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MAQĀSID AL-SHARĪʿAH, IJTIHAD
AND CIVILISATIONAL RENEWAL

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FOREWORD

THE International Institute of Islamic Thought (IIIT) and the International Institute of Advanced Islamic Studies (IAIS) Malaysia have great pleasure in jointly presenting Occasional Paper 20 *Maqāṣid al-Sharīʿah, Ijtihad and Civilisational Renewal*. The author, Professor Mohammad Hashim Kamali, is a well-known scholar and specialist in this field.

Maqāṣid al-sharīʿah refers to the higher ideals and objectives of Islamic Law which in the opinion of the IIIT forms an important yet neglected area of Islamic Law, particularly relevant to address current and real challenges facing Muslims living both in Muslim societies and as minorities. For Islamic rulings to fulfil their purposes of justice, equality, human rights, development, and civility in today's context, implementation of *maqāṣid al-sharīʿah* is vital. The field highlights human welfare as the ultimate purpose of all Islamic rulings and stresses its importance, while basing itself on the foundational postulates of Islamic faith and scripture.

It is for this reason as well as the paucity of works in the English language on the subject of *maqāṣid al-sharīʿah* that the IIIT decided to fill the vacuum by initiating the translation and publication of a series of books on *al-Maqāṣid* to introduce this important and difficult area of thought to English readers. These include to date, *Ibn Ashur: Treatise on Maqāṣid al-Sharīʿah*, *Imam al-Shāṭibī's Theory of the Higher Objectives and Intents of Islamic Law* by Ahmad al-Raysuni, *Towards Realization of the Higher Intents of Islamic Law: Maqāṣid al-Sharīʿah a Functional Approach* by Gamal Eldin Attia, and *Maqasid al-Sharīʿah as Philosophy of Islamic Law: A Systems Approach* by Jasser Auda.

As the topic is complex and intellectually challenging, with most books appearing on the subject written mainly for specialists, scholars and intellectuals alone, the IIIT London Office is also producing other simple introductory guides to the subject as part of its Occasional Papers series with a view to providing easily accessible material for the general reader. These include *Maqāṣid al-Sharīʿah: A Beginner's Guide*, *The Islamic Vision of Development in the Light of Maqāṣid al-Sharīʿah* by Muhammad Umer Chapra and *Maqāṣid al-Sharīʿah Made Simple* by Mohammad Hashim Kamali.

Where dates are cited according to the Islamic calendar (hijrah) they are labelled AH. Otherwise they follow the Gregorian calendar and are labelled CE where necessary. Arabic words are italicised except for those which have entered common usage. Diacritical marks have been added only to those Arabic names not considered modern.

The IIIT, established in 1981, has served as a major center to facilitate serious scholarly efforts based on Islamic vision, values and principles. The Institute's programs of research, seminars and conferences during the last thirty years have resulted in the publication of more than four hundred titles in English and Arabic, many of which have been translated into other major languages.

Founded in 2008 in Kuala Lumpur, the International Institute of Advanced Islamic Studies (IAIS) Malaysia is a non-profit, independent research institute, dedicated to objective academic research with practical policy-relevant implications on Islam and contemporary issues of concern to Malaysia, the Muslim world, and Islam's engagement with other civilisations. IAIS Malaysia publishes a quarterly international peer-reviewed journal, *Islam and Civilisational Renewal* (ICR), and books, monographs, and Occasional Paper Series, as well as convening seminars and conferences on contemporary topics with special reference to Islam.

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Maqāṣid al-Sharīʿah, Ijtihad and Civilisational Renewal

MOHAMMAD HASHIM KAMALI

This essay develops the idea of a maqāṣid-based framework for ijtiḥad and civilisational renewal (tajdīd ḥaḍārī), a broad and engaging prospect that also involves a review and reappraisal of the methodology of Islamic jurisprudence relating to both the maqāṣid and ijtiḥad. The author argues that this would enable Muslims to widen the scope and horizon of the maqāṣid or objectives of Islamic law from their currently legalistic leanings towards the wider perspective of civilisational renaissance. The nexus that needs to be developed between the maqāṣid and ijtiḥad also needs to be supported by a credible methodology, which is what the author has attempted to provide in the following pages.

INTRODUCTORY REMARKS

The *maqāṣid* of the Sharīʿah naturally reflect on the Sharīʿah itself in that the goals of the Sharīʿah arise from the Sharīʿah and are in many ways affected by developments in the Sharīʿah itself, the history of ijtiḥad, and major developments in the applied law and custom of society. Developments relating to the *aḥkām* (legal rules), ijtiḥad and fatwas have largely been influenced by the minutiae of fiqh writings that focused on particular cases and incidents at the expense sometimes of the broader goals and purposes of the Sharīʿah. Similarly, the textualist orientations of fiqh are manifested in the legal theory of *uṣūl al-fiqh* and both remained focused on analysing the text at the expense often of the overall goal and objective of the Sharīʿah. Theoretical expatiation into the higher purposes of the law and the quest to explore the intent of the Lawgiver were generally not encouraged. The *maqṣid* or purpose of the text was only recognised when the text declared it as such, a position which to all intents and purposes extended the textualist approach of *uṣūl al-fiqh*

also to the *maqāṣid*. The onset of *taqlīd* (indiscriminate imitation), which advised unquestioning adherence to the authority of the past jurists and imams, added to the problem. The *maqāṣid*-based approach was consequently marginalised so much so that many a reputable text of *uṣūl al-fiqh* did not even assign a section or chapter to the study of the *maqāṣid*, and it was not until al-Shāṭibī (d. 1388) that the *maqāṣid* were treated as a credible theme in its own right, and an instrument also of flexibility within the *corpus juris* of the Shari‘ah. However, the *maqāṣid* still remained marginal to the mainstream *uṣūl al-fiqh*, but made a comeback only in the latter part of the twentieth century.

It is due to their focus on real life issues of vital concern to people’s welfare that the *maqāṣid* became the focus of renewed attention in recent decades, attested by numerous doctoral dissertations, books, and conferences that sought to further develop this important chapter of the Shari‘ah. A mere glance at the five essential *maqāṣid*, namely life, intellect, religion, property and family, shows that the *maqāṣid* are concerned with protection of basic values of interest to all human beings. This is a different approach to that of the *uṣūl al-fiqh* that proposes certain methodologies for *ijtihād* of relevance only indirectly to the protection of basic values. In its long history of development, the *uṣūl* methodology has also become burdened with technicality and literalism.

Researchers have in recent decades focused on exploring the utility and relevance of the *maqāṣid* to constitutional law and government as well as to criminal law, family law and more specific issues of concern to Islamic finance, genetic engineering and so forth. This is accompanied by an awareness that the methodologies of *uṣūl al-fiqh* and *ijtihād* are, on the whole, predicated on medieval society values, retrospective, and somewhat slow to relate effectively to modern legislative processes, science, technology, industry and commerce. By contrast, the *maqāṣid* are goals and purposes that look to the future and permit innovative approaches to the Shari‘ah and contemporary issues. To speak, for instance, of *ijmā‘* (general consensus), *qiyās* (analogical reasoning) and *istiḥsān* (juristic preference), one is likely to be involved in technicalities and methodological

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details. *Maqāṣid* are inherently dynamic by comparison and open to growth in tandem with changing conditions, just as they also strike a closer note with the contemporary human rights discourse. The Muslim world is currently witnessing a growing support for accountability, good governance, democracy and human rights, and the *maqāṣid* are seen to be offering a preferable approach to that of the *uṣūl* methodologies to meet the demand of healthy adjustment within the fabric of the Shari‘ah.

Beginning with the meaning and definition of *maqāṣid* and a brief review of its allied expressions such as *ḥikmah*, *‘illah*, and *maṣlahah*, this article proceeds with a note on the relevance of *maqāṣid* to civilisational renewal (*tajdīd haḍārī*). Next follows a review of the Qur’an and Sunnah with special reference to their rule-based passages, namely the *āyāt al-aḥkām* and *aḥādīth al-aḥkām*. A question is posed whether the placement of Qur’an verses and hadith into these categories could also be made based on the objective and purpose (*maqṣid*) of a particular text, whether of the Qur’an or hadith. An affirmative answer to this question would mean that a new branch of *maqāṣid*-based *tafsīr* and hadith can be developed, and a good place to start this may be to take a fresh look into the relevant segments of an existing genre of *tafsīr*, namely the thematic *tafsīr* (*tafsīr mawḍū‘ī*), as will be explained. This would help ascertain the place of *maqāṣid* not only in Qur’an interpretation but also as valid criteria of *ḥukm* of the Qur’an and hadith. To link the *maqāṣid* thus directly to *āyāt al-aḥkām* and *aḥādīth al-aḥkām* could also address and overcome the historical marginalisation and neglect of *maqāṣid* in the legal theory of *uṣūl al-fiqh*. Then I expound the development of *maqāṣid* themselves through the reading in the first place of the clear text (*naṣṣ*), and then through juristic reasoning (*ijtihād*). The latter may consist in turn of inductive reasoning (*istiqrā’*), *istidlāl* and *‘aql* (human intellect, unrestricted reasoning respectively), and then also of innate human nature (*al-fiṭrah*) that resembles natural law and natural justice in western jurisprudence. Then I turn to the prospects of widening the scope of *maqāṣid*, from a designated list of the five essentials (*darūriyyāt*), to a basically open chapter of the Shari‘ah that could evolve in tandem with the progress of science and

civilisation. The basic hypothesis of this research is thus to expound, from the Islamic jurisprudential perspective, the uses of *maqāṣid* and *ijtihād* as instruments of civilisational renewal. The article ends with a conclusion and recommendations.

MEANING AND DEFINITION OF MAQĀṢID

Maqāṣid (singular: *maqṣid*) refers to the goals and purposes of the Shari‘ah either generally (i.e. *al-maqāṣid al-‘āmmah*), or in reference to its particular themes and subjects (*al-maqāṣid al-khāṣṣah*). Three other Arabic words that occur in the relevant literature of *uṣūl al-fiqh* and convey similar meanings to *maqāṣid* are *ḥikmah* (wisdom), *‘illah* (effective cause/*ratio legis*), and *maṣlahah* (interest, benefit) respectively. A brief review of these is followed by the definition of *maqāṣid*.

Hikmah in the sense of wisdom looks toward the positive end or purpose of conduct, and in the works of Muslim jurists it usually refers to the wisdom and end-result of legislation, accomplishment of a desired benefit or its perfection. *Hikmah* (pl. *ḥikam*) may signify a beneficial consequence of the Shari‘ah as a whole, or of a particular ruling thereof. It also signifies the objective of legislation, in which case, *ḥikmah* would be synonymous to *maqṣid*. It is unusual, however, to use *maqṣid* or *maqāṣid* in reference to God the Most High, such as *maqāṣid Allāh*, although *maqāṣid al-Shārī‘* – objectives of the Law-Giver – is commonplace, which is why Muslim jurists normally use *ḥikmah* in reference to Allah. One can, of course, use both *ḥikmah* and *maqṣid* almost interchangeably in reference to the Shari‘ah.¹

‘Illah signifies two meanings, namely *cause*, as in *cause and effect*, but also more technically in the context of legislation it refers to the effective cause and attribute of a ruling (*ḥukm*) of the Shari‘ah for which it was legislated. For al-Āmidī (d. 1233), *‘illah* refers to the effective cause, or the *ḥikmah* and benefit the Lawgiver has considered in introducing a law.² This evidently brings *‘illah* very close to *maqṣid*, as per Mustafā al-Zarqā who wrote: “*‘illah* could signify the *ḥikmah* of legislation in reference to the attraction of benefit or prevention of harm that may be sought through a legal command or prohibition.”³ This would equate *‘illah* to *maqṣid* and make it

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synonymous with the goal and objective, or *ghāyah*, of the Shariʿah. I may add, however, that *ʿillah* is normally tied to the existing text and status quo of the law, whereas *ḥikmah* in the sense of end-result and purpose looks equally to the present and future and is also not so closely tied to the specificities of the text. In their discussions of the *ʿillah* of analogy (*qiyās*) the *uṣūl* scholars have stated that *ʿillah* must be constant and unchangeable (*munḍabit*) whereas *ḥikmah* need not meet this qualification.⁴

The *uṣūl* writers have used *maṣlaḥah* almost interchangeably with *maqṣid* and many have considered them as convergent and coterminous. I shall have occasion later to draw a distinction between *maṣlaḥah* and *maqṣid*, but here I note that the tendency of equating these two concepts is partially accountable for the marginalisation of *maqāṣid* in mainstream *uṣūl al-fiqh*. From an essentialist viewpoint, there is no objection, of course, as *maṣāliḥ* and *maqāṣid* are parallel concepts and look at basically the same values. Yet we also know that *maṣlaḥah*, especially the unrestricted *maṣlaḥah* (*maṣlaḥah mursalah*) became controversial in *uṣūlī* thought as it represented a certain departure from the textualist proclivities *uṣūl al-fiqh*. Only the Mālikī School recognised *maṣlaḥah* as a source of law in its own right, but all the other schools gave it partial recognition and stipulated it with many conditions. The substance of the scholastic critique of *maṣlaḥah* is based on the specious argument, as many have advanced, that the *nuṣūṣ* of Qurʾan and Sunnah encapsulate most, if not all, the benefits and that a *maṣlaḥah* outside this sphere can only be recognised if it can be connected to a recognised principle of Shariʿah. *Maṣlaḥah mursalah* would in this way be likely to be reduced to a form of analogical reasoning (*qiyās*). This is the substance basically of the Shāfiʿī critique of *maṣlaḥah mursalah*. Now to equate the *maqāṣid* with *maṣāliḥ*, as is the case with mainstream *uṣūl al-fiqh*, one would be indirectly inviting the polemics of *maṣlaḥah* also to the *maqāṣid* and the tendency thereby to subsume the latter under the rubric of the *uṣūlī* thought and methodology, which would clearly undermine the place and prominence of *maqāṣid* as a distinctive source and chapter of Shariʿah in its own right.⁵

Early pioneers of the *maqāṣid*, such as Abū Ḥāmid al-Ghazālī, ʿIzz al-Dīn ʿAbd al-Salām (d. 1262), and al-Shāṭibī who wrote on the *maqāṣid* did not attempt a definition for it on the assumption perhaps of the linguistic clarity of the word itself. This can no longer be an adequate explanation due mainly to the sheer scope and diversity of writings on the subject that has developed ever since, both in the Arabic and other languages. Hence the need for a definition, which was, however belatedly, attempted by twentieth-century scholars such as Ibn Ashur, Allal al-Fasi, al-Qaradawī, al-Zuhaylī and others, who defined the *maqāṣid* and also stipulated a number of conditions a valid *maqāṣid* must meet.

