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QAWA'ID AL-FIQH: THE LEGAL MAXIMS OF ISLAMIC LAW

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This essay provides a brief introduction to legal maxims, an evidently important chapter of the juristic literature of Islam, that is particularly useful in depicting a general picture of the nature, goals and objectives of the *Shari'ah*. Yet, for reasons that will presently be explained, legal maxims represent a latent development in the history of Islamic legal thought. A brief explanation of the background history of legal maxims will be followed by a discussion of developments in three other related areas. We will discuss briefly the *dawabit* (lit. controlling rules), which are abstractions of the rules of *fiqh* (Islamic jurisprudence) on specific themes. We will then move onto a discussion of the *nazariyyah al-fiqhiyyah*, or the general theories of *fiqh*, which attempt to embrace a wider scope. The final area of interest in this connection is the *furug*, or the distinctions and contrasts, which may be said to be a comparative study of the similarities and differences of the legal maxims and the substantive themes with which they are concerned.

Legal maxims (*qawa'id al-kulliyah al-fiqhiyyah*) are theoretical abstractions, usually in the form of short epithetical statements, that are expressive, often in a few words, of the goals and objectives of the *Shari'ah*. This is so much so that many *'ulama* (scholars) have treated them as a branch of the *maqasid* (goals and objectives) literature. The legal maxims of *fiqh* are statements of principles that are derived from the detailed reading of the rules of *fiqh* on various themes. The *fiqh* has generally been developed by individual jurists in relation to particular themes and issues in the course of history and differs, in this sense, from modern statutory rules which are concise and devoid of detail. The detailed expositions of *fiqh* enabled the jurists, at a later stage of development, to reduce them into abstract statements of principles. Legal maxims represent, in many ways, the apex of cumulative progress, which could not have been expected to take place at the formative stages of the development of *fiqh*. The actual wordings of the maxims are occasionally taken from the *Qur'an* or *Ahadith* but are more often the work of leading jurists and *mujtahids* that have subsequently been refined by others throughout the ages. It has often been a matter of currency and usage that the wordings of certain maxims are taken to greater refinement and perfection.

The science of legal maxims is different from the science of *usul al-fiqh* (methodology in Islamic jurisprudence) in that the maxims are based on the *fiqh* itself. *Usul al-fiqh* is concerned with the methodology of legal reasoning and the rules of interpretation, the meaning and implication of commands and prohibitions, and so forth. A maxim is defined as "a general rule which applies to all of its related particulars".¹ A legal maxim is reflective of a consolidated reading of the *fiqh* and it is in this sense different from what is known as *ad-dabitah* (a controller) which is somewhat limited in scope and controls the particulars of a single theme or chapter of *fiqh*. *Dabitah* is thus confined to individual topics such as cleanliness (*taharah*), maintenance (*nafaqh*), paternity and fosterage (*ar-ridaa'*), and as such does not apply to other subjects. An example of a *dabitah* is the statement: "Marriage does not carry suspension"; and with reference to cleanliness: "When the water reaches two feet, it does not carry dirt".² An example of a legal maxim is the statement: "The affairs of the imam concerning his people are judged by reference to *maslahah*" (*Anw al-Imami fi shu'un ar-ra'iyati manutun bil-maslahah*). The theme here is more general without any specification of the affairs of the people or the activities of the imam. Having drawn a

distinction between *dabitah* and *qa'idah*, we note, however, that legal maxims also vary concerning the level of abstraction and the scope that they cover. Some legal maxims are of general application, whereas others might apply to a particular area of *fiqh*, such as *'ibadah* (worship), *mu'amalah* (transactions), contracts, litigation and court proceedings. Some of the more specific maxims may qualify as a *dabitah* rather than as a maxim proper, as the distinction between them is not always clear and regularly observed. Ibn Juzay al-Maliki's, *Al-Qawanin al-Fiqhiyyah* has identified and discussed a large number of *dawabit* in relation to particular themes and chapters of *fiqh*.

