels 144
Background 144
Islamic 'Ideologies' 145
RAND's Classification 147
'Script-Based' Classifications 150
5.2. A Proposed Classification 153
Levels of Authority 153
Current 'Sources' in Islamic Law 156
Current 'Tendencies' in Islamic Law 160
5.3. Traditionalism 162
Scholastic Traditionalism 162
Scholastic Neo-Traditionalism 164
Neo-Literalism 166
Ideology-Oriented Theories 168
5.4. Islamic Modernism 168
Reformist Re-interpretation 171
Apologetic Re-interpretation 174
Maṣlaḥah-Based Theories 176
Uṣūl Revisionism 177
'Science'-Oriented Re-interpretation 179
5.5. Postmodernist Approaches 180
Post-Structuralism 182
Historicity of Means and/or Ends 184
Neo-Rationalism 188
Critical Legal Studies 189
Post-Colonialism 190

oberhandl.com

6 A SYSTEMS APPROACH TO ISLAMIC JURIDICAL THEORIES 192

Overview
6.1. Towards Validating All 'Cognitions' 193
'Revealed' Ijtihad 193
Separating the Revealed from its 'Cognition' 194
6.2. Towards 'Holism' 197
The 'Uncertainty' of Individual Evidence 197
Limitation of 'Causation' in Traditionalist and Modernist Theories 198
Towards a 'Holistic' *ʿIlm al-Kalām* 200
6.3. Towards Openness and Self-Renewal 201
Change of Rulings with 'Cognitive Culture' 201
Self-Renewal via Philosophical Openness 206
6.4. Towards Multi-Dimensionality 211
Spectrum of Certainty 211
Resolving 'Opposition' through Multi-Dimensionality 218
Multi-dimensionality and Postmodernism 226
6.5. Towards 'Purposefulness' 227
The 'Implication of the Purpose' 228
Purposeful Interpretations of Primary Sources 232
Prophetic Purposes and Intents 233
Analogy via Purposes 236
Interests Coherent with Purposes 238
Juridical Preference Based on Purposes 239
'Opening the Means' to Achieve Good Ends and *Maqāṣid* 241
Customs and the Purpose of 'Universality' 241
Presumption of Continuity 243
'Purposefulness' as Common Grounds for Schools of Law 243
'Purposefulness' as the Fundamental Criteria for Ijtihad 244

7 CONCLUSIONS 246

Classic Conceptions and Classifications of *Maqāṣid* 246
Contemporary Conceptions of *Maqāṣid* and Their Significance 248
Multi-Disciplinarity 249
Systems Analysis 249

oneikandi.com

Classifying Theological Schools Regarding 'Causation' 250
What is 'Islamic law'? 250
The Evolution of Traditional Schools of Islamic Law 251
Fundamental Sources/Scripts 251
Linguistic Evidences 252
Rational Evidences 252
Contemporary Theories in Islamic Law 253
A Proposed Classification for Theories of Islamic Law 253
A Systems Approach to Theories of Islamic Law 255

Notes 259
Bibliography 305
Glossary of Islamic Terms 329
General Index 332
Notes on Sources of Information, Transliteration and Translation 348

opeikandl.com