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EDITORIAL

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The Codification of Islamic Juridical Principles (Qawā'id Fiqhīyah): A Historical Outline

Muṣṭafā Muḥaqqiq Damād

Translated from the Persian by Azarmidukht M. Faridani

A close examination of the system of law in Islam proves that this system meets all the essential qualifications required to constitute a "legal system." This can be readily established by tendering an exact definition of what, strictly speaking, makes up a "legal system" and by studying its qualities and elements.

There is some difference of opinion among jurists regarding the definition of a "legal system." For example, in the following passage it is defined as:

The structure of any functioning body of law, which reflects the inner unity and coherence of the juridical norms composing the body of law which expresses the division of the norms into com-

ponents as objectively necessitated by the particular features of the social relations subject to such norms.¹

It is also said that,

A legal system exists if and only if it reaches a certain minimum degree of efficacy.²

Kelsen believes, however, that,

Efficacy depends not only on conformity to law by the general population but also on the success of the courts and other law-enforcing agencies in applying sanctions those who violate the law.³

Thus, it may be inferred that a body of law constitutes a system when it has the qualities and elements required to establish a legal system, namely:

1. a body of law;
2. a great number of coherent general norms and principles;
3. a functioning body of law based on those general norms and principles;
4. a close and profound relation between the laws and general principles, as that of the component to the norm, or the general to the particular;
5. comprehensiveness of general principles which enables them to respond to particular needs, events and cases;
6. the conformity of norms and general principles to rational and human standards in a manner which makes it acceptable to the general public;

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7. juridical guarantee of enforcement in the case of a breach or violation of the law.

As an objective study would well ascertain, all these elements are found in the Islamic legal system. By no means a collection of inconsistent and scattered rules formulated according to the circumstances of specific individuals or groups, the Islamic legal system represents a coherent and consistent body of law thoroughly based on general norms and principles, and expressed in laws and legal judgements which generally reflect the particular application and specific cases of those basic and essential norms.

Students of the methodology of the Islamic legal system are well aware that in this system the coherence and constancy of the juridical standards, from which particular regulations derive, are maintained to such a degree that if a jurist, for example, comes to believe that in a certain case he has a civic responsibility, he is automatically obliged to apply the same opinion to any number of other comparable cases, and a different ruling in similar cases, in fact, would reflect a lack of knowledge of juridical standards.

The above statements clearly demonstrate the significance of juridical codes and its place in the history of Islamic legal studies. The existence of a body of general norms and principles whereby the jurist can infer the corollaries and by way of comparing them with particular instances and cases, form decisions regarding current events, is, in fact, a mark of the dynamic nature of the Islamic legal system.

It is true that Muslim Jurists, from the very beginning, made some attempts to introduce the general norms and principles of Islamic law. By this, however, we do not mean to imply that Islam, in itself, lacks a system, and that the principles of Islamic law were wholly formulated by Muslim jurists. In fact, there are two kinds of principles in Islamic law; one taken entirely from the Qur'ān and the Sunnah, e.g. the rule of *lā darar*, the rule of *yad* and the rule of *taslīf*. The other category of princi-

ples are those not mentioned in religious texts, but supported by legal texts and juridical evidence, such as the principle of "*mā yudmanu bi sahihih, yudmanu bi fāsidih*." There is, of course, yet another group of principles formulated by jurists by adopting a uniform criterion for numerous similar cases. Sometimes classified as "*al-ashbāh wa al-nazā'ir*," these principles are more commonly used by Sunni jurists.

In the last two groups, the jurist essentially deduces the criterion, basis, and the main principles of religious law and introduces them. Clearly this procedure provides a strong argument and positive proof in support of the fact that Islamic law has all the elements and qualities required to be classified as a legal system.

More information on the history of codification of juridical principles in Islam by Muslim Jurists is found in the following concise bibliography of relevant works compiled in the Sunnī, as well the Imāmī Shi'ī, schools:

1. Hanafi Fiqh

1. The oldest work in which a collection of juridical norms can be found is, according to 'Alā'ī Shāfi'i, al-Suyūṭī and Ibn Nujaym,⁴ the treatise of Abū Ṭāhir al-Dabbās. A Hanafi jurist of the 4th/10th century, al-Dabbās has reduced the most important principles of the Hanafi school to seventeen general principles. Imām Abū al-Hasan al-Karkhi, a contemporary of Abū Ṭāhir, may have adopted some of the material for his celebrated treatise *Uṣūl al-Karkhi*, on juridical principles, from the latter's work. It seems, therefore, that of the four different Sunni schools, the Hanafi's was the first to compile works on juridical rules. A list of other important Hanafi compilations on this subject includes the following titles:

2. *Uṣūl al-Karkhi*, by 'Ubayd Allāh b. al-Hasan b. al-Dallāl also known as Abū al-Hasan al-Karkhi (260-340/873-951).