The most comprehensive and broadly based of all maxims are known as "*al-qawa'id al-fiqhiyyah al-asliyyah*", or the normative legal maxims, and they apply to the entire range of *fiqh* without any specification. The *madhahib* are generally in agreement over them. Maxims such as "Harm must be eliminated" (*Ad-dararu yuzal*) and "Acts are judged by the intention behind them" (*Al-umuru bi-maqasidih*) belong to this category of maxims.

The early *'ulama* have singled out about five of these to say that they grasp between them the essence of the *Shari'ah* as a whole, and the rest are simply an elaboration of these. The other three of the normative legal maxims are:

- "Certainty is not overruled by doubt" (*Al-yaqinu la yazulu bish-shakk*).
- "Hardship begets facility" (*Al-mashaqqatu tujlab at-taysir*).
- "Custom is the basis of judgement" (*Al-'addatu muhakkamatun*)

The first of these has been supplemented by a number of other maxims such as "The norm (of *Shari'ah*) is that of non-liability" (*Al-aslu baraa'ah ad-dhimmah*). This is an equivalent to what is generally known as the presumption of innocence, although the maxim is perhaps more general. The primary expression implies that it relates principally to criminal procedure, whereas the non-liability maxim extends to civil litigation and to religious matters generally. The normative state, or the state of certainty for that matter, is that people are not liable, unless it is proven that they are, and until this proof is forthcoming, to attribute guilt to anyone is treated as doubtful. Certainty can, in other words, only be overruled by certainty, not by doubt. Another supplementary maxim here is the norm that presumes the continued validity of the *status quo ante*, until we know there is a change. "The norm is that the *status quo* remains as it was before" (*Al-aslu baqaa'u ma kaana 'ala ma kaana*) unless it is proven to have changed. An example of this is the wife's right to maintenance that the *Shari'ah* has determined; when she claims that her husband failed to maintain her, her claim will command credibility. For the norm here is her continued entitlement to maintenance for as long as she remains married to him. Similarly when one of the contracting parties claims that the contract was concluded under duress and the other denies this, this later claim will be upheld because the absence of duress is the normal state or *status quo*, which can only be rebutted by evidence.³ According to yet another maxim, "The norm in regard to things is that of permissibility" (*Al-aslu fil-ashyaa' al-Ibahah*). Permissibility in other words is the natural state and will therefore prevail until there is evidence to warrant a departure from that position. This maxim is based on a general reading of the relevant evidence in the *Qur'an* and *Sunnah*. Thus when we read in the *Qur'an* that God "*has created all that is in the earth for your benefit*" (2:29), and also the *hadith* that states: "whatever God has made *halal* is *halal* and whatever He has rendered as *haram* is *haram*, and all that over which He has remained silent is forgiven", the conclusion is drawn that we are allowed to utilise the resources of the earth for our benefit, and that unless something is specifically declared forbidden, it is presumed to be permissible.

It is stated in the *Majelle* that legal maxims are designed to facilitate a better understanding of the *Shari'ah* and the judge may not base his judgement on them unless the maxim in question is derived from the *Qur'an* or *Ahadith* or supported by other evidence.⁴ This is in contrast, however, with the view of Shihab al-Din al-Qarafi who held that a judicial decision is reversible if it violates a generally accepted maxim.⁵ The *'ulama* have generally considered the maxims of *fiqh* to be significantly conducive to *ijtihad*, and they may naturally be utilised by the *mujtahid* and judge as persuasive evidence. It is just that they are broad guidelines, whereas judicial orders need to be founded in specific evidence that is directly relevant to the subject of adjudication. Since most of the legal maxims are expounded in the form of generalised statements, they hardly apply in an exclusive sense and often admit exceptions and particularisation. Instances of this had often been noted by the jurists, especially in cases when a particular legal maxim had failed to apply to a situation that evidently fell within its ambit. They then attempted to formulate a subsidiary maxim to cover that particular case.

