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• Islam and Civilisational Renewal (ICR) is an international peer-reviewed journal published by Pluto Journals on behalf of the International Institute of Advanced Islamic Studies (IAIS). It carries articles, book reviews and viewpoints on civilisational renewal.
• ICR seeks to advance critical research and original scholarship on theoretical, empirical, historical, inter-disciplinary and comparative studies, with a focus on policy research.
• ICR aims at stimulating creative and original contributions within contemporary Muslim and non-Muslim scholarship to further civilisational renewal.
• ICR promotes advanced research on the civilisational progress of Muslims and critical assessments of modernity, post-modernity and globalisation.

CONTRIBUTIONS AND EDITORIAL CORRESPONDENCE

Notes to contributors and details of submission can be found at: ICR.plutojournals.org
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This Special Issue of Islam and Civilisational Renewal on the objectives and purposes of Islamic law opens – differently from our previous practice – with a focus article, written by myself, which is entitled “Maqāṣid al-Sharī‘ah and Ijtihād as Instruments of Civilisational Renewal: A Methodological Perspective” in which I have tried to provide an outline of maqāṣid al-sharī‘ah and its contemporary relevance by developing the idea of a maqāṣid-based framework for civilisational renewal (tajdīd haḍārī).

Maqāṣid have been the focus of renewed attention in recent decades as shown by the plethora of publications, doctoral dissertations and conferences on the subject in numerous Muslim countries and universities. This is due mainly to two factors, one of which is a certain neglect and marginalisation of the maqāṣid in the scholastic articulations of the uṣūl al-fiqh (science of the sources of fiqh); so much so that the typical textbook coverage of uṣūl al-fiqh in classical works mentioned the maqāṣid only in passing and certainly did not feature the maqāṣid in the range of either the primary or the secondary sources of Islamic law. The second, and perhaps the more important factor to explain the revival of maqāṣid, is their inherent versatility and relevance to human welfare matters in a certain order of priorities that differentiates the maqāṣid from the rest of the uṣūl al-fiqh.

Maqāṣid are classified from a variety of angles expounded in the substantive articles of this issue, but merely to mention the first level of classification of maqāṣid into the five themes of the protection of life, and religion, protection and advancement of the human intellect, the family and property, collectively known as ḍarūriyyāt (essential interests), is enough to show an immediate focus on priorities of direct relevance of human welfare matters. The focus is on human values and the building of a civilisational edifice that take rationality, faith and law as well as material welfare and a strong family as the basic unit of social organisation.

One of the main weaknesses of the maqāṣid discourse that has been with us from the outset and which is to a large extent accountable for their marginalisation is that the maqāṣid are in need of methodological accuracy to verify the credibility or otherwise of personal opinion that may seek to validate new additions in the name of maqāṣid. The whole issue over the identification of maqāṣid, it is said, becomes subject to
value judgment. This would explain why my own article is mainly concerned with the methodology of maqāṣid, expounding the existing doctrine and an exposition of human intellect (ʿaql), ijtihād, and enlightened human nature (fitrah) that may be considered, next to the scripture, as valid criteria for the identification of maqāṣid. Then I address the question as to whether the essential maqāṣid should be confined to only the five headings of darūriyyāt or could they also include other objectives that find support in the Qurʾān and Sunnah. My third and last theme breaks new ground by saying that the maqāṣid need not be confined to the framework only of juristic thought but can be utilised as instruments more widely of civilisational renewal (tajdīd haḍārī). I conclude by drawing attention to the following:

- The sharīʿah 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 sharīʿah jurisprudential framework, and the maqāṣid serve to provide that.
- The maqāṣid should be adequately reflected and utilised as instruments of legislation and decision-making by Muslim leaders, parliamentarians and judges. According a high level visibility to the maqāṣid is likely to enhance credibility and better prospects of law enforcement in Muslim societies.
- In pluralist societies such as Malaysia incorporating the maqāṣid into the government decision-making processes can promote social harmony and cohesion among the various strata of the populace.

Aside from this focus article, this issue contains six articles:

Ahmad Kazemi-Moussavi, Professor of Islamic law and Persian language in the University of Maryland in the United States, is the author of “Rethinking Islamic Legal Methodology with Reference to Maqāṣid al-Sharīʿah”. His article aims at providing a critical survey of efforts by contemporary Muslim scholars toward new approaches for rethinking Islamic legal methodology, based on maqāṣid al-sharīʿah. Professor Kazemi-Moussavi suggests that

- it is essential to stress that the divine laws are to be understood in their social context of time and that
- to carry out the divine ruling in a given society necessitates a degree of recognition of ‘public’ and respect for public opinion and public interest of time.
- Therefore, in order to understand the higher objectives and to consider fully the public interest (maslahah) a comprehensive appreciation of the existing public practices, institutions and even public requirements is needed.
“The Place and Role of Maqāṣid al-Sharīʿah in the Ummah’s 21st-Century Civilisational Renewal’ is by IAIS Malaysia’s Deputy CEO, Emeritus Professor Osman Bakar. His article addresses what its author refers to as ‘progressive inner decay of human civilisation’ and means to deal with this issue from the perspective of Islam. Professor Bakar advocates

- a restoration of lost unity, balance, and equilibrium to contemporary Islamic civilisation, arguing that
- Islam’s main solution would be the maqāṣid-based approach, which would reassert traditional essential components, such as religion, intellect-reason, life, lineage and property.

“Maqāṣid al-Sharīʿah: A Literature Review” is a survey article by IAIS Malaysia Principal Research Fellow Eric Winkel. He argues that

- the maqāṣid approach may be an answer to semantic word drift if the question of context is adequately addressed;
- the approach provides us with an architecture that allows us to speak productively among ourselves and with others;
- the special contribution of maqāṣid to government policy and legislation is to direct the conduct of its affairs with wisdom and to strive for the improvement of people’s welfare.

“The Framework of Maqāṣid al-Sharīʿah and Its Implication for Islamic Finance” is an article jointly written by Asyraf Wajdi Dusuki and Said Bouheraoua, two scholars who are with the International Sharīʿah Research Academy for Islamic Finance (ISRA) at Kuala Lumpur. In it the authors have aimed at finding somewhat more comprehensive, rational and realistic answers to contemporary financial issues, especially with regard to structuring and developing contemporary Islamic finance products. They argue that

- Islamic finance as an institution should be grounded on the ethics of Islamic law in order to make it a reality in Muslim society and that
- it should involve respect for the principles of justice, thereby bringing about a balance between the rights of individuals and their duties and responsibilities towards others, and between self-interest and altruistic values.
Halim Rane, Deputy Director of the Griffith Islamic Research Unit and a Lecturer in the National Centre of Excellence for Islamic Studies at Australia’s Griffith University, is the author of “The Impact of Maqāṣid al-Sharīʿah on Islamist Political Thought: Implications for Islam–West Relations”. He investigates political parties in parts of the Muslim worlds that favour a maqāṣid-oriented approach in response to contemporary issues by exploring emerging trends in political Islam and discussing their implications. He makes the salient suggestion that

- accepting a maqāṣid slant in Muslim politics should be based on its benefits to Muslim states and societies in terms of upholding the collective wellbeing of Muslims based on Islamic teachings;
- they thus should not necessarily be based on relations with the West.

“The Maqṣad of Ḥifẓ al-Dīn: Is Liberal Religious Freedom Sufficient for the Sharīʿah?” is by Andrew F. March, an Assistant Professor in the Department of Political Science at Yale University in the United States. His piece contains a stern criticism of what he is referring to as “modern liberal and secularist understandings” of Islamic law. His main arguments are:

- Muslim scholars will have to address the different kinds of obstructions to preserving religion which Muslim minority communities face.
- A maqāṣid-based approach also would have to ensure the preservation of religion as its main goal. This would have to include ensuring access to knowledge of Islam and the creation of religious institutions for a Muslim civil society.

This time ICR also contains five viewpoints:

“The Maqāṣidī Aspects of Ṣukūk (Islamic Bonds) and Civilisational Renewal (Tajdīd Haḍārī)” is by myself. It adds to the discussion on the methodology of maqāṣid which is the topic I explored in the feature article of this issue. Here I am considering the maqāṣid in relation to certain problematic practices in contemporary Islamic finance while at the same time also looking at the larger picture of civilisational renewal.

“Corporate Social Responsibility (CSR) in Malaysia with Reference to the Maqāṣid” by Zarina Nalla aims at offering a comparative understanding of Western and Islamic approaches towards business ethics.
In his “Malaysia’s Need for an Enlightened National Policy on Interreligious Peace: A Dictate of Maqāṣid al-Sharīʿah”, Osman Bakar proposes to Malaysian policy-makers that the panel or council of experts to be chosen to help formulate the policy in question must also include experts on the higher objectives of Islamic law.

Two more viewpoints by Christoph Marcinkowski and Eric Winkel, respectively, address intra-Muslim dialogue as a precondition to credibility on a wider horizon as well as issues pertaining to thankfulness toward God.

This time we have also included seven book reviews, and six event and significant development reports: an international conference on ‘Muslims in Multicultural Societies’ that was staged in Singapore; another conference that took place in Kuala Lumpur on the role of Malaysia’s ethnic Chinese community; a meeting in London between myself, representing IAIS Malaysia, and the Cordoba Foundation (TCF); the visit to Malaysia of the Grand Mufti of Syria; the International Consultation on Faith, Shared Wisdom and International Law (an event that took place in Kuala Lumpur); and a conference on the role of the sharīʿah which was staged at Georgetown University in Washington DC.

Last, we also carry three obituaries which commemorate the passing of three great scholars of Islam: Mahmood Ahmad Ghazi, Mohamed Fathi Osman, and Mohammed Arkoun.

I would like to convey my appreciation to all of our eminent contributors as well as the IAIS Malaysia editorial committee and staff for their hard work.

Mohammad Hashim Kamali
Editor-in-Chief
IN FOCUS

MAQĀṢID AL-SHARĪʿAH AND IJTIHĀD AS INSTRUMENTS OF CIVILISATIONAL RENEWAL: A METHODOLOGICAL PERSPECTIVE

Mohammad Hashim Kamali*

Abstract: This article develops the idea of a maqāṣid-based framework for civilisational renewal (tajdid hadārī), a broad and engaging prospect that also involves a review and reappraisal of the methodology of Islamic jurisprudence relating to the maqāṣid. 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.

Introductory Remarks

The maqāṣid of the shariʿah naturally reflect on the shariʿah itself in that the goals of the shariʿah arise from the shariʿah and are in many ways affected by developments in the shariʿah itself, the history of ijtihād and major developments in the applied law and custom of society. Developments relating to the aḥkām (legal rules), ijtihād and fatwās 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 shariʿah. 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 shariʿah. 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

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**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 *sharīʿah*. 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 *sharīʿah*. 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 *sharīʿah* and contemporary issues. To speak, for instance, of *ijmāʿ* (general consensus), *qiyās* (analogical reasoning) and *istiḥsān* (juristic preference), one is likely to be involved in technicalities and methodological 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 *sharīʿah*.

Beginning with the meaning and definition of *maqāṣid* and a brief review of its allied expressions such as *ḥikmah*, *ʿillah*, and *maṣlaḥah*, this article proceeds with a note on the relevance of *maqāṣid* to civilisational renewal (*tajdīd haḍārī*). Next follows a review of the Qurʾān 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 Qurʾān verses and *ḥadīth* into these categories could also be made based on the objective and purpose (*maqṣid*) of a particular text, whether of the Qurʾān or *ḥadīth*. An affirmative answer to this question would mean that a
new branch of maqāṣid-based tafsīr and ḥadīth 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 mawdūʿī) as will be explained. This would help ascertain the place of maqāṣid not only in Qurʾān interpretation but also as valid criteria of ḥukm of the Qurʾān and ḥadīth. To link the maqāṣid thus directly to āyāt al-ahkām and aḥādīth al-ahkām could also address and overcome the historical marginalisation and neglect of maqāṣid in the legal theory of usūl al-ḥiq. 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 ʿaql (human intellect, unrestricted reasoning respectively), and then also of innate human nature (al-fiṭrah) that resemble 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 sharīʿah 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 sharīʿah either generally (i.e. al-maqāṣid al-ʿāmmah), or in reference to its particular themes and subjects (al-maqāṣid al-khāṣṣah). Three other Arabic words that occur in the relevant literature of usūl al-fiqh and convey similar meanings to maqāṣid are ḥikmah (wisdom), ʿillah (effective cause/ratio legis), and maṣlaḥah (interest, benefit) respectively. A brief review of these is followed by the definition of maqāṣid.

Ḥikmah 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. Ḥikmah (pl. ḥikam) may signify a beneficial consequence of the sharīʿah 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-shārīʿ – 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 sharīʿah. 1

ʿIlāh 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 sharīʿah for which it was legislated. For al-Āmidī (d. 1233),
'illah refers to the effective cause, or the hikmah and benefit the Lawgiver has considered in introducing a law. This evidently brings 'illah very close to maqṣīd, as per Muṣṭafā al-Zarqā’ who wrote: “'illah could signify the hikmah of legislation in reference to the attraction of benefit or prevention of harm that may be sought through a legal command or prohibition”. This would equate 'illah to maqṣīd and make it synonymous with the goal and objective, or ghāyah, of the shari‘ah. I may add, however, that 'illah is normally tied to the existing text and status quo of the law, whereas hikmah 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 'illah of analogy (qiyās) the uṣūl scholars have stated that 'illah must be constant and unchangeable (munḍabīt) whereas hikmah need not meet this qualification.

The uṣūl writers have used maṣlahah almost interchangeably with maqṣīd and many have considered them as convergent and cotermious. Maslahah is described as the benefit or interest the Lawgiver has contemplated in introducing a law. Abū Ḥāmid al-Ghazālī (d. 1111) and Fakhr al-Dīn al-Rāzī (d. 1198) validate maslahah only when it begets the purpose or maqṣīd of the law. Some have said that maslahah is the cause that leads to the maqṣīd of the Lawgiver, whereas others have held it to be identical with the purpose/maqṣīd of the Lawgiver. Still others have described maslahah (pl. maṣāliḥ) as a utilitarian concept that looks toward material benefits and pleasures palpable to the senses. Most writers thus appear to equate maslahah with maqṣīd. I have elsewhere tried to draw a distinction between them to say that maslahah tends to be circumstantial and therefore changeable according to time and place, whereas maqṣīd/maqāṣīd tend to have a quality of constancy and permanence that may be lacking in maslahah. Hence one may say that a maqṣīd may well be the ultimate purpose of maslahah and stand a degree above it. I also think that maslahah is a utilitarian concept for the most part and tends to contemplate material benefits of some kind, whereas maqṣīd maintains a wider outlook that often rises above utilitarian concerns. And lastly the maqāṣīd have a stronger textual grounding in the ruling and text of the Qur‘ān and Sunnah. This is not the case with at least one variety of maslahah, namely the unrestricted or unregulated maṣlahah (i.e. maṣlahah mursalah), although the accredited maslahah (maslahah mu‘tabarah) is by definition textually-founded.

Early pioneers of the maqāṣīd, such as Abū Ḥāmid al-Ghazālī (d. 1111), ’Izz al-Dīn Ḥāfiz al-Salām (d. 1262), and al-Shāṭibī (d. 1388), who wrote on the maqāṣīd 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 Ṭāhir, Izz al-Dīn Ḥāfiz al-Salām, and al-Shāṭibī.
‘Allāl al-Fāsī, al-Qaraḍāwī, al-Zuhaylī and others, who defined the maqāṣid and also stipulated a number of conditions a valid maqāṣid must qualify.

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

Ibn ʿĀshūr (d. 1973) defined the general objectives (maqāṣid ʿāmmah) of the sharīʿah as “the deeper meanings (maʿānī) and inner wisdom (ḥikam) that the Lawgiver has contemplated in respect of all or most of the sharīʿah ordinances […]”.7 ‘Allāl al-Fāsī (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 sharīʿah ordinances”.8 The two definitions differ only slightly in that according to al-Fāsī none of the laws of the sharīʿah is without a purpose, whereas Ibn ʿĀshūr put it that “all or most of the ordinances of sharīʿah” have their purposes. Al-Fāsī’s usage of “hidden meanings – al-asrār” invites criticism as it would fail to meet Ibn ʿĀshūr’s four conditions that the general goals of the sharīʿah must qualify. These are: firm, evident, general, and exclusive (thābit, zāhir, ʿāmm, tārd). Other jurists have generally concurred with the analysis that virtually all of the laws of the sharīʿah 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

Al-Qaraḍāwī 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 l-mafāsid) from them”.10 Muḥammad al-Zuḥaylī has given a more detailed definition of maqāṣid as “the ultimate goals, aims, consequences and meanings which the sharīʿah 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-Raysūnī, signify “the end-goals for which the sharīʿah has been promulgated in order 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 sharīʿah are inclusive of both Muslims and non-Muslims alike. Islam also recognises the basic freedom of religion and the validity in principle also 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’ān: Text and Interpretation**

This section presents an overview of the *maqāṣid*-based orientations of the Qur’ānic 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’ān is expressive in numerous places of the benefits, goals and purposes of its messages. The Qur’ān characterises itself as “guidance and mercy” (*hudūn wa raḥmatu* (10:57)) and the prophethood of Muḥammad as “a mercy to the worlds” (21:107). Mercy and *raḥmah* also characterise the most favourite of all the 99 Excellent Names of God: these are *al-Raḥmān* and *al-Raḥīm* (Most Merciful, Most Compassionate), both of which signify that compassion (*raḥmah*) is a cardinal goal and purpose of Islam. More specifically, the purpose of the law of retaliation (*qiṣāṣ*) in the Qur’ān is to protect life (2:179); the purpose of *jihād* 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’ān 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’ān without ever letting it (its meaning) go down their throat”. The purpose is to provide guidance, as one observer put it: “the cardinal objective of Qur’ān 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”.