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5. *Al-Qaw*
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6. *Majallat a*
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7. *Al-Farā'id*
by Mahmūd b. M
Hamzah al-Ijusi

8. *Tashriḥ al-*
al-Quraymi al-Qus

9. *Al-'Uqūd a*
Muḥammad al-Ha
author entitled *Far*

10. Khātimah
Dawā'iq wa al-Fa
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11. *Qawa'id a*
published in the sa

3. *Ta'sis al-Nazar fi Ikhtilaf al-A'imma*, by 'Ubayd Allāh b. 'Umar b. 'Isā Abū Zayd al-Dabūsī (d. 430/1038).
4. *Al-Ashbāh wa al-Nazā'ir fi al-Furū'*, composed by Zayn al-Dīn b. Ibrāhīm b. Muḥammad, also called Ibn Nujaym (d. 970/1562). Of about twenty-six commentaries and glosses on this work one of great reputation is *Ghamz 'uyūn al-basā'ir 'alā mahāsīn al-Ashbāh wa al-nazā'ir* by Aḥmad b. Muḥammad al-Ḥamawī (d. 1098/1562-3), which has been reprinted several times.
5. *Al-Qawā'id fi al-Furū'*, by 'Alī b. 'Uthmān al-Ghazzī al-Dimashqī, commonly called Sharaf al-Dīn al-Ḥanafī (d. 799/1397).
6. *Majallat al-Aḥkām al-'Adliyyah*, compiled during the time of Sultān 'Abd al-'Azīz Khān, by a committee of distinguished Ottoman scholars. Since the publication of the work by the Ottoman government in 1292/1875 several commentaries have been written on it.
7. *Al-Farā'id al-Bḥiyyah fi al-Qawā'id wa al-Fawā'id al-Fiqiyyah*, by Maḥmūd b. Muḥammad b. Nasīb b. Ḥusayn, also known as Ibn Ḥamzah al-Ḥusaynī (1239-1305/1829-1887).
8. *Tashrīḥ al-Qawā'id al-Kulliyyah*, by 'Abd al-Sattār b. 'Abd Allāh al-Quraymī al-Qusṭantīnī (d. 1304/1866).
9. *Al-'Uqūd al-Ḥisān fi Qawā'id Madhhab al-Nu'mān*, by Aḥmad b. Muḥammad al-Ḥamawī (1098/1562), in verse with a commentary by the author entitled *Farā'id al-Durr wa al-Marjān Sharḥ al-'Uqūd al-Ḥisān*.
10. *Khātimah Majāmi' al-Ḥaqāyiq wa al-Qawā'id wa Jawāmi' al-Dawā'iq wa al-Fawā'id*, by Muḥammad b. Muḥammad b. Mustafā al-Khādīmī, known as Abū Sa'id al-Khādīmī (d. 1176/1762).
11. *Qawā'id al-Fiqh*, by Shaykh 'Amim al-Iḥsān of Bangladesh, first published in the same country.

12. *Majmū'at al-Qawā'id*, by Ibrāhim b. Muḥammad al-Qaysari al-Ḥanafī, called Kūzi Buyūzkādeh (d. 1252/1836).

13. *Sharḥ al-Qawā'id al-Fiqhiyya*, by aḥmad al-Zarqā' al-Ḥalabi (1285-1352/1368-1938).

Unpublished Manuscripts:

1- "Talqīh al-'Uqūl fī Furūq al-Manqūl," by Ṣase al Shari'ah the First, Aḥmad b. 'Ubaydallāh Maḥbūbi al-Ḥanafī, of which a number of copies are found in the 'Arif Hikmah Library of Madinah.⁵

2- "Sharḥ al-Jāmi' al-Kabir," by 'Isā Ayyūbi (576-624/1180-1227).⁶

3- "Ma'rifat al-Ashbāh wa al-Nazā'ir," by an anonymous author, A gilded copy of this manuscript with glosses by 'Umar al-Riḍā is available at the 'Arif Hikmah Library of Madinah.⁷

2. Māliki Fiqh

1- *Al-Furūq*, by Abū al-'Abbās b. Abī al-'Alā' Idris b. 'Abd al-Rahmān, commonly called Qarāfi (d. 684/1250).