Legal maxims were developed gradually and the history of their development in a general sense is parallel with that of the *fiqh* itself. More specifically, however, these were developed mainly during the era of imitation (*taqlid*), as they are in the nature of extraction (*takhrij*) of guidelines from the detailed literature of *fiqh* that were contributed during the first three centuries of Islamic scholarship, known as the era of *ijtihad*.⁶ Some of the

most important of the maxims are basically a reiteration of either the *Qur'an* or the *Ahadith*. One of the five maxims noted above has been derived from the *hadith* that “harm may neither be inflicted nor reciprocated in Islam” (*la darara wa la dirara fil-Islam*). Some of the variant renderings of the maxim *Ad-dararu yuzal* read as follows: “Harm must be eliminated but not by means of another harm” (*Ad-dararu yuzalu wa lakin la bi-darar*); and “Harm is not eliminated by another harm” (*Ad-dararu la yuzalu bid-darar*). The *hadith* under discussion has provided the basis of numerous other maxims on the subject of *darar*; including for example, “A specific harm is tolerated in order to prevent a more general one” (*Yutahammal ad-darar al-khaas li-daf al-darar al 'aam*), “Harm is eliminated to the extent that is possible” (*Ad-dararu yudfa'u bi-qadr al-imkaan*) and “A greater harm is eliminated by means of a lesser harm” (*Yuzal ad-darar al-ashaddu bid-darar al-akhaff*).⁷

A practical manifestation of the maxim “Harm must be eliminated” is the validation of the option of defect (*khiyar al-'ayb*) in Islamic law, which is designed to protect the buyer against harm. Thus when A buys a car and then discovers that it is substantially defective, he has the option to revoke the contract. For there is a legal presumption under the *Shari'ah* that the buyer concluded the contract on condition that the object of sale was not defective.

The *hadith* under discussion has also been used as a basic authority for a number of legal maxims on the subject of necessity (*darurah*), and I refer here to only two. The first of these proclaims: “Necessity makes the unlawful lawful” (*Ad-daruratu tubiyh al-mahzurah*). It is on this basis that the jurists validate demolition of an intervening house to prevent the spread of fire to adjacent buildings, just as they validate dumping of the cargo of an overloaded ship to prevent the danger (or *darar*) to the life of its passengers. The second maxim on necessity declares: “Necessity is measured in accordance with its true proportions” (*Ad-daruratu tuqdaru bi-qadriha*). Thus, if the court orders the sale of assets of a negligent debtor to pay his creditors, it must begin with the sale of his movable goods if this would suffice to clear the debt, before selling his real property.⁸

The maxim “Hardship begets facility” is, in turn, a rewording of the Qur'anic verses that state: “*God intends for you ease and He does not intend to put you in hardship*” (2:185), and “*God does not intend to inflict hardship on you*” (5:6), purporting to a theme that also occurs in a number of *ahadith*. The jurists have used this evidence in support of the many concessions that are granted to the disabled and the sick in the sphere of religious duties as well as civil transactions. With reference to the option of stipulation (*khiyaar ash-shart*), for example, there is a *hadith* that validates such an option for three days, that is, if the buyer wishes to reserve for himself this amount of time before ratifying a sale. The jurists have then reasoned that this period may be extended to weeks or even months depending on the type of goods that are bought and the need of the buyer who may need a longer period for investigation.

The maxim “Acts are judged by the intention behind them” is also a rephrasing of the renowned *hadith* that states: “Acts are valued in accordance with their underlying intention” (*Imama al-a'maalu bin-niyyah*). This is a comprehensive maxim that has implications that the *'ulama* have discussed in various areas, including devotional matters, commercial transactions and crimes. The element of intent often plays a crucial role in differentiating, for example, a murder from erroneous killing, theft from inculpable appropriation of property, and the figurative words that a husband may utter to conclude the occurrence or otherwise of a divorce.

The maxim “Custom is the basis of judgement” is again based on a statement of the Companion, Abdullah ibn Mas'ud, that “what the Muslims deem to be good is good in the eyes of God”. The court is accordingly authorised to base its judgement on custom in matters that are not regulated by the text, provided that the custom at issue is current, predominant among people, and is not in conflict with the principles of the *Shari'ah*. Several other subsidiary maxims have been derived from this, including the one that proclaims: “What is determined by custom is tantamount to a contractual stipulation” (*Al-ma'rufu 'urfan kal-mashrutu shartan*). Thus, when the contract does not regulate a matter that is otherwise regulated by custom, the customary rule would be presumed to apply. Similarly when someone rents a car, he should use it according to what is customary and familiar, a condition that is presumed to apply even if not stated in the contract.