Al-Raysunī who wrote a book on al-Shāṭibī's theory of the *maqāṣid* concurred that it was due most likely to the linguistic clarity of *maqāṣid* that such a prominent contributor to the subject did not attempt a definition. The renowned hadith-cum-legal maxim, *al-umūru bi-maqāṣidihā* (human affairs are judged by reference to their purposes) was commonplace and frequently cited from early times.⁶

Ibn Ashur (d. 1973) defined the general objectives (*maqāṣid ʿāmmah*) of the Shariʿah as “the deeper meanings (*māʿānī*) and inner wisdom (*ḥikam*) that the Lawgiver has contemplated in respect of all or most of the Shariʿah ordinances [...]”⁷ Allal al-Fasi (d. 1964) also defined the *maqāṣid* as “the hidden meanings (*al-asrār*) and wisdom that the Lawgiver has considered in the enactment of all of the Shariʿah ordinances.”⁸ The two definitions differ only slightly in that according to al-Fasi none of the laws of the Shariʿah is without a purpose, whereas Ibn Ashur put it that “all or most of the Shariʿah ordinances” have their purposes. Al-Fasi's usage of “hidden meanings – *al-asrār*” invites criticism as it would fail to meet Ibn Ashur's four conditions that the general goals of the Shariʿah must qualify. These are: firm, evident, general, and exclusive (*thābit, zāhir, ʿamm, ṭard*). Other jurists have generally concurred with the analysis that virtually all of the laws of the Shariʿah have their purposes; the doubt emerges, however, whether they are all known to us, since they are not always declared in the clear text.⁹

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Al-Qaradawi noted that “*maqāṣid al-sharīʿah* consist of the attraction of benefits (*al-maṣāliḥ*) to the people and repelling of harm and corruption (*al-maḍār wa al-mafāsīd*) from them.”¹⁰ Muhammad al-Zuhayli has given a more detailed definition of *maqāṣid* as “the ultimate goals, aims, consequences and meanings which the Shariʿah has upheld and established through its laws, and consistently seeks to realise, materialise and achieve them at all times and places.”¹¹ *Maqāṣid*, according to al-Raysuni, signify “the end-goals for which the Shariʿah has been promulgated, namely to realise benefit (*maṣlahah*) for God’s servants.”¹²

Technicalities apart, almost all the definitions of *maqāṣid* reviewed above are focused on realisation of benefits for human beings, that is, for the individual and society, indeed for all people, regardless of any distinction of status, colour and creed, both in this life and the Hereafter. The benefits/interests include temporal and utilitarian interests of concern to the material, moral and spiritual aspects of human life in this world and the next. Protection of religion is one of the essential *maqāṣid*, yet our general reading of the source evidence informs us that the lives and properties (also among the essential *maqāṣid*) of non-Muslims are sacrosanct and that justice and fair dealing under the Shariʿah are inclusive of both Muslims and non-Muslims alike. Islam also recognises the basic freedom of religion and the validity in principle of all monotheistic faiths, which would therefore fall under the protective cover of *maqāṣid*. *Maqāṣid* can thus subsume all monotheistic religions as well as the contemporary human rights law, albeit with minor reservations.

MAQĀṢID IN THE QUR’AN: TEXT AND INTERPRETATION

This section presents an overview of the *maqāṣid*-based orientations of the qur’anic language, and then a discussion as to how this tendency could be reflected into the legal verses and interpretation of the Holy Book.

The Qur’an is expressive in numerous places of the benefits, goals and purposes of its messages. The Qur’an characterises itself as

“guidance and mercy” (*hudan wa rahmatan*) (10:57) and the prophethood of Muhammad as “a mercy to the worlds” (21:107). Mercy and *rahmah* also characterise the most favourite of all the 99 Excellent Names of God: these are *al-Rahmān* and *al-Rahīm* (Most Merciful, Most Compassionate), both of which signify that compassion (*rahmah*) is a cardinal goal and purpose of Islam. More specifically, the purpose of the law of retaliation (*qiṣās*) in the Qur’an is to protect life (2:179); the purpose of jihad is to fight injustice (22:39); the purpose of prayer is to repel immorality and evil (29:45), and of the alms tax is to prevent circulation of wealth in the hands only of the rich (59:7). The same can be said of the prohibitive injunctions of the text that seek to protect people against harm, prejudice and injustice.

The frequent invocations in the Qur’an for people to think and exercise their reason especially for those who possess knowledge (4:83), prompted the Prophet to speak in condemnation of those who “utter the Qur’an without ever letting it (its meaning) go down their throat.”¹³ The purpose is to provide guidance, as one observer put it: “the cardinal objective of Qur’an that runs through the entire text is to provide guidance to individuals and societies, to educate, improve and reform the people, to enable them to build the earth.”¹⁴

The development of the genre in Qur’an interpretation known as *tafsīr mawḍū‘ī* (thematic interpretation), which seeks to consolidate isolated verses into thematic clusters, signified a step towards the development of a goal-oriented *tafsīr*. The thematic *tafsīr* proceeds on the assumption of an essential unity of a number of verses throughout the text on the one and the same subject. The question to pose now is how this unity of theme and content can be reflected into the legislative contents of the Qur’an.¹⁵

The *āyāt al-aḥkām*, numbered at about 350 (out of the total of 6,235) verses had to be confined to a limited number due to the somewhat restrictive criteria of their selection. The rule-based verses were thus identified as ones with a practical import that sought to regulate the manifest and practical aspects of human conduct. This is because legal ordinances are typically concerned with commands

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and prohibitions that relate to the externalities of conduct and their provable consequences. The *āyāt al-aḥkām* were thus confined to practical rulings (*aḥkām ʿamalī*) whose violation could also be proved by admissible evidence. But since the Qurʿan was not meant to be a law book but a source of moral and spiritual guidance, one could conceive its rule-based verses somewhat differently to incorporate, for instance, not only practical rulings, but also verses and sections of the Qurʿan on the essence of faith, prophethood, moral themes, encouragement and warning (*targhīb wa tarhīb*), stories and parables and matters of concern to the hereafter and so forth that share a common purpose. All of these could become part of the data that could justify extraction of the *āyāt al-aḥkām* from a much wider selection of verses.¹⁶

The *tafsīr mawḍūʿī* approach brings us closer to the idea of constructing a *maqāṣid*-based *tafsīr*. One can unite, in other words, the thematic and *maqāṣid*-based approaches together through an effort that integrates unity of purpose into thematic unity, thus enhancing the *maqāṣidī* content of *mawḍūʿī*, or better still, attempt a *tafsīr maqāṣidī* as a new genre of *tafsīr*. Note also that thematic *tafsīr* is itself a late-comer to the genres of existing *tafāsīr*, and it is of interest to us here simply because identification of goal and purpose can only be done with a full knowledge of the theme and subject-matter in the first place, and our *tafsīr maqāṣidī* can be seen as complementary and supportive of the existing works. The wider framework proposed here for identification of the *āyāt al-aḥkām* would permit in turn, the moral and spiritual teachings of the Qurʿan as well as its historical narratives and parables to enrich our enquiry into the identification of *maqāṣid*.¹⁷

A word is in order here on the subject of ratiocination, which is concerned, in the *uṣūl* literature, with identifying the rationale and *ʿillah* of a ruling of the text, which some would say is not very different to that of identifying the goal and purpose of the text. However, when one looks into the juristic technicalities of *taʿlīl* and the restrictive approaches the *uṣūl* scholars have taken towards it, both the rational and *maqāṣidī* purport of the text tend to be diluted and minimised under the heavy weight of literalism with the overall

effect of keeping legal reasoning and *ijtihad* closely aligned with the literalist readings of the text.¹⁸

The *uṣūlī* discourse on the identification of effective cause or *‘illah* of a ruling, known as *masālik al-‘illah*, draws a distinction between *‘illah* and *ḥikmah*, validating the former and disqualifying the latter: the *‘illah* must be constant and unchangeable (*muḍabbiṭ*), but the *ḥikmah* is changeable and therefore fails to provide a reliable basis of *ḥukm* and legislation. The *ḥikmah*, although essentially more logical, is thus not accepted as a substitute for *‘illah*. To illustrate, the Qur’an grants the traveller during the fasting month a concession not to fast, but to observe it when he is no longer travelling. The *‘illah* of this concession is deemed to be the fact of travelling itself, and not as it were, the hardship that it involves, on the analysis that people tend to vary in their tolerance of hardship. Hence hardship, although the effective cause and *ḥikmah* of the concession, is disqualified and travelling itself is identified as the ‘correct’ *‘illah*. To take a *maqāṣidī* approach to the identification of *‘illah*, it is proposed that the *ḥikmah* should in principle be accepted as a substitute to *‘illah*. The purpose of the concession in question is evidently to prevent hardship, and travelling itself can sometimes become (as in our times of fast and comfortable means of transport) rather a juristic façade and less than satisfactory for it to be a valid *‘illah*.

MAQĀṢID AND SUNNAH

What has been said concerning a *maqāṣidī* approach to qur’anic laws, and more specifically to the identification of *āyāt al-ahkām*, can be extended, *mutatis mutandis*, to their equivalents in the hadith, namely the *ahādīth al-ahkām*. These are also *ahādīth* which lay down practical rulings, commands, and prohibitions that demand performance and constitute the actionable laws (*ahkām ‘amaliyyah*) of the Sunnah. A great deal of the legal hadith support and supplement the legal verses of the Qur’an by way either of elaboration, specification, or qualification of the qur’anic injunctions of concern to human conduct. These may include worship matters (*‘ibādāt*) and civil transactions (*mu‘āmalāt*), but they also introduce, albeit on a

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limited scale, new rulings of the Shariʿah on which the Qurʿan may be silent.¹⁹

Aḥādīth al-aḥkām are larger in number compared to the *āyāt al-aḥkām*. According to an estimate attributed to Abū Ḥāmid al-Ghazāly the legal hadith number at about 1,200 according to the traditional *uṣūl* methodology of selection. Determining the precise number, whether of the rule-based verses or *aḥādīth*, would much depend on the methodology and purpose of the selection.²⁰ Unlike the Qurʿan which does not pose any question over the authenticity of its text, the hadith does, and so does the selection of *aḥādīth al-aḥkām* from the large bulk of hadith: if one proposes a *maqāṣidī* approach to the selection of *aḥādīth al-aḥkām*, one would need to verify the authenticity of the hadith in the first place. Yet the issue over authenticity of the *aḥādīth al-aḥkām* may not be as challenging as that of the bulk of the hadith itself. This is because the *aḥādīth al-aḥkām* are generally verified and adopted into the body of fiqh and the applied laws of the Shariʿah, often endorsed by general consensus and continuous practice.

Since the thematic *tafsīr* (*tafsīr mawḍūʿī*) has already gained general acceptance in the genres of Qurʿan hermeneutics, one may propose the same approach to *āyāt al-aḥkām*: Thematic unity in the larger body of hadith and chapterisation of its existing collections has to some extent been attempted, just as the so-called Sunan category of hadith purports on the whole to compile only the legal hadith. The effort to ascertain thematic unity in hadith is, moreover, likely to strike a note with that of the *āyāt al-aḥkām* – since much of the legal hadith reiterate or supplement the *āyāt al-aḥkām*. Thus it is likely that only a smaller number of hadith, in the *aḥkām* category at least, would be left for an independent attempt at classification on the basis of theme and purpose. If one were to assimilate the general purpose, spirit and rationale of the hadith consistently with the Qurʿan, the criteria of selection of hadith into the *aḥkām* category should roughly be the same as one would propose with regard to the *āyāt al-aḥkām*.