2- *Īdāh al-Masālik ilā Qawā'id al-Imām Mālik*, by Aḥmad b. Yahyā b. Muḥammad al-Tilimsāni al-Wansharisi (834-914/1430-1508).

3- *Al-Muwāfiqāt fī Uṣūl al-Fiqh*, compiled by Ibrāhim b. Mūsā b. Muḥammad al-Lakhmi, Known as Abū Ishāq al-Shāṭibi (s. 790/1388).

4- *Qawā'id al-Ahkām al-Shar'iyyah*, by Muḥammad b. Aḥmad al-Māliki.

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5- *Al-Majmū' wa al-Furūq*, by 'Abd al-Wahhāb b. Ahmad b. 'Abd al-Wahhāb b. Jalabah al-Baghdādi (d. 476/1083), MS. 3822, Qarwiyyin Library, Fez (Morocco).

6- *Al-Kulliyāt al-Fiqhiyyah 'ala Madhhab al-Mālikiyyah*, by Muḥammad b. 'Alī b. Ghādī al-Makānāsī (841-919/1437-1513), a critical edition of which has been published by the Shari'ah and Uṣūl al-Dīn Faculty of the Zaytūniyyah University in tunis.

7- *'Amal Man Ṭabba li Man Ḥabba*, by Muḥammad b. Muhammad al-Maqqarī (d. 758/1357). The second volume of this work is being edited at Riyād University.

Manuscripts:

1- "Al-Qawā'id," by Muḥammad b. Muḥammad al-Masaqqarī (d. 758/1357).

2- "Al-Qawā'id," by Qāḍī 'Ayād b. Mūsā b. 'Iyād b. 'Umar al-Yaḥṣabi of morocco (476-544/1083-1149), microfilm 6018 at Muhammad b. Sa'ūd Islamic University Library.

3- "Al-Mudhhab fi Dabṭ Qqawā'id al-Mmadhhab," by Abū 'Abd Allāh Muḥammad b. 'Azūm (d. 889/1484), MS. 14891, National Library of Tunis.

4- "Al-Yawāqit al-Thamīnah fi Nazā'ir 'Ālam al-Madinah," by Abū al-Ḥasan 'Alī b. 'Abd al-Wāhid b. Muḥammad al-Anṣarī al-Sijilmāsi (d. 1057/1647), MS. 14708, National Library of Tunis.

5- "Qawā'id al-Imām al-Mālik," by Muḥammad b. Muḥammad al-Sajini, Ms. 1723, Ribāt University.

6- "Al-Nazā'ir al-Fiqhiyyah," by Ibn 'Abdūn Muhammad al-Miknāsī, Ms. 14862, National Library of Tunis.

7- "Al-Nazā'ir al-Fiqhiyyah," by Fāsī Abū 'Imrān. MSs. 1694. National Library of Tunis.

3. Shāfi'i Fiqh

1- *Qawā'id al-aḥkām fi Maṣāliḥ al-Aanām*, by 'Izz al-Dīn 'Abd al-'Azīz b. 'Abd al-Salām al-Sulamī (577-660/1181-1262)

2- *Al-Ashbāh wa al-Nazā'ir*, by Muḥammad b. 'Umar b. al-Makkī, Known as Ibn Wakīl al-Miṣrī al-Shāfi'i (665-716/1266-1316)

3- *Al-Majmū' al-Mudhhab fi Qawā'id al-Madhhab (Qawā'id al-'Alā')*, by Khalīl b. Kaykaldī, known as al-'Alā'i al-Shāfi'i (694-761/1295-1360).

4- *Al-Ashbāh wa al-Nazā'ir*, by 'Abd al-Wahhāb b. 'Abd al-Kāfi b. 'Alī b. Tammām al-Subkī, Known as Tāj al-Dīn Ibn al-Subkī (727-771/1328-1369).

5- *Al-Manthūr fi tartīb al-Qawā'id al-Fiqhiyyah (al-Qawā'id fi al-Furū')*, by Muḥammad b. Bahādūr b. 'Abd Allāh Badr al-Dīn Muḥammad al-Zarkashī al-Miṣrī (745-794/1344-1392).

6- *Al-Ashbāh wa al-Nazā'ir*, by Ḥasan b. Abī Bakr b. Muḥammad al-Asyūṭī, commonly known as jalāl al-Dīn al-Suyūṭī al-Shāfi'i (849-911/1445-1505).

Manuscripts:

1- "Al-Furūq," by al-Jurjānī, MS. 915, Dār al-Kutub al-Miṣriyyah.