The maxim “Profit follows responsibility” (*Al-kharaju bid-daman*) is a direct rendering of a *hadith* in identical words. Thus, the yields of trees, animals, etc., belong to those who are responsible for their upkeep and maintenance. Suppose that A buys a machine which yields profit, where A then returns the machine to the seller, does A have to return the profit he made with that machine to the seller? By applying the legal maxim before us, we say that A may keep the profit as the machine was his responsibility during the interval just as he would have been responsible for its destruction and loss before returning it to the seller.

The maxim “(A ruling of) *Ijtihad* is not reversed by its equivalent” (*Al-ijthadu la yunqadu bi-mithlih*) has, in turn, been attributed to a statement of the Caliph ‘Umar ibn al-Khattab which is also upheld by the consensus of the Companions. Suppose that a judge has adjudicated a dispute on the basis of his own *ijthad*, in the absence of a clear text to determine the issue, and then he retires. If another judge, whether of the same rank or at the appellate level, looks into the case and his *ijthad* leads him to a different conclusion on the same issue, then provided that the initial decision does not violate any of the rules that govern the propriety of *ijthad*, a mere difference of opinion on the part of the new judge, or a similar *ijthad* that he might have attempted, does not affect the authority of the initial *ijthad*. This is so because one ruling of *ijthad* is not reversible by another ruling of *ijthad*.

Historically, the Hanafi jurists were the first to formulate legal maxims. An early Iraqi jurist, Sufyan ibn Tahir ad-Dabbas, collated the first seventeen maxims, and Abul Hassan al-Karkhi (d.340) increased this to thirty-nine. Some of the early maxims that were compiled include the following: “The norm is that the affairs of the Muslims are presumed to be upright and good unless the opposite emerges to be the case”. This means that acts, transactions and relations among people should not be given a negative interpretation that verges on suspicion and mistrust, unless there is evidence to suggest the opposite. Another maxim states: “Question and answer proceed on that which is widespread and common and not on what is unfamiliar and rare”. Again, if we were to interpret a speech and enquire into its implications, we should proceed on what would be commonly understood as opposed to what might be said to be a rare understanding and interpretation. We read in another maxim: “Prevention of evil takes priority over the attraction of benefit” (*Dur’ al-masaalih awla min jalb al-manaafi*). The earliest collections of maxims also included the five leading maxims that were discussed above.⁹ One of the early collections was that of al-Karkhi, which was not very highly refined as it included statements that were expressive of an idea but not necessarily in the eloquent style that is typically associated with maxims.¹⁰ Many scholars from various schools added to these over time and the total number of *qawa’id* and *dawabit* eventually exceeded twelve hundred. After the Hanafis, the Shafi’is, then the Hanbalis, and following them the Malikis - as az-Zarqa has noted - added their contributions to the literature on legal maxims. The leading Shafi’i scholar, ‘Izz ad-Din ‘Abd as-Salam’s (d. 660H), *Qawa’id al-Ahkam fi Masalih al-Anam* is noted as one of the salient contributions to this field, as is ‘Abd ar-Rahman ibn Rajab al-Hanbali’s (d.795) work *Al-Qawa’id*. Both have been highly acclaimed. Yet in terms of conciseness and style, the *Majdile* collection, written in the 1870s, represents the most advanced stage in the compilation of legal maxims.¹¹

The development of this branch of *fiqh* is in many ways related to the general awareness of the ‘*ulama* that the *fiqh* literature is of a piecemeal and fragmented style, which, somewhat like Roman juristic writings, is on the whole issue-oriented and short of theoretical exposition of the governing principles. This is, in turn, attributed to the history of the development of *fiqh*, where private jurists made their contributions independent of any government and institutions that might have exerted a unifying influence. They often wrote in response to issues as and when encountered, and we consequently note that theoretical abstraction was not a well-developed feature of their work. The legal maxims filled that gap to some extent and provided a set of general guidelines for an otherwise diverse discipline that combined an impressive variety of schools and influences into its fold.