Furthermore, the circumstantial element in hadith is larger compared to the Qurʿan as a great deal of hadith are known to have

addressed particular situations that may or may not amount to laying down a general law or *ḥukm* of the Shariʿah. It is therefore important that in reading the hadith, one is aware of its original occasion and context, and avoid, as Ibn Ashur has warned, the temptation of engaging in literalism. “For holding on to the literalist understanding of *Sunnah* may miss out on implementing the spirit and purpose thereof, and worse still, if one unwittingly moves in the opposite direction, even through apparent adherence to its text.”²¹ Ibn Ashur concurred that a great deal of the *Sunnah* is concerned with particular cases and situations and cannot be readily considered as a basis for universal legislation. This may well entail frequent recourse to qualification (*taqyīd*), generalisation (*taʿmīm*) and particularisation (*takhṣīṣ*) of the rulings of the *Sunnah*. This was partly the reason why the Prophet discouraged his Companions from writing down his hadith.²² It is advisable therefore to read the detailed rulings of hadith in light of the general purposes and objectives of the Shariʿah. The Companions understood the *Sunnah* in this way and the insight they had gained through direct involvement in its teachings – even by allowing themselves the liberality occasionally to move away from the text of a hadith in favour of its purpose. This is illustrated as follows:

- a) The Prophet distributed, in line with a qurʿanic injunction (8:41), the conquered lands of Khaybar among the Muslim soldiers, but later the caliph ʿUmar ibn al-Khaṭṭāb resisted the pressing demands of his fellow Companions when he refused to do the same with the fertile lands of Iraq. ʿUmar ordered instead that the conquered lands should remain with their owners who should pay the *kharāj* tax. This he did on the analysis that if he distributed the fertile land, the Companions would become settled landowners away from Madinah, and may well neglect jihad. Thus he went against the apparent ruling of the *Sunnah* and moved in the opposite direction, knowing that this would be in line with the purpose the Prophet himself would have embraced due to the change of circumstances.²³

- b) The same tendency could be seen in the ruling of hadith on price control (*tasʿīr*). The Prophet himself turned down a request from his Companions for price control at a time of price hikes in the market of Madinah and said that fixing commodity prices may prove unfair to commodity suppliers.²⁴ But the opposite of this was ruled by the Successors (*tābiʿūn*), including the so-called ‘Seven Jurists of Madinah,’ who held that the objective of ensuring fair market prices in their time actually favoured price control of essential foodstuffs. Ibn Taymiyyah (d. 1328), who spoke in support of this latter ruling, commented that the purpose was to ensure fair prices; the original ruling addressed that purpose during the Prophet’s time, but that the same purpose could best be achieved by introduction of carefully measured controls on the price of essentials, due to the change of market conditions.²⁵
- c) According to a renowned hadith, “a Muslim does not inherit from an infidel (*kāfir*), nor an infidel from a Muslim.”²⁶ By general consensus (*ijmaʿ*), it is held that a non-Muslim does not inherit from a Muslim, and the majority have also held that a Muslim does not inherit from a non-Muslim either. However, many prominent figures among the Companions and Successors, including Muʿādh ibn Jabal, Muʿāwiyah ibn Abī Sufyān, Muḥammad ibn al-Ḥanafīyyah and Saʿīd ibn al-Musayyib have held, as Ibn Taymiyyah recounts, that a Muslim may inherit from his non-Muslim relative, as the Prophet himself had allowed this in some cases. To this it is added that *kāfir* in the above hadith refers to *kāfir ḥarbī*, one who is engaged in active hostility with Muslims. It is also established on the authority of leading Companions, ʿAlī ibn Abī Ṭālib and ʿAbd Allāh ibn Masʿūd, that an apostate is inherited from by his Muslim relatives and that their case is not subsumed by the text of the above hadith. It is further added that *kāfir ḥarbī* in this case also precludes protected non-Muslims (i.e. the *dhimmīs*) as well as apostates and hypocrites (*munāfiqūn*).²⁷ Ibn Taymiyyah and his disciple Ibn al-Qayyim understood this hadith in the light of a

maqāsid-based analysis that allowing Muslims to inherit from their non-Muslim relatives would encourage non-Muslims to embrace Islam and would not be deterred by the prospect of their preclusion from the estate of their non-Muslim relatives. When it is known that conversion to Islam does not mean loss of inheritance from one's non-Muslim family, it works as an incentive, which is a suitable ground for specification (*takhṣīṣ*) of the general terms of the above hadith.²⁸

- d) A woman who experiences menstruation during the hajj is allowed to continue, according to the instructions of a hadith, with the rest of the hajj rituals except for circumambulation (*tawāf*) around the Ka'bah.²⁹ Ibn Taymiyyah's analysis of this ruling of hadith led him to the conclusion that if the impediment of menstruation were to disqualify the woman from completing her hajj and required her to return from a long distance the same year or the next, it would mean hardship, which is contrary to the spirit and purpose of the Shari'ah. He added that in the Prophet's lifetime it was not too difficult for the women of Madinah to tolerate the inconvenience, but that with the expansion of the territorial domains of Islam, and issues over the physical safety of women travelling alone, plus the additional expense, it would be in line with the goal and purpose of the Shari'ah for her to complete the hajj and the *tawāf*. Ibn Taymiyyah added on a general note that ritual purity is not a prerequisite of *tawāf*, and also that a Shari'ah obligation may be suspended on grounds of intolerable hardship, which is the issue here. However, if the woman concerned can stay in Makkah until the end of her menstruation without much hardship, she must do that, otherwise she is advised to take a bath and do the *tawāf*.³⁰

These examples serve to show that a specific requirement of the Sunnah is either relaxed or given an alternative interpretation, or even reversed to its opposite, in order to realise a higher purpose and goal of the Shari'ah. One can add to these many more examples

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from the Qur'an and the Sunnah. Ibn Taymiyyah who looked into such issues concluded that the textual commands and prohibitions of the Shari'ah do not overrule their *maṣlaḥah* and *maqāṣid*-based understanding and import. For God the Most High revealed the Qur'an and sent the Messenger in order to realise ease and repel hardship, corruption and prejudice. One should in principle adhere to the clear injunctions of the Shari'ah at all times, and as far as possible, even if one does not perceive the benefit or harm in them. However, in the event where the harm of a command or prohibition overwhelms its benefit, effort must be made to minimise the harm even if a command of a lower order is abandoned or a less harmful prohibition is committed.³¹

MAQĀṢID AND CIVILISATION

The *maqāṣid* contemplate a welfare-oriented vision of Islamic civilisation for the whole of humanity through their obvious prioritisation of human welfare interests as are featured in the list of essential *maqāṣid*, the *ḍaruriyyāt*. Attention is also drawn in the scriptural sources of Islam to greening the earth and development of its resources. This is an integral part of the role of the Ummah and its vicegerency (*istikhlāf*) on the earth. Establishing a just social order, promotion of the human intellect through education and scientific advancement, promotion of a strong family unit, creation of wealth and its legitimate acquisition and transfer are integral to humanity's mission of vicegerency and advancement of a humane civilisation (*ʿumrān*). Wealth must, however, be prudently managed to enable its owners to "spend on others out of that which He (God) has made you trustees of" (57:7), and "give them (the have-nots) their share of the wealth God has bestowed upon you" (24:33). Earning through lawful work is the principal means of acquisition of wealth in the Shari'ah. All able-bodied individuals are thus obligated to earn their living and avoid becoming a burden on others. "So tell them," the Qur'an commands the Prophet, "to go and work, so that God may see the fruits of your labour, as will His Messenger and the believers" (9:105). The earth is made subservient to

mankind's benefit, and mankind is then asked to "go and travel in its tracts and regions, and partake of the sustenance God has provided" (67:15). Honest work done with the intention to fulfil one's responsibility towards one's family and society is equated with an act of worship that earns God's pleasure: "I shall not let go to waste (without due reward) the work of a worker among you, man or woman [...]" (3:109).

On the prudent management of wealth, Muslims are directed to "let not those who are weak of judgment waste away the wealth God has made a means of sustenance for you" (4:5). Cooperation in good works among peoples and nations is a qur'anic purpose, indeed a universal *maqṣid* and responsibility of individuals and communities in Islam (49:13; 5:2). People differ, as the Qur'an affirms, in their natural talents and capabilities, and some are therefore in need of what others may have. Cooperation for reciprocal benefit thus becomes a necessity and a building block of the qur'anic vision of a human civilisation on the earth. That vision also contemplates an appropriate level of distribution of wealth and opportunities among people that derives from beneficial work and cooperation among them. Building the earth through cooperation for people's benefit thus becomes a universal *maqṣid* of Islam, which is premised on the general equality of all of its participants. General equality is the purport of the following hadith: "O People! Your Creator is one and you are all descendants of the same ancestor. There is no superiority of an Arab over a non-Arab nor of a black over the red except on the basis of righteous conduct."³²

CLASSIFICATION OF MAQĀṢID

Maqāṣid have been classified in several ways depending on the viewpoint and purpose of the classification. Classifications are not always without a margin of uncertainty and overlap, yet they are a tool to facilitate better understanding. An overview of the classification of *maqāṣid* into the following five types will help advancing a better understanding of the subject:

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1. From the viewpoint of their relative merit and importance, the *maqāṣid* have been classified into the three categories of essential purposes (*darūriyyāt*), complementary *maqāṣid* (*ḥājjiyyāt*) and desirabilities (*taḥsīniyyāt*). Only the first of these have been specified into the five headings of the protection of life, religion, intellect, family and property. This is a well-known classification which is adequately treated in the existing works that need not be elaborated here. The *uṣūl al-fiqh* texts usually treat the *maṣlaḥah* in fuller detail but pay scant attention to the *maqāṣid*. They also tend to use *maqāṣid* and *maṣāliḥ* interchangeably, which is not altogether devoid of ambiguity and confusion. I shall therefore attempt to identify certain lines of distinction between these two closely associated subjects before I continue with the other classifications of *maqāṣid*.

Briefly, the *maqāṣid* command a degree of objectivity and permanence that may or may not obtain in the *maṣāliḥ*. Sometimes the *maqāṣid* are used as criteria to verify the authenticity and merit of *maṣlaḥah*. This is reflective in fact of the position taken by al-Ghazāly (d. 1111) and Fakhr al-Dīn al-Rāzī (d. 1209) who express reservations over the validity of *maṣlaḥah* as a source of law and judgement but validate it if it secures the *maqāṣid* of Sharīʿah. Some writers have held the view that *maṣlaḥah* is the cause that leads to the *maqāṣid* of the Lawgiver, whereas others have described it as a utilitarian concept that looks mainly toward material benefits and may or may not qualify as the *maqāṣid* of the Lawgiver. For the *maqāṣid* are likely to have a broader outlook that often rises above utilitarian concerns. And then the *maṣāliḥ* also tend to be circumstantial and liable to change according to time and place. Al-Shaṭībī has thus described the *maṣlaḥah* to be relative and circumstantial (*nisbī, idafī*) for the most part. To enact a law may be beneficial at one time and not so at another, and even at one and the same time it may be beneficial under some conditions but not so under different ones.³³ The *maqāṣid* have, on the other hand, a quality of constancy and permanence that may be lacking in *maṣlaḥah*. Hence the *maqāṣid* provide criteria of validity for *maṣlaḥah* and stand a

degree above it. And lastly the *maqāsid* have a stronger textual grounding in the Qur'an and Sunnah. This is not the case with at least one, perhaps the most extensive, variety of *maṣlahah*, namely the unrestricted *maṣlahah* (i.e. *maṣlahah mursalah*), although the accredited *maṣlahah* (*maṣlahah mu^ʿtabarah*) is also textually-founded.³⁴

2. From the viewpoint of their scope, the *maqāsid* have been classified into general purposes (*al-maqāsid al-^ʿāmmah*) and particular goals (*al-maqāsid al-khāṣṣah*), to which we may add a third, namely partial purposes (*al-maqāsid al-juz'iyah*).³⁵

The general purposes are those that extend to the whole of Shari'ah in all its parts and they are on the whole broad and comprehensive. Realisation of benefit (*maṣlahah*), prevention of harm and corruption (*ḍarar, maḥṣadah*), building the earth (*i^ʿmār al-arḍ*), administration of justice, and removal of hardship (*raf^ʿ al-ḥaraj*) are examples of the general purposes of Shari'ah. They differ from particular purposes in that the latter contemplate specific areas and subjects of the Shari'ah, such as commercial transactions (*mu^ʿāmalāt*), crimes and punishments (*ʿuqūbāt*), matrimonial law (*munākahāt*), worship matters (*ʿibādāt*), acts of charity (*tabarru^ʿāt*) and so forth. The two are not totally separate in that the specific *maqāsid* should observe and comply with the broader objectives of Shari'ah and should not go against them.³⁶

Partial purposes (*al-maqāsid al-juz'iyah*) may be defined as that which the Lawgiver has intended through each particular ruling of Shari'ah in any area or topic. This is similar to what is known as the effective cause (*ʿillah*) of a ruling, also referred to as *ḥikmah* (wise purpose), which the jurist needs to identify in the construction, for example, of analogy (*qiyās*).³⁷ One of the reasons why the *uṣūl al-fiqh* jurists have not expatiated on the *maqāsid al-shari'ah* is that in their view *ʿillah* is about the same as the *maqāsid* of a ruling. Yet the present author has elsewhere argued that this could also mean an attempt to subsume the *maqāsid* under the *uṣūl* methodology and thus deny them independent recognition.³⁸ The *ʿillah* of a ruling may or may not be

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the same as its purpose. For one thing, ^ʿ*illah* of a ruling tends to be more grounded in the status quo and existing order of values, whereas its end-goal and purpose may be looking more to the future. Without wishing to engage into details, if one were to apply all the conditions of the ^ʿ*illah* to the *maqṣid*, the whole idea of a *maqṣid* is likely to be subjected to unwarranted restrictions.

3. The *maqāṣid* have also been classified into the purposes of the Lawgiver (*maqāṣid al-shārīʿah*) and human purposes (*maqāṣid al-mukallaf*). To say that human welfare and benefit are God's illustrious purpose behind the laws of Shariʿah, or pursuit of religious knowledge with the intention of seeking closeness to God, illustrates the former, whereas seeking employment or university qualifications may represent the human purpose of seeking knowledge. It is generally recommended that all competent persons should bring, as far as possible, their own purposes into conformity with the *maqāṣid* of the Lawgiver.³⁹
4. It is also useful to know that some of the *maqāṣid* are primary (*al-maqāṣid al-aṣliyyah*) which the Lawgiver, or a human agent, have originally intended, whereas others are subsidiary (*al-maqāṣid al-tabaʿiyyah*) which support and complement the primary *maqāṣid*. Acquisition and transfer of ownership, for instance, represent the primary Shariʿah purposes of a sale contract, whereas wanting to build a house or a garden in a plot of land the buyer has purchased may be said to be a secondary purpose. Similarly the primary Shariʿah purpose of marriage is procreation of the human species, which may or may not materialise in a marriage among elderly persons contracted with the purpose mainly of companionship – which is a secondary purpose.⁴⁰
5. Lastly, the *maqāṣid* may be either definitive (*qaṭʿī*) or speculative (*ẓannī*). The former signify purposes which are based in a clear text of the Qurʿan, hadith, or general consensus (*ijmaʿ*), whereas the latter may be based on a speculative text, rationality and *ijti-*had.⁴¹ The definitive purposes of Shariʿah command higher

authority than speculative purposes; in the event of a conflict between them, the former prevail over the latter.