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4. Hanbali Fiq

1- *Al-Qawā'id*
'Abbas Aḥmad b
1328).

2- *Taqrīr al-*
al-Rahmān b. Sh
Hanbali (d. 795/)

3- *Al-Qawā'id*
Ḥasan b. Aḥmad
909/1436-1503).

4- *Badā'i'*
commonly know

5- *Qawā'id*
Aḥmad b. Hanb
1359/1891-1940

Manuscripts:

1- "Al-Furūq
copy exists at
manuscript have
Riyād.

2- "Al-Furūq," by Al-juwaynī, MS. 277, Sulaymāniyyah Library.

3- "Nuzhat al-Nawāzīr," by jamāl al-Dīn Abū Muḥammad 'Abd al-Raḥīm al-Umawī al-Isnawī, Born in 704/1304 A copy of this work (Ms. 277) is found at Dār al-Kutub al-Miṣriyyah.

4. Hanbalī Fiqh

1- *Al-Qawā'id al-Nurāniyyat al-Fiqhiyyah*, by Taqī al-Dīn Abū al-'Abbas Aḥmad b. 'Abd al-Ḥallīm b. Taymiyyah al-Harrānī (661-728/1263-1328).

2- *Taqrīr al-Qawā'id wa Tahrīr al-Fawā'id* (or *Al-Qawā'id*), by 'Abd al-Raḥmān b. Shihāb b. Aḥmad b. Abi Aḥmad, known as Ibn Rajab al-Hanbalī (d. 795/1392).

3- *Al-Qawā'id al-Kulliyyah wa al-Dawābiḥ al-Fiqhiyyah*, by Yūsuf b. Ḥasan b. Aḥmad b. 'Abd al-Ḥādī, known as Ibn al-Mibrad al-Ṣāliḥī (840-909/1436-1503).

4- *Badā'i' al-Fawā'id*, by Shams al-Dīn Muḥammad b. Abi Bakr, commonly known as Ibn Qayyim al-Jawziyyah (d. 751/1350).

5- *Qawā'id Majallat al-Aḥkām al-Shar'iyyah 'alā Madhhab al-Imām Aḥmad b. Ḥanbal*, by Qāḍī Aḥmad b. 'Abd Allāh al-Qārī al-Ḥanafī (1309-1359/1891-1940).

Manuscripts:

1- "Al-Furūq," compiled by Abī 'Abd Allāh al- Sāmīrī, of which a copy exists at the Ibn Sa'ūd Islamic University Library. Parts of this manuscript have been edited and published by the Sharī'at University of Riyād.

2- "Al-Qawā'id al-Fiqhīyyah," ascribed to Aḥmad b. Ḥasan b. 'Abd Allāh, known as Ibn Qāḍī al-Jabal (693-771/1294-1369), Ms. 1924, Ibn Sa'ūd Islamic University.

5. Imāmiyyah Fiqh

In so far as Sunni Jurists, especially the early ones, were willing to use particular methods of reasoning such as *qiyas* and *istihsān* to infer legal precepts, it must be acknowledged that without any doubt they have made a greater effort to systemize the principles of Islamic jurisprudence. Nevertheless, it appears, that many of the general principles mentioned in Sunni sources, are found, in an identical form, in the traditions transmitted from the Imāms of Imāmi Shi'is, some of which are narrated from the Holy Prophet (ṣ) himself and some others drawn from the direct teachings of the Imāms. If these teachings are taken into account, then it can be stated, with certainty, that compared with Sunni fiqh, Imāmiyyah fiqh is not only not later in this respect but that, in fact, it played a pioneering role. For, as is revealed by extant riwayaths, the method of instruction used by Shi'i Imāms, as a rule, comprised of elucidating general rules and principles. Thus by following the special methodology in which they were trained and by refraining from applying any kind of analogical reasoning (*qiyās*) prior to attaining the real criterion and the main cause of the ruling through explicit legal text or direct legal reference, their disciples were able to draw the corollaries and infer the necessary ramifications of a rule. In this relation we have, for instance, the following dictum from al-Imām al-Ridā (peace be upon him): "We shall deliver the general principles and rules, and from these, you must deduce the corollaries and particular legal precepts for each case".⁸ The history of Shi'i fiqh bears witness to the fact that the dynamic quality of Shi'i ijtihād is essentially inspired by these instructions.

Among numerous works on fiqh, for instance, are those compiled by Shaykh Ṭūsī (385-460/995-1068).