Islamic jurisprudence is also textualist, in that it is guided by the textual injunctions of the *Qur’an* and *Sunnah*. In developing the law, the jurists have shown a tendency to confine the range of their expectations to the given terms of the text. Theoretical generalisations of ideas were viewed with caution *vis-à-vis* the overriding authority of the text and attention was focused on the correct interpretation of the text rather than developing general theories.

Questions are being asked to this day whether Islamic law has a constitutional theory, a theory of contract, or a theory of ownership. It is only in recent times that Muslim scholars began to write concise and self-contained expositions of the law in these areas, as I shall presently explain.

A genre of literature known as *al-ashbah wan-naza’ir* (similitude and resemblance), that was devoted to legal maxims, emerged in the writings of the ‘*ulama* well after the formation of the *madhahib*. The term evidently originated in the famous letter of the Caliph ‘Umar al-Khattab, addressed to a judge, Abu Musa al-Ash’ari of Basrah, in which he was instructed to “ascertain similitudes and resemblances and adduce matters analogous in giving judgement”. Later, Taj ad-Din as-Subki, who wrote a most important work on legal maxims, chose the term ‘*al-ashbah wan-naza’ir*’ as the title of his book. Jalal ad-Din as-Suyuti (d.911) and Zayn al-‘Abidin Ibn Nujayam al-Hanafi (d.972) also wrote works that closely resemble one another, both bearing the title *Al-Ashbah wan-Naza’ir*. They relied mainly on as-Subki’s writings, with certain modifications that were reflective, perhaps,

of their respective scholastic orientations. As-Suyuti often identified the source evidence from which maxims were derived and added illustrations and analysis. Some of the leading maxims that As-Suyuti recorded were: “Private authority is stronger than public authority” (*Al-wilayah al-khaasah aqwa min al-wilaayah al-aammah*), which means that the authority, for example, of the parent and guardian over the child, is stronger than that of the ruler and the judge; “No speech is attributed to one who has remained silent” (*La yunsabu lis-saakiti qawh*); and “The attachment follows the principal” (*At-taabi’u taabi’*), which obviously means, in reference to, for example, contracts and transactions, that things that belong to one another may not be separated. Thus, for example, one should not sell a yet-to-be-born animal separately from its mother, or a living room separate from the house.

Ibn Nujaym divided the legal maxims into two normative categories: leading maxims and subsidiary maxims. He only placed six under the former and seventeen under the latter, but discussed a number of others in his detailed elaboration and analysis. The sixth leading maxim of Ibn Nujaym, that he added to the familiar five, as noted above, states: “No spiritual reward accrues without intention” (*La thawaaba illa bin-niyyah*), which is why the ritual prayer, and most other acts of devotion, are preceded by a statement of intention (*niyyah*). The twelfth century author, Abu Sa’id al-Khadimi compiled 154 maxims in his work entitled *Majma’ al-Haqaa’iq*.¹²

Despite the general tendency in legal maxims to be inter-scholastic, jurists and schools are not unanimous on all of the maxims and there are some on which the *madhabib* have disagreed.¹³ The difference between the schools in this area is, however, not very wide. The Ja’fari School of the Shi’ah have their own collections of legal maxims, but apart from some differences in style, the thematic arrangement in their collections closely resembles those of their Sunni counterparts. The first *Shi’i* work on maxims was that of ‘Allamah al-Hilli (d.726H) entitled *Al-Qawa’id*, followed by ash-Shahid al-Awwal Jamal al-Din al-‘Amili’s (d. 786) *Al-Qawa’id wal-Fawa’id* that contained over three hundred maxims, and many more works that elaborated and enhanced the earlier ones. The more recent work of Muhammad al-Husayn Kashif al-Ghita’, bearing the title *Tahrir al-Mujalla*, is an abridgement and commentary of the first ninety-nine articles of the Ottoman *Mejelle*. He selected forty-five as being the most important in the range, and the rest he found to be overlapping and convergent or obscure, but he added eighty-two others to make up a total of one hundred and twenty-seven maxims of current application and relevance, especially to transactions and contracts. However, al-Ghita’ went on to say that “if we were to recount all the maxims that are referred to in the various chapters of *fiqh*, we can add up to five hundred more”.¹⁴