The development of the genre in Qur’ān interpretation known as *tafsīr mawḍūʿī* (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’ān.

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 and prohibitions that relate to the externalities of conduct and their provable consequences. The *āyāt
al-āhkām were thus confined to practical rulings (ahkām ‘amalī) whose violation could also be proved by admissible evidence. But since the Qurʾān 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 Qurʾān on the essence of faith, prophethood, moral themes, encouragement and warning (targhib wa tarḥīb), 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 āyat al-āhkām 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 āyat al-āhkām would permit in turn, the moral and spiritual teachings of the Qurʾān 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 ijtihād closely aligned with the literalist readings of the text.18

The uṣūlī discourse on the identification of effective cause or ʿillah of a ruling, known as masālik al-ʿillah, draws a distinction between ʿillah and ḥikmah, validating the former and disqualifying the latter: the ʿillah must be constant and unchangeable (mundābit), but the ḥikmah is changeable and therefore fails to provide a reliable basis of hukm and legislation. The ḥikmah, although essentially more logical, is thus not accepted as a substitute for ʿillah. To illustrate, the Qurʾān grants the traveller during the fasting month a concession not to fast, but to observe it when he is no longer travelling. The ʿillah 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’ *ʿillah*. To take a *maqāṣidī* approach to the identification of *ʿillah*, it is proposed that the *ḥikmah* should in principle be accepted as a substitute to *ʿillah*. 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 *ʿillah*.

**Maqāṣid and Sunnah**

What has been said concerning a *maqāṣidī* approach to qur’ānic laws, and more specifically to the identification of *āyāt al-aḥkām*, can be extended, mutatis mutandis, to their equivalents in the *ḥadīth*, namely the *ahādīth al-aḥkām*. These are also *ḥadīths* which lay down practical rulings, commands, and prohibitions that demand performance and constitute the actionable laws (*ahkām ʿamaliyyah*) of the Sunnah. A great deal of the legal *ḥadīth* support and supplement the legal verses of the Qurʾān by way either of elaboration, specification, or qualification of the qur’ānic injunctions of concern to human conduct. These may include worship matters (ʿ*ibādat*) and civil transactions (*muʿāmalāt*), but they also introduce, albeit on a limited scale, new rulings of the *shariʿah* on which the Qurʾān may be silent.¹⁹

*Ahādīth al-aḥkām* are larger in number compared to the *āyāt al-aḥkām*. According to an estimate attributed to Abū Ḥāmid al-Ghazālī, the legal *ḥadīth* number at about 1,200 according to the traditional *uṣūl* methodology of selection. Determining the precise number, whether of the rule-based verses or *ahādīth*, would much depend on the methodology and purpose of the selection.²⁰ Unlike the Qurʾān which does not pose any question over the authenticity of its text, the *ḥadīth* does, and so does the selection of *ahādīth al-aḥkām* from the large bulk of *ḥadīth*: if one proposes a *maqāṣidī* approach to the selection of *ahādīth al-aḥkām*, one would need to verify the authenticity of the *ḥadīth* in the first place. Yet the issue over authenticity of the *ahādīth al-aḥkām* may not be as challenging as that of the bulk of the *ḥadīth* itself. This is because the *ahādīth 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 *tafsîr* (tafsîr mawdūʿī) has already gained general acceptance in the genres of Qurʾān hermeneutics, one may propose the same approach to *āyāt al-aḥkām*: Thematic unity in the larger body of *ḥadīth* and chapterisation of its existing collections has to some extent been attempted, just as the so-called Sunan category of *ḥadīth* purports on the whole to compile only the legal *ḥadīth*. The effort to ascertain thematic unity in *ḥadīth* is, moreover, likely to strike a note with that of the *āyāt al-aḥkām* – since much of the legal *ḥadīth* reiterate or supplement the *āyāt al-aḥkām*. Thus it is likely that only a smaller number of *ḥadīth*, in the *ahkām*
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 hadīth consistently with the Qur’ān, the criteria of selection of hadīth 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 hadīth is larger compared to the Qur’ān as a great deal of hadīth are known to have addressed particular situations that may or may not amount to laying down a general law or ḥukm of the sharīʿah. It is therefore important that in reading the hadīth, one is aware of its original occasion and context, and avoid, as Ibn ʿĀshūr 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.” Ibn ʿĀshūr 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 hadīth. It is advisable therefore to read the detailed rulings of hadīth in light of the general purposes and objectives of the sharīʿah. 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 hadīth in favour of its purpose. This is illustrated as follows:

(a) The Prophet distributed, in line with a qur’ānic injunction (8:41), the conquered lands of Khaybar among the Muslim soldiers, but later the caliph ʿUmar b. 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 Medina, and may well neglect jihād. 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.

(b) The same tendency could be seen in the ruling of hadīth 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 Medina and said that fixing commodity prices may prove unfair to commodity suppliers. But the opposite of this was ruled by the Successors (tābiʿūn), including the so-called
‘Seven Jurists of Medina’, 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 hadīth, “a Muslim does not inherit from an infidel (kāfir), nor an infidel from a Muslim”.26 By general consensus (ijmāʿ), 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 b. Jabal, Muʿāwiyah b. Abī Sufyān, Muḥammad b. al-Ḥanāfīyyah and Saʿīd b. 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 hadīth refers to kāfir ḥarbī, one who is engaged in active hostility with Muslims. It is also established on the authority of leading Companions, ‘Alī b. Abī Ṭālib and ‘Abd Allāh b. Masʿūd that an apostate is inherited from by his Muslim relatives and that their case is not subsumed by the text of the above hadīth. 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 Qayyim understood this hadīth in the light of a maqāṣid-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 hadīth.28

(d) A woman who experiences menstruation during the ḥajj is allowed to continue, according to the instructions of a hadīth, with the rest of the ḥajj rituals except for circumambulation (ṭawāf) around the Kaʿbah.29 Ibn Taymiyyah’s analysis of this ruling of hadīth led him to the conclusion that if the impediment of menstruation were to disqualify the woman from completing her ḥajj 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 sharīʿah. He added that in the Prophet’s lifetime it was not too difficult for the women of Medina 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 ṭawāf. Ibn Taymiyyah added on a general note that ritual purity is not a prerequisite of ṭawāf, 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 Mecca until the end of her menstruation without much hardship, she must do that, otherwise she is advised to take a bath and do the ṭawāf.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 from the Qur’ān 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 maṣlahah and maqāṣid-based understanding and import. For God the Most High revealed the Qur’ān 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’ān 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 fulfill 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’ānic purpose, indeed a universal maqṣid and responsibility of individuals and communities in Islam (49:13; 5:2). People differ, as the Qur’ān 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’ānic 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 ḥadīth: “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.”

Identification of Maqāṣid

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

Maqāṣid are often equated with maṣāliḥ (interests, benefits) and the two are used interchangeably. They do admittedly resemble in many ways but also differ in others. Maqāṣid are goals that suggest a degree of finality and permanence. Al-Shāṭibī thus characterised them as “the fundamentals of religion, basic rules of the revealed law, and universals of belief”.33 Ibn ʿĀshūr similarly described the maqāṣid as either “certain, or uncertain close to certainty – qaṭʿī aw zannī qarīb min al- qaṭʿī”.34 Maṣāliḥ are, on the other hand, largely circumstantial and liable to change. Hence the maqāṣid tend to be a rank above the maṣāliḥ and in many ways constitute criteria of validity for them.35 The maqāṣid are also founded in the authority of Qur’ān and Sunnah whereas the maṣāliḥ, especially the maṣāliḥ mursalah (open or unregulated interests), are not textually grounded. Maqāṣid and maṣāliḥ can be coterminous and convergent but they could also relate to one
another in their capacities as means and ends: The *maqāṣid* signify higher goals and ends whereas *maṣāliḥ* could either be the same as *maqāṣid* or may serve as means toward attaining them.

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

1. **Clear text**: The strongest evidence that can establish the validity of a *maqṣid* is a definitive text of the Qurʾān or ḥadīth. Failing which, recourse may be had to what al-Shāfiʿī and al-Juwaynī have termed as sound reasoning (*istiqlāl*) and which ‘Izz al-Dīn b. ‘Abd al-Salām has termed variously as reason (*al-‘aql*), experience (*al-tajrībah*) and innate perception (*al-fīrāh*). 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*, there is no other text that introduces an element of uncertainty and doubt.
   
   (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 (*zuḥūr* – it can be seen for what it is), constancy (*inḍibāt* – obtains in all situations), and exclusiveness (*iṭtirāḍ* – 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. In the event of a conflict arising between the evidential bases of two *maqṣid*, recourse may be had to the rules of interpretation pertaining to conflict and preference (*al-taʿāruḍ wa’l-tarjīḥ*).

2. **Inductive reasoning (*istiqrā*):** Al-Shāṭibī (d. 1388) proposed *istiqrā* as a reliable identifier of *maqāṣid* next to the clear text. A *maqṣid* or goal of *sharīʿah* 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 Qurʾān is there a specific declaration to say that the sharīʿah has been enacted for the benefit of mankind. Yet this is a definitive conclusion drawn from a general reading of the Qurʾān.37 Similarly, the Qurʾān 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 sharīʿah 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 ascertain its purpose. For instance, if human dignity (karāmah), equality (musāwah), justice (ʿadl), and fair treatment (iḥsān) are the overriding objectives of the sharīʿah, 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 ijtihād is warranted simply because many of the abusive applications of guardianship violate the higher goals and purposes of the sharīʿah.

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).38 The discourse on this point tends to run parallel, for the most part, with the one that has arisen concerning the proof of maslahah/maqṣid. Al-Ghazālī (d. 1111) went on record to say “It is by means of ʿaql that people know the benefits of this world.”39 Credibility is given, however, al-Ghazālī added, to the intellect of those with sound judgment and knowledge of the custom and culture of society. Ḥāfiz al-Dīn ʿAbd al-Salām (d. 1262) observed that “temporal benefits and harms are mostly known and

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identified by ‘aql, not only in the sharī‘ah 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).’40 Ibn Taymiyyah’s view on the authority of ‘aql is similar but adds a reference to innate human nature (al-fiṭrah)41 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 Shāfī‘ī schools all of whom accepted istislah (consideration of public interest) as a valid basis of law and judgment in the sharī‘ah. The Shāfī‘ī 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’.42 Imām al-Shāfī‘ī 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.43

Human intellect (al-ʿaql) 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 sharī‘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. Fīṭrah is a qur’ānic term denoting a human disposition that inheres in every person and thus universal by the fact of its commonality. The qur’ānic assignment of the vicegerency (istikhlāf – Qur’ān 2:30) of man makes...
everyone a carrier of a Divine trust and mission to build the earth. *Fitrah* thus refers to the innate nature of God’s trusted vicegerents, all of whom partake in a sparkle of the Divine (Qur’ān 38:72), and excel in ranks of His creatures (Qur’ān 17:70). This is also manifested in Islam’s designation of itself as *dīn al-fitrah*, a religion that strikes harmony with enlightened human nature.

In his *Kitāb al-najāt*, Ibn Sīnā (d. 1037) tends to equate *fitrah* with intellect (*ʿaql*) in a passage where he speaks of intuitive intellect (*fitrah*) 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 *fitrah* 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.

Ibn ʿĀshūr (d. 1974) linked the *maqāṣid* to *al-fitrah*, quoting a qur’ānic text, and concluded that both the *sharīʿah* and its *maqāṣid* bear harmony with *al-fitrah*:

And so, set thy face steadfast towards the one true faith, turning away from all that is false, in accordance with the natural disposition (*fitrah*) which God has endowed in humankind. Allow no change to alter (or corrupt) what God has endowed (Qur’ān 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 ʿĀshūr, *fitrah* also refers to the natural disposition (*khilqah*) and the natural order (*niẓām*) that God endowed in every creature. The human *fitrah* consists both of inward and outward manifestations. Walking on two feet is just as much an aspect of man’s physical *fitrah* as is his intellect and reason. Similarly relating effects to their causes and drawing conclusions from them is an intellectual *fitrah*. He argued that the *sharīʿah* 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 *fitrah*. Islam does not aim to suppress nor eradicate these nor the innate human nature.
Ibn ʿĀshūr 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 Qurʾān proclaimed, brought a universal message for human guidance. Islam recognised the diversity of peoples and cultures, their laws and languages (Qurʾān 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 wasaʿṭ an), committed to moderation and justice (2:143). “The essence of all virtues (faḍāʾil) and sound fitrah lies in moderation in all matters.”47 Ibn ʿĀshūr’s commentator, el-Messawi, observed that through Ibn ʿĀshūr’s understanding of fitrah, one can see how he conceived the universality of Islam and “the proposition that the sharīʿah objectives (maqāṣid) are grounded in man’s fitrah […] [signifying] a cardinal attribute of the sharīʿah”.48

The study of fitrah 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 fitrah, 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 deprive children of their childhood. The fitrah 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 fitrah 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.

**Widening the Scope of Maqāṣid**

Our attempt to open the scope and theory of the maqāṣid suggests the use of maqāṣid as criteria, in a broad sense, for evaluation of all rulings and decisions of concern to the shari'ah – especially those of fatwā and ijtihād in conjunction with new issues. Traditional Islamic scholarship accorded this status to uṣūl 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 maqāṣid while in the meantime using the resources of uṣūl al-fiqh that often endorse and enrich the scope of legal reasoning and ijtihād. 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 uṣūl 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.49

Ibn Rushd (d. 1198) did not specifically write on maqāṣid. 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-maqāṣid 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-Raysūnī observed that Ibn Rushd called attention through these statements to the cardinal purposes of the shari'ah (al-maqāṣid al-'ulyā li 'l-shari'ah), the moral and spiritual aspects of conduct...
that are emphasised in the Qur’an and accentuate the merits of faith, purity and wisdom (cf. Qur’an 62:2). The key Hanbali scholar, Ibn Qayyim al-Jawziyyah, also emphasised the primacy of ethical norms to the whole structure of Islamic values:

The *shari‘ah* 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 *shari‘ah*, even if it is claimed to be so according to some interpretations.

Ibn ‘Āshūr identified the greatest purpose (al-*maqṣid* al-a‘ẓam) of the *shari‘ah* as “achievement of well-being and integrity and prevention of harm and corruption”. He further identified it as the general objective (al-*maqṣid* al-‘āmm) of the *shari‘ah* 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 ‘Āshūr further observed:

The *shari‘ah* 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.

Ibn ‘Āshūr 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”.

Ibn ‘Āshūr’s contemporary, ʿAllāl al-Fāsī, also identified as a cardinal purpose of the *shari‘ah*:

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.

Al-Raysūnī 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.

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 sharīʿah “what is indispensable for the accomplishment of a wājib becomes a part of that wājib, and the means to ḥarām also becomes ḥarām”.

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.

According to a survey report on the Sunnite and Shi’ite applications of maqāṣid, it was found that their differences are minimal. Both tend to discuss “the same topics: ijtihād, qiyās, huqūq, qiyam, 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 Mustaṣfā, al-Shāṭibī’s Muwatā‘āt, and Ibn ʿĀshūr’s Maqāṣid – and use the same theoretical classifications – maṣāliḥ, ḍarūrāt, ḥājiyyāt, taḥsīniyyāt, maqāṣid ʿāmmah, maqāṣid khāṣṣah and so on”. It is then added that most of the juridical differences between the Sunnite and Shi’ite schools are due to their differences over the āḥād (solitary) hadith and the different conclusions drawn from them.

“A maqāṣidi 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 fiqh details.” The leading Lebanese Ayatollah, the late Muḥammad Mahdī Shāms al-Dīn proscribed, “based on the higher and fundamental purposes of reconciliation, unity and justice”, hostile disagreement and aggression along the Shi’ite–Sunnite lines of division. Without exaggeration, unity among the ummah is one of the cardinal goals of Islam – even if the maqāṣid 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

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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 that enriched the scope of interpretation and *ijtihād*. Yet unwittingly perhaps, *ijtihād* was used as an instrument of disagreement (*ikhtilāf*) more than that of consensus (*ijmāʿ*). 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 *maqāṣid* approach to legal enquiry and research.