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have made radical principles

A. Al-Ashbah wa

Najīb al-Ḥakīm (601-698/1204) *Nuzhat al-Nāẓi'ah wa al-nazā'ir* "abwāb of fiqh ties between text and in literature" *Al-Ashbah wa*

The present work indicates, though first to compile earlier the work authored by Ibn

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Shaykh Ṭūsī the most complete literature, I

In additions to the above, since the 7th/13th century, Imāmi Shi'is have made relatively important attempts to compile books on Islamic juridical principles, a concise list of which includes the following titles:

A. Al-Ashbah wa al-nazā'ir:

Najib al-Din Yahyā b. Sa'id al-Hilli, otherwise known as Ibn Sa'id (601-698/1204-1298) composed a most valuable and useful work entitled *Nuzhat al-Nāzir fi al-Jam' Bayn al-Ashbah wa al-Nazā'ir*. By "al-ashbah wa al-nazā'ir" the author means that group of cases pertaining to various abwāb of fiqh which can be brought a single heading due to the similarities between them. This type of classification is used in other disciplines, and in literature, for example, al-Suyūṭī's work on naḥw is also entitled *Al-Ashbah wa al-Nazā'ir*.

The presents stats of arts leading to the compilation of this article indicates, though perhaps only tentatively, that Shaykh Najib al-Din was the first to compile such a work in the history of Islamic law, for as noted earlier the oldest extant work entitled al-Ashbah wa al-Nazā'ir was authored by Ibn Wakil al-Shāfi'i (655-716/1257-316).

Najib al-Din's valuable treatise is written in a fluent and eloquent style free of obscurity and complexities; it is neither excessively detailed nor too concise. The treatise deals with all the abwāb of fiqh, from taḥārah to diyāt. Though brief on some subjects, the author fully substantiates each case, discusses the supporting or dissenting opinions of different jurists, giving his own judgment in each case. For this, Najib al-Din mostly refers to the riwāyahs of *Man lā Yahduruhu al-Faqih* and *Al-Tahdhib*, giving greater weight to the views of the authors of these works than to that of other jurists.

Shaykh Najib al-Din is said to have been a pious and devote man and, the most celebrated scholar of his time, and master of many arts including literature, law, jurisprudence, and *ḥadīth*, of which he was a ḥāfiz, He was

also the teacher of 'Allāmah al-Hilli.⁹ Based on a note on the cover of a manuscript of the work in his possession of his dated, the author of al-Riyāḍ has cast some doubt on Yaḥyā b. Sa'īd's authorship of the treatise, dating it 674/1275 and claiming that it was composed by *Muhaddhab* al-Dīn al-Hilli. Later scholars, however, see no reason for doubting its ascription to Yaḥyā b. Sa'īd, for which there is sufficient evidence.¹⁰

Yaḥyā b. Sa'īd has compiled a number of other important works among which is the esteemed *Al-Jāmi' li al-Sharāyī'* published in Qum. The *Nuzhat al-Nāzir* consists of 78 chapters, and in each, cases with similar legal rulings are classified together.

If all the "ashbāh wa al-naẓā'ir" works on fiqh are also included among the books on juridical principles (I. e. as Sunni jurists have done), then, to be sure, this treatise was written before *Al-Qawā'id wa al-Fawā'id* of the Shahīd al-Awwal. In our opinion, however, these two works are profoundly different in their style of writing, and hence, it must be reiterated that compilation of works on juridical principles in fact began with the Shahīd al-Awwal.

B. Works on *Qawā'id al-Fiqh*.

The writing of these works by Imāmi Shi'is can be traced to *Al-Qawā'id wa al-Fawā'id* of the Shahīd al-Awwal. In fact, research in this field indicates that an increase in the number of works on juridical principles (*qawā'id al-fiqh*) by Imāmi jurists, corresponds to a gradual decrease among Sunni jurists. It must be noted, however, that even before the Shahīd al-Awwal, discussions of juridical principles are found scattered in the pages or in the prefaces of books on fiqh and uṣūl written by Imamiyyah jurists, namely Abū al-Makārim b. Zuhrah (511-585/1117-1189) in *Ghunyat al-Nuzū' ilā 'Ilm al-Uṣūl wa al-Furū'*, al-Muḥaqqiq al-Hilli (602-676/1205-1277) in the *Mu'tabar*, or the Shahīd al-Awwal himself in *Dhikrā al-Shi'ah*, by in which along with the discussion of

other subject needs to know "qawā'id" and *Fawā'id*. Its the Imamiyyah which he writes

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other subjects mention is made of the legal principles which a mujtahid needs to know. At any rate, the first book which is specifically entitled "qawā'id" and devoted mainly to this subject is *Al-Qawā'id wa al-Fawā'id*. Its celebrated author who is well aware of its unique position in the Imāmiyyah school, praises the work in the following terms in an ijāzah which he wrote for Ibn al-Khāzin:

"The Kitāb al-Qawā'id wa al-fawā'id which I have compiled, is a concise work which consists of general rules in *uṣūl* and *fiqh* and it is from these principles that laws (*aḥkām al-Shar'īyyah*) are deduced [and] no one else among the Imāmiyyah has compiled such a book."