Two other related developments that are of interest have taken two different directions. One of these is the *furuq* literature, which as the word indicates, highlights differences between similar concepts or those that have an aspect in common. The attempt to highlight the differences also extended to the maxims themselves, in that the *furuq* literature specified the differences between some of the maxims that resembled one another but could be subtly distinguished in some respect. The Maliki jurist Shihab ad-Din al-Qarafi’s *Kitab al-Furuq* (in four volumes) discusses five hundred and forty-eight maxims, and two hundred and seventy-four distinctions and differences (*furuq*) between similar themes and ideas. Occasionally the word *qa’idah* is used in reference to what is a *dabitah* or even a specific ruling of *fiqh*. Examples of the *furuq* include the distinctions between hire (*ijara*) and sale, between custody (*hadanah*) and guardianship (*wilayah*), between testimony (*shahadah*) and narration (*riwayah*), and between verbal custom (*al-’urf al-qawali*) and actual custom (*al-’urf al-fi’li*). These are often expressed in rule-like statements that generally resemble *dabitah* in their application to specific themes only, but are named *al-furuq* as they usually compare similar themes and highlight the differences between them. Al-Qarafi’s approach represented a new development in the *qawa’id* literature. He also discussed legal maxims in his other works, namely, *Ad-Dhakhirah* and (more specifically) *Al-Ihkamu fi Tamyiz al-Fatawa ‘ani’-Ahkam*. The title itself is, it may be noted, a *furuq* oriented title referring to differences between *fatawa* and judicial decisions.¹⁵ Ibn ash-Shat Qasim bin ‘Abd Allah al-Ansari’s (d.723) work, *Idrar ash-Shuruq ‘ala Anwar al-Furuq* is also a work on *furuq*, and smaller works of a similar kind were also written by some Shafi’i scholars.¹⁶

The next development that may briefly be explained is relatively recent and appears in the modern writings of *fiqh* under the general designation of *an-nazariyyah al-fiqhiyyah*, or legal theories of *fiqh*. *Nazariyyah* in this context implies a self-contained and comprehensive treatment of an important area of law, such as *nazariyyah al-’aqd* (theory of contract), *nazariyyah al-milkiyyah* (theory of ownership), *nazariyyah ad-darurah* (theory of necessity) and so forth. This level of theoretical development marks a departure from the earlier style of juristic writing in *fiqh* literature where topics are poorly classified and themes pertaining to a particular area are scattered in different places. The *nazariyyah* literature seeks to overcome that and offers systematic treatment of its subject matter that aims to be self-contained and convenient to use.

The *nazariyyah* literature draws upon the combined resources of *fiqh* in all areas, including the *qawa'id*, the *dawabit* and the *furuq*. Yet the *nazariyyah* are usually not expected to reproduce the detailed formulation of these related branches, as theory oriented works generally seek to be concise, clear of repetition and unnecessary detail. The *nazariyyah* also incorporate new methods of research and writing, which are more effective and less time-consuming.

The *nazariyyah* literature is not merely confined to improved methods and forms of writing but often seeks to advance some of the substantive aspects of the *fiqh* doctrines. With regard to the law of contract for example, 'Abd ar-Razzaq as-Sanhuri has observed that the *fiqh* literature in this area is focused on the detailed exposition of a number of nominate contracts and treats each contract separately. The Hanafi jurist, al-Kasani, has thus dealt with nineteen nominate contracts, many of which have aspects in common and, of course, they also differ in other respects. A perusal of the relevant literature on *fiqh* contracts, As-Sanhuri notes, leaves the reader askance as to: (a) whether these could all be consolidated in order to highlight the features they all have in common; (b) whether the *fiqh* validates contracts other than these; and (c) whether the *fiqh* recognises the basic freedom of contract, merely on the basis of an agreement that does not violate morality and public interest?¹⁷ Questions of this nature are likely to receive a better response from the *nazariyyah* literature, which is better consolidated and expressive of the common aspects of contracts.