IDENTIFICATION OF *MAQĀŞID*

This section begins with a brief differentiation of *maqāşid* and *maşāliḥ*, followed by a reference to the underdeveloped state of the *maqāşid*. A more detailed discussion is then attempted to expound the methodology by which the *maqāşid* are ascertained and identified: through the clear text, the human intellect (*‘aql* – also unrestricted reasoning – *istidlāl*), inductive reasoning (*istiqrā’*), and innate human nature (*fiṭrah*).

Maqāşid are often equated with *maşāliḥ* (interests, benefits) and the two are used interchangeably. They do admittedly resemble in many ways but also differ in others. *Maqāşid* are goals that suggest a degree of finality and permanence. Al-Shātibī thus characterised them as “the fundamentals of religion, basic rules of the revealed law, and universals of belief.”⁴² Ibn Ashur similarly described the *maqāşid* as either “certain, or uncertain close to certainty – *qaṭ‘ī aw ḡannī qarīb min al- qaṭ‘ī*.”⁴³ *Maşāliḥ* are, on the other hand, largely circumstantial and liable to change. Hence the *maqāşid* tend to be a rank above the *maşāliḥ* and in many ways constitute criteria of validity for them.⁴⁴ *Maqāşid* and *maşāliḥ* can be coterminous and convergent but they could also relate to one another in their capacities as means and ends: The *maqāşid* signify higher goals and ends whereas *maşāliḥ* could either be the same as *maqāşid* or may serve as means toward attaining them.

As noted earlier, the legal theory of *uşūl al-fiqh* marginalised the *maqāşid*, which is why the methodology for their identification has also remained underdeveloped. The clear text (of Qur’an and Hadith) is the principal carrier of *maqāşid* by general consensus. Even though protection of the mind (*‘aql*) is included in the essential *maqāşid* (*darūriyyāt*), Muslim scholars are not in agreement as to whether *‘aql* can validate a *maqāşid* without the authority of a scriptural proof, or *naql*. Can rationality alone identify and validate a *maqāşid* and purpose of the Shari‘ah, and what are the principal indicators and identifiers of *maqāşid*?

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1. *Clear text*: The strongest evidence that can establish the validity of a *maqṣid* is a definitive text of the Qur’an or Hadith. Failing which, recourse may be had to what al-Shāfi‘ī and al-Juwaynī have termed as sound reasoning (*istidlāl*), which ‘Izz al-Dīn ibn ‘Abd al-Salām has termed variously as reason (*al-‘aql*), experience (*al-tajribah*) and innate perception (*al-fiṭrah*). These are roughly equivalent terms to that of al-Shāṭibī’s inductive reasoning (*al-istiqrā’*).

Each of the foregoing methods can be used as indicators of *maqāṣid*, be it independently from one another or in combination, provided that the following requirements are met:

- (a) In the event where a clear text validates a *maqṣid*, and there is no other text that introduces an element of uncertainty and doubt therein.
- (b) The *maqṣid* in question is clear of conflict with another *maqṣid* of equal standing.
- (c) The *maqṣid* concerned fulfils all four conditions: certainty over its existence (*thubūt*), clarity (*zuhūr* – it can be seen for what it is), constancy (*inḍibāt* – obtains in all situations), and exclusiveness (*iṭṭirād* – precludes confusion with its similitudes). Plurality of methods by which a *maqṣid* is identified and known adds to credibility, while the use, in the meantime, of a single method does not diminish the value of the result arrived at.⁴⁵ In the event of a conflict arising between the evidential bases of two *maqṣids*, recourse may be had to the rules of interpretation pertaining to conflict and preference (*al-ta‘arud wa al-tarjih*).

2. *Inductive reasoning (istiqrā’)*: Al-Shāṭibī proposed *istiqrā’* as a reliable identifier of *maqāṣid* next to the clear text. A *maqṣid* or goal of Sharī‘ah may be identified by a clear text, failing which recourse may be had to a general reading of the text: There may be various textual references to a subject, all of which may be in the nature of allusions rather than decisive declarations. Yet

when read together their collective meaning and weight leaves little doubt as to the purpose on which they concur. A decisive conclusion may, in other words, be drawn from a plurality of speculative expressions. Al-Shāṭibī illustrates this by saying that nowhere in the Qur'an is there a specific declaration to say that the Shari'ah has been enacted for the benefit of mankind. Yet this is a definitive conclusion drawn from a general reading of the Qur'an.⁴⁶

Similarly, the Qur'an has nowhere enumerated the five essential *maqāṣid* in a clear text, but they are so identified by way of induction and general reading thereof. The inductive method also provides insight into the source evidence on *maqāṣid* that can reduce the prospects of error. At times people take strong positions based on weak evidence, such as in the case of child marriage, and guardianship of adult women, claiming them to be Shari'ah requirements, even in the absence of clear evidence. One should in such cases look for evidence in the clear text, failing which one resorts to a general reading of the text and ascertains its purpose. For instance, if human dignity (*karāmah*), equality (*musāwāh*), justice (*ʿadl*), and fair treatment (*iḥsān*) are the overriding objectives of the Shari'ah, then the question arises as to how they are reflected in the contested positions at issue.

The issue here may be over the proper uses of guardianship (*qiwāmah* and *wilāyah*) in contemporary contexts, and evidence shows that abuse of guardianship powers in respect of women of almost all ages has become so extensive as to warrant a fresh enquiry into the sources. In a quest to limit the scope of guardianship only to its valid applications, one may need to attempt a fresh interpretation of the source evidence in the light of the *maqāṣid*. Abuse of guardianship is marked by its manifest neglect of the human dignity of the ward, and denial of justice and fair treatment to them. This *maqāṣid*-based enquiry and *ijtihad* is warranted simply because many of the abusive applications of guardianship violate the higher goals and purposes of the Shari'ah.

3. *Human intellect* (ʿaql): Can we accept human intellect and judgment as validator of *maqāṣid* side-by-side with the text – or even in the absence of any clear text? Different responses have been given by both the earlier and modern jurists. Few would seem to agree that ʿaql alone can validate the *maqāṣid* without any textual evidence. Most have agreed, however, that reason can evaluate human conduct of concern to temporal affairs, but that reason cannot provide a reliable basis of evaluation on devotional matters (ʿibādāt).⁴⁷ The discourse on this point tends to run parallel, for the most part, with the one that has arisen concerning the proof of *maṣlaḥah/maqṣid*. Al-Ghazālī went on record to say “It is by means of ʿaql that people know the benefits of this world.”⁴⁸ Credibility is given, however, al-Ghazālī added, to the intellect of those with sound judgment and knowledge of the custom and culture of society. ʿIzz al-Dīn ʿAbd al-Salām observed that “temporal benefits and harms are mostly known and identified by ʿaql, not only in the Shariʿah of Islam, but in most other legal traditions. A person of sound judgment would know, even before the existence of a revealed text, that realisation of pure benefit or prevention of pure evil is praiseworthy. The learned in most legal traditions, and all the revealed laws, tend to be in agreement on the prohibition of murder, theft, adultery and the like [...]. As for the benefit/harm of concern to the hereafter, these can only be known by means of transmitted proof (*naql*).”⁴⁹ Ibn Taymiyyah’s view on the authority of ʿaql is similar but adds a reference to innate human nature (*al-fiṭrah*)⁵⁰ that also plays a role in the identification of *maqāṣid*, as elaborated below.

Al-Juwaynī discussed the place of sound reasoning (*istidlāl*) in the categories of recognised proofs. The proponents of *istidlāl* were mainly from the Malikī, but also many from the Ḥanafī and Shāfiʿī schools, all of whom accepted *istiṣlāḥ* (consideration of public interest) as a valid basis of law and judgment in the Shariʿah. The Shāfiʿī school holds *istidlāl* to be a valid basis of judgment even if it cannot be traced to a clear text, provided that it operates close to the meaning and spirit of the established ‘roots.’⁵¹ Imām al-Shāfiʿī referred to the precedent of the

Companions saying that leading figures among them exercised flexibility; whenever they could not find a textual ruling on a matter they would resort to sound reasoning – *istidlāl*.⁵² Human intellect (*al-‘aql*) is informed by the senses, but has the capacity to go beyond the data of the senses, although it falls short of the wider reaches of revelation (*al-wahy*). The intellect performs a number of functions. It perceives that which is unseen based on that which is seen, derives universals from concrete particulars, recognises self-evident truth, and associates causes and effects. It is a criterion of responsibility, and the criterion by which God has honoured human beings above the rest of His creation. It is also the only means by which human beings can know the Shari‘ah and the essence of responsibility and *taklīf*. Human reason is therefore a credible basis of judgment in the absence of revelation, provided that the judgment arrived at is in harmony with the general spirit and guidance of the revealed scripture.

There may be subtle differences between *‘aql* and wisdom (*ḥikmah*), yet *‘aql* should aim at inclusivity and merger with *ḥikmah*. This may to some extent be a question of the input *‘aql* can have from culture that can generate wisdom through the light of experience. The lessons drawn from past errors should inform one’s perspective on formal logic, *istidlāl* and syllogism that may or may not be endowed in cultural wisdom and the insight gained from experience.

4. *Human nature (al-fiṭrah)*: A tendency inheres in the human make up to accept good and reject evil. *Fiṭrah* is a qur’anic term denoting a human disposition that inheres in every person and thus universal by the fact of its commonality. The qur’anic assignment of the vicegerency (*istikhlāf* – Qur’an 2:30) of man makes everyone a carrier of a Divine trust and mission to build the earth. *Fiṭrah* thus refers to the innate nature of God’s trusted vicegerents, all of whom partake in a sparkle of the Divine (Qur’an 38:72), and excel in ranks the rest of His creatures (Qur’an 17:70). This is also manifested in Islam’s designation of itself as *dīn al-fiṭrah*, a religion that strikes harmony with enlightened human nature.

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In his *Kitāb al-Najāt*, Ibn Sīnā (d. 1037) tends to equate *fiṭrah* with intellect (*‘aql*) in a passage where he speaks of intuitive intellect (*fiṭrah*) endowed in someone who is brought into this world without prior exposure to society, its realities and customs. Then he perceives and comprehends concrete realities and cases. Something is then presented to him of which he becomes doubtful, if doubt is possible for him; his innate understanding will not affirm it. If on the other hand, doubt is not possible, his innate understanding must of necessity affirm it. Ibn Sīnā admits, however, that not everything affirmed by *fiṭrah* is true; what is true is the capacity of innate human reason to discern values, good and bad, in what is perceived by the senses.⁵³

Ibn Ashur linked the *maqāsid* to *al-fiṭrah*, quoting a qur’anic text, and concluded that both the Shari‘ah and its *maqāsid* bear harmony with *al-fiṭrah*:⁵⁴

And so, set thy face steadfast towards the one true faith, turning away from all that is false, in accordance with the natural disposition (*fiṭrah*) which God has endowed in humankind. Allow no change to alter (or corrupt) what God has endowed. (Qur’an 30:30)

Natural reason is thus an inherent endowment, and Islam bears essential harmony with it. It is evident nevertheless that God has not left human affairs to be judged by reason alone.

For Ibn Ashur, *fiṭrah* also refers to the natural disposition (*khilqah*) and the natural order (*nizām*) that God endowed in every creature. The human *fiṭrah* consists both of inward and outward manifestations. Walking on two feet is just as much an aspect of man’s physical *fiṭrah* as is his intellect and reason. Similarly relating effects to their causes and drawing conclusions from them is an intellectual *fiṭrah*. He argued that the Shari‘ah injunctions aim at harmony with human nature but also seek to liberate and enlighten it against superstition and corrupting influences. For example, survival of the species, cooperation for the common good, protection of life and lineage all correspond to natural human proclivities. Similarly, building the earth and

a virtuous civilisation therein, pursuit of knowledge and intellectual creativity correspond with the human *fiṭrah*.⁵⁵ Islam does not aim to suppress nor eradicate these nor the innate human nature.

Ibn Ashur refers to the laws of Hammurabi, of ancient Egypt, Moses, Zoroaster, as well as ancient India etc., but adds that none had the characteristics of universality that would transcend their geographic and socio-cultural confines in which they appeared. Islam on the other hand emerged in an era and setting that had preserved its simplicity in isolation from major civilisational spheres of the ancient world. Islam emerged in an Arabian setting but never confined its outlook to that context, and as the Qur'an proclaimed, brought a universal message for human guidance. Islam recognised the diversity of peoples and cultures, their laws and languages (Qur'an 5:48; 30:22; 2:136) and encouraged recognition and friendship among them (49:13). The Muslim community is described as the mid-most community (*ummatan wasaṭan*), committed to moderation and justice (2:143). "The essence of all virtues (*fadā'il*) and sound *fiṭrah* lies in moderation in all matters."⁵⁶ Ibn Ashur's commentator, El-Messawi, observed that through Ibn Ashur's understanding of *fiṭrah*, one can see how he conceived the universality of Islam and "the proposition that the *sharī'ah* objectives (*maqāṣid*) are grounded in man's *fiṭrah* [...] [signifying] a cardinal attribute of the *sharī'ah*."⁵⁷

The study of *fiṭrah* should enable one to identify what it is one must protect, how Islam protects it, what happens when one loses it, and how does one restore the natural balance once disturbed. We must examine various standards of "modern progress" that may be out of line with the healthy development of human *fiṭrah*, as I illustrate below.

- (a) Some have urged the use of pre-school facilities for children at an early age of three so as to help them become quickly intelligent. Entering school at age three may be good socialisation, but it is premature, and may even

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deprive children of their childhood. The *fiṭrah* of small children is that they learn by playing, not by studying. Excessive after-school tutoring also tends to rob children of their natural inclinations; they then grow up deprived and emotionally imbalanced.