It must be pointed out that in addition to juridical principles, the book also deals with the principles of jurisprudence as well as literature. On the whole it treats of about 303 principles (*qawā'id*) and a hundred other notes and points (*fawā'id and tanbihāt*).

The first lithograph edition of this work was published by Mulla 'Ali Akbār Kirmāni in Tehran in 1270/1852. It was later printed with some glosses by Shaykh Bahā'i, commentary by al-Harfūshi and notes by Sayyid Muḥammad 'Aṭṭār Lawāsāni in 1308 S. H. /1929, followed by a third and undated edition. Finally, Dr. Sayyid 'Abd al-Hādī Ḥakīm prepared a fourth critical edition, published in Najaf in 1400/1980, reprinted by Maktabah Mufid.

Due to its arrangement and distinct style, the Qawā'id of the Shahid al-Awwal soon attracted the attention of learned circles among Imāmiyyah Shi'ah. Included in the curricula of the centers of learning, it was recommended to the students and scholars who hoped to attain the degree of ijtihād. Numerous notes and glosses, as well as, commentaries were written on it by celebrated scholars and jurists, a few of which include the following titles:

- 1- *Hāshiyah* by Abū al-Qāsim al-Faq'āni al-'Āmili (d. 850/1466).

- 2- *Hāshiyah* by Shaykh Bahā' al-Dīn Muḥammad al-'Āmilī (953-1035/1546-1625), published in part with the text in Tehran in 1308/1929.
- 3- *Hāshiyah* by Mirzā Qāḍī b. Kāshif al-Dīn Muḥammad Yazdī (was alive in 1056/1646).
- 4- *Sharḥ* by Shaykh Muḥammad b. 'Alī b. Aḥmad al-Ḥarfūshī (d. 1059/1649), entitled *al-Qalā'id al-Saniyyah 'alā al-Qawā'id al-Shahidiyyah*, published in part with the text in Tehran in 1308/1929.
- 5- *Hāshiyah* by 'Alī b. 'Abd Allāh Shūshtari Isfahānī.
- 6- *Sharḥ* by Mirzā Abū Turāb, Known as Mirzā Aqā Qazwīnī Hā'irī (died after 1292/1875, probably in 1300/1882), a pupil of the author of *jawāhir al-kalām*.
- 7- *Hāshiyah* by Mirzā Muḥammad b. Sulaymān Tunikābunī (1230-1302/1815-1884), author of *Qisas al-'Ulamā'*. The manuscript of this work has not been published.
- 8- *Hāshiyah* by Mowlā Muḥammad b. Muḥammad Bāqir Najafī Irawānī, otherwise known as Fāḍil Irawānī (d. 1306/1888).
- 9- *Sharḥ* by Sayyid Ismā'il b. Najafī Ḥusaynī Tabrizī Marandī (d. 1318/1900), the original text of this work is found in Āyatullāh Mar'ashī library in Qum of which I have a facsimile in my personal library.
- 10- *Sharḥ* by Sayyid Mahdī Māzandarānī entitled *Maṣābih al-Zalām fī Sharḥ Qawā'id al-Aḥkām*, the original text of which, in the commentator's handwriting is found in the Mar'ashī Library in Qum.
- 11- *Hāshiyah* by 'Alī b. al-Riḍā al-Khū'i (incomplete).
- 12- *Hāshiyah* by Sayyid b. Maḥmūd Hā'irī Tehrānī Ḥusaynī Lawāsānī (1264-1356/1848-1937), known as 'Aṣṣār, published with the text in Tehran in 1308/1929.

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The *Qawā'id* of the Shahid al-Awwal has been revised and recast by several jurists who followed him. A number of these recensions are:

1- *Nadd al-Qawā'id al-Fiqhiyyah 'alā Madhhab al-Imāmiyyah*, by Fādil Miqdād b. 'Abd Allāh al-Suyūrī al-Ḥillī (d. 826/1423), an eminent pupil of al-Shahid al-Awwal. After deleting the redundant parts of the work, he named it *Jāmi' al-Fawā'id fi Talkhis al-Qawā'id*. Later, adding only the new "Bāb Qismah" he recast the work according to the furū' of fiqh and entitled it *Nadd al-Qawā'id al-Fiqhiyyah 'alā Madhhab al-Imāmiyyah*.