The *nazariyyah* literature is not entirely without precedent in the world of *fiqh*. With reference to the theory of contract, for example, we may note that significant progress had been made by the Hanbali *'ulama*, Ibn Taymiyyah (d.728H) and his disciple, Ibn al-Qayyim al-Jawziyyah, whose contributions are widely acknowledged. Ibn Taymiyyah effectively departed from the earlier strictures over the nominate contracts and advanced a convincing discourse, through his own reading of the source evidence, that contracts need not be confined to a particular prototype or number. The essence of all contracts is manifested in the agreement of the contracting parties, who may create new contracts, within or outside the ones that are already known, provided that they serve to realise a lawful benefit and do not violate public policy and morals. It may be noted, however, that Ibn Taymiyyah's contribution to the theory of contract represented a rather latent development and a departure in many ways from the majority position on this theme. This is why As-Sanhuri's critique may still be considered relevant. Considerable progress has also been made, in the sphere of *nazariyyah* literature, not only in As-Sanhuri's own writings, but by numerous other scholars, both Arab and non-Arab, who have written widely on contracts and other major themes of *fiqh*.

We also note in this context, the emergence of the encyclopaedias of *fiqh* in the latter part of the twentieth century. This marks a milestone of development and succeeds in producing consolidated and reliable works of reference on *fiqh*, and these efforts are still continuing. Yet, as a distinctive genre of *fiqh* literature, legal maxims are likely to remain an influential area of the legacy of *fiqh*. This is perhaps borne out by the fact that the Turkish *'ulama* who drafted the Ottoman *Majelle* articles in 1850, decided to begin their impressive and, in many ways, original work on the Islamic law of transactions with a collection of the most important of these maxims.

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References

- ¹ Cf Mahmassani, Subhi, *Falasafat at-Tashri' fil-Islam: The Philosophy of Jurisprudence in Islam*, Eng. Trans. Farhat I. Ziadeh, E.J. Brill, Lieden 1961, p. 151; Az-Zarqa', Shaykh Muhammad, *Sharh al-Qawa'id al-Fiqhiyyah*, 3rd ed., Dar al-Qalam, Damascus 1414/1993, p. 33.
- ² Cf As-Sabuni, 'Abd ar-Rahman, et al, *Al-Madkhal al-Fiqhi wa Tarik at-Tashri' al-Islami*, Maktabah Wahbah, Cairo 1402/1982, p. 389.
- ³ *Ibid.*, p. 407.
- ⁴ Cf Mahmassani, *ibid.* p. 152; Az-Zarqa', *ibid.* p. 34.
- ⁵ Al-Qarafi, Shihab ad-Din, *Kitab al-Furuq*, Matha'ah Dar al-Ihya al-Kutub al-'Arabiyyah, Cairo 1346H, Vol. IV, p. 40; see also 'Atiyyah, Jamal ad-Din, *At-Tanzir al-Fiqhi*, Doha 1407/1987, p. 208.
- ⁶ Cf As-Sabuni, *ibid.*, p. 398.
- ⁷ *Ibid.*, p. 380.
- ⁸ *Ibid.*, p. 400.
- ⁹ Cf 'Attiyah, *ibid.*, p. 81; As-Sabuni, *ibid.*, p. 387
- ¹⁰ See for details Az-Zarqa', *ibid.*, pp. 38-39.
- ¹¹ *Ibid.*, p. 43.
- ¹² Cf Az-Zarqa', *ibid.*, pp. 39-40.
- ¹³ Cf Abu Sulayman, 'Abd al-Wahhab, "An-Nazariyyah wal-Qawa'id fil-Fiqh al-Islami" in *Mujallah Jamai'ah al-Malik 'Abdal-'Aziz*, No.2, May 1978, p. 53.

¹⁴ Kashif al-Ghita', Muhammad al-Hussain, *Tahrir al-Mujallah*, p. 63; 'Attiyah, *ibid.*, p. 75; As-Sabuni, *ibid.*, p. 395.

¹⁵ Cf Az-Zarqa', *ibid.*, pp. 42-43; As-Sabuni, *ibid.*, p. 393.

¹⁶ See for further details 'Attiyah, *ibid.*, pp. 131-132.

¹⁷ As-Sanhuri, 'Abd ar-Razzaq, *Masadir al-Haqq fil-Fiqh al-Islami*, Ma'had al-Buhuth wad-Dirasah al-'Arabivyah, Cairo 1967, Vol. I, p. 78; see also As-Sabuni, *ibid.*, p. 380.