The Scope of *Maqāṣid* Revisited

A valid concern exists as to where one draws the line in one’s attempt at expanding the scope of the *maqāṣid*, and how does one distinguish the valid from spurious additions. One observer noted that research in *maqāṣid* 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 *maqāṣid* by scholars like Ibn ‘Āshūr, Muḥammad al-Ghazālī, Gemal Atiya, ‘Abd al-Majīd al-Najjār and many others “opened the door very wide to include other [new] *maqāṣid* that seem to increase unreservedly. The question is whether all these are genuine *maqāṣid*.” It is then stated that al-Shāṭibī’s identification of the leading five *maqāṣid*, as well as his classification of *maqāṣid*/*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’ān or *ḥadīth* to enumerate or classify them as such. Al-Shāṭibī’s conclusions were based on conceptual induction of the common meaning (istiqrā’ maḥnī) of the numerous references to these (five *maqāṣid*) in the Qur’ān and Ḥadīth. It is then recommended that *maqāṣid* should be identified by the same methodology that the *‘ulamā*’ of *uṣūl* have used for the identification of *‘illah* – thus mentioning *sabr* and *taqsīm* (isolation and assignment), and also *takhrīj al-manāt* (extraction of *‘illah*). To put it simply, *maqāṣid* are to be identified in accordance with the *uṣūl* methodology for identification of *‘illah*, which would effectively place the *maqāṣid* back under the umbrella of the conventional *uṣūl al-fiqh*. The advice of 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*. Besides, the *maqṣid* is not the same as *‘illah*: whereas *‘illah* looks basically to the existing status
quo, a maqṣid goes beyond that, and one would not want to burden the maqṣid to 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 maqṣid 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 ʿĀshūr adds ḥayāʾ, or when Qaraḍāwī adds justice and freedom, and al-Najjar protection of the environment to the range of maqṣid— they have presumably done so in light of their general knowledge and insight into the sources of Islam. They have not subsumed the maqṣid 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 maqṣid. It is advisable also to preserve the inherent versatility and dynamism of maqṣid in tandem with our quest for improvement, civilisational renewal and reform.

I now propose to review the scope of maqṣid from its designated list of five towards an open-ended scale of values. This is because maqṣid in the sense of goals and purposes of the sharīʿah can logically not be limited to a particular number, simply because the sharīʿah itself is not limited in that order. Our understanding of the sharīʿah 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 sharīʿah must also remain an evolving chapter of the juristic and civilisational edifice of Islam.

Ibn Taymiyyah (d. 1328 CE) who attempted to widen the scope of the maqṣid so long ago observed that anyone who reads the Qurʾān 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 maqṣid are open-ended and evolving.65 Ibn Taymiyyah’s approach has been supported by leading twentieth-century jurists, including Ibn ʿĀshūr, Muhammad al-Ghazālī, al-Qaraḍāwī, al-Raysūnī, Attia, Muhammad Sirāj, Khamlishi and many others.66

Al-Qaraḍāwī added to the five leading maqṣid 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 Qurʾān.67 Ghazālī, Khamlishi, Attia and Sirāj also made a strong case for the inclusion of equality and justice among the higher maqṣid. Sirāj ranked equality only slightly below freedom and justice. The starting point is justice, which is however not possible
without equality.\(^6\) I also propose world peace, economic development, science research, and fundamental constitutional rights to be added to the leading maqāṣid.\(^6\)

Îbn ʿĀshūr 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 maqṣid. Since the ʿummah’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 ʿummah necessitates its unity, this too should be included.\(^7\) Al-Qaraḍāwī 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?\(^7\)

Muḥammad al-Ghazālī 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 Qurʾān and Sunnah. Similarly, the affairs of community and state can hardly be regulated without the guarantee of freedom. Since the Qurʾān advocates freedom, it too should be recognised as a goal and maqṣid of the sharīʿah.\(^7\)

Al-Raysūnī observed that the existing list of essentials is based on ijtihād 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.\(^7\)

**Conclusion and Recommendations**

This article 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 sharīʿah 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 sharīʿah 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 sharīʿah-based responses to such issues.

• Critics have often questioned the methodological accuracy and scope of maqāṣid. This article 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 Sharīʿah: History and Methodology” (2008); “Maqāṣid al-Sharīʿah Made Simple” (2008); and “Law and Ethics in Islam: the Role of the Maqāṣid” (2009).74

• 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 sharīʿah that can grow in tandem with the needs and aspirations of today’s Muslims. The desire to rejuvenate the dynamism of Islamic thought can be better served through maqāṣid-oriented ijtihād. Equipped with a credible methodology to ensure the proximity and nexus of maqāṣid with the scriptural guidelines of Islam, the maqāṣid can provide a promising prospect for the advancement of values and objectives held in common between Islam and other civilisations.

• 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 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 in the multi-ethnic and multi-religious environment of Malaysia.

Notes


3. Muḥšafآ Ahmad al-Za$rāţ, al-Madkhal al-fiqhī al-ānum (Damascus: Dār al-Qalam, 1998), 1:392. Without engaging in technicalities, the uṣūl scholars define ʿillah as an attribute of the ḥukm which is constant and evident (ẓāhir) and bears a proper (munāsib) relationship to the ruling of the text.


14. al-Fāsī, Maqāṣid, 88.


17. The uṣūl methods for identification of effective causes include takhrīj al-manāt (extraction of the effective cause), tanqīḥ (isolation of) al-manāt, and taḥqīq (ascertaining of) al-manāt, as well as
a number of other methods that tend to run into technicalities. See for details, Kamali, *Principles* (chapter on gīyās).


19. For example, the right of preemption (*ḥaqq al-shufʿ*), 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 *ḥadīth*.

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.


23. Ibid., 130.

24. The *ḥadīth* of *tasʿīr* is recorded by Abū Dawud, *Sunan Abī Dawud* (various edns), *ḥadīth* no. 3,457 – also recorded by Tirmidhī and Ibn Mājah.


31. This is the view of Abū Ḥāmid al-Ghazālī who validated *maṣlaḥah* only if it promoted the *maqāṣid*. See for details Ẓāhir al-Dīn bin ʿAbd al-Raḥmān, *Maqāṣid*, 102f.


33. This is the view of al-Juwaynī, al-Sarakhsī, al-Sulamī and Ibn Taymiyyah. It is also noted that since Imam Mālik accepted *maslahah mursalah* as a basis of law and judgment, he can be assumed to have accepted *ʿaql* as a proof also of *maqāṣid*. See for details Zāhir al-Dīn bin ʿAbd al- Raqām, *Maqāṣid*, 102f.

34. Al-Bukhārī, *Ṣaḥīḥ*, *ḥadīth* no. 294, and Muslim, *Ṣaḥīḥ*, *ḥadīth* no. 1,211.


39. This is the view of Abū Hāmid al-Ghazālī who validated *maslahah* only if it promoted the *maqāṣid*. See for details Ẓāhir al-Dīn bin ʿAbd al-Raḥmān, *Maqāṣid*, 51; Attia, *Towards*, 16.


42. This is the view of al-Juwaynī, al-Sarakhsī, al-Sulamī and Ibn Taymiyyah. It is also noted that since Imam Mālik accepted *maslahah mursalah* as a basis of law and judgment, he can be assumed to have accepted *ʿaql* as a proof also of *maqāṣid*. See for details Zāhir al-Dīn bin ʿAbd al- Raqām, *Maqāṣid*, 102f.


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43. Ibid., 2:117.
45. Ibn ʿĀshūr, Maqāṣid, 58.
46. Ibid., 266.
47. Ibid., 268.
49. Ibn ʿĀshūr, Maqāṣid, 64.
52. Ibn ʿĀshūr, Maqāṣid, 78.
53. Ibid., 266.
55. ’Allāl al-Fāsī, Maqāṣid, 41. See also Attia, Towards, 102–3.
56. al-Raysūnī, Najariyyāt, 294f.
57. See for details on commands and prohibitions and their consequences Mohammad Hashim Kamali, Principles, 196f.
59. Auda, Maqasid, 244.
60. Ibid.
63. Ibid., 63 – Soualhi’s quotation is from al-Shāṭibī, al-Muwāfaqāt, 2:51.
64. 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 the text (ḥukm) and no qiyās will be needed.
66. See for a summary of their views Attia, Towards, 79–86. See also Kamali, Principles, 401–2.
67. al-Qaraḍāwī, Madkhal, 75.
68. As quoted in Attia, Towards, 84 – excerpt from Siraj’s seminar paper on “Islamic Legal Priorities”.
70. Ibn ʿĀshūr, Maqāṣid, 139. See also Attia, Towards, 82.
71. Excerpt from al-Qaraḍāwī’s seminar paper on the Sunnah, as quoted in Attia, Towards, 84.
72. Quoted from Attia’s version of an excerpt from Muhammad al-Ghazālī’s seminar paper on the subject of Islamic legal priorities with minor linguistic adjustments by the present writer; Attia, Towards, 83.
73. al-Raysūnī, Najariyyāt, 47f.
Abstract: Alternative approaches to Islamic law made ‘Islamic legal methodology’ a locus of scrutiny and re-examination by contemporary Muslim authors. This ‘methodology’ (usūl al-fiqh), which is more than 1,200 years old, developed out of consideration for the authority of the Qur’ān and the Sunnah as the fundamental sources of the law. Although fascinating at the beginning, the rules of literal demonstration could not solve problems arising from the sheer text-based reading of the law. Muslim scholars of the classical period occasionally took different approaches such as consideration of higher objectives of the law (al-maqāṣid) and knowledge of priorities (al-awlawiyyāt) to harmonise the applicability of the law with varying situations facing them. This genre of efforts got a new momentum in the recent decades as it seems heading towards rethinking the method of reading Islamic law. The purpose of this article is to provide a critical survey of what these efforts offered to rethink Islamic legal methodology.

Introduction

Centuries of text-based reading of the Islamic law ultimately centred its methodology on a chief formula, i.e. ‘the authority of literal demonstration’ (ḥujjīyyah zavāhir al-alfāz). This process has begun with typology of religious statement (bayān) and address (khiṭāb), and ended up with assertion of the authority of literal demonstration. The assumption behind this formula is that each statement of the text represents an eternal truth which should be discovered and applied regardless of time and space differences. Muslim scholars of the early period had no choice but to assume a sacred authority for the texts; because the nascent Muslim communities were so attached to their customs and arbitrary laws which made impossible introducing a new system of law without connecting it to the sacred mandate. Al-Shāfiʿī’s al-Risālah points to the fact that he had a hard time to establish a legal sense or an

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accountable feeling amongst the emergent Muslims of time. To do so he upheld the supreme authority of the Qur'ān and especially the Sunnah of the Prophet against the personal opinions of ahli al-ra'ya and living traditions of the community. Al-Shāfiʿī’s method of text-based reasoning, especially his way of founding the Sunnah on hadith reports, set a pattern for the later scholars who practically left little room – let alone any constituent role – for human reasoning except for the re-arranging of what had already been established.

Nevertheless, Muslim scholars ever since the eleventh century adopted certain notions from Greek logic which equipped them with a stronger epistemological introduction of usūl al-fiqh although did not change the structure of their methodology. It was Abū Ḥāmid al-Ghazālī (d. 1111) who, after sporadic touches on logic by Ibn Ḥazm (d. 1064) and al-Juwaynī (d. 1085), incorporated some basic concepts of formal logic in the introduction of his last work on legal methodology. Moreover, al-Ghazālī praises human reason and likens it to a judge who may never be dismissed or substituted. He adds: ‘aql is a witness (shāhid) for the sharīʿah, a spectator which refines and accommodates. Thus no wonder if the same al-Ghazālī was an important precursor for bringing to the fore the idea of consideration of public interest and higher objectives of the law which actually added a reason-based facet to Islamic legal methodology.

Considering the Higher Objectives of the Law

Before al-Ghazālī, Imām al-Ḥaramayn al-Juwaynī and Shihāb al-Dīn al-Qarafī (d. 1285) touched upon the idea of consideration. It was al-Ghazālī, however, who expanded the chapter of analogical reasoning (qiyās) to the extent that new notions of suitability of ratio legis (munāsabah) and consideration of public interest (maṣlaḥah) found a solid ground in the legal methodology. If a ratio legis (‘illah) has not been fixed through the text or consensus, al-Ghazālī argued, the underlying ‘illah would be discerned by rational reasoning what suits the case. Al-Ghazālī eventually links the practice of suitability to maṣlaḥah to serve the higher objective of the law. It is particularly the case where a remote suitability overrules other textual or contextual signs due to the underlying maṣlaḥah based on the main purpose of the law (maqṣid al-sharʿ). It is noteworthy that al-Ghazālī identifies maṣlaḥah with the protection of the end goals of the law which include the life, religion, intellect, property and the family. The authority of this maṣlaḥah is divided into three levels of darūrāt (lit. ‘necessities’), hājāt (lit. ‘needs’) and taḥsīnāt or tazyīnāt (lit. ‘embellishments’). It is striking that al-Ghazālī allows the consideration of maṣlaḥah by way of qiyās and suitability only. He already excluded istiṣlāḥ (seeking maṣlaḥah) from the adillah (lit. ‘indicants’, sources of the law) because of its wide and undefined application. Other juridical formulas that al-Ghazālī excludes from
the adillah are istihsān (juristic preference) and the same topic of qiyās because al-Ghazālī considered them as a means of setting rules, not a source of the law. This demonstrates that al-Ghazālī’s re-adopti on of maṣlaḥah in qiyās was due to its conformity to the higher objectives of the law (maqāṣid) which in his view can be better devised by the principles of qiyās.

After al-Ghazālī, Abū ʿĪsā al-Shāṭibī (d. 1388) is the next important figure who revised the structure of Islamic legal methodology. He actually wrote one of the most inspiring works on legal methodology and its relation to the philosophy of the law. In his al-Muwafaqat (The Congruences), al-Shāṭibī presents uṣūl al-fiqh as a method not only to extrapolate rules from the sources, but also to serve aims and objectives of the law what he describes as maqāṣid al-sharīʿah. He makes consideration of higher objectives of the law an essential part of legal methodology. By offering twelve theoretical premises as introduction, he elaborates on theories of harmonising the legal norms with the philosophy of the law that he identifies with the notion of maṣlaḥah or public welfare. The primary intention of the Lawgiver, according to al-Shāṭibī, is the good of the people (maṣlaḥah). He divides the maṣlaḥah into three categories of necessity, needed and improvements which may go parallel with the typology of the respective legal norms depending on the circumstances. The category of ‘necessity’ consists of the protection of the following five: religion, self (nafs), family, property, and intellect. The category of ḥājiyyāt includes a variety of rituals and transactions whose purpose is to mitigate hardship. Similarly taḥsīniyyāt refers to the best of conducts and customs (ʿādāt). Before al-Shāṭibī, this categorisation was employed by Muslim jurists such as Juwaynī, al-Ghazālī, and al-Qarafi in their respective chapters of qiyās to mainly justify the appropriate application of ratio legis (ʿillah) to new legal cases. By commensurating this category with the public good of the people (maṣlaḥah), al-Shāṭibī introduces a new rational approach to the sources of law in which social realities are taken into consideration for determining suitable legal norms. As a result, adherence to the text of law, according to al-Shāṭibī, must not be so rigid as to alienate the rationale and purpose of the sharīʿah.

The Contemporary Genre of ‘Consideration of the Higher Objectives of the Law’ (Maqāṣid al-Sharīʿah)

Contemporary works on the maqāṣid mainly aim at providing an Islamic response to the requirements of modern developments in Muslim societies. Al-Shāṭibī’s proposal to include the maqāṣid among the fundamental sources of the law could not find enough plausibility among Muslim scholars as none dared to commensurate maqāṣid with the text-based sources. Neither did al-Shāṭibī’s emphasis on consideration of public good receive enough attention until the twentieth century when Ibn ʿĀshūr...
(d. 1973), a Tunisian student of the Egyptian reformist thinker Muḥammad ʿAbduh (d. 1905), allocated his major work to the subject.

Ibn Ṭāhir’s point of departure is the idea that the contested propositions of ʿusūl al-fiqh are not realistic enough to capture the wisdom or hidden insights of religious norms. “Rather, they revolve around the deduction of provisions (aḥkām) from the literal expressions and words (alfāẓ) of the Lawgiver.”14 He proceeds then to ground maqṣid on fitrah or human nature. The fitrah in Ibn Ṭāhir’s opinion is closely related to al-dīn (the religion) whose definitive article denotes the familiarity of human natural disposition with the truth of both the shariʿah and faith.15 He refers to al-Zamakhsharī (d. 1144) a Muʿtazilite thinker who claimed that “human nature is always bent on right judgment and understanding such as understanding the principle of monotheism”.16 With these introductory remarks, Ibn Ṭāhir proceeds to elaborate on his own understanding of maqṣid which principally includes the five categories of maṣāliḥ, equality and freedom in the shariʿah and finally social order. Furthermore, Ibn Ṭāhir tries to find out the maqṣid in the applied law of Islam such as family law, financial transactions and penal law.17 Besides elaboration of al-Shāṭibī’s theory of maqṣid, Ibn Ṭāhir’s work contains considerable references to the role of fitrah, reason, freedom in the shariʿah and the necessity of ijtihād.