- (b) The incessant drive for technological progress has taken industrial powers to over-utilisation of natural resources. The urge to gain a technological edge over a rival industry or country often results in disgraceful sacrifice of human lives and values. The arms manufacturers of the world stand out for their total disregard of natural human rights and values. Environmental degradation and the ever-increasing incidents of natural disasters are proof of these excesses and those of the oil-producing countries and companies in their aggressive drive for commercial gain. The natural balance demanded by *fiṭrah* has been disturbed, and in some cases to the point of irreversibility.
- (c) Mainstream media and advertisements have turned women into sex symbols that denigrate their human dignity. One can advertise an elegant car, for instance, for what it is without the addition of a half naked girl to the picture. Yet the imbalances of greed and abusive advertising exceed natural *fiṭrah*, and worse still, puts a car above the price of human dignity.
- (d) Similar tendencies of upsetting the natural balance of values could be seen in the overtures of feminist movements. In their quest for freedom, the children's needs for their mothers' time and attention, and priorities of motherhood are sometimes neglected, and society bears the costs. Children grow up emotionally imbalanced. They play in motorcycle gangs, dancing in nightclubs, taking drugs and so on.

SCOPE OF *MAQĀSID*: *UŞŪL AL-FIQH* AND BEYOND

Our attempt to open the scope and theory of the *maqāsid* suggests the use of *maqāsid* as criteria, in a broad sense, for evaluation of all rulings and decisions of concern to the Shari‘ah – especially those of fatwa and ijtihad in conjunction with new issues. Traditional Islamic scholarship accorded this status to *uşūl al-fiqh* which is used as criteria of the validity for juridical decision-making and research. We now propose to assign this role to the *maqāsid* while in the meantime using the resources of *uşūl al-fiqh* that often endorse and enrich the scope of legal reasoning and ijtihad. The purpose is to strike a balance between the rules of the Shari‘ah and its higher goals and purposes while ensuring in the meantime that our formulas and methods do not engage in burdensome technicalities. Methodological accuracy is undoubtedly important, yet it should not be allowed to distance the researcher from the goals and purposes of the Shari‘ah – something that the *uşūl al-fiqh* methodology has been unable to avoid. Human welfare should remain as the mega-purpose of the Shari‘ah. To quote al-Shāṭibī:

Since it is established that the rules of the *shari‘ah* aim to serve human interest, it follows that human actions should be judged on its basis [...]. When an act is legitimate in both essence and appearance, no difficulty arises. However, if an act is consistent [with the law] in appearance yet contrary to human interest, it is invalid, and anyone who acts contrary to human welfare is engaged in an illegitimate exercise.⁵⁸

Ibn Rushd (d. 1198) did not specifically write on *maqāsid*. However, the conclusion of his important book, *Bidāyat al-mujtahid*, identified achievement of moral and spiritual virtues such as gratitude, purity, justice and generosity as the ultimate objectives of all law. He similarly noted in his *Faṣl al-Maqāl* that the ultimate purpose of the law is simply to advocate the truth and encourage acting upon it. In an interesting essay on Ibn Rushd, al-Raysuni observed that Ibn Rushd called attention through these statements to the cardinal purposes of the Shari‘ah (*al-maqāsid al-‘ulyā li al-shari‘ah*), the moral and spiritual aspects of conduct that are

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emphasised in the Qurʿan and accentuate the merits of faith, purity and wisdom (cf. Qurʿan 62:2).⁵⁹ The key Ḥanbalī scholar, Ibn al-Qayyim al-Jawziyyah, also emphasised the primacy of ethical norms to the whole structure of Islamic values:

The *sharīʿah* is founded in wisdom and realisation of people’s welfare in this life and the next. It is all about justice, mercy, and the common good. Thus any ruling that replaces justice with injustice, mercy with its opposite, common good with mischief, and wisdom with indiscretion does not belong to the *sharīʿah*, even if it is claimed to be so according to some interpretations.⁶⁰

Ibn Ashur identified the greatest purpose (*al-maqṣid al-aʿẓam*) of the Sharīʿah as “achievement of well-being and integrity and prevention of harm and corruption.”⁶¹ He further identified it as the general objective (*al-maqṣid al-ʿām*) of the Sharīʿah to “preserve normal order among the Ummah and perpetuate its well-being and integrity through the well-being and integrity of [...] the whole of the human race.” On the universality of the *maqāṣid*, Ibn Ashur further observed:

The *sharīʿah* aims at preservation of the world order and regulation of the people’s conduct in a way that protects against corruption and collapse. This can only be realised through the promotion of benefit and prevention of harm in all their manifestations.⁶²

Ibn Ashur is clearly not too concerned with the juristic aspects of *maqāṣid*; “he is rather trying to capture its civilisational dimension, cultural and political significance as a foundational framework of his thought.”⁶³ Ibn Ashur’s contemporary, Allal al-Fasi, also identified as a cardinal purpose of the Sharīʿah:

To develop and populate the earth and maintain peace and order among people. The well-being of the planet earth and its usefulness for human habitat can be assured through devotion to right conduct by all those who bear the Divine trust of vicegerency. It is also to ensure that people act justly toward one another and observe the standards of moral integrity;

that they reform all that which need to be reformed, tap the resources of the earth, and plan for the common good of all.⁶⁴

Al-Raysuni concluded that the centrality of human welfare to the *maqāṣid* is a shared position of the majority of jurists across the *madhāhib*, with the exception perhaps of the *Zāhirīs*, who differ with it not in principle, but in the degree to which they use it. The *maqāṣid* are thus identified as criteria of evaluation of legal rulings obtained through *ijtihād* and interpretation. Al-Shāṭibī also emphasised paying attention to the particular side by side with the universal objectives of Islam – and *vice versa*.⁶⁵

This integrated approach to *maqāṣid*-based research and *ijtihād* is further extended to the treatment of means and ends so as to avoid disparity and divergence between them. Questions arose and responses given as to whether the means to a command (*al-amr*), obligation (*wājib*), and prohibition (*ḥarām*) should also be seen as integral to the ends that they serve. In response it is said that the supplementary aspects of commands and prohibitions are indeed integral to their ends and purposes. Thus according to a legal maxim of Shari‘ah “what is indispensable for the accomplishment of a *wājib* becomes a part of that *wājib*, and the means to *ḥarām* also becomes *ḥarām*.”⁶⁶

Another benefit of the wider use of the *maqāṣid* proposed here is to minimise the scope of disagreement in *ijtihād* and the differential conclusions that Muslim schools and scholars have often derived through *ijtihād*, *istidlāl* (open reasoning) and other *uṣūl al-fiqh* doctrines. One could expect wider levels of agreement if the *uṣūl* doctrines are read, not as independent tools and formulas, but in the light of their higher goals and purposes. It is not unusual, for example, to see differences in the application of analogy (*qiyās*) by different jurists who derive differential results that stand in questionable relationship with their original objective and purpose. Had the leading *madhāhib* agreed over the primacy of *maqāṣid* and accorded them due prominence, greater uniformity in their rulings and interpretations could be expected.⁶⁷

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According to a survey report on the Sunnite and Shiite applications of *maqāsid*, it was found that their differences are minimal. Both tend to discuss “the same topics: *ijtihād*, *qiyās*, *ḥuqūq*, *qiyām*, *akhlāq* and so on, refer to the same jurists and books: al-Juwaynī’s *Burhān*, Ibn Bābawayh’s *‘Ilal al-Sharā’i’*, al-Ghazālī’s *Mustasfā*, al-Shāṭibī’s *Muwāfaqāt*, and Ibn Ashur’s *Maqāsid* – and use the same theoretical classifications – *maṣāliḥ*, *ḍarūrāt*, *ḥājjiyāt*, *taḥsīniyyāt*, *maqāsid ‘āmmah*, *maqāsid khāṣṣah* and so on.”⁶⁸ It is then added that most of the juridical differences between the Sunnite and Shiite schools are due to their differences over the *āḥād* (solitary) hadith and the different conclusions drawn from them.

“A *maqāsidī* approach to jurisprudence,” as Jasser Auda commented, “is a holistic approach that does not restrict itself to [any] one narration or partial ruling, but rather refers to general principle and common ground. Implementing the higher purposes of unity and reconciliation of Muslims has a higher priority over implementing *fiqhī* details.”⁶⁹ The leading Lebanese Ayatollah, the late Muhammad Mahdi Shams al-Din proscribed hostile disagreement and aggression along the Shiite-Sunnite lines of division, “based on the higher and fundamental purposes of reconciliation, unity and justice.”⁷⁰ Without exaggeration, unity among the Ummah is one of the cardinal goals of Islam – even if the *maqāsid* discourse of earlier times has not articulated it as such, it must be clearly identified now. Islam speaks of *tawḥīd*, the Oneness of the Creator, and by implication also of the oneness of humanity.

Islam provides numerous theological and juridical grounds for the unity of the Ummah. Yet much of the *uṣūl al-fiqh* literature was written during the height of Abbasid power when the Caliphate of Baghdad ruled over the Muslims under one leadership, hence the relative absence of a focus on Muslim unity at that time. The emphasis then was on the opposite of unity. In the era of *ijtihād* (first four centuries of Islam), Muslim scholars encouraged diversity in their attempt to propose many a new *madhhab*, doctrine and movement to enrich the scope of interpretation and *ijtihād*. Yet unwittingly perhaps, *ijtihād* was used as an instrument of disagreement (*ikhtilāf*) more than that of consensus (*ijma‘*). What seemed

desirable to our thought leaders of the past has become rather a difficult challenge for the Muslim Ummah of today. Colonialism and its aftermath undoubtedly left a legacy of divisiveness and seeds of many problems for the renewed unity of the Ummah. There is a greater need now for consensus than *ikhtilāf*; our *‘ulamā’* and leaders are therefore advised to nurture consensus and unity in their deliberations. This can be achieved even better by taking a purposive or *maqāsidī* approach to legal enquiry and research.

THE SCOPE OF *MAQĀSID* REVISITED

A valid concern exists as to where one draws the line in one’s attempt at expanding the scope of the *maqāsid*, and how does one distinguish the valid from spurious additions. One observer noted that research in *maqāsid* has advanced at a rapid pace giving rise to a methodological problem as to the viability of many of its findings. That the new additions made to the initial list of five essential *maqāsid* by scholars like Ibn Ashur, Muhammad al-Ghazali, Gemal Atiyya, Abd al-Majid al-Najjar and many others “opened the door very wide to include other [new] *maqāsid* that seem to increase unreservedly. The question is whether all these are genuine *maqāsid*.”⁷¹ It is then stated that al-Shāṭibī’s identification of the leading five *maqāsid*, as well as his classification of *maqāsid/maṣāliḥ* into the three classes of essential, complementary and desirable (*darūrī, ḥājī, taḥsīnī*) was done through induction as there is no text either in the Qur’an or hadith to enumerate or classify them as such. Al-Shāṭibī’s conclusions were based on conceptual induction of the common meaning (*istiqrā’ ma‘nawī*) of the numerous references to these (five *maqāsid*) in the Qur’an and hadith.⁷² It is then recommended that *maqāsid* should be identified by the same methodology that the *‘ulamā’* of *uṣūl* have used for the identification of *‘illah* – thus mentioning *ṣabr* and *taqṣīm* (isolation and assignment), and also *takhrīj al-manāṭ* (extraction of *‘illah*). To put it simply, *maqāsid* are to be identified in accordance with the *uṣūl* methodology for identification of *‘illah*, which would effectively place the *maqāsid* back under the umbrella of the conventional *uṣūl al-fiqh*. The advice of

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caution so given is valid. But recourse to the *uṣūl* methodology would be tantamount to inviting the problematics of those hallowed methodologies, which actually impeded rather than encouraged originality and *ijtihād*.⁷³ Besides, the *maqṣid* is not the same as *ʿillah*: whereas *ʿillah* looks basically to the existing status quo, a *maqṣid* goes beyond that, and one would not want to burden the *maqāṣid* with the same technicalities as the *uṣūl al-fiqh* applied to identification of *ʿillah*.

It is well to remember that al-Shāṭibī himself tried to avoid the *uṣūl* methodology of *ʿillah* as he viewed the *maqāṣid* differently to *ʿillah*: his inductive reasoning involved a quest for broader meanings and common conceptual denominators. The scholar-*mujtahid* thus draws a general principle from his observation of a number of smaller incidents. Moreover, when someone of the standing of Ibn Ashur adds *fiṭrah*, or when al-Qaradawi adds justice and freedom, and al-Najjar protection of the environment to the range of *maqāṣid* – they have presumably done so in light of their general knowledge and insight into the sources of Islam. They have not subsumed the *maqāṣid* under the *uṣūl* methodologies of *ʿillah*. The present writer is not advising that either. What is suggested here is to observe the textual guidelines of Islam but also to use induction (*istiqrāʾ*), unrestricted reasoning (*istidlāl*), human intellect (*ʿaql*), and innate human nature (*fiṭrah*) as indicators and identifiers of *maqāṣid*. It is advisable also to preserve the inherent versatility and dynamism of *maqāṣid* in tandem with our quest for improvement, civilisational renewal and reform.

I now propose to review the scope of *maqāṣid* from its designated list of five towards an open-ended scale of values. This is because *maqāṣid* in the sense of goals and purposes of the Shariʿah can logically not be limited to a particular number, simply because the Shariʿah itself is not limited in that order. Our understanding of the Shariʿah is one of its continuing relevance, development and growth through independent reasoning (*ijtihād*), renewal and reform (*tajdīd, iṣlāḥ*). Hence, the goals and purposes of the Shariʿah must also remain an evolving chapter of the juristic and civilisational edifice of Islam.