2- *Ikhtisār Qawā'id al-Shahid*, by Shaykh Zayn al-Dīn Ibrāhīm b. 'Alī Kafāmi.

3- *Tamhid al-Qawā'id al-Uṣūliyyah wa al-'Arabiyyah li Tafrī' Fawā'id al-Aḥkām al-Shar'iyyah*, by Shaykh Zayn al-Dīn al-Jabā'i al-'Āmili, also known as al-Shahid al-Thāni.

C. Other Works on Qawā'id al-Fiqhiyyah:

Since al-Shahid al-Awwal, other celebrated jurists have attempted to collect and compile works on the juridical principles. As noted above, some wrote notes and glosses or composed commentaries on the Shahid's work. Others, however, while drawing on the works of their predecessors, compiled independent works for the benefit of the juristic circles, namely:

1- *Al-Aqtāb al-Fiqhiyyah 'alā Madhhab al-Imāmiyyah*, by Muḥammad b. 'Alī b. Ibrāhīm al-Iḥṣā'i, known as Ibn Abi Jumhūr (d. 901/1495), recently published by Mar'ashi Library in Qum.

2- *'Awā'id al-Ayyām min Muhimmat Adillat al-Aḥkām*, by Ahmad b. Muḥammad Mahdi b. Abi Dhar al-Narāqī-Kāshānī (d. 1209/1794).

3- *Anāwin*, by Sayyid 'Abd al-Fattāḥ b. 'Alī al-Ḥusaynī al-Marāghī (d. about 1274/1857). Completed a year after the *'Awā'id al-Ayyām*, on the 28th of Ramaḍān 1246/1830, it includes 93 'unwān (entries) of the

qawā'id of fiqh. Al-Marāghī frequently quotes from his mentor without mentioning his name, but according to the author of *Al-Dhari'ah*, he probably refers to Shaykh 'Ali b. Ja'far Kāshif al-Ghiṭā'. Lithograph editions of it have been published in Tabriz (1274/1875) and Tehran (1292/1875).

4- *Al-Maqālid al-Ja'fariyyah*, by Muḥammad Ja'far Shariy'at Madār Istarābādi (d. 1263/1847). A fine copy of this work is found in the Mar'āshi Library in Qum, of which I have a facsimile in my personal library.

5- *Al-Qawā'id al-Fiqhiyyah*, by Sayyid Muḥammad Mahdī Qazwini Hilli Najafī (d. 1300/1882). This work treats of 75 qawā'id of fiqh.

6- *Al-Qawā'id al-Fiqhiyyah* (2 vols.), by Shaykh Mahdī b. Ḥusayn b. 'Aziz Khāliṣi Kāzimi (d. 1343/1924).

7- *Tahrir al-Majallah*, by Shaykh Muḥammad Ḥusayn al-Kāshif al-Ghiṭā' (1294-1373/1877-1953).

8- *Al-Qawā'id Uksintyyah*, by Sayyid Ḥasan Ḥusayni Qumi Ḥā'iri, a compilation of the lectures of Mirzā Shirāzi on several qawā'id of fiqh.

9- *Al-Qawā'id al-Sittah 'Aashar*, by Shaykh Ja'far Kāshif al-Ghiṭā' al-Najafī. A lithograph edition of this short treatise was published, along with another work by the same author, *al-Ḥaqq al-Mubin*, in Qum in 1306/1889.

10- *Al-Qawā'id al-Shar'iyyah*, by Shaykh Ismā'il b. 'Ali Naqi Tabrizi (d. 1295/1878).

11- *Bulghat al-Faqih*, by Sayyid Muḥammad Bahr al-'Ulūm Tabātabā'i (d. 1326/1908), of which two lithograph and later a letter-set edition in four volumes were published in Najaf.

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12- *Al-Qawā'id al-Fiqhiyyah* (7 vols.), by Sayyid Muḥammad Ḥasan Mūsawī Bujnūrdī. This valuable work includes 70 qawā'id of fiqh.

13- *Al-Qawā'id al-Fiqhiyyah*, by Shaykh Muḥammad Ḥusayn Yazdī (d. 1329/1911). Its original copy is found in the Martyr Muṭahhari College (Masjid Sepahsālār).