Muhammad Khalid Masud (b. 1939) is the author who in fact re-introduced al-Shāṭibī’s philosophic work on legal theory to the interested English-reading milieu. He evaluates al-Shāṭibī’s approach to ʿusūl al-fiqh in the context of adaptability of Islamic law to social changes. For this purpose he holds al-Shāṭibī’s theory of maqṣid as the defining feature of his conception of Islamic law. In his introduction, Masud quotes arguments holding Islamic law to be theologically grounded and authoritarian to the last degree.18 However, he later keenly deliberates on the space provided by al-Shāṭibī for consideration of maqṣid and maṣāliḥ – in fact for the role of human reason to balance the authoritarian nature of purely text-based reading of the shariʿah. Following al-Shāṭibī, Masud elaborates on three notions of maslahah, dalālah (lit. ‘indication’) and ʿādah (lit. ‘convention’) as core concepts of his methodological discourse. In al-Shāṭibī’s analysis, Masud argues, maslahah appears as a primary objective of law. Therefore it is interchangeable with maqṣid. The meaning of maslahah however – although it may vary in different contexts – is aimed at the protection of public interest.19

Masud considers dalālah in terms of al-Shāṭibī’s theory of language and meaning. He stated that “Shatibi regarded the indication (dalālah) as the most essential aspect of language” and that he maintained that the question of the clarity of the text (the Qurʾān) is not the problem of vocabulary, but rather that of ‘indication’ and ‘understanding’.20 On the whole, Masud concludes that al-Shāṭibī’s theory of language can be compared more appropriately with the ‘ordinary language theory’
which allows a ‘word’ or a ‘sentence’ to be understood only in a ‘context’ and by ‘usage’.

Another interesting topic that Masud sets forth is about ‘ādah or conventional practices of society that are confirmed by the shari‘ah. Masud examines ‘ādah as contrasting bid‘ah (lit. ‘innovation’) in the context of continuity and change. Social ‘ādah such as diyah (blood money), qasāmah (compurgation) and qarḍ (loan) “can change in certain cases, but more important is the fact that when a change takes place within an ‘ādah it also affects a change in the rule of the shari‘ah”. It is noteworthy that al-Shāṭibī, who had already distinguished rituals (ʿibādāt) from customary practices (ʿādāt), assigns the former to Meccan stage and the latter to Medinan period. ‘Ibādāt, according to al-Shāṭibī, are acts of devotion (taʿabbudī) and immutable whereas ‘ādāt are variable and subject to human choice. This kind of dichotomous treatment of concepts according to the Meccan and Medinan phases of revelation is typical of al-Shāṭibī’s work.

In connection with maqāṣid, Mohammad Hashim Kamali (b. 1944) after his far-reaching engagement with ‘principles of Islamic jurisprudence’ comes up with a number of suggestions particularly in two neglected areas of usūl al-fiqh where improvement could be made. First, there is the Qur’ānic concept of shūrā (lit. ‘consultation’) which has never been integrated in the usūl doctrines and procedures. In addition to the tradition of the Prophet, the Qurʾān (42:38) equates ‘consultation’ (shūrā) on a par with ‘obligatory ritual prayer’ (al-ṣalāh) as important characteristics of the nascent Muslim community. Nevertheless, the notion of shūrā did not receive one per thousand elaborations that the prayer did. Even a number of contemporary Muslim thinkers disqualify the concept of shūrā as unfit for consideration in the modern political thought. The constituent components of shūrā seem inadequate now owing to one millennium of Muslims’ negligence during which Europe could evolve its semi-consultative bodies into the modern parliamentary system. The second suggestion of Hashim Kamali rests on the Qurʾānic dictum of accepting the legitimacy of ulu ‘l-amr or those who are in charge from among Muslims. Kamali entertains the proposition of ulu ‘l-amr in order to find a solution to the historical detachment of jurisprudence from the practicalities of governance. It seems, however, that the problem lies in the historical crisis of legitimacy facing Muslim societies which has long alienated Muslims intellectuals from the governmental practicalities. These two concepts, after all, belong originally to the area of Islamic political thought, and legal methodology in its conventional framework can hardly offer an answer for them.

Concerning the present gap between the theory and practice of Islamic law, Hashim Kamali also encourages the widening of the scope of maqāṣid, but at the same time he warns that without the aid of the methodological tools, the maqāṣid procedure may lead to arbitrary conclusions. Kamali restates the history
of the development of *uṣūl al-fiqh* to show how it vacillated between two goals of promoting *ijtihād* and disciplining *taqlīd* (following the opinions of others). In fact, *uṣūl al-fiqh* has shouldered the double duty of setting meters for legality of divine ordinances (*al-aḥkām*) and at the same time to update them according to their end-goals and new requirements of the changing situations. The latter part still awaits new meters to be set for its promotion.

We now turn to the work of Jasser Auda (b. 1966), who claims introducing a new approach to Islamic law particularly to the theory of *maqāṣid*. Jasser Auda dismisses ‘Islamic modernism’ as being unnecessarily apologetic about traditional Islam. ‘Islamic modernism’, Auda argues, was by and large a reaction to European modernism which endorsed the ideas of the centrality and supremacy of modern sciences. Furthermore Auda criticised the way Muslim reformists (such as ‘Abduh, al-Ṭahṭāwī and Muhammad Iqbal) incorporated the concept of ‘causality’ in order to re-interpret or re-word the Islamic philosophy of religion. That is to say, they ‘re-interpreted’ Islamic articles of faith (the Qur’ān and *Sunnah*) in a way that ‘fits’ the conclusions of (pre-twentieth century) science, whereas ‘causality’ served as the logic of modernist *kalām* (philosophy of religion). ‘Abduh’s *Risālat al-tawḥīd* is the clearest example of the above changes in attitude. Auda then explains the contemporary changing status of philosophic thought as follows:

In the west, the second half of the twentieth century witnessed postmodernism’s complete rejection of all modernist ‘meta-narration’ [...] All streams of postmodernism agreed on the ‘deconstruction of centrim’. Thus, according to postmodernists, the center should remain void of anything, whether it is science, man, the West, or even God. ‘Rationality’ itself, according to postmodernists, became an undesirable from of centrim and marginalization. ‘Irrationality’ became a desirable and ‘moral’ alternative.

‘Islamic postmodernists,’ in turn, utilized deconstructionist concepts in order to criticize central and basic Islamic articles of faith in a radical way. The centrality of the Qur’an and the Prophet in Islam and Islamic law was made subject to a ‘free play of the opposites,’ to borrow an expression from Derrida.

Auda then defines ‘systems theory’ before offering his proposal for an ‘Islamic systems philosophy’ as a rational and non-Eurocentric ‘postmodern’ philosophy:

Systems theory and philosophy emerged in the second half of the twentieth century as an anti-thesis of both modernist and postmodernist philosophies. Systems theorists and philosophers reject the modernist reductionist view that all human experiences could be analyzed into indivisible causes and effects. On the other hand, systems philosophy also rejects postmodernist irrationality and deconstruction, which are ‘meta-narration’ in their own right. Thus according to systems philosophy, the universe is neither a huge deterministic machine nor a totally unknown being, complexity can be explained neither
via a series of ‘nothing-but’ cause and effect operation nor via claims of ‘non-logocentric irrationality, and the problems of the world could be solved neither via more technological advances nor via some sort of nihilism.’ Hence, thanks to systems philosophy, the concept of ‘purposefulness,’ with all of its teleological shadows, was back to philosophical and scientific discourses.30

By cherishing ‘the concept of purposefulness’, Auda provides a space for the maqāṣid theory in his ‘system approach’. Despite the multi-dimensionality of efforts made by Auda to re-philosophise Islamic law, ‘the implication of purpose’ remains the most tangible part of his work. He first refers to the difference between goal and purpose as the latter produce ‘the same outcome in different ways and different outcome in the same or different environment. Thus, purpose-seeking systems could produce different outcomes for the very same environment as long as these different outcomes achieve the desired purpose.’31 Islamic theology (kalām) discussed the problem in the context of ‘causation’ in divine actions (taʿlīl afʿāl Allāh). After quoting some Muʿtazilite and Ashʿarite views, Auda finally arrives at al-Māturīdī’s view that “divine actions have causes/purposes out of God’s grace.”32 Finally as the core of his methodology of systematic analysis, Auda presents the following outline of the relationship between purposefulness and other features of the system of Islamic law.

(i) Purposefulness is related to the cognitive nature of Islamic law because various proposals for the nature and structure of the purposes of the Islamic law (maqāṣid al-sharīʿah) reflect cognitions of the nature and structure of law itself.

(ii) Universal purposes of Islamic law (al-maqāṣid al-ʿāmmah) represent the law’s holistic characteristics and universal principles.

(iii) Purposes of the Islamic law play a pivotal role in the process of ijtihād, in all of its various forms, which is the mechanism by which the system of Islamic law maintains its ‘openness.’

(iv) Purposes of the Islamic law are perceived in a number of hierarchical ways, which correspond to the hierarchies in the system of Islamic law.

(v) Purposes provide multiple dimensions that help resolve and understand ‘apparent contradictions’ and ‘opposing tendencies’ in the scripts and the fundamental theories of the law.33

As seen above, Auda relates his doctrine of purposefulness to ‘the cognitive nature’ of Islamic law, and ‘pivotal role of various forms of ijtihād’. By ‘cognitive nature’, he means that Islamic law (fiqh) is a result of human reasoning and reflection of ijtihād upon the scripts.34 This way of characterisation of Islamic law seems to be

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in line with what a number of Muslim reformist thinkers had already offered, but Auda refuted them as deconstructionists of the modern and post modern periods. It is not clear to what extent ‘human reasoning and reflection’ could or should use modern disciplines and methods without ignoring the centrality and superiority of the revealed sources. Number four of Auda’s outline refers to a number of hierarchical ways, which correspond to that “in the system of Islamic law”, i.e. they should be observed in a purpose-based reading of the law. If these hierarchies refer to those presented in the traditional usūl al-fiqh, then, a conventional limitation is discernable in the proposed system. Auda acknowledges there are ‘apparent contradictions’ and ‘opposing tendencies’ in the script which require multiple dimensions to help in understanding the fundamental theories of the law and resolving problems arising from purpose-based reading of the shari‘ah.

Knowledge of Priorities

Closely connected to the maqāṣid theory is the new idea of knowledge of priority (fiqh al-awlawiyyāt) discussed currently among Muslim scholars. This idea was initially entertained by the contemporary Egyptian scholar Yūsuf al-Qaraḍāwī (b. 1926), and elaborated by al-ʿAlwānī. The etymological roots of awlawiyyah can be traced in the Qur‘ān and Sunnah, and in a number of parallel concepts; but what is meant in the contemporary context – according to al-Qaraḍāwī – is “to place things in their seats (martabah) so that the proper or important bid will not be deferred or down played”. By examining the roots and precedents of awlawiyyah in the works of scholars such as al-Ghazālī, al-Qaraḍāwī arrives at the conclusion that is necessary to observe the priority among the binding duties prescribed by the religion. Al-Qaraḍāwī, as the title of his work suggests, is more concerned with the future of political Islamic movements rather than setting legal rules. His concluding priorities, therefore, include the necessity of ‘dialogue’ with different groups such seculars, orientalists, Christians etc.

Ṭāhā Jābir al-ʿAlwānī (b. 1935) sets forth the notion of awlawiyyāt, as a supplementary to the maqāṣid theory, to deal with questions facing today’s Muslim societies. Al-ʿAlwānī’s continuous search for an appropriately Islamic context led him to envisage some principles for the idea of priorities. In a work published under the rubric of maqāṣid al-sharīʿah al-ʿAlwānī signifies the important role that knowledge of ‘rational priorities’ can play in balancing and stabilising Islamic jurisprudence. He justifies this idea with examples taken from topics of ‘conflict of laws’ (taʿāruḍ) and preferences (tarājiḥ) that originally stem from reason rather than revelation. What he interprets as ‘awlawiyyāt’ in this context is much broader than the conception some contemporary Muslim authors identify with the
term. A comprehensive knowledge of the *shārīʿah* i.e. Islamic theology as well as jurisprudence is needed to acquire the wisdom of ‘priorities’.38

The negative effects that result from disregarding the ‘priorities’ constitute a topic from which al-ʿAlwānī had extracted 24 unwanted outcomes. The first outcome is that Muslims have plunged into details (of the *shārīʿah*) to the extent they are not able to systematise them and to address the subtle relation between cases and principles. The second is the fact that they preferred to adhere to blind following (*taqlīd*) rather than carrying out their initiatives (*ijtihād*). Third, they placed too much significance upon supererogatory or optional undertakings, before obligatory actions. Fourth, Muslim jurists often rely upon their presumptions, and decline to find out the causality of things; and to seek the relationship between cause and effect. Fifth, the over-reliance upon the names of iconic scholars from whom Muslims expect to hear the truth instead of verifying the authenticity of what they said. This is in fact a kind of idolatry (*ṣanāʿīyyah*) that deters Muslims from thorough contemplation. In the rest of his elaboration, al-ʿAlwānī signifies how trivial trends of thought and superfluous spiritual displays occupied the minds of Muslims without making a real contribution to religion and society.39 Al-ʿAlwānī does not hesitate to point out the fact that his concept of priorities should indeed be understood along with the higher objectives of the *shārīʿah* as the title of his book suggests.

Another noteworthy work on ‘priorities’ belongs to Muḥammad al-Wakīlī (b. 1960). In his 2006 publication, al-Wakīlī examines the definition, roots, ways and principles of priorities in cases of conflict of law and antagonism, all juridically with a lexicographical approach.40 His work seems good to review the legal norms of the *shārīʿah* from the standpoint of ‘priorities’, but he does not pay much attention to the role of human reasoning in determining priorities. He repeatedly refers to the works of al-Qaraḍāwī and al-ʿAlwānī, however, he does not engage with the ‘philosophy of priorities in today’s context’ as the two above-mentioned authors did.

**Concluding Remarks and Recommendations**

The above overview of the existing accounts on consideration of ‘higher objectives and priorities’ in interpretation of Islamic law points to the fact that the need for new ways of reading the *shārīʿah* is inflicting additional changes on the framework of Islamic legal methodology. Both formulas of *maqāṣid* and *awlawiyyāt* had no title in the conventional legal theory although a number of parallel notions may be traced in the *uṣūl al-fiqh*. The important difference, to me, is the vantage point taken by the contemporary authors to incorporate more ‘timely reasoning’ into the largely ‘text-based’ reading of the law. Although equipped with rich language and propositions, the conventional legal methodology is still essentially based on the principles of literal demonstration (*ḥujjīyyāt al-ẓawāhir*) of the texts. The rise
of rational considerations seems presently to be making its way into the legal methodology to fill the vacuum created by limitation of literal reading of the law. Regardless of their sources of inspiration, the new considerations are necessitated by varying situations in the Muslim societies.

We have surveyed the history of consideration of the maqāṣid or higher objectives of the law as an introduction for the direct role of ‘human reason’ in Islamic legal methodology. No doubt that al-Ghazālī and particularly al-Shāṭibī played significant roles in employing reason and purpose-based reading of the shari‘ah. But their efforts to rationally re-arrange or to update topics of uṣūl al-fiqh did not outlive the traditional course of literal arrangement of legal methodology. The ambiance created by Sheikh Muḥammad ‘Abduh for a rational approach to the religion, however, drove his student Ibn ‘Āshūr to write a treatise on maqāṣid al-sharī‘ah.41 The publication of Masud’s English work on maqāṣid as the philosophy of Islamic law followed by the translation of Ibn ‘Āshūr and al-Raysūnṭ’s works on al-Shāṭibī, made the theory of maqāṣid a locus of attention for Muslim intellectuals such as al-ʿAlwānī, Abū Sulaymān (b. 1935) and Wahbah Zuḥaylī (b. 1932) who wrote chapters on the necessity of consideration of higher objectives of the law along with observation of rational priorities. However, none of them have so far tried to structure maqāṣid as an essential part of the legal methodology as al-Shāṭibī did.42

The currently rising attention to maqāṣid and awlawiyyāt points to the fact that Islamic legal thought is heading towards a purpose-based reading of the law. But a question remains of how the conventional legal methodology may accommodate this way of reading the law.

• The idea of consideration of higher objectives of the law and observing rational priorities may be regarded as the first step towards rethinking Islamic legal methodology, and thus must be taken seriously. As we saw above, Jasser Auda after his multi-layered research came up with the meaningful proposal of ‘purpose-based reading of the shari‘ah’, which should correspond to the hierarchies in the system of Islamic law. The latter part of Auda’s proposal, though limiting the scope of free reasoning, shows the necessity of the presence of ‘tradition’ in the Muslim jurisprudence.

• It seems reasonable to assume that the end-goals of the law-giver correspond to the wellbeing of the society. If the purpose-based reading of the law is taken seriously, it should produce its methodical devices how to find out the higher objectives of the law in the light of time-space requirements of a given society. Here, we see Kamali’s emphasis on the necessity of procedural devices for recognition and harmonising the maqāṣid. The new trend, Kamali argues, while indicative of the desire to rejuvenate ijtihād, should not move to
the other extreme and “to think that maqāṣid could by themselves satisfy the reformist demand without the aid of methodological tools of uṣūl al-fiqh”.

Another problem facing purpose-based reading of the sharīʿah is the confusion caused by unstructured elaboration of traditional sources concerning both concepts of maqāṣid and awlawiyyāt. These concepts, as mentioned above, have a variety of parallel concepts in the sharīʿah whose real contexts have been different from that of today. We can easily lose the point by sheer reliance on the rich terms and expressions of Arabic language without providing meaningful contexts for them. We have examples of Arabic works on maqāṣid and awlawiyyāt rich in drawing parallel notions from the conventional sources, but poor in providing a meaningful context for their application in practice. There are scholars who were confused by several rubrics for one and the same concept, and complained from the khudaʿ al-ʿanāwīn (deception of titles) which had misled or confused them.

- On the practicality of purpose-based reading of the law, it is necessary to emphasise that the divine laws are to be understood in their social context of time.
- We know that the nature of ‘law’ in Islam is ḥukm which was conventionally understood as ‘divine ordinance’, not a ‘social norm’. To carry out the divine ḥukm in a given society needs a degree of recognition of ‘public’ and respect for public opinion and public interest of time.

The notion of ‘public’ was not historically recognised – let alone respected – by Muslim governments. The failure to recognise the status of public brought about the current ‘lack of legitimacy’ from which Muslim governments have suffered. In Islamic jurisprudence, ‘public practices’ are recognised in terms of ʿurf and ʿādah (conventional and habitual practices) as secondary criteria to determine minor rules.

- For understanding the higher objectives (maqāṣid) and consideration of public interest (maṣlaḥah) a fuller recognition of the existing public practices, institutions and even public requirements are needed.

This recognition was not covered in the traditional uṣūl methodology except for the work of al-Shāṭibī. He not only focused on maqāṣid, but equipped it with recognition of a range of ʿādāt and al-taṣarrufāt al-ʿañāwīn or valid current practices of the community which show his understanding of the necessity of accommodating the divine law with the timely normative practices of the society. Thus, it seems appropriate to conclude that the work of al-Shāṭibī still stands as the best example of
today’s course for improving the legal methodology and initiating a purpose-based reading of law.

Notes


5. Ibid. Al-Ghazālī’s treatment of ‘ʿaql here is in line with his account on ‘ʿaql in his major work Iḥyāʿ ʿulūm al-dīn (Beirut: Dar al-Kutub al-‘Ilmiyyah, n. d.), 1:99–106, excluded qiyyūs from among the indicants (adillah).


8. Ibid., 1:287.

9. Ibid., 1:286.

10. Ibid., 1:284–314. Other juridical formulas that al-Ghazālī excludes from the sources of the law are words of the Companions of the Prophet and the status of acts before the Revelation of Islam.


12. al-Shāṭibī, al-Muwāfaqāt, 2:2–5. See also Muhammad Khalid Masoud, Shatibi’ s Philosophy of Islamic Law (Kuala Lumpur: International Islamic University, 2000), 152. This book is based on his PhD dissertation submitted to the Institute of Islamic Studies of McGill University, Montreal, Canada, in 1973 and was first published in 1977.


15. Ibid., 80.


18. Masoud, Shatibi’s Philosophy, 4–9.

19. Ibid., 151–6.

20. Ibid., 170–1.

21. Ibid., 175.

22. Ibid., 212–14.


25. Ibid.
28. Ibid.
29. Ibid.
30. Ibid., 28–9.
32. Auda, *Maqasid*, 53. Auda adds that many Muslim jurists including al-Āmidī, al-Shāṭibī, Ibn Taymiyyah, Ibn Qayyim and Ibn Rushd have been closer to the Māturīdī position than to the official Ash‘arite position.
33. Ibid., 54–5.
34. Ibid., 46.
36. Ibid., 35.
37. Ibid., 167–78.
39. Ibid., 78–82.
41. Before the reformist movement of ʿAbduh (and Sayyid Jamāl al-Afghānī, d. 1897), we had scholars such as Shāh Walī-Allāh of Delhi (d. 1762) and Shaykh Murtaḍā Anṣārī (d. 1864), respectively, who offered principles on human development (*al-irtifāq*) and practical maxims (*al-uṣūl al-ʿamaliyyah*). However, they did not intend a reform or change in the legal methodology.
42. Wahbah Zuḥaylī, who wrote a specific book on legal methodology, does not provide a suitable context for *maqāṣid*; see his *Uṣūl al-fiqh al-islāmi*, 2 vols (Damascus: Dār al-Fikr, 2004), 1:1045–57.
THE PLACE AND ROLE OF MAQĀṢID AL-SHARĪʿAH IN THE UMMAH’S 21st CENTURY CIVILISATIONAL RENEWAL

Osman Bakar*

Abstract: The author of this article argues that – from the point of view of the ideals of human civilisation as set forth by the Qur’ān – modern civilisation, which is largely of Western inspiration and making, has undergone a progressive inner decay while displaying marvels of scientific and technological achievements unmatched in human history. He sees this decay as referring to human degradation or dehumanisation. In order to address his concern, he argues for a restoration of a previously lost unity, balance and equilibrium to contemporary civilisation. He argues that Islam’s main contribution to a possible solution would be an approach based on maqāṣid al-sharīʿah. He concludes by stating that an Islamic agenda of civilisational renewal (al-tajdīd al-hadārī) is ultimately congruent with civilisational renewal for humanity as a whole.

Introduction

The main purpose of this article is to provide an introductory discussion of the place and role of the higher objectives of Islamic law (maqāṣid al-sharīʿah) in the pursuit of civilisational renewal (al-tajdīd al-hadārī). For the moment, only a brief and preliminary explanation is given to the meanings of the two keywords, maqāṣid al-sharīʿah and tajdīd hadārī. Both terms, maqāṣid and tajdīd, are of early Islamic origin. The word tajdīd has found popular usage among the Muslim ummah of every century, because it is traceable to a saying of the Prophet Muḥammad himself. According to a ḥadīth, “God will send to this community at the turn of each century someone [or ‘people’] who will restore [revive/renew] the religion [i.e. who will carry out the tajdīd of the religion].” The idea of tajdīd conveys multi-faceted meanings and their practical societal applications in conformity with the multi-dimensional teachings of Islam as a religion (al-dīn) and of Islam as a civilisation.

Central to its meanings is the idea of renewal which embraces the ideas of acceptance of change and preservation of permanence, harmonisation of permanence

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and change and of tradition and modernity, and restoration of principles, values, and dimensions which are traditionally integral to the identity of Islamic civilisation but which, for one reason or another, have been lost. It is in the light of this understanding of the idea of tajdīd that it is permissible for us to speak of al-tajdīd al-haḍārī, meaning the renewal of civilisation or civilisational renewal. In the Islamic perspective, tajdīd of religion necessarily includes tajdīd of civilisation, since Islamic civilisation refers to the all-embracing societal manifestations of the religion of Islam. However, since civilisation embraces all sectors of human life and thought – including the social, political-economic, and ethical-legal spheres – its renewal becomes an all-embracing societal concern. In other words, al-tajdīd al-haḍārī should be a societal concern and a societal agenda of great priority. Appropriately the global Muslim ummah and its branches throughout the world should adopt al-tajdīd al-haḍārī as its priority agenda and enterprise. As for the term al-tajdīd al-haḍārī itself, it should not arouse any suspicion at all. It may be of modern origin but the two component terms on which it is based are not. As stated earlier the word tajdīd is of prophetic origin. As for the word haḍārī it finds extensive usage in the new science of civilisation expounded by Ibn Khaldūn (1332–1406) in his celebrated Muqaddimah. The term maqāṣid al-sharīʿah also finds wide usage in Islamic intellectual history particularly in the domain of ethical-legal thought, much more so in the earlier centuries before the modern period than it is now. Although as pointed out by a good number of Muslim scholars of the sharīʿah, both in the classical and modern periods, there is no set number of maqāṣid and no set prioritisation among them, the most popular understanding and usage of the term among Muslims is in reference to the five rights or necessities. In his Muqaddimah, Ibn Khaldūn speaks of the five necessary things emphasised by Islamic law:

1. the preservation of religion,
2. the soul (life),
3. intellect-reason,
4. progeny, and
5. property.

However, Ibn Khaldūn also asserted that these five necessities have been emphasised in Islamic law with the view of attaining justice and eradicating injustice, since injustice brings about the ruin of civilisation. Thus, even the five most well-known maqāṣid in the Muslim discourse as produced here by Ibn Khaldūn have a presiding objective – the pursuit of justice. Metaphysically speaking, the idea of justice as an even more fundamental objective of Islamic law is fully justified since justice is a divine quality. God manifests His Names and Qualities in both
the natural and human worlds. He wants His justice to prevail in human societies through His laws, and therefore it is the function of the *shari‘ah* to identify the things necessary to justice in society. The *maqāṣid* are an answer to the search for conditions of justice.

The *maqāṣid*, regardless of their number, are now variously presented by contemporary Muslim scholars as the philosophy of Islamic law, the irreducibly universal principles of justice, and the architectonics of Islamic normative law. The term *al-tajdīd al-haḍārī* is only of recent usage. However, analogous to the role of *maqāṣid*, the future significance of the idea of *al-tajdīd al-haḍārī* will probably lie in its role as an integral component of the Islamic philosophy of civilisation and as a paradigm and framework for the particular *tajdīd* in all sectors of human life and thought, including, perhaps, the *tajdīd* of the *maqāṣid* itself.

This article, therefore, seeks to explore some aspects of the relationship between the *maqāṣid* and *al-tajdīd al-haḍārī*. The focus, however, shall be on the role of the essential components of the *maqāṣid* as the foundational elements of a new science of civilisation that is sorely needed for this century’s civilisational renewal.

**The Need to Restore the Rightful Role of the *Maqāṣid***

Much has been written on *maqāṣid* and *tajdīd* in their various aspects, but little has been explored on their conceptual and other forms of relationships. More disappointingly, there exists practically nothing on the epistemological relationship between the *maqāṣid* and *tajdīd* at the civilisational level. Yet this neglected subject is not only important at the level of ideas, but also of great practical importance to the future of Islamic civilisation and, by extension, to the future of our common human civilisation. Central to this subject would be the role of the *maqāṣid* in the renewal of Islamic civilisation.

In the following we shall first have a look at the specific context in which the role of the *maqāṣid* is being discussed. The role envisaged is specific to the needs of the twenty-first century global Muslim community (*ummah*) and its contemporary civilisation. There is at present a wide recognition in the global *ummah* that its contemporary civilisation is in real need of a renewal in the sense its Arabic equivalent, *tajdīd*, has been traditionally understood in Islam. The present reality of Islamic civilisation dictates the need for its renewal. Under the powerful global impact of modern Western civilisation, contemporary Islamic civilisation has lost some of its traditional features and even some aspects of its traditional identity and character that have been its source of strength and dynamism. For example, there is the loss of balance between the universal and particular traits of Islam as can be seen in the domain of the *shari‘ah*.
Broadly understood, the *sharīʿah* comprises a universal dimension in the form of its ethical-legal injunctions, together with their underlying principles that are meant for the whole of humanity and a particular dimension in the form of ethical-legal injunctions exclusively meant for Muslim communities and the global ummah. The *maqāṣid* belong to the universal dimension of the *sharīʿah*. Due to both external and internal factors, the *sharīʿah*, which is traditionally a key element and a major driving force of Islamic civilisation, lost the greater part of its universal dimension, thus tilting the ‘ethical-legal’ balance in question in favour of its particular dimension. Included in this fateful and very significant loss are the *maqāṣid* with their meaningful societal and civilisational roles.

Traditionally, the *maqāṣid* are precisely the embodiment of ideas and the intellectual force that have helped to preserve Islamic law in both letter and spirit in a balanced way with societal balance and justice in view and to prevent literalism and legalism in all their strands from becoming the mainstream approaches to Islamic law that could only undermine the goal of societal balance and justice. The marginalisation of the *maqāṣid* in mainstream contemporary Muslim legal thought and in their approaches to Islamic law has deprived the general public everywhere – both Muslim and non-Muslim – of the means and perspectives whereby they could appreciate the real worth and significance of the *sharīʿah*.

The *sharīʿah* without its universal dimension, particularly without its *maqāṣid*, would lose much of its appeal as an ethical-legal system that transcends time and space that comes from its claim as the last divine law to be revealed to humankind. Were it to be so then it would appear as particularistic and sectarian in nature and not as universal, and as ancient and of relevance only to human societies of bygone eras but not as modern and timeless. It is only in more recent times that there has been renewed interest and commitment among Muslim academics, scholars, and thinkers to give back to the *maqāṣid* its rightful place and role and to articulate and discourse on it in the light of twenty-first century societal realities.9

Another example of dynamic traditional features of Islamic civilisation that have been lost is its holistic educational philosophy and its tawḥīdic knowledge culture in which the unity of the sciences was preserved. For the greater part of its history, Islamic civilisation was spared of the kind of epistemologically conflict-ridden knowledge culture that is characteristic of modern Western civilisation. The so-called ‘conflict’ of the two cultures – the scientific-technological and the humanities – prevalent in the modern West was totally absent in Islamic civilisation. However, now – again under the impact of modern Western civilisation – the contemporary Islamic world is perpetuating within its societies the same dichotomous educational philosophy and system and the same conflicting two cultures that have been problematic to the West. Both, the dichotomous education system and the two cultures in question, have generated numerous intellectual conflicts and contributed.
significantly to the loss of balance and equilibrium in modern civilisation as well as to the rampant human degradation or dehumanisation in the modern world.

In the two examples for the lost traditional features of Islamic civilisation it is the impact of modern Western civilisation that has been most responsible for that loss. The first major impact came from European colonialism. Generally speaking, European colonial rule, wherever it may have been, weakened the position of *sharīʿah* law as a legal system and lowered its prestige in society by simultaneously expanding the domain of jurisdiction of European civil law and diminishing that of *sharīʿah* law to its minimum tolerable level. Likewise, European colonial rule sought to give the maximum space possible to Western-style secular education and to minimise the societal values and impact of Islamic education. Islam was made largely irrelevant in developmental terms in law and education, two of the societal domains in which Islam excelled and made major contributions to human civilisation. As a result, Islamic civilisation lost a significant part of its traditional identity and character.

Presenting the Case for the Pursuit of Civilisational Renewal

In the following, the pursuit of civilisational renewal shall be discussed on the basis of several considerations. First, there is a need to explain appropriately the real meaning of the idea of civilisational renewal. In the view of this writer, in accordance with the traditional understanding of *tajdīd* and in furtherance of the earlier brief discussion of it, the idea of *tajdīd haḍārī* must include the following elements:

1. The preservation of principles, ideas, and institutions that are permanently needed by human beings both in individual and societal life;
2. The rediscovery and the restoration of principles, ideas, and institutions that have been lost through the vicissitudes of time, but that are still needed for the well-being of societies;
3. The acceptance of necessary changes in the light of permanence;
4. The synthesis of tradition and modernity or the integration of acceptable modernity into tradition.

In other words, in articulating the concept of civilisational renewal we need to address all those four fundamental issues. However, to do so would require to seek intellectual help from the science of civilisation, which is perhaps the only science competent enough to adequately deal with those civilisational issues. It is this science which deals with these issues at the level of fundamental ideas and societal principles, as Ibn Khaldūn’s *Muqaddimah* shows. However, for all the four issues to be adequately addressed in our present times we need to take into account the
nature and characteristics of modern and contemporary Western civilisation, which has made such a major impact on contemporary Islamic civilisation.

The second consideration for civilisational renewal is that there is a need to explain why presently it is an imperative for the global ummah and for humanity at large. This means that we have to describe the contemporary condition of the global human civilisation, which in practical terms is none other than an extension of the modern Western civilisation that justifies the pursuit of civilisational renewal. This necessitates essentially identifying the serious defects and pitfalls of contemporary human civilisation.

The third consideration is that, having diagnosed the major symptoms of the civilisational diseases that have for some time now afflicted modern Western civilisation, there is a need to identify their causes. Once these causes are known, we would be in a better position to come up with the right cures to these ‘diseases’. The fourth and final consideration pertains precisely to the task of finding the right cures and applying them to the ‘disease-afflicted’ civilisational body with the view of restoring its health.

The scope of this article does not allow to treat all of these issues and considerations pertaining to the pursuit of civilisational renewal, even if only briefly. Therefore, we shall deal with only some of them. What we shall seek to present in the following are arguments that seek to affirm the view that an effective pursuit of civilisational renewal presupposes the availability of a well-developed science of civilisation. Furthermore, for such a science to be well-placed for undertaking the task at hand, the contributions of the maqāṣid are called for.

**Contemporary Western Civilisation and Its Global Extension: A Civilisation in Crisis**

The contemporary condition of Western civilisation may be best described in terms of the dominant mindsets and ideas that have shaped it and the ironies and contradictions that characterise it. The thinking of contemporary Western man in general is dominated by three related ideas, namely growth, development, and progress – understood in secular and material terms. He organises his life and thought – at both individual and societal levels – around these concepts in such a manner that all other ideas and concepts are made subservient to them. Human life has no meaning and purpose other than the practical realisation of these ideas in all areas of human affairs.

Around these ideas revolve his hopes and aspirations, as well as his fear and anxieties. His vision of the future of its challenges and opportunities is described in terms of these ideas and other related concepts. ‘Modern eschatology’ is described primarily in terms of economic prosperity and salvation and its contrast, economic
doom or catastrophe. Moreover, on the basis of these three ideas, he judges the past and anticipates the future. He evaluates and grades his fellow men according to the degree of their success or failure in achieving growth, development, and progress. Thus, we used to have the groupings ‘advanced’ or ‘developed’ nations, ‘developing’ and ‘underdeveloped’ nations or societies, or ‘progressive’ and ‘backward’ countries and societies.

The world in which we find ourselves today is the direct consequence of this growth, development and progress-oriented view of human life and society. Our world is undeniably a world ridden with ironies and contradictions. It is a world in which extreme opposites flourish side-by-side. We are proud of its many achievements, but at the same time we are disillusioned with its failures and chronic problems that are equally many, numerically speaking, if not even more. The shapers of our world promise many positive things for the betterment of humankind, but at the same time it is full of dangers and threats which, if left unresolved, will lead to the massive destruction of humankind, if not its complete annihilation.