Ibn Taymiyyah (d. 1328), who attempted to widen the scope of the *maqāṣid* so long ago, observed that anyone who reads the Qur'an will find a variety of other values that also merit consideration well beyond the scope of the five essentials. Thus he added such other themes as fulfilment of contracts, trustworthiness (*amānah*), honouring one's neighbours, sincerity, and moral rectitude, and maintained that *maqāṣid* are open-ended and evolving.⁷⁴ Ibn Taymiyyah's approach has been supported by leading twentieth-century jurists, including Ibn Ashur, Muhammad al-Ghazali, al-Qaradawi, al-Raysuni, Attia, Muhammad Siraj, Khamlishi and many others.⁷⁵

Al-Qaradawi added to the five leading *maqāṣid* such other values as justice, human dignity and human rights, especially the rights of the oppressed, freedom, and social welfare assistance, all of which find support in the Qur'an.⁷⁶ Ghazali, Khamlishi, Attia and Siraj also made a strong case for the inclusion of equality and justice among the higher *maqāṣid*. Siraj ranked equality only slightly below freedom and justice. The starting point is justice, which is however not possible without equality.⁷⁷ I also propose world peace, economic development, science research, and fundamental constitutional rights to be added to the leading *maqāṣid*.⁷⁸

Ibn Ashur further observed that the conventional *maqāṣid* are on the whole premised on the well-being of individuals, thus leaving out well-being of the Muslim community as a *maqāṣid*. Since the Ummah's well-being and international standing depend on its economic and scientific success, these should also be included in the *maqāṣid*. And then again, if the well-being of the Ummah necessitates its unity, this too should be included.⁷⁹ Al-Qaradawi also wrote:

I believe there is a category of *maqāṣid* which has not been duly recognised, namely those that concern the society at large. For if most of the *maqāṣid* are related to the individual, such as preservation of the individual's religion, life, faculty of reason, material wealth etc., then where do we stand with regard to such other goals as freedom, equality and justice, and how are they to be evaluated?⁸⁰

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Muhammad al-Ghazali posed the question: Are we not entitled to benefit from the 14 centuries of Islamic history? Corrupt rule over the centuries led to baneful outcomes. Hence we could add freedom and justice to the five essentials. Justice is a cardinal objective of Islam based on the unequivocal authority of the Qur’an and Sunnah. Similarly, the affairs of community and state can hardly be regulated without the guarantee of freedom. Since the Qur’an advocates freedom, it too should be recognised as a goal and *maqāṣid* of the Shari‘ah.⁸¹

Al-Raysuni observed that the existing list of essentials is based on *ijtihad* and so is the idea of raising their number beyond the initial five. There are other vital interests whose importance the religion has unequivocally affirmed, there remaining no reason why they too should not be added to the five recognised *maqāṣid*.⁸²

MEANS AND ACCOMPLISHERS
(*WASĀ’IL WA MUKAMMILĀT*) OF *MAQĀṢID*

This aspect of the *maqāṣid* methodology is not well-known, yet it is clearly important for a holistic understanding of *maqāṣid*. *Maqāṣid* and the means that secure them are inter-related so much so that the knowledge of the one without the other would leave open the possibility of errors in the understanding of Shari‘ah. This complementarity of means and purposes is underscored in Bin Bayyah’s broad observation that the Shari‘ah in its entirety consists of *maqāṣid* and *wasā’il*. Whereas the latter are liable to change in tandem with various factors, the former tend to be more stable and less liable to oscillation.⁸³ The *maqāṣid* are, moreover, desired in themselves, whereas the *wasā’il* are means that beget the *maqāṣid* and may not as such be desired in themselves. Yet the means are often subsumed under their purposes, depending on the strength or weakness of their linkage: If the means in question be indispensable to securing their relevant *maqāṣid*, then according to the renowned legal maxim: “that without which a *wājib* (obligation command) cannot be accomplished also become a part of that *wājib*”⁸⁴ and both would

be covered by the same rules. This maxim refers, however, to means that is instrumental and direct to a *maqṣid* but not to ones that may only be attached to a subsidiary or incidental aspect thereof.⁸⁵ A possible misunderstanding can arise from confusing the means with the purpose, which can result either in the neglect of the *maqṣid*, or exaggeration in the importance of it means. Hence a correct placement of the one in relationship with the other calls for a degree of jurisprudential insight.⁸⁶

The accomplishes are, broadly speaking, an addition to the *maqāṣid* and not a separate category thereof as they permeate the entire range of *maqāṣid*, be it essential (*ḍarūrī*), complimentary (*ḥājī*), or desirable (*taḥsīnī*) and so forth.

The means and accomplishes to a *maqṣid* may have been identified in the Qur'an or hadith, failing which they may be identified by recourse to rationality and ijtihad. To illustrate the accomplisher of the essential, or *ḍarūrī*, we note that the Qur'an enjoins that a future obligation (*dayn*), or a mortgage (*al-rahn*) should be documented and reduced into writing (2:283). This is to ensure preservation of property (*ḥifẓ al-māl*), which is one of the essential goals. Documentation in this case is not a goal in itself, but a means toward the protection of an essential *maqṣid*. Then by way of analogy the same requirement is extended to all contracts and transactions, which should also be documented so as to protect them against possible disputation. Similarly, the text stipulates marriage as a means of realising the *maqṣid* of reproduction (*al-nasl, al-nasab*) but then the details that are attached to marriage, such as a valid contract, dower, maintenance, guardianship and the like are the accomplishes of marriage, some of which have also been specified by the text of the Qur'an and hadith.

To illustrate the accomplisher of a complementary goal (*mukammil al-ḥājī*), we may refer to contractual options (*al-khayārāt*, sing. *khayār*) that can be inserted, on the authority of hadith, in a contract of sale. Upon concluding a sale, for instance, the purchaser may stipulate an option that he will ratify the deal in two or three days. The permissibility of sale is a complementary (*ḥājī*) interest or means in relationship to the protection of property (*ḥifẓ al-māl*) and

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inserting an option into a sale contract ensures that it is validly concluded and free of fraud, misrepresentation and *gharar*. To illustrate the accomplisher of a *taḥsīnī*, or a desirable goal, we may refer to all legitimate means that keep the market place clear of transactions over unclean, poisonous and harmful substances, or which ensure that the passage-ways in the market place are not overcrowded.⁸⁷

It is a condition of the accomplisher, or *mukammil*, however, that it does not exceed nor overrule the initial goal and purpose which it seeks to accomplish. Food, for example, is a means for preservation of life; however, it is not acceptable for it to be transformed into a *maqsid* such that one lives to eat rather than eating to live. This example can be extended to making money, obtaining a house and means of transport etc., all of which are accomplishers and means. If people fail to associate them properly with their purposes, the danger would arise of them becoming end-goals in themselves.⁸⁸

To take our previous example of sale and option again, the purpose of the option as a *mukammil* is to prevent uncertainty and ignorance (i.e., *gharar*) in the sale at issue, but if one were to exaggerate the *mukammil* and demand total exclusion of all ignorance and *gharar*, it would be difficult to achieve the purpose, and may even obstruct the sale altogether. For a slight amount of *gharar* is unavoidable and usually tolerated in many transactions, including sale.⁸⁹

In the event there be numerous means for the realisation of a single purpose, the one that is most likely to secure the purpose in a complete, prompt and direct manner shall be selected. Should there be a situation, however, where several available means are equally good in order to realise the *maqsid* in question, then any one or more may be selected for the purpose. The Shari'ah thus provides certain guidelines with regard to the selection of means, this being an area, however, where greater flexibility and choice is granted over the selection of means. Hence the scholar/judge may make appropriate decisions over them in the light of surrounding circumstances.⁹⁰

MAQĀṢID AND IJTIHAD

Muhammad al-Tahir ibn Ashur, the twentieth century author of the landmark work bearing the title, *Maqāṣid al-Shari‘ah al-Islāmiyyah*, has observed that knowledge of the *maqāṣid* is indispensable to *ijtihād* in all of its manifestations.⁹¹ Some ‘*ulamā’* who confined the scope of their *ijtihād* only to literal interpretations have found it possible, Ibn Ashur added, to project a personal opinion into the words of the text and fell into error as they were out of line with the general spirit and purpose of the surrounding evidence.⁹² This may be illustrated by reference to shortcomings that are detected in some rulings of the *Zāhirī* school and those of the *hadith* scholars. One of the reasons for such errors is that reported speech reduced into writing often loses contextual connotations and features of both the speaker and the conveyor. Notwithstanding the greater accuracy of the written record, the speaker’s direct speech to his listeners is expressive of his intention more clearly than his reported speech by others. This would explain why some scholars fall into errors when they focus all their attention on text, and confine the process of deriving the rules (*ahkām*) of *Shari‘ah* from their source evidence to the minutia of textual analysis. Speakers and reporters admittedly vary on the score of accuracy, and certain types of speech are more open to interpretation than others, yet no text has, in any human language, been sufficient by itself to indicate the purpose of the speaker in such a way as to preclude all doubt.⁹³

Many writers have, for instance, reported Imam al-Shafi‘ī to have said: “Whenever the authenticity of a *hadith* from the Messenger of God is verified, that is my *madhhab*.” This has prompted Ibn Ashur to comment that “a learned *mujtahid* is unlikely to make this kind of statement.” Available evidence from al-Shafi‘ī and the Shafi‘ī School leaves little doubt that it is distorted. For such an attribution to al-Shafi‘ī can be taken to mean also that “when you see a ruling of my *madhhab* then know that it is tantamount to an authentic *hadith*.”⁹⁴ Abd Allah bin Bayyah has similarly noted weaknesses in al-Shafi‘ī textualist orientations. This is illustrated by a reference to al-Shafi‘ī’s views concerning financial transactions during the

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Prophet's time, which were based on gold, silver and wheat as units of value. Al-Shafi'ī has, in turn, considered this to be textually-ordained regardless of customary and circumstantial changes: What was the law then to al-Shafi'ī must be the law today! Yet al-Shafi'ī's disciples have adjusted that position, Bin Bayyah adds, when they spoke of the reality of prevailing custom. The Shafi'ī school has in reality undergone major changes in subsequent centuries, especially between the fourth to sixth centuries AH/tenth to twelfth CE partly due to the more rationalist influences of Imam al-Ḥaramayn al-Juwaynī and his disciple Abū Ḥāmid al-Ghazālī (d. 1111). This only shows, Bin Bayyah concludes, the corrective influence of the *maqāṣid* on ijtihād, which can hardly be overestimated, and that the position is hardly any different in our time.⁹⁵

Ibn Ashur has also referred to what is attributed to Imam Aḥmad Ibn Ḥanbal that “a weak hadith is better than a ruling of analogy (*qiyās*).”⁹⁶ This too is unsound as a weak hadith carries the possibility of a lie and the harm of reliance on it is greater than what can arise from an analogy. We are therefore certain, Ibn Ashur stated, that the said statement is a distortion of what Aḥmad ibn Ḥanbal has really said. This is enough to show how the true purpose of a reported statement, or a hadith, can be distorted if reliance is only made on written words in disconnect with what the speaker had originally intended.⁹⁷

Another commentator essentially elaborates the same point to say that knowledge of *maqāṣid al-sharīʿah* is instrumental for a *mujtahid* in at least two situations: Firstly, when he undertakes ijtihād concerning interpretation of a speculative text (*naṣṣ ḥamīd al-dalālah*) which is not self-contained as to its precise meaning. The text may be speculative with regard either to its meaning, or its authenticity, or both. Secondly, when the scholar conducts ijtihād over an issue on which no textual ruling exists in the first place. In both situations, the *mujtahid* needs to ascertain the *maqāṣid* of Shari'ah as an aid to textual interpretation and ijtihād. The wording of a text may, moreover, convey a variety of meanings, and it is possible that one or more of these are in conflict with another text. To be able to ascertain the preferable meaning, the *mujtahid* would

certainly need to be knowledgeable of the higher purposes of Shari'ah.⁹⁸

With reference to *zakah* (poor due), Ibn Qayyim al-Jawziyyah has discussed the different views of the *ulamā* on whether the *zakah* on commodities such as wheat and dates must be given in kind or could it also be given in their monetary equivalents. The Ḥanafis have validated giving of *zakah* in monetary equivalents but al-Shafi'ī has held otherwise. The Ḥanafī view is founded on the analysis that the purpose of *zakah* is to satisfy the need of the poor and this can also be achieved by paying the monetary equivalent of a commodity. Ibn Qayyim has likewise observed regarding the *ṣadaqat al-fiṭr* (charity given at the end of the fasting month of Ramadan) that there are hadiths on the subject which refer sometimes to dates and other times to raisins or food-grains as these were the staple food of Madinah and its environs at the time. The common purpose in all of these was to satisfy the need of the poor rather than to confine its payment in a particular commodity for all times.⁹⁹

To give another example, Imām Mālik (d. 795) was asked about a person who paid his *zakah* ahead of time, that is, prior to the expiry of one year, whether he was liable to pay it again at the end of the year. Mālik replied that he was and he drew an analogy with the ritual prayer (*salah*). If someone performs his prayer before its due time, he must perform it again in its proper time. Subsequent Mālikī jurists, including Ibn al-ʿArabī (d. 1148) and Ibn Rushd (d. 1126), have reversed this position and stated that early payment of *zakah* was permissible. There was, they added, a difference between *salah* and *zakah* in that the former was bound to specific times, but no such time had been stipulated for the payment of *zakah*. Hence *zakah* may be paid earlier, especially if it is prepaid by only a few weeks or even longer.¹⁰⁰

Mujtahids and judges have occasionally issued decisions in disputed matters, which were found, upon further scrutiny, to be discordant with the goals and objectives of Shari'ah. Instances of this are encountered with reference to contracts. A contract may have been duly signed and made binding on the parties but later it proves to be unfair to one of the parties due to unexpected change

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of circumstances. In that eventuality the judge and *mujtahid* can hardly ignore the changes and insist merely on the obligatoriness of contract on purely formal grounds. For a contract is no longer the governing law of contracting parties if it proves to be unjust. Such a contract must be set aside, and justice, which is the goal and *maqṣid* of the Lawgiver, must be given priority over an untenable contract.¹⁰¹ Instances of conflict between the overriding objectives of Shariʿah and a particular ruling thereof can also arise with reference to the rulings of analogy (*qiyās*). A rigid adherence to *qiyās* in certain cases may lead to unsatisfactory results, hence recourse may be had to considerations of equity (*istiḥsān*) in order to obtain an alternative ruling that is in harmony with objectives of Shariʿah.¹⁰²

With reference to statutory law, Salim al-Awa has drawn attention to the strictures that emanate from the ever so prevailing “enslavement to the text (*al-ʿubūdiyyah li'l-nuṣūṣ*)” that can be far removed from the true intent of the legislator. This manner of abiding by the text is all the more of a requirement when the legal text is explicit and conveys clear meaning. The Cassation Court of Egypt has thus held that reference to the purposes (*maqāṣid*) of the law is made only when there is ambiguity in the text but not when the text is clear and unambiguous. Yet the same court has frequently emphasised the need to ascertain the intent and purpose of the legislator above and beyond the wordings of text.¹⁰³