14- *Tashīl al-Masālik ilā al-Madārik*, by Mullā Ḥabīb Allāh b. 'Alī Madad b. Ramadān Kāshānī (d. 1340/1921), with a brief exposition of 500 qawā'id of fiqh.

15- *Qawā'id al-Faqih*, by Shaykh Muḥammad Taqī Āl-e Faqih 'Āmīlī, twice published in Lebanon.

16- *Al-Qawā'id al-Fiqhiyyah* (4 vols.), by Nāṣir Makārim Shirāzī.

17- *Lamahāt 'alā al-Qawā'id al-Fiqhiyyah fi al-Aḥādith al-Kāzimiyyah*, by Sayyid Muḥammad Khāminīh'i. Compiled for presentation at the Third World Congress on Imām Riḍa (may peace be upon him) (March 1988), it was published in Majmū'at al-āthār al-Mu'tamar al-'Ālami al-Thālith li al-Imām al-Riḍā 'alayh al-salām (Vol. 1, pp. 169-258), this short treatise treats of 23 qawā'id of fiqh, drawn from traditions transmitted from Imām Mūsā b. Ja'far (may peace be upon him).

D. Persian Works on the Qawā'id of Fiqh:

In addition to the works mentioned above, all of which are in Arabic, the following are some Persian books on the qawā'id of Imāmi fiqh.

1- *Qawā'id-e Fiqh*, by Mirzā Maḥmūd Shahābi Khurāsānī (1321/1904), published by Tehran University.

2- *Qawā'id-e Fiqh*, by Ḥājj Shaykh 'Alī Bābā Firūz-kūhi, often reprinted, the last time in 1313 H. Sh. /1924.

3- *Qawā'id-e Fiqh*, by Sayyid Muḥammad Mūsawī Bujnūrī, published in Tehran in 1371 H. Sh. /1413 H. /1992.

4- *Qawā'id-e Fiqh*, (vol. 1, civil law), by the present writer. First published in 1361 H. Sh. /1982, it has been reprinted four times and treats 13 qawā'id of fiqh.

Conclusion:

1- Islamic law fulfills the necessary criteria required by a legal system. This is clearly evidenced by the existence of a systematized body of general principles from which particular laws can readily be deduced.

2- Though Sunni jurists have a long history of compiling and codifying the qawā'id of fiqh, it is worth nothing that most of these qawā'id are found as such in the traditions transmitted from the Imams of the Ahl al-Bayt ('a).

3- The beginnings of the compilation of works on the juridical principles among Imāmiyyah Shī'ah can be traced to al-Qawā'id wa al-fawā'id of the al-Shahīd al-Awwal, or even to an earlier work, al-Ashbāh wa al-naẓā'ir by al-Hillī. However, our study indicates that when such activity reached its high point among Imami jurists, it declined considerably among the Sunnis.

NOTES:

1- *Great Soviet Encyclopedia*, (Moscow 1976) vol. 23, p. 124

2- *Raz, J. The Concept of Legal System*. 2nd ed, (Oxford: Clarendon Press, 1980), p. 93.

3- *Ibid*, p. 210.

4- Al-Nadawī, 'Alī Aḥmad. *Al-Qawā'id al-Fiqhiyyah*, p. 99.

5- Muqaddima Academy, J

6- *Ibid*.

7- Al-Nadawī,

8- Al-Hurr al-'al-Hillī, Muḥammad

9- Ardibīlī, Mu

10- Hillī, Najīb Naẓā'ir, intr

- 5- Muqaddimah tamhidiyyah li mashrū' mu'allamah al-qawā'id al-fiqhiyyah, The fiqh Academy, Jiddah, 1994, p. 6.
- 6- Ibid.
- 7- Al-Nadawi, 'Ali Ahmad. *Al-Qawā'id al-Fiqhiyyah*, p. 434.
- 8- Al-Hurr al-'Amili, Muhammad b. Hasan, *Wasā'il al-Shi'ah*, vol. 27, p. 62; Ibn Idris al-Hilli, Muhammad b. Ahmad, *Al-Sarā'ir*, vol. 3, p. 575 and, Majlisi ('Allamah), Muhammad Baqir, *Biḥār al-Anwār*, vol. 2, p. 245.
- 9- Ardibili, Muhammad b. 'Ali, *Jāmi' al-Ruwat* (rafi' al-ishtibāhat), vol. 2, p. 24.
- 10- Hilli, Najib al-Din Yahya b. Sa'id, *Nuzhat al-Nāzir fi al-Jam' Bayn al-Ashbah wa al-Nazā'ir*, introd. by Sayyid Ahmad Husayni.