Contemporary human civilisation is rich and advanced in scientific and technical knowledge, but poor and backwards in moral and spiritual knowledge and wisdom. Consequently, we are superb at solving even the most complex of scientific and technological problems and extremely successful in controlling the forces of the natural world that is external to us. But we are utterly hopeless when it comes to solving the most basic of human problems, and we fail miserably in the task of social engineering, that is, in ordering and controlling human behaviours and the inner forces of human nature which govern them.

Material wealth and prosperity is unjustly distributed and is not matched by moral strength and excellence. It is literally found side-by-side with material deprivation and poverty at all levels of collective existence. At the global level, the disparity between the very rich and the very poor nations is so wide that not only is it religiously and morally repugnant, but also politically and economically undesirable. Similarly, at the level of the nation-state, the gulf separating the rich citizens and the poor ones is getting wider than ever, so much so that it has posed numerous social and moral problems of a very serious nature.

Modern civilisation which is supposedly founded on humanism and which in fact takes great pride in having adopted it as its philosophical worldview, is also a witness to the greatest genocide in human history, one in which millions of American-Indians, Australian aborigines, and New Zealand Māori perished, purportedly committed in the name of civilisation and progress, not to mention the genocide of millions of Jews. It is the same civilisation that acts as the midwife to the birth of institutionalised racism which is clearly an affront to human dignity and man’s moral worth. It is also ironic that this civilisation which prizes very dearly mental health, even overriding spiritual health, and which is completely dedicated to its
promotion and preservation has to cope with an unprecedented incidence of mental illnesses. We can go on and on in enumerating the ironies, contradictions, and paradoxes which characterise the state of human affairs prevailing in contemporary human civilisation.

In his address to the “International Conference on the ASEAN Countries and the World Economy: The Challenge of Change”, held in Bali on 4 March 1991, the then Prime Minister of Malaysia, Dr Mahathir Mohamad, borrows Charles Dickens’s description of the Europe of 1775 in the latter’s *A Tale of Two Cities* to describe ‘the positive and negative fundamentals and uncertainties’ in our world of the early 1990s:10

It was the best of times,
it was the worst of times.
It was the age of wisdom,
it was the age of foolishness.
It was the epoch of belief,
it was the epoch of incredulity.
It was the season of Light,
it was the season of Darkness.
It was the spring of hope,
it was the winter of despair
We had everything before us,
we had nothing before us.

We could add that these poetic expressions of Dickens are also very apt in describing modern civilisation right from his time until now. The character of contemporary civilisation has not changed since Mahathir’s speech. If present trends continue, then it looks like we have to contend forever with this state of civilisational disequilibrium. We are also becoming more convinced that this disequilibrium is the necessary price we have to pay for development and progress. However, an important question to ask is whether the path followed by the West in its construction of civilisation during the last four hundred years is the only path to development, progress and civilisation. Or is there a way out of this civilisational crisis? We do know that many contemporary minds – and every day their number is increasing – have sought to address this problem either in its specific aspects and dimensions or in its totality. In the process, many thoughts have been expressed, many symptoms diagnosed, a lot of data sifted and analysed, and many solutions proposed. If we have the time to glance through the fast-growing literature on the subject, we cannot fail to notice the intense debate that is currently going on between the different schools of thought.
For many reasons – intellectual as well as practical – Muslims must participate actively and constructively in this debate. Islam must play an important role in the present search for solutions to the problems of humanity and in the quest for alternative models of development and civilisation construction. We must come up with our own analysis of the problems, guided by our own religious and philosophical worldview without sacrificing objectivity and intellectual and scientific rigour. And we must put forward our own solutions to these problems, solutions which wisely take into account all the positive things the contemporary world has to offer, but which remain faithful to the letter and spirit of our spiritual and moral systems. Before we can come up with this new synthesis of ideas, which is theoretically sound and practically workable, it is imperative that we first have a clear understanding of the essential nature of the problems.

We would go along with many thinkers and scholars in the West today who strongly feel that we ought to critically re-examine all the basic presuppositions concerning growth, development and progress, which many people in the modern world have taken for granted or unquestioningly accepted as true all this while, although we do not necessarily share all their views when it comes to the solutions. In particular, we could go along with those who call for the formulation and implementation of a balanced and holistic development, although again their conception of ‘balanced and holistic’ development may not coincide with ours. In fact, there are those who speak of a balanced, integrated and holistic development without really venturing beyond the parameters and boundaries of physical development.

The Nature of the Present Crisis

The crisis of human civilisation that we are now witnessing is essentially a crisis arising out of the loss of equilibrium in human life. Contemporary civilisation is indeed suffering from a state of disequilibrium that has reached dangerous proportions. ‘Equilibrium’ is an important concept which must figure prominently in all our discussions on the present civilisational crisis. It is certainly an important concept in the medical theory of health and disease. It assumed an even greater importance in pre-modern times. But it is a forgotten concept in the modern social sciences, including economics and political science. We say ‘forgotten’ because in the social sciences of the Middle Ages, particularly in Muslim political theory, the concept of balance or equilibrium in human society was highly prized.

In Islam, this concept is represented by the term *iʿtidāl* which is etymologically related to ‘*ʿadl*, the Arabic word for ‘justice’. In fact, the ideas of equilibrium and justice are conceptually related. Justice is one of the principles of equilibrium. Without justice, there would be no equilibrium. As applied to the totality of a system or organism, the idea of balance implies not only taking into account all its
constituent elements, but also their ordering and interrelationships. In other words, the idea of balance is inseparable from the ideas of order, proportion, harmony, justice and wholeness.

In reformulating the traditional Islamic notion of justice, Syed Muhammad Naquib al-Attas defines justice as that “harmonious condition or state of affairs whereby everything is in its right or proper place such as the cosmos”. The broad, comprehensive meaning of justice in Islam was not lost on Sir Hamilton Alexander Rosskeen Gibb (1895–1971), a leading British orientalist of the last century, when he says that “[j]ustice in this [i.e. Islamic] sense has little or nothing to do with the political or judicial application of man-made laws. It is a principle of order and wholeness: that all elements, endowments, and activities of life shall be in harmonious relation with one another, each fulfilling its proper purpose and ends in a divinely-appointed system of interlocking obligations and rights.”

Perhaps, we can gain a better understanding of the ideas of equilibrium and disequilibrium as applied to a human civilisation, and thus a better understanding of the nature of the present crisis, if we were to draw an analogy with the concepts of equilibrium and disequilibrium as applied to the human body. This way of explaining human society with respect to its structure, the functions of its integral components, and the state of its activities viewed in their totality, that is, by resorting to the symbolism of human anatomy and employing the terminologies of medical science relating to the theory of health and disease appears to be universal. The languages of mankind bear testimony to this fact. In almost every human society, there exist a considerable number of terms which become the common legacy of its political science and medical science.

This method of explanation was certainly popular among classical Muslim political theorists, many of whom, like Ibn Rushd (the Averroes of the medieval Latin West, 1126–1198) and Rashīd al-Dīn Faḍl-Allāh (1247–1318), were both political leaders and administrators and practising medical doctors. For example, in his Commentary on Plato’s Republic, Ibn Rushd maintains that the theoretical and practical parts of political science stand in the same relationship to each other as do the books Health and Illness and the Preservation of Health and the Removal of Illness in medicine.

The human body is comparable to human society. Both are living organisms. Interestingly, the Qur’ān speaks of each ummah (community) as having its own life-span. Conceptions of health and disease are applicable to both the human body and the ‘political’ body, that is, human society. Health, which constitutes the norm, is defined in traditional medical theory as that condition of the body in which the physiological elements are in a proper proportion or balance, and in which the various parts or powers function harmoniously with one another.
Disease is a deviation from the norm. As health is harmony or good order in the body, so disease consists in imbalance and disharmony – an excess or defect with consequent disproportion of the elements, or the disorder of conflicting bodily process. Although the physiological elements and factors of modern medicine are different from those of traditional medicine, health continues to be conceived as an equilibrium, and disease as its loss through disorder and disproportion.

The health and illness of human society may be conceived in an analogous manner. Contemporary civilisation whether in the West or in the East is not well and is abnormal, because it has lost its equilibrium through various kinds of disorders and disproportions. Some of the diseases are unique to Western societies, some others to Eastern societies, and there are diseases that are common to both. The problem of restoring equilibrium in contemporary human societies is made worse by the fact that those individuals, institutions or functional groups on whom society traditionally relies to undertake the task are themselves in a state of crisis.

In the view of this writer, of all the present societal disorders the most serious is perhaps at the level of thought and worldview itself. We have lost the vision of the whole. For example, in mainstream contemporary Western thought the vision of the whole man, the whole society, the whole universe and the whole reality has been lost. There are blurs and cracks in our belief system. We no longer see the whole man, but only the partial man, such as man the social animal, man the economic animal, or man the political animal. The loss of wholeness at the level of thought has already manifested itself at the level of action and practical life in the form of societal imbalances and disharmony. The symptoms of disequilibrium are obvious to everyone. In contemporary society, the spiritual, intellectual, psychological or mental, and physical elements are no longer harmoniously related.

In the history of medicine, there has been a long debate as to whether health of the human person is better served by the general practitioner treating the whole man or by a specialist treating a special organ. The correct view would be that society needs both types of medical doctors. Similarly, the health of society would be better served when we have both generalists and specialists who understand each other’s roles and functions. When specialisation is pursued to its furthest limits without being balanced by a holistic vision of things, and by knowledge of a generalised nature, then there will definitely be disorder and disharmony in the domain of knowledge.

Microbiology informs us that animals and plants are composed of cells which are considered as the fundamental units of life. The state of health at the cellular level influences or determines the general health of the body. Similarly, society, as a kind of living organism, has its own fundamental units of life in the form of the individual and the family unit. The health of the society as a whole depends a lot on the health of its individual citizens and its family units. Today, we know that in some societies the family institution is being uprooted by radical socio-economic
changes, while in some other societies it is cracking under the impact of modern economic development.

One important consequence of the loss of wholeness in man’s vision of himself and of reality, especially the loss of his spiritual dimension, is progressive reductionism in his theory of development and progress. Development as understood by many people today has been reduced to its economic dimension. No one wishes to deny or belittle the importance to human life and society of this dimension. Our objection is to the fact that this important dimension has been conceptualised to convey a rather restrictive meaning, defined primarily in quantitative and monetary terms. This emphasis on quantification gives economics the appearance of an exact science.\textsuperscript{16}

At the same time, however, it severely restricts the scope of economic theories by excluding qualitative distinctions that are crucial to understanding the ecological, social and psychological dimensions of economic activity. For example, energy is measured only in kilowatts, regardless of its origins; no distinction is made between renewable and non-renewable goods; and the social costs of production are added, incomprehensibly, as positive contributions to the gross national product. Furthermore, economists have completely disregarded psychological research on people’s behaviour as income earners, consumers, and investors because the results of such research cannot be integrated into the current quantitative analyses.\textsuperscript{17}

The reduction of value to its economic component and the further reduction of economic value to the quantifiable in contemporary economic calculus have placed other sectors of human development at a great disadvantage. Spiritual, intellectual, moral and cultural aspects of human development command scant attention and in many countries hardly any at all because their economic values cannot be calculated. As a result, the different branches of knowledge related to these non-economic sectors of human development suffer too. Thus, for example, the social sciences and the humanities are left far behind the natural and engineering sciences. The value of the latter sciences to economic development is immediately evident.

The reduction in question has also affected in a negative way our conceptions of resources, production and consumption. One aspect of this negative impact was brought out, for example, by the British economist of German origin, Ernst Friedrich Schumacher (1911–1977), who stated:

There are many activities which are totally uneconomic, but they are carried on for their own sakes. The economists have an easy way of dealing with them: they divide all human activities between ‘production’ and ‘consumption’. Anything we do under the heading of ‘production’ is subject to the economic calculus, and anything we do under the heading of ‘consumption’ is not. But real life is very refractory to such classifications, because man-as-producer and man-as-consumer is in fact the same man, who is always producing and consuming ‘at the same time’.\textsuperscript{18}

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This reductionism in the theory of economic development has claimed – and continues to claim – other victims as well, victims which from the point of view of religion are even more important. These include social justice, equitable distribution of income, and full employment, all of which are necessary for the well-being of society.

The Root Causes of the Problem

The ideas of growth, development, and progress in themselves are not to be blamed for the present crisis. These ideas are legitimate and even necessary. They are not peculiar to modern civilisation alone. These ideas are as old as human civilisation itself. Of course, the modern understanding of these ideas is fundamentally different from the pre-modern one, such as the one we have in traditional Islamic civilisation.

In pre-modern societies, these ideas were understood within the framework of a God-centred worldview that features one or more well-defined systems of relationships involving God, the universe, and man. In these societies, these ideas derive their meanings from a religious or spiritual conception of human life and human perfection. The final goal of human development is spiritual perfection and human progress is primarily defined in spiritual and moral terms. While the general emphasis in all these religious societies and cultures is the same – that is on the spiritual dimension of growth, development, and progress – their social systems are different from each other. In all of them, the idea of wholeness and balance is very much emphasised. Still, some societies and civilisations were clearly more holistic and more successful in achieving civilisational equilibrium than others, in both theory and practice.

The ultimate test of the inherent strength and effectiveness of a social system is its ability and capacity to adapt itself to changes in time and space without its foundation being undermined. This ability and capacity has a lot to do with its inherent power through which it can maintain balance and equilibrium.

There are primary and secondary causes of the present crisis of human civilisation. The root cause of it may be traced back to that particular moment in Western history when the God-centred worldview was abandoned in favour of the man-centric worldview where the vision of the whole man has been lost. In the modern West, following the rise and spread of secular humanism, the ideas of growth, development, and progress underwent a long process of secularisation to become completely devoid of spiritual meaning and significance. Without doubt, secularisation brought certain gains to Western man, but it has also unleashed numerous destructive forces which in due course of time threaten not just the West but the entire world.

As a result of Western colonialism and cultural imperialism, secularism flowed to other continents. The Muslim world in particular was badly affected. Today, the
Muslims too have lost their vision of wholeness and their civilisational renewal agenda must seek to recover this wholeness or tawḥīdic vision. The present crisis has also a lot to do with the fact that Western civilisation has no religiously sanctioned law comparable to the sharīʿah of Islam or to the law of the Jews. As a consequence, in its long history it has never really known and experienced balance and equilibrium in the true sense of the words. Instead, it has been oscillating from one extreme to the other. It is important to remember that the raison d’être of the sharīʿah is to maintain equilibrium in society.

Civilisational Renewal: Toward a New Science of Civilisation to Restore the Civilisational Health of Contemporary Humanity

Contemporary humanity in general and the Muslim ummah in particular are in urgent need of a new science of civilisation deemed appropriate and sufficient for their twenty-first century needs. What is understood here as appropriate and sufficient means that the science in question would have to be comprehensive and developed well enough to generate ideas, outlooks, practices, and institutions that can unleash the forces of societal change for civilisational renewal or ‘rebirth’. In other words, a plea to the twenty-first century global ummah and the whole humanity is this: Let us have a new science of civilisation so that we can have a civilisational renewal.

In this new science, the idea of civilisational renewal and its pursuit go hand in hand with that of civilisational conservation, preservation and restoration. The new science has first of all to be authentic, meaning that it has to conform to all the necessary epistemological requirements. As true of every authentic science, the new science must possess well-defined foundational assumptions.

To those familiar with the Islamic intellectual legacy the treasury of Islamic thought appears as quite rich enough to be able to make meaningful intellectual contributions to the formulation and articulation of these assumptions. They would be able to tell us further where to look in the treasury for ideas precisely needed for the formulation in question. Not surprisingly, in the light of our foregoing discussion, the location of the ideas points to that sector of the Islamic thought treasury concerned with the sharīʿah, of course as this term is understood in its broadest and most universal sense. This understanding is inclusive of the place and role of the maqāṣid. It is only in this sense that we could claim that in Islam, the principles governing the organisation of human society and the creation of human culture and civilisation are mostly embodied in the teachings of the sharīʿah.

Given the nature and the scope of the societal and civilisational issues under consideration their foundational or governing principles have to be of universal nature as well. But such a kind of principles could hardly be provided by a limited
and sectarian understanding of the sharīʿah now widely found among the Muslims. The proposal made here is to utilise the maqāṣid as the source of the fundamental assumptions of the new science of civilisation which has to be a vast improvement on the one founded by Ibn Khaldūn. The hope is that if the new science is widely taught in the institutions of higher learning and applied in society we would be able to produce new mindsets and ideas that will help to restore the civilisational health of present humanity through the restoration of balance, equilibrium, and justice in society. The five necessities in the maqāṣid will be part of the core foundational assumptions. Other maqāṣid, both traditional and new, have to be added. Apart from the societal balance, equilibrium, and justice we have to add to the list of maqāṣid other civilisational imperatives such as the common good, moderation, food security, and inter-religious peace.

The five necessities – preservation of religion, life, intellect-reason, progeny, and property – may be seen as perennial in nature in the sense that these are relevant at all times. But these traditional necessities need to be re-conceptualised and articulated in the context of twenty-first century life and thought. It is within the framework of a tawḥīdic vision of these five necessities and other maqāṣid that we would be pursuing a holistic and balanced human and societal development. Islam’s tawḥīdic worldview proves indispensable in this task of identifying the maqāṣid for the twenty-first century humanity and of viewing them as a system in which they are interrelated as well as complementary to each other.

Some Recommendations

The task of civilisational renewal as expounded in this article is vast in scope and formidable to be undertaken in practice. It requires the cooperation of many individuals, groups, and institutions.

• For a start, it is suggested that IAIS Malaysia and similar-minded institutions will work together in promoting the ideas of the maqāṣid and al-tajdīd al-haḍārī through activities such as seminars and conferences and publications of writings on the two themes, particularly from the civilisational point of view.
• There is a need to identify scholars and academics with the interest and the necessary expertise to help develop the new science of civilisation in question.
• The issue of the interrelationships between the maqāṣid and civilisational renewal has to be put high on the priority list in the collaborative research and publication programmes among the Islamic think tanks and other research organisations.
Notes

1. Hereafter, for the purpose of brevity, just the word *maqāsid* is used to refer to *maqāsid al-sharīʿah* or the ‘higher objectives’ of Islamic law.

2. In Arabic, the ḥadīth reads: *Inna Lillāh yaw‘athu li-hādhihi ’l-ummati ‘ala raʾi kulli miʿat sanatīn man yujaddidu lahāamri dīnīhā*; see Abū Dawud, *Sunan* (Kitāb al-fitan wa ’l-malāhīm), ch. 1.

3. Since its inception, IAIS Malaysia has been promoting the pursuit of civilisational renewal as an important component of the global Muslim *ummah*’s agenda in the twenty-first century. Towards this end IAIS publishes the present quarterly journal, featuring mainly articles that are related in one way or another to the general theme of civilisational renewal. It also organises academic and scholarly activities, such as seminars and conferences that are of significance to the quest for civilisational renewal. For a preliminary exposition of the concept and agenda of *tajdīd haḍārī*, as understood and adopted by IAIS, see Mohammad Hashim Kamali, *Civilisational Renewal: Revisiting the Islam Hadhari Approach* (Shah Alam [Malaysia]: ARAH Publications, 2008). For a discussion of *tajdīd haḍārī* as a fundamental aspect of Islamic reform see Osman Bakar, “Islam and the Challenge of Diversity and Pluralism: Must Islam Reform Itself?” *Islam and Civilisational Renewal* 1, no. 1 (October 2009), 55–73.


5. Ibid., 2:107.

6. Says Ibn Khaldūn: “It should be known that this is what the lawgiver [i.e. Allāh] actually had in mind when he forbade injustice. He meant the resulting destruction and ruin of civilisation, which ultimately permits the eradication of the human species. This is what the religious law quite generally and wisely aims at in emphasising five things as necessary: the preservation of religion, the soul, the intellect, progeny, and property” (Ibn Khaldūn, *Muqaddimah*, 2:107).

7. For a discussion of these various descriptions of the *maqāsid*, see Robert Dickson Crane, *The Natural Law of Compassionate Justice: An Islamic Perspective* (Fl. Washington MD: Read 1 Communications, 2010), especially ch. 1.


9. Especially mentioned should be the initiatives by the International Institute of Islamic Thought (IIIT), based in Herndon, Virginia, and the IAIS Malaysia. IIIT has translated a number of classical and modern works on the *maqāsid* into several languages, including English. It is also preparing (as a 20-year project) to publish a 20-volume *Encyclopedia of Natural Law and Justice*.


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15. For a discussion of this theme, see Osman Bakar, “Economics as a Science: Insights from Classical Muslim Classifications of the Sciences”, Islam and Civilisational Renewal 1, no. 3 (April 2010), 425–44.

16. For a critique of modern economics as an authentic science see ibid.


MAQĀṢID AL-SHARĪʿAH: A LITERATURE REVIEW

Eric Winkel*

Abstract: At the core of the question of maqāṣid is the conception of the engagement of the community with the revelation. From this core, one can gain perspective on the usūl al-fiqh and maqāṣid approaches. The former does not provide priorities and does not address directly the pressing concerns that are overwhelming contemporary societies – it focuses on ‘form’ at the expense of ‘substance’. For the latter, the issue of methodology is important – how are the goals of the law ascertained? Finally, the author looks at key contributions of the maqāṣid approach, which opens the door to applications into areas typically beyond the scope of the usūl al-fiqh, such as civilisational renewal.

The Importance of the Sharīʿah

As I researched this article on maqāṣid, I began to see the scholarship on maqāṣid as very much springing from fundamental values and conceptions of what law in Islam really is. As a result, I had to ‘step back’ numerous times to capture the full picture. The question of maqāṣid is fully the question of how we are to understand the revelation. So, to begin at the beginning, we may choose, then, a thirteenth-century report of a dream that shows the fundamental importance of sharīʿah for Muslims.

I saw in a dream a clear way, even, with a soft light. I saw on the right of this way and on the left trenches and canyons and arroyos all with thorns that could not be penetrated because of their constriction and the ruggedness of the terrain and the many thorns, and the darkness that was there. I saw all the people stumbling about blindly, having left the clear, easy way. On the way was the Messenger of Allah and a small, plain group. He was looking at who was behind him, and there, in the community following, but on the path, was Shaykh Abū Ishāq Ibārāhīm b. Qarqūr, the hadith scholar, an excellent master of hadith, joined by his son, who understood from Prophet that he was telling him to call to the people to return to the path. Ibn Qarqūr raised his voice and spoke out calling – there was no one urging or urged – “Come to the path! Come to the path!” He called but no one responded, and no one returned to the path.

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Algorithms and Self-Reference

This clear path is what Muslims seek, and it is what Muslims mean by the *sharīʿah*. The directions and signposts for the clear path are similarly assumed to be clear. Let us look at two such instructions which function as algorithms, and thus are instructions that apply universally, and not simply to a particular, historical happenstance. In the passage just before the dream account above, we find this:

The *sharīʿah* is a clear path, a path of the fortunate ones and a path of good fortune, who walks on it is saved and who leaves it is destroyed. Messenger of Allah, when there came down his *taʾālā* word, “This indeed is a direct path (*ṣirāţ mustaqīman*)” [Qur’ān 6:153], traced a line in the earth and then traced lines on the right side of the line and on the left, then he put his finger on the original line and said, reciting, “This indeed is a direct path, so follow it and do not follow the (other) courses” [Qur’ān 6:153]. And he pointed to these lines he had drawn to the right of the original line and to its left, “as they will scatter you from his course” [Qur’ān 6:153], and he pointed to the direct line.2

This is an algorithm for finding the middle path.1 Another algorithm is described by ʿĀ’ishah as follows and has a positive and a negative dimension.

The Messenger of Allah never chose between two things, one being easier than the other, except he chose the one easiest; except if it were offensive, and if it were offensive, he was the farthest of anyone from it.4

These algorithms are situational: finding the middle of a plurality of courses, choosing the easiest alternative, and recognising when something is offensive. Other algorithms are self-referential, as is the Prophet’s instruction “Skip what disquiets you for what does not disquiet you”, which is associated with a spiritual practice called *waraʾ*. A saying associated with this is: “I never found anything easier for me than *waraʾ*’; everything that grated’ at all in myself, I left it.”6 Often paired with the above is the instruction, given to Wābṣah, sitting before the Prophet when he “put his fingers together and tapped them on my chest and said, ‘Wābṣah, take a *fatwā* (*astafta*) from your heart, and take a *fatwā* from yourself’, three times; ‘goodness is what eases the self and offence is what grates on yourself and casts suspicion in your chest, even if you ask for an opinion (*aftāka*, cf. *fatwā*) from the people and they give you an opinion’.”

Part of this sense of ease is to be restful (Ibn al-ʿArabī uses the word *mustarīḥ*) with the commands that were given without requesting additional commands, found in the key text, “Shed off of me what I left off of you (*dharūnī mā taraktukum*).”
A man asked, “Each year [hajj], Messenger?” He was silent, until he was asked three times. Then he said, “Had I said yes, it would have been; but as you are able.” Then he said, “Shed from me what I leave off of you, because they were destroyed, who came before you, by the quantity of their questions and their oppositions against their prophets. So when I command you something, do what you are able; when I forbid you from something, let it go.”

Ibn al-ʿArabī’s comment on this statement is that “he disliked the question and faulted it. Allah! May we, and you (the audience), understand the wisdom of the law (maqāṣid al-sharʿ); and do not veil us from its outward (wisdom) and its inward (wisdom).”

This suggests an outward (material) and inward (spiritual) dimension to the laws spoken as well as the unspoken area (“he was silent”). And above, we saw how key texts had the format of an algorithm, and how they necessarily had an element of situation or self-reference. The engagement of the revelation always has an individual, direct aspect. Because of this aspect, Muslims did not think that the shariʿah disappeared when they travelled outside of Muslim societies individually. However, the lack of a supportive community was seen as detrimental to one’s worldly life, and the relatively modern phenomenon of minority Muslim communities has called forth an expanded legal discourse to deal with new situations. Often discussed under the rubric of dār al-islām, scholars generally believed that the benefit a Muslim community provided the individual was so vast and deep that one would not contemplate living outside of such a community permanently, and especially not women and children. We will return to this idea in the next section when we look at the fiqh. In transition to that section, we may consider the individual and community aspect to be merged in the following sense. The Muslim community recognised its value for the individual, from providing men a place for Friday prayers to mapping spaces for men and women; from regulating market transactions to alleviating poverty; from teaching children to restoring relationships. The “system” was sustained by knowledgeable people, in areas such as medicine, spirituality, law, and sciences. But the revealed instructions create such a system, where the system may be invisible to the individual, they are also targeted at the individual directly, as in the verse, “but say, We accept islām (aslamnā), as not yet has faith entered your hearts” (Qurʾān 49:14). The first stage is entering into a system; the second is to engage directly with the instructions, such that faith enters hearts.

The Usūl al-Fiqh

It may be fruitful to examine the usūl al-fiqh trans-historically – not historically, and one hopes not ahistorically. If we consider the interface of a community of believers
and revelation, we may notice themes that persist across history. We may find, for example, that the idea of analogy not only has its history, with the polemics of the second and third centuries A.H., and with its role in scholasticism later as it related to Greek logic, but a community-revelation dynamic as well.

In a trans-historical dynamic, we can see major arguments that persist over time. How does the community follow the Qur’ān and the Messenger? One answer is that of the ‘people of Medina’. The idea was that over the years with the Messenger they had been trained well. When questions arose, they could draw on this training to provide answers. The school of Imam Mālik uses this basis of authority and refers back to this community and their practice. Closely related is the idea that communities themselves have answers to questions under the rubric ‘customary practice’ (‘urf, ʿādah). Another answer is analogy (qiyyās), that the community can answer questions by taking a text and considering how the new situation ‘looks like’ the textual situation. A third answer is to exert one’s rationality to provide an answer, called ijtiḥād al-raʿy. This approach is associated with Abū Ḥanīfah. To recap, authority may be vested in new answers by reference to the people of Medina, to customary practice, to analogy, or to rational consideration. The assumption here is that the revelation had been somehow integrated into the community, especially the knowledgeable members.

In dynamic contrast with these approaches is one which seeks to answer all questions with an external, textual authority. This approach may be called ḥadīth. The felt need for textual answers created a vacuum into which ḥadīth poured; historically, the proliferation of these purportedly textual answers pushed scholars to devise elaborate techniques to categorise, evaluate, and use ḥadīth.

Mixed with this need for textual answers is the idea that language is fluid and changes with societal changes. The solution is to anchor a text with its original, Arabic context, anticipating that words such as ‘apostate’, ‘adulterer’, ‘people of the Book’, as examples, will have meanings that change over time and space. This approach is associated with al-Shāfiʿī.

The importance of knowing the specifically Arabic revelation is seen in the efforts of lexicographers such as Ibn Manẓūr (d. 1311) to describe that language of the Arabs up until the death of the Prophet. It was assumed that after that, any contemporary Arabic usage would not be authoritative.

Let us now take up a fairly recent fiqh issue, that of a woman leading the congregate prayers with men, in order to see how these ideas work in practice. The first response is ‘no, that is not the way Muslims have acted over the centuries’. If one wants to challenge this response, the way to challenge is to say that the established practice is based on a context that has now changed. This idea of context is one we shall return to throughout this article. Using the idea of integrity in the first three approaches listed above, the first argument is that the Muslim community,
and especially its knowledgeable members, integrated their understanding of the revelation and believed, from that position, that women do not lead prayers. There is within this position no search for an external textual authority, as the fourth approach requires.

A second response is from this external textual authority (the ‘fourth approach’). Here the technical proficiency of the fiqh scholars is brought to bear. One argument will start with the instruction to Umm Waraqah to lead the members of her household, and scholars will debate whether that meant that men in the household were led in prayer, or they would go to the mosque for prayers, or whether the only man present was a bondsman. No conclusive result emerges from here. Then, an argument might address “the best rows for the women are the last and the worst are the first”. This is a clear text for position, and the argument could be made that imāmah meaning leadership is linguistically the same as amāmah meaning ‘in front’. The possibility of a woman leading from the middle, behind the men, might avoid this argument. Some scholars discuss allowing the woman to lead for optional prayers if she is the most versed in the Qurʾān, and they discuss whether she should be related to the men, or elderly, and so on. Another argument might connect imāmah to amīrah using “the nation will not prosper whose affairs are governed by a woman”. This argument then has to evaluate Abū Bakrah’s position as hadīth transmitter, with many different evaluations offered over the centuries.

We can see that the search for context is very important and very involved. The linguistic focus too is very complicated and technical. The context will be addressed in the next section.

The textual focus is not only complicated and technical. Developments of the last century, and especially the last two decades, have strained or broken the connection between definitions of words today and words that would have an Islamic textual referent. The strain is seen in the legal position in Malaysia, for example, where a Muslim man may not marry a woman generally defined as Christian. As we saw, al-Shāfiʿī wanted to anchor words in their Arab, historical context. The ‘People of the Book’, then, are only the People of the Book who were so during the Prophet’s lifetime, which in practice now would include perhaps some St-Thomas-Christians of Kerala. If however, ‘People of the Book’ is defined linguistically and not simply historically, as was the practice for most Muslim communities, inter-marriage becomes common. For the first centuries of their encounter, Muslims considered Indians to be people of a Book – the Laws of Manu – with a Prophet, Noah. But even with texts, ʿUmar suspended marriage with Jewish women, as he suspended corporal punishment for stealing during a time of famine.

This is the arena of reason and revelation. Robert Crane situates these two this way, as the
perennial issue of the Mutazillite contention that reason trumps faith versus the Salafi position that faith trumps reason, both of which are extremist forms of error. The development of methodologies, such as the maqasid, has been designed to show that both extremes are wrong since there can be no conflict between the Qur’an and human reason. The elevation of either one to an absolute, independent of the other, is shirk al khafi or hidden idolatry. This is the meaning of this particular warning, made in various contexts throughout the Qur’an, “Do not set up any deity side by side with Allah”.9

From this insight, neither revelation applied without reason nor reason applied without revelation is secure. There is no preventing word drift, and no refuge in reading the text without reason.

Then there are words that have no linguistic connection to an Islamic referent. For example, we can envision a consensus among Muslim scholars that genetically modified organisms fall under the clear text of “make no change in the creation of Allah” (Qur’ān 30:30), especially when the dangers have been well-documented.10 Although this verse was mainly interpreted as referring to changes in the religion (dīn) of God, many interpreters included Ibn ʿAbbās’ statement that it included changes to animals, such as castration.11 The problem of new words is not confined only to very recent history, as Ibn ʿĀshūr in the twentieth century found many scholars erring with neologisms. He wrote:

Here, some scholars erred greatly, for example, the fatwā of some of them to kill the magician (mashʿīd) by describing them nominally as sorcerers (sahhār), closing their eyes to the real meaning of sihr (sorcery) which the Lawgiver connects to the penalty of death. Part of the scholar’s responsibility when he speaks about sorcery or is asked about it is that he explain or clarify the attribute and true nature of it, and not to make a fatwā as soon as the word ‘sorcery’ is mentioned, saying, “Kill the sorcerer and do not accept his repentance,” for that is a serious matter.