The High Constitutional Court of Egypt has more emphatically upheld the importance for the judge and jurist of discovering the purposes of the legislature in the interpretation of a constitutional text. Yet it has also stressed that constitutional text should be read in light of socio-economic conditions that prevailed at the time of its enactment and not the ones that emerged long after that.¹⁰⁴ On a comparative note, al-Awa also observed that the fiqh discourse on *maqāṣid* is wider and pays attention to a structure of ideas, values and approaches that are often lacking in their parallel expositions of the era of binding statutory laws.¹⁰⁵

The late Lebanese scholar, Sheikh Muhammad Mahdi Shams al-Din, drew attention to the finite nature of the text of the Qurʿan

and the Sunnah and the infinitude of actual real life issues experienced by individuals and societies at all times. The *maqāṣid* evidently play a role in moderating the rigidities of a binding legal text. The limitations of a binding text can be meaningfully addressed, Sham al-Din recommends, through granting a more prominent role to *maqāṣid*-oriented *ijtihād*.¹⁰⁶

Another feature of the *maqāṣid* which is important for *ijtihād* is the attention a *mujtahid* must pay to the end result and consequence of his ruling. For a fatwa or *ijtihād* would be deficient if it fails to contemplate its own consequences (*ma'ālāt*). We note in the Sunnah of the Prophet instances where the Prophet paid attention to the consequence of his ruling often in preference to other considerations. For example, the Prophet avoided changing the location of the Ka'bah to its original foundations which the patriarch Prophet Abraham had laid. The pre-Islamic Arabs of Makkah had evidently changed that location. When 'Ā'ishah suggested to the Prophet that he could perhaps restore the Ka'bah to its original position, he responded: 'I would have done so if I didn't fear that this may induce our people into disbelief.'¹⁰⁷ In this case, the Prophet evidently did not take what would be thought to be the normal course, that is, to restore the Ka'bah to its original foundations, because of the adverse consequences that were feared as a result of so doing.

The normal course in the context of crimes and penalties is to apply a punishment whenever the cause and occasion for it is present. There may be cases, however, where pardoning the offender appears a preferable course to take, and it is for the judge to pay attention to them and reflect them in his judgement. Al-Shāṭibī has in this connection drawn a subtle distinction between the normal *'illah* (effective cause) that invokes a particular ruling in a given case, and what he terms as verification of the particular *'illah* (*taḥqīq al-manāt al-khāṣ*) in the issuance of judgement and *ijtihād*. The scholar and *mujtahid* may be investigating the normal *'illah* and identify it based on the testimony, for example, of an upright witness, but such an enquiry may take a different course when he notes that the witness in question comes from a certain group, family or profession

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that may render his testimony questionable. The judge needs, therefore, to be learned not only in the law and specific evidence, but also to have acumen and insight to render judgement that is enlightened by both the overall and special circumstances of each case.¹⁰⁸

CONCLUSION AND RECOMMENDATIONS

This essay has engaged in the methodology of *maqāṣid* and the search for additional indicators for their identification as well as widening their scope and application to the broader civilisational objectives of Islam. The evidence I have presented and reviewed sustains the following policy recommendations:

- The Shariʿah plays an instrumental role in negotiating the currents of reformist thought and perimeters of their acceptability in the Muslim world. Civilisational renewal can become a more engaging prospect if it is anchored in a suitable Shariʿah jurisprudential framework, and the *maqāṣid* serve to provide that.
- Civilisational renewal is broad and far-reaching, which may give rise to detailed issues that demand credible answers. The *uṣūl* methodology has historically provided the criteria of credibility, yet it bears the vestiges of a different era and falls short of accommodating the demands of contemporary challenges facing the Ummah. Compared to the *uṣūlī* doctrines, the *maqāṣid* provide a more promising prospect and methodology to find valid Shariʿah-based responses to such issues.
- Critics have often questioned the methodological accuracy and scope of *maqāṣid*. This essay has discussed some of the weaknesses of the *maqāṣid* methodology in an attempt to make it more engaging and self-contained. It does not, however, pretend to offer a comprehensive coverage of all issues. Some relevant issues have been addressed elsewhere in my previous works. Here I refer to three of my other publications: “Goals and Purposes (*Maqāṣid*) of Shariʿah: History and Methodology” (2008); “*Maqāṣid al-Sharīʿah* Made Simple” (2008); and “Law and Ethics in Islam: the Role of the *Maqāṣid*” (2009).¹⁰⁹

- We do not propose to sever the links between the *maqāṣid* and the *uṣūl al-fiqh*, but maintain that the one can benefit and enrich the other. Yet we also do not propose to subsume *maqāṣid* under the *uṣūl* methodology, which tends to be burdened with technicality. The *maqāṣid* provides an open and evolving chapter of the Shari‘ah that can grow in tandem with the needs and aspirations of today’s Muslims. Yet the *maqāṣid* can, in many ways, be enhanced and supplemented the rich methodology and resources of *uṣūl al-fiqh*.
- The desire to rejuvenate the dynamism of Islamic thought can be better served through *maqāṣid*-oriented ijtiḥad. Equipped with a credible methodology to ensure the proximity and nexus of *maqāṣid* with the scriptural guidelines of Islam, the *maqāṣid*-oriented ijtiḥad can provide a promising prospect for the advancement of a fresh genre of Islamic legal thought in conjunction with new and unprecedented developments. The *maqāṣid*-oriented ijtiḥad (*al-ijtiḥad al-maqāṣidī*) may thus be seen as a bridge between the *uṣūl al-fiqh* and *maqāṣid*. It is suggested, therefore, that writers on the *maqāṣid* also take *maqāṣid* together with ijtiḥad as a framework for their scholarly deliberations and enhance our understanding of *al-ijtiḥad al-maqāṣidī*.
- *Maqāṣid* should be given adequate coverage in the university teaching programmes of Islamic jurisprudence. This is beginning to be the case generally, yet greater attention to *maqāṣid* that would reflect the current state of scholarship on the subject is still wanting.
- Muslim leaders, parliamentarians and judges may be advised to take the *maqāṣid* as a basis of justification for legislative and judicial reforms that can enhance the substance of fruitful civilisational engagement and dialogue. This would make a meaningful contribution toward turning the tide of hostile overtures of the so-called ‘clash of civilisations’ towards peaceful coexistence and engagement, a prospect one hopes to be grounded in commitment to shared values.
- Since the essential *maqāṣid* are all concerned with basic human welfare targets and speak of the protection of humanitarian

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values, they have the potential to unite people across the religious and ethnic divides. This would, in turn, be meaningful to our quest to strengthen and enhance the substance of pluralism and human rights in the multi-ethnic and multi-religious environment of Malaysia and many other parts of the Muslim world.



NOTES

- 1 Cf., Zaharuddin Abdul Rahman, *Maqāṣid al-Sharī'ah fī Ahkām al-Buyū'* (Kuala Lumpur: International Islamic University Malaysia (IIUM) Press, 2009), 16–17.
- 2 Sayf al-Dīn al-Āmidī, *al-Ihkām fī Uṣūl al-Ahkām*, ed. Abd al-Razzaq Affi, 4 vols (Beirut: al-Maktab al-Islāmī, 1982, 2nd ed.), 3:180.
- 3 Mustafā Ahmad al-Zarqa, *al-Madkhal al-Fiqhī al-Āmm* (Damascus: Dār al-Qalam, 1998), 1:392. Without engaging in technicalities, the *uṣūl* scholars define *illah* as an attribute of the *ḥukm* which is constant and evident (*ẓāhir*) and bears a proper (*munāsib*) relationship to the ruling of the text.
- 4 See for details Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge: Islamic Texts Society, 2003), 274f.
- 5 Cf. Mohammad Hashim Kamali, *Shari'ah Law: An Introduction* (Oxford: Oneworld Publications, 2008), ch. on *maqāṣid*, 123–41.
- 6 Ahmad al-Raysuni, *Naẓariyyat al-Maqāṣid 'Ind al-Imām al-Shātibī*, Engl. tr. as *Imam al-Shatibi's Theory of the Higher Objectives and Intents of Islamic Law* by Nancy Roberts (Herndon VA: International Institute of Islamic Thought, 2006), 17.
- 7 Muhammad al-Tahir Ibn Ashur, *Maqāṣid al-Sharī'ah al-Islāmiyyah*, ed. Muhammad al-Tahir al-Messawi (Amman: al-Baṣā'ir li al-Intāj al-Īlmī, 1998), 171. This book was first published in 1946, whereas Allal al-Fasi's book (see note below) was published in 1963.
- 8 Allal al-Fasi, *Maqāṣid al-Sharī'at al-Islāmiyyah wa Makārimuhā* (Casablanca: Maktabat al-Waḥdah al-Ārabiyyah, n.d.), 3.
- 9 Cf., Abd al-Rahman Ibrahim Zayd al-Kilani, *Qawā'id al-Maqāṣid 'Ind al-Imām al-Shātibī* (Damascus: Dār al-Fikr, 2000), 128.
- 10 Yusuf al-Qaradawi, *Fiqh al-Zakāt* (Beirut: Mu'assasat al-Risālah, 2000), 1:31.

- 11 Muhammad al-Zuhayli, *Maqāṣid al-Sharī'ah: Asās li-Huqūq al-Insān*, Kitāb al-Ummah Series No. 87 (Doha: Ministry of *Awqāf* and Islamic Affairs of Qatar, 2003), 70.
- 12 Al-Raysuni, *Nazariyyat*, 19. For a more detailed discussion of Raysuni's definition and its critique see Mohammad Hashim Kamali, "Law and Ethics in Islam: The Role of the Maqāṣid," in Kari Vogt, Lena Larson, and Christian Moe (eds), *New Directions in Islamic Thought: Exploring Reform and Muslim Tradition* (London: I.B. Tauris, 2009), 23–47.
- 13 Muḥammad ibn Ismā'īl al-Bukhārī, *Ṣaḥīḥ al-Bukhārī* (Beirut: Dār al-Ma'rifah, 1961), hadith no. 3,344; *Ṣaḥīḥ Muslim*, ed. Muhammad Fuad Abd al-Baqi (Beirut: Dār Iḥyā' al-Turāth, 1980), hadith no. 1,064.
- 14 al-Fasi, *Maqāṣid*, 88.
- 15 Cf., Hasan al-Turabi, *al-Tafsīr al-Tawḥīdī*, 20, as quoted in Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London and Washington: International Institute of Islamic Thought, 2008), 232.
- 16 Historical accounts and stories of bygone nations and prophets occupy almost eight of the 30 parts of the Qur'an and they are replete with moral guidance, sincerity in belief, leadership qualities, educational themes and insights into the consequences of how people conducted themselves. To marginalise these would seem to be tantamount to marginalising the moral substance of Qur'anic teachings. See for a discussion, Ridwan Jamal al-Atrash, "Al-Maqāṣid al-Aṣliyyah fī al-Qur'ān al-Karīm 'ind al-Imām Ibn 'Āshūr," in *Maqasid al-Shari'ah and its Realization in Contemporary Societies* [proceedings of the 'International Conference on Islamic Jurisprudence and the Challenges of the 21st Century,' International Islamic University Malaysia, IIUM, Kuala Lumpur, 8–10 August 2006] (Kuala Lumpur: IIUM, 2006), 2:540–541.
- 17 The *uṣūl* methods for identification of effective causes include *takhrīj al-manāṭ* (extraction of the effective cause), *tanqīḥ* (isolation of) *al-manāṭ*, and *tahqīq* (ascertaining of) *al-manāṭ*, as well as a number of other methods that tend to run into technicalities. See for details, Kamali, *Principles* (chapter on *qiyās*).
- 18 See for details on *tā'līl*, Kamali, *Principles*, 46f. and on the *uṣūlī* treatment of *maqāṣid*, Kamali, *Shari'ah Law*, 124f.
- 19 For example, the right of preemption (*ḥaqq al-shu'f'a*), and the ruling that a Muslim may not make an offer of betrothal to a woman who is already engaged to another person originate in the hadith.
- 20 This is the main reason why the numbering of *āyāt al-aḥkām* also fluctuate from 200

to 350, 500, and even 600, by different writers depending on the degree of specification and restrictiveness that is applied in the selection.

- 21 Yusuf al-Qaradawī, *Kayfa Nata'āmalu ma' al-Sunnah* (Cairo: Dār al-Wafā', 1990), 135.
- 22 Ibn Ashur, *Maqāṣid*, 322. See also Mohamed El-Tahir El-Mesawi, "Maqāṣid al-Sharī'ah: An Uṣūlī Doctrine," in *Maqasid al-Shari'ah and its Realization in Contemporary Societies* [proceedings of the 'International Conference on Islamic Jurisprudence and the Challenges of the 21st Century,' International Islamic University Malaysia, IIUM, Kuala Lumpur, 8–10 August 2006] (Kuala Lumpur: IIUM, 2006), 3:80.
- 23 Ibid., 130.
- 24 The hadith of *tas'ir* is recorded by Abū Dāwūd, *Sunan Abī Dāwūd* (various edns), hadith no. 3,457 – also recorded by Tirmidhī and Ibn Mājah.
- 25 Taqī al-Dīn ibn Taymiyyah, *Majmū' al-Fatāwā* (Riyadh: Ministry of Islamic Affairs, 1998), 10:2. See for details also Mohammad Hashim Kamali, "Tas'ir or Price Controls in Islamic Law," *The American Journal of Islamic Social Sciences* 11 (1994), 25–38.
- 26 al-Bukhārī, *Ṣaḥīḥ*, hadith no. 6764; and Muslim, *Ṣaḥīḥ*, hadith no. 1,614.
- 27 Ibn Qayyim al-Jawziyyah, *Aḥkām ahl al-Dhimmah* (Beirut: Dār al-'Ilm li al-Malāyīn, 1981), 2:462–3.
- 28 Ibid., 2:464. See also Khalid ibn Mansur al-Daris, "Āthār Maqāṣid al-Sharī'ah fi Fahm al-Hadīth al-Nabawī: Al-Imām Ibn Taymiyyali Numajizan," in *Maqasid al-Shari'ah and its Realization in Contemporary Societies* [proceedings of the 'International Conference on Islamic Jurisprudence and the Challenges of the 21st Century,' International Islamic University Malaysia, IIUM, Kuala Lumpur, 8–10 August 2006] (Kuala Lumpur: IIUM, 2006), 2:429–430.
- 29 al-Bukhārī, *Ṣaḥīḥ*, hadith no. 294, and Muslim, *Ṣaḥīḥ*, hadith no. 1,211.
- 30 Ibn Taymiyyah, *Majmū' al-Fatāwā*, 26:224.
- 31 Ibid., 28:126. See also al-Daris, "Āthār," 2:433–4.
- 32 Excerpt from the Prophet's sermon on the occasion of the 'Farewell Pilgrimage.' See also Gamal Eldin Attia, *Towards Realisation of the Higher Intents of Islamic Law: Maqāṣid al-Sharī'ah – A Functional Approach*, Eng. Tr. by Nancy Roberts (London and Washington: The International Institute of Islamic Thought, 2007), 142.
- 33 Cf., Kamali, *Principles of Islamic Jurisprudence*, 352.
- 34 Cf., Mohammad Hashim Kamali, "Maqasid al-Shari'ah and Ijtihad as Instruments of Civilisational Renewal," *Islam and Civilisational Renewal*, Vol.II, no. 2 (January 2011), 248.

- 35 This third class (i.e. *juz'iyah*) has also its correlative, namely *al-maqāṣid al-kulliyah*, or totalitarian purposes. However the last category is almost identical with 'general purposes'— hence we combine the two classification into one that consist of three varieties.
- 36 Cf., Muhammad Ibrahim Naqashi, 'Amaliyyāt al-Taṣkīk wa Dawruhā fi Taḥqīq Maqāṣid al-Sharī'ah al-Islāmiyyah,' in IUM Conference Proceedings, vol. 2, Maqṣid al-Sharī'ah, 62.
- 37 Cf., Gamal Eldin Attia, *Towards Realisation of the Higher Intents of Islamic Law: Maqāṣid al-Sharī'ah – A Functional Approach*, Eng. Tr. by Nancy Roberts (London and Washington: The International Institute of Islamic Thought, 2007), 112.
- 38 See for further detail, Mohammad Hashim Kamali, "Maqasid al-Shari'ah and Ijtihad as Instruments of Civilisational Renewal," *Islam and Civilisational Renewal*, Vol. 2, no. 2 (January 2011), 251 f.
- 39 Al-Shatibi, *al-Muwāfaqāt*, Vol. II, 400. See also Attia, *Towards Realisation*, 113.
- 40 See for details on the classification of Maqasid, Kamali, *Shariah Law*, 134–137.
- 41 See for details *ibid*.
- 42 In the Arabic original: "Uṣūl al-Dīn wa Qawā'id al-Sharī'ah wa Kulliyāt al-Millah," see Abū Ishāq Ibrāhīm ibn Mūsā al-Shāṭibī, *al-Muwāfaqāt fī Uṣūl al-Sharī'ah*, ed. Abd-Allah Darraz, 4 vols (Beirut: Dār al-Ma'rifah, 1975, 2nd ed.), 2:25.
- 43 Ibn Ashur, *Maqāṣid*, 225.
- 44 This is the view of Abū Ḥāmid al-Ghazāly who validated *maṣlahah* only if it promoted the *maqāṣid*.
- 45 Cf., Ibn Ashur, *Maqāṣid*, 51; Attia, *Towards*, 16.
- 46 Al-Shāṭibī, *al-Muwāfaqāt*, 1:243; see also Yusuf al-Qaradawī, *Madkhal li-Dirāsāt al-Sharī'ah al-Islāmiyyah* (Cairo: Maktabah Wahbah, 1990), 64–5; Kamali, *Shari'ah Law*, 132.
- 47 This is the view of al-Juwaynī, al-Sarakhsī, al-Sulamī and Ibn Taymiyyah. It is also noted that since Imam Mālik accepted *maṣlahah mursalah* as a basis of law and judgment, he can be assumed to have accepted 'aql as a proof also of *maqāṣid*. See for details Zaharuddin Abdul Rahman, *Maqāṣid*, 102f.
- 48 Abū Ḥāmid al-Ghazāly, *Iḥyā' 'Ulūm al-Dīn* (Cairo: al-Maktabah al-Tijāriyyah al-Kubrā, n.d.), 4:115.
- 49 'Izz al-Dīn 'Abd al-Salām, *Qawā'id al-Aḥkām fī Masāliḥ al-Anām*, ed. Abd al-Latif Abd al-Rahman (Beirut: Dār al-Kutub al-'Ilmiyyah, 1999), 1:8.
- 50 Cf., Zaharuddin Abdul Rahman, *Maqāṣid*, 104.
- 51 Imām al-Ḥaramayn al-Juwaynī, *al-Burhān fī Uṣūl al-Fiqh* (Doha: Dār al-Qalam, 1978), 2:114.

- 52 Ibid., 2:117.
- 53 Abū ʿAli ibn Sinā, *Kitāb al-Najāt fī al-Hikmah al-Manṭiqiyyah wa al-Tabṣiʿiyyah wa al-Ilāhiyyah*, ed. Majid Fakhri (Beirut: Dār al-Āfāq al-Jadidah, 1985), 99.
- 54 Ibn Ashur, *Maqāṣid*, 58.
- 55 Ibid., 266.
- 56 Ibid., 268.
- 57 El-Mesawi, “*Maqāṣid*, 3:84.
- 58 al-Shāṭibī, *al-Muwāfaqāt*, 2:385.
- 59 Ahmad al-Raysuni, “al-Manhaj al-Maqāṣidī fī Fiqh Ibn Rushd,” in *Qaḍāyā Islāmiyyah Muʿāṣirah*, as quoted in Attia, *Towards*, 97–9.
- 60 Ibn al-Qayyim al-Jawziyyah, *Flām al-Muwaqqiʿin ʿan Rabb al-ʿĀlamīn*, ed. Taha Abd al-Rauf Saad (Beirut: Dār al-Jil, 1973), 1:333.
- 61 Ibn Ashur, *Maqāṣid*, 64.
- 62 Ibid., 78.
- 63 El-Mesawi, “*Maqāṣid*, 3:90.
- 64 Allal al-Fasi, *Maqāṣid*, 41. See also Attia, *Towards*, 102–3.
- 65 al-Raysuni, *Naẓariyyat*, 294f.
- 66 See for details on commands and prohibitions and their consequences Mohammad Hashim Kamali, *Principles*, 196f.
- 67 Cf., Ahmad al-Raysuni, *al-Fikr al-Maqāṣidī* (Rabat: Jarīdat al-Zamān, 1999), 129f.
- 68 Auda, *Maqāṣid*, 244.
- 69 Ibid.
- 70 Muhammad Mahdi Shams al-Din “Maqāṣid al-Sharīʿah,” in *Maqāṣid al-Sharīʿah*, ed. Abd al-Jabbar al-Rifāi (Damascus: Dār al-Fikr, 2001), 26.
- 71 Yunus Soualhi, “The Question of Methodology in the Science of Maqasid,” in *Maqasid al-Sharīʿah and its Realization in Contemporary Societies* [proceedings of the ‘International Conference on Islamic Jurisprudence and the Challenges of the 21st Century,’ International Islamic University Malaysia, IIUM, Kuala Lumpur, 8–10 August 2006] (Kuala Lumpur: IIUM, 2006), 2:62.
- 72 Ibid., 63 – Soualhi’s quotation is from al-Shāṭibī, *al-Muwāfaqāt*, 2:51.
- 73 Soualhi only mentions some aspects of the *uṣūl* methodology for the identification of effective cause (*masālik al-ʿillah*) in the context of *qiyās*. Some *uṣūl* texts, however, record close to forty conditions that the *ʿillah* must fulfil for it to be valid. To follow all of those would actually make *qiyās* and *ʿillah* both redundant as the new case (*farʿ*) would to all intents and purposes have to be an exact replica of the original case (*qiyās*), in which case both the new and the original cases would fall under the law of (*hukm*) and no *qiyās* will be needed.

- 74 Ibn Taymiyyah, *Majmūc al-Fatāwā*, 32:134. See for further details also Kamali, *Principles*, 402f.
- 75 See for a summary of their views Attia, *Towards*, 79–86. See also Kamali, *Principles*, 401–2.
- 76 al-Qaradawi, *Madkhal*, 75.
- 77 As quoted in Attia, *Towards*, 84 – excerpt from Siraj’s seminar paper on “Islamic Legal Priorities.”
- 78 Cf., Kamali, *Principles*, 402.
- 79 Ibn Ashur, *Maqāṣid*, 139. See also Attia, *Towards*, 82.
- 80 Excerpt from al-Qaradawi’s seminar paper on the Sunnah, as quoted in Attia, *Towards*, 84.
- 81 Quoted from Attia’s version of an excerpt from Muhammad al-Ghazali’s seminar paper on the subject of Islamic legal priorities with minor linguistic adjustments by the present writer; Attia, *Towards*, 83.
- 82 al-Raysuni, *Nazariyyat*, 47f.
- 83 Bin Bayyah, *Maqāṣid al-Sharīah*, 52, 54.
- 84 ‘Abd al-Karīm Zaydān, *al-Wajīz fī Sharḥ al-Qawā'id al-Fiqhiyyah* (Beirut: Mu’assasah al-Risalah, 1425/2004), 184.
- 85 Cf., Attia, *Towards Realisation*, 109.
- 86 Sayf al-Din ‘Abd al-Fattah, “Nahw Tafīl al-Numūzaj al-Maqāṣidī fi’l-Majl al-Siyāsī wa’l-Ijtimā’i,” in *al-Maqasid Research Centre, Maqāṣid al-Sharīah wa Qaḍāyā al-‘Asr*, 187–88.
- 87 Cf., Riyad Mansur al-Khalifī, “al-Maqāṣid al-Sharīyyah wa atharuhā fi’l-fiqh al-mu’āmalāt al-māliyyah,” *Majallah Jāmi’ah al-Malik ‘Abdulazīz al-Iqtiṣād al-Islāmī*, 17.1 (1425/2004), 3–48, 14.
- 88 ‘Izz al-Din ‘Abd al-Salam, *Qawā'id al-Ahkām fi Maṣāliḥ al-Anām*, Vol 1, 124–25.
- 89 Al-Shatibi, *Muwāfaqāt*, II, 13–14; see also al-Khalifī in the previous note at p.16.
- 90 See for details, Ibn Ashur, *Maqāṣid al-Sharīah*, 419–20.
- 91 Al-Tahir ibn Ashur, *Maqāṣid al-Sharīah*, 15–16.
- 92 *Ibid.*, 27.
- 93 Cf., Ibn Ashur, *Maqāṣid al-Sharīah* (Messawi’s trans), (London: International Institute of Islamic Thought, 1417/2007), 25. I have also consulted the original Arabic version of Ibn Ashur’s book for added verification.
- 94 *Ibid.*, 25.
- 95 ‘Abd Allah Bin Bayyah, *Maqāṣid al-Sharīah fi’l-Mu’āmalāt*, Lecture series no. 6, al-Maqasid Research Centre in the Philosophy of Islamic Law, London, 2008. The

- lecture was actually delivered at Alexandria University, Faculty of Law in February 2008.
- 96 Ibn Ashur, *Maqāṣid*, 204. The Arabic version of this quote reads: “Inn al-ḥadīth al-ḍāʿif khayrun min-al-qiyās.”
- 97 ʿAbd Allah Bin Bayyah, *Maqāṣid al-Sharīʿah fiʾl-Muʿāmalāt*, 26.
- 98 Khalifah Ababakr al-Hasan, *Falsafah Maqāṣid al-Tashrīkh fil-fiqh al-Islāmī* (Cairo: Maktabah Wahbah, 2000/1421), 38.
- 99 Ibn Qayyim, *Flām*, III: 12; Raysūn, *Nazariyyah*, 336.
- 100 Cf., Raysuni, *Nazariyyah*, 338–9.
- 101 Cf., al-Zuhayli, *al-Fiqh al-Islāmī* IV, 32. See for more illustrations, Kamali, *Jurisprudence*, 323.
- 102 See for details the chapter on *Istihsān* in Kamali, *Jurisprudence*.
- 103 Muhammad Selim al-Awwa, “*Fikrat al-Maqāṣid fiʾal-Tashrīkh al-Waḍʿī*,” in al-Maqasid Research Centre (London: *Maqāṣid al-Sharīʿah wa Qadāyā al-ʿAsr*, 2007), 263–65.
- 104 *Ibid.*, 268.
- 105 *Ibid.*, 270.
- 106 See for details on Mahdi Shams al-Din’s views, Gamal Eldin Attia, *Towards Realisation of the Higher Intents of Islamic Law*, 166–67.
- 107 Malik ibn Anas, *al-Muwaṭṭāʾ*, *Kitāb al-ajj, Bab Mā Jāʾ fi Bināʾ al-Kaʿbah*; Raysuni *Nazariyyah*, 354.
- 108 Shatibi, *Muwāfaqāt*, IV, 97; *Madhkal*, 186–7.
- 109 These chapters are found in Kamali, *Shariʿah Law*, 41ff.; and Mohammad Hashim Kamali, “Maqāṣid al-Sharīʿah Made Simple,” Occasional Paper Series 13 (London and Washington: International Institute of Islamic Thought, 2008), 26ff.; and “Law and Ethics in Islam: The Role of the Maqāṣid,” in Kari Vogt, Lena Larsen, and Christian Moe (eds), *New Directions in Islamic Thought: Exploring Reform and Muslim Tradition* (London: I.B. Tauris, 2009), 23–47.