LEGAL MAXIMS AND OTHER GENRES OF LITERATURE IN ISLAMIC JURISPRUDENCE

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Introductory Remarks

This essay introduces the legal maxims of *fiqh* (*qawilla kulliya fiqhyya*) as a distinctive genre of *fiqh* literature side by side with three other related areas of development, namely *al-daw bi†* (rules controlling specific themes), *al-furūq* (distinctions and contrasts), and *al-nazariyyāt al-fiqhyya* (general theories of *fiqh*). Developed at a later stage, these genres of *fiqh* literature seek, on the whole, to consolidate the vast and sometimes unmanageable juris corpus of *fiqh* into brief theoretical statements. They provide concise entries into their respective themes that help to facilitate the task of both the students and practitioners of Islamic law. Legal maxims are on the whole inter-scholastic, and disagreement among the legal schools is negligible on them. Legal maxims also closely relate to the *maqāsid*, and provide useful insights into the goals and purposes of Sharī‘a (*maqāsid al-Sharī‘a*), so much so that some authors have subsumed them under the *maqāsid*. Yet, for reasons that will presently be explained, legal maxims represent a late development in the history of Islamic jurisprudence. The discussion which follows begins with introductory information on the basic concept and scope of legal maxims. This is followed by a more detailed account of the leading five maxims which the jurists have seen as representative of the entire field, saying that all the other maxims can be seen as a commentary on these five. The discussion continues by looking into the history of legal maxims, and then provides an account of their subsidiary themes, namely the *daw bi†*, the *furūq*, the resemblances and similarities (*al-ashba‘a wa‘l nazariyyāt*), and finally the *nazariyyāt*.

There is a lacuna in the available English literature on Islamic law that cries to be filled. Except for a few cursory references in the works

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of Joseph Schacht and three other articles, the present writer has not seen any substantive coverage of legal maxims in the English language. Unlike the existing works in English that tend to be historical, the present essay focuses on a juridical coverage of legal maxims, and traces salient developments of its allied genres of literature. No one has, to the best of the present writer’s knowledge, placed the legal theories of Islamic law (nazarīyyāt) and the fiqh encyclopedias in context with the legal maxims. There is also a certain ambiguity and convergence in some of the existing works between qawa’id and the goals and objectives (maqāṣid) of Shari’a, both in the Arabic and English works, which call for clarification. This has also been attempted in our discussion below.

Legal maxims as a distinctive area of fiqh studies has gained considerable recognition, in recent decades, in the legal studies programmes of Islamic universities and institutions of higher learning. Many traditional Arabic texts on the subject have been published for the first time, and a number of modern works added, for basically two reasons. One is the somewhat excessive attention to detail in the fiqh texts and difficulty of access due to poor classification, and the refreshing contrast one finds in the synoptic summaries of legal principles in the qawa’id, especially for purposes of teaching. The other reason is that, unlike the wider fiqh literature that bears the vestiges of the imitative tradition of taqlīd, legal maxims are not hampered by that factor as much. Taqlīd finds its foothold mainly in concretised detail, but, since legal maxims consist mainly of abstract ideas, they are not particularly affected by the legacy of taqlīd, and can thus be more readily utilised as aids in the renewal of fiqh and contemporary ḫāṭīhād (independent reasoning).

The renewed interest in legal maxims is also informed by a parallel revival of interest, among teachers and researchers of Shari’a, in the maqāṣid al-Shari’a, goals and objectives of Islamic law. Since legal maxims bear close affinity to the maqāṣid, they tend to provide an efficient entry into the understanding of the maqāṣid al-Shari’a.