And some of the muftis erred when they made a fatwā forbidding smoking the tobacco leaf in the mouth, because when smoking first arose in the early eighth century [A.H.] and they called it hashish, they thought that it was the hashish that drugged the hāshāshūn smokers of it. Likewise when the Yemeni beans appeared called qahwah, some of the ‘ulama’ made a fatwā in the beginning of the tenth century forbidding infusing it, because they called it qahwah and that is a name for khamr (an intoxicant) in the Arabic language, even though the name of this bean is a corruption of a non-Arabic word ‘caffa’ [cafē].12

How do we evaluate, then the principles of jurisprudence? Mohammad Hashim Kamali is clear that “in its long history of development, the methodology of uṣūl al-fiqh has also become somewhat burdened with technicality and literalism”.13 As a result, “people often know the ḥukm (injunction) of the shariʿah without knowing its ḥikmah (wisdom and purpose, synonymous with maqṣad)”.14 In light of these
difficulties, he suggests an alternative route, not through the literal text but through the wisdom of the text. He says:

At a time when some of the most important doctrines of *usūl al-fiqh*, such as *ijmāʿ* (general consensus) and *qiyās* (analogical reasoning), and even *ijtihād* as a whole, seem to be burdened with many difficult conditions – conditions that may be difficult to apply to the climate generally prevailing in the Muslim world, *al-maqāṣid* may, as such, provide a ready and convenient alternative route to the *sharīʿah*.\(^{15}\)

Writing in 1946, Ibn ʿĀshūr explains the need for such ‘an alternative route’. He says:

All of these [technicalities] are applications to the [the *sharīʿah*’s] field that detach from the elucidation of the general wisdom of the *sharīʿah* and its general and specific objectives in its injunctions. They constrict its field to *sharīʿah*-based terms, and to meanings constructed [analogically] on its terms, that is, analogical deduction of the reasons for injunctions.\(^{16}\)

Kamali says, “The greater part of the issues of *usūl al-fiqh* do not stem from service to the wisdom of the *sharīʿah* and its objectives.”\(^{17}\) Extending this observation, he writes:

the methodologies of *usūl al-fiqh* and *ijtihād* are on the whole predicated on medieval social values, retrospective and slow to relate effectively to the modern processes of adjudication and law making […]. The *maqāṣid* are inherently dynamic by comparison and capable of evolution in tandem with the changing conditions of society.\(^{18}\)

The focus on private law, too, means that jurisprudence pays “scant attention to public law and governance”.\(^{19}\) We turn now to the possibilities for Islamic law that emerge from a *maqāṣid* approach.

**Maqāṣid al-Sharīʿah**

**Form and Substance**

If we engage the metaphor of “form and substance”, an interesting irony appears. We saw above that the external textual authority approach to understanding the revelation was concerned to put a linguistic halt to word drift. Sherman A. Jackson at a conference spoke about it this way. He said that this approach was a concern that interpretive viruses were going undetected because they had been “sublated into the realm of plain speech by peoples whose language was now that of the Arabs but whose interpretive presuppositions were emphatically not […]. Otherwise, a command to amputate the hands of thieves might be interpreted away by those
whose inherited notions of God preempted the possibility that He might actually sanction literal amputation.\textsuperscript{20} A focus on words – on forms – however, risks losing substance entirely. By engaging the \textit{maqāṣid}, it becomes possible to move beyond forms to substance. In his presentation, Sherman Jackson showed how it is possible and necessary to extend the desire to protect the intellect (\textit{ḥifẓ al-ʿaql}) to the larger picture of self-determinacy. Under the colonial, imperial, or modern ‘gaze’, as Foucault put it, the other has a race but the (white) speaker does not. One may provide the example of the discourse of ‘straightening hair’, where the tacit proclamation is that ‘curly’ is abnormal and ugly.\textsuperscript{21} In the discourse of ‘fairness’, brown skin wants to become white, meaning, normal. Jackson’s use of \textit{maqāṣid} is an intriguing way of both identifying and rising above the constraints imposed by dominant forces. Especially in a period of global wars waged by the United States at the same time as its popular culture is dominant, such a project is very much needed.

As the substance of an Islamic order or civilisation recedes further into the past, the desire for “form” increases. But the desire for form does not engage the question of substance very well. Many Muslims want financial instruments that work like bonds and other foreign (‘Western’, ‘modern’) instruments. As an IAIS colleague, Sheila Aïn, is currently discovering, however, there is a functional gap between the \textit{ṣarīʿah}-compliant form of some financial instruments and their implementation, or substance. In France, the ḥiṭāb becomes a form and site of contention, at the highest political levels. A proposed community centre in New York City becomes a ‘mosque’ and its location becomes ‘at Ground Zero’.

A big obstacle for a ‘substance’ approach is the tendency today for Muslims to define the ‘features’ of Islam by outward forms instead of substance. Wael Hallaq points out that “the utilitarian/secularist approach to legal construction...has proven to lack legitimacy in most parts of the Muslim world”.\textsuperscript{22} It is not clear yet whether the \textit{maqāṣid} approach will convey ‘Islamic’ legitimacy to legal constructions.

In any case, the form–substance problem must be addressed. Ibn ʿĀshūr explains that to stubbornly hold on to superficialities without understanding the intent is to “expose the \textit{ṣarīʿah} to being dismissed disdainfully”.\textsuperscript{23} One could follow the letter of the law and actually be going against the law. But how far did he take this? Aïcha El Hajjami writes that he “commendably broadened the concept of the \textit{maqāṣid} to the principles of freedom and equality”, but he seemed to restrict it very quickly in the matter of gender. She concludes that “even the most innovative theologians of Islam have failed, in their turn, to escape the social construction of sexual relations of their age, according to which the physical and intellectual abilities of women are conclusively determined by their sex”.\textsuperscript{24} When it comes to women, then, these theologians remain fairly hide-bound. Their enthusiasm for technology, on the other hand, as we shall see, knows no bounds.
Neologisms

What about new words, then? In the same way that Jackson described above, where one internalises the dominant view, urban Muslims especially have generally absorbed the dominant view of technology, and especially the idea that it is neutral. Even with issues of cloning, obvious areas where “words” are new and therefore have no literal referent in Islamic law, organisations such as the Islamic Fiqh Academy in Jeddah are unabashedly pro-technology. If possible problems are pointed out, either from environmentalists or experimental scientists, they are ignored, as Anke Iman Bouzenita points out. Somehow the words “cheap medication through genetic engineering in plants” trump all. So while the *maqāṣid* are used here in the absence of forms or words from Islamic history, they are used superficially. She says that “they take the production of cheap medication available to all as leading to the preservation of life, which is one of the essential objectives of *shari‘ah*”. She continues to say that

what has been left out in analysis is the question, why is medication for a lot of diseases unaffordable to vast parts of the global population? The answer is quite simple indeed: because their production is monopolised in the hands of a few multinational companies who prefer their increasing profits to global health, and because these companies externalise their monopoly with a copyright of ‘their’ products. Considering these facts, would it not be closer to the mechanisms of reality and change to present the Islamic alternative to this marketed copyright phenomenon prior to giving a legal ruling based on an objective which, ironically enough, we will not see realized as long as this monopoly is in operation? [...] These problematic issues accrue from an unjust global economic system. Any innovation in the field of genetic technology will ultimately be used to serve its vital interests and the objectives of the free global market as long as the Islamic framework is not reactivated.25

This dichotomy is one of Islamic values on one side and non-Islamic systems on the other. Bouzenita does not see this dichotomy resolved by placing an Islamic *maqāṣid* approach onto a non-Islamic society. In fact, “it rather confronts us with an additional danger. The ultimate objectives of the *maqāṣid* can only be obtained by a whole-scale implementation of the same.”26

As Social Science

Anke Iman Bouzenita clearly identified problems with attempting to find legal prescriptions in a society that is not Islamic. The *maqāṣid* approach does not automatically guide the scholar to the correct level or depth of analysis. As a result, it is easy for the legal scholars in Jeddah to focus on the superficial legality of genetic engineering without looking at the bigger picture of unjust, monopolistic
global capitalism. Aïcha El Hajjami’s criticism was also that in gender at least the scholars are not able to transcend constrictive constructions of gender. Sherman Jackson was able to gain deep insight into how the concept of ḥifz al-ʿaql may be used to defend against normalised domination, but he does not suggest that the maqāṣid automatically led him to that insight.

In order to apply maqāṣid to our world today, we need to engage contemporary social sciences. This enterprise is furthered by scholars such as Wahabuddin Raes (“Maqasidic Approach to an Islamic Theory of International Relations”) and Shuhaidah Md Noor and Azila Ahmad Sarkawi (“The Use of al-Maqāṣid al-Sharīʿah in Building an Alternative Framework of Urban Design”). Mohamed el-Tahir el-Mesawi describes this as taking the idea of maqāṣid as a basic framework for the understanding of human socio-historical existence. He sees this as an “opportunity to overcome the inadequacies of both the positivistic and formal approaches to the study of man and society through an integrated methodology in which the empirical and the theoretical are cast together”. A critical social scientific approach may plumb the depths of a problem, so that a maqāṣid evaluation would not be merely superficial.

Policy-Relevancy

One consequence of the ‘form over substance’ problem we considered above is a focus on words (especially in uṣūl al-fiqh) that misses substance. There is a way Muslim scholars have maintained their focus on substance, and that has been the maqāṣid approach. Robert Crane says this:

Ignorance of the maqāṣids among modernist Muslims explains why even otherwise knowledgeable Muslims have accepted the biased approach of the Orientalists and therefore have had basically nothing to say about human rights in Islamic thought other than an embarrassed ‘me too’.

This defensive mindset reflects the lack of ijtihad as a primary goal of competency in Islamic education and relegates Muslims to irrelevance in world affairs. The ‘me too’ mentality implies that Islamic scholarship has nothing to offer in addressing the issues of conscience in the world. In effect, it leaves Muslims no choice but to agree with the secular fundamentalist legal systems that have come to dominate in Western culture, in which justice has been crowded out as the real meaning of ‘the rule of law’ and been replaced by the imposition of ‘peace, freedom, and democracy’ without any moral content.

The maqāṣid approach, then, opens up a way for the Muslim scholar to engage meaningfully in matters of legislation without being bogged down with the formalism of a narrowly-conceived Islamic jurisprudence. This approach suggests
that the wisdom of the *shari‘ah* may be applied in contemporary societies through the *maqāṣid*. Perhaps the leading proponent of this approach is Mohammad Hashim Kamali, who situates his efforts, and that of IAIS Malaysia, in the interface of the Islamic scholar and the policy-maker. There are policy studies and recommendations that are purely positivist; there are recommendations (criticisms, usually) that are only formally Islamic; his method is to bring the wisdom of Islam ascertained through the study of the *maqāṣid* to bear on issues of pressing concern. As long as ‘Islam’ is conceived of as a narrow list of do’s and don’ts, as Robert Crane says, it will generate little interest in policy-makers. If, instead, the *maqāṣid* can be engaged to inform policy-makers, significant advances may occur. We may start to see policies that are ‘Islamic’ in substance but are not necessarily identified explicitly with Islam. The idea is that the ‘Islamicity’ of a society would be better measured by its actual implementation of *maqāṣid* than its display of formally ‘Islamic features’, like the number of mosques or sales of *burqahs*.

**Constitution Building**

This journal has reported on efforts to apply the *maqāṣid* to constitution-building, where

> We have also seen a fresh emphasis on the revival of Islam and the demand of Muslim masses almost everywhere to integrate and enhance the relevant aspects of *shari‘ah* in their otherwise western-law oriented laws and constitutions. This is a demand that seeks to rectify the imbalances of colonialism and their aggressive downgrading and suppression of the *shari‘ah*. Yet the success of this exercise, and indeed of any other aspect of the constitution, would very much depend on methodical, realistic and moderate approaches toward the revival of a valuable heritage.30

Having contributed to building constitutions in Afghanistan, the Maldives, and Somalia, Mohammad Hashim Kamali has been at the forefront of bringing the wisdom of Islamic law to bear on Western forms of law.

**Nation-State**

We started with the algorithms of Islamic instructions. These instructions have an individual and community aspect. They are situated in a community and refer to the individual self. The existence of relatively new *fiqh* of Muslim minorities shows that Muslims historically lived in Muslim communities. In many traditional societies, the connection between individual and community and law was so strong that when colonialism and nation-states destroyed the bond, the community was destroyed. If colonial or national powers allowed for a code of laws that were superficially Islamic, nevertheless, the bond or horizontal authority of the community was broken.
This horizontal authority can even be seen as the primary focus of the colonial and national onslaught. In fact, the force of vast and powerful militaries, led by the United States, is to destroy any last remnants of horizontal power. This power is so comprehensive as to be atmospheric and almost invisible. It ranges from the power to annihilate every human being on the planet to the power to enter the home and determine whether or not a child may be spanked.

The focus still today is on the tribe, which resists national-state authority. Zoltan Grossman says,

The so-called ‘Global War on Terror’ is quickly growing outside the borders of Iraq and Afghanistan, into new battlegrounds in Pakistan, Yemen, Somalia, and beyond. The Pentagon is vastly increasing missile and gunship attacks, Special Forces raids, and proxy invasions – all in the name of combating ‘Islamist terrorism’. Yet within all five countries, the main targets of the wars are predominantly ‘tribal regions, and the old frontier language of Indian-fighting is becoming the lexicon of 21st-century counterinsurgency. The ‘Global War on Terror’ is fast morphing into a ‘Global War on Tribes’.

Tribal regions are local areas where tribes are the dominant form of social organization, and tribal identities often trump state, ethnic, and even religious identities. Tribal peoples have a strongly localized orientation, tied to a particular place. Their traditional societies are based on a common culture, dialect, and kinship ties (through single or multiple clans). Although they are tribal peoples, they are not necessarily Indigenous peoples – who generally follow nature-centered spiritual and cultural systems. Nearly all tribal communities in the Middle East and Central Asia have been Islamicized or Christianized, but they still retain their ancient social bonds.31

The problem identified by Bouzenita is then actually part of a larger problem: it is the nation-state. The divide between a society under a nation-state and one not, is, for the workings of Islamic law, absolute, but many vocal Muslim activists assume the opposite. For them, ‘king’ and ‘leader’ and ‘state’ are the same. When the caliphate finally disappeared in Turkey in 1924, Muslim scholars scrambled to find resolution. ʿAlī ʿAbd al-Rāziq argued that Islam was a religion like others, individual and personal, and that a lack of political power was not to be regretted. But it was not until the 1970s that the idea of an Islamic state took hold. One would imagine that the idea that a corporation is a person would be a hard sell, and similarly that a state could be Muslim or Islamic. Instead, the Muslims who live in societies of horizontal authority are the last holdouts and Muslims who are comfortable with the state dominate the discussion. But Wael Hallaq says, “It would be no exaggeration, I believe, to suggest that there is virtually no problem or issue in the modern legal history of Islam that does not hark back to the discord between the thoroughly indigenous Islamic/customary law and the European-grown import that was the nation-state.”32
Concluding Remarks and Recommendations

The first stage is to recognise the pervasive nature of the state.

- Then, the question becomes, what is Islamic law without Islamic order? Our ‘words’ have drifted semantically so far as to be beached. The *maqāṣid* approach may be an answer if the question of context is adequately addressed.
- The approach itself does not automatically provide us insight. It does not automatically reveal the most important contextual issues — it does not by itself challenge our views of state, power, gender, and so on. But what the approach does do is provide us with an architecture that allows us to speak productively among ourselves and with others.
- The special contribution of *maqāṣid* to government policy and legislation is not to implement a particular system of rules but to direct the conduct of its affairs with wisdom and to strive for the improvement of people’s welfare.

Notes

2. Ibid., 5:101.
5. The word *ḥāka* is translated here as ‘grates’. In Ibn Manẓūr’s *Lisān al-ʿarab*, under ḥ-y-k, we find, “Nawwās b. Samʿân asked the Prophet about goodness and offense, and he said, ‘Goodness is fine character, and offense is what *ḥāka* [grates] in yourself and you hate that it would be proclaimed to people,’ that is, that it would make a mark in the self and become rooted. And it is reported from Shamr in a ḥadīth, ‘offense is what *ḥāka* in the self and causes doubt in the chest, even if the people propound it [i.e., as a *fatwā*]. And Ibn al-ʿA’rābī said, Nothing *ḥāka* [grates] in my heart or nicks it.”
11. For example, in Abū Tālib al-Makkī’s commentary, “Ibn ʿAbbās said, ‘Its meaning is, do not alter what God has created, for example animals, do not castrate them.’ He disliked animals being castrated and recited this verse.”
17. Ibid., 166.
19. Ibid., 38.
21. Some of these ideas come up in the 2009 American documentary comedy film “Good Hair” by Chris Rock, especially in his conversations with Al Sharpton.
23. Ibid., 215.
26. Ibid., 402.
27. From the 2006 IIUM conference.
29. Crane, “Islamic Jurisprudence”.
THE FRAMEWORK OF MAQĀŚID AL-SHARĪ’AH AND ITS IMPLICATION FOR ISLAMIC FINANCE

Asyraf Wajdi Dusuki and Said Bouheraoua*

Abstract: This article aims at examining the concept of maqāṣid al-sharī’ah of Islamic jurisprudence in order to appreciate its contribution toward more comprehensive, rational and realistic answers to contemporary financial issues and thereby to increase the awareness of the maqāṣid approach in structuring and developing Islamic finance products. For this purpose, the authors examine the literal and conceptual meaning of maqāṣid al-sharī’ah and scrutinise its position in Islamic law. They also highlight the essential elements of maqāṣid al-sharī’ah and explain how this approach may contribute to better solutions for various Islamic finance issues and challenges.

Introduction

Islamic finance made its first appearance in the 1970s. Since its first inception, Islamic finance has made a phenomenal progress and expanded beyond its traditional markets to become a global phenomenon. The recent global financial crisis has also brought Islamic finance into the limelight. Despite its alleged minimal impact on Islamic finance, the crisis offered an opportunity for it to be introspected and self-evaluated. This is inevitable to determine whether it can become a significant alternative to the conventional system within the global financial market.

Accordingly, Islamic financial institutions must ensure that all of their transactions are sharī’ah-compliant, not only in their forms and legal technicalities but, more importantly, in their economic substance, which should be premised on the objectives outlined by the sharī’ah, also known as maqāṣid al-sharī’ah. Indeed, the Islamic banking system has the potential to become one of the promising sectors for realising the noble objectives of the sharī’ah, as it resides within a financial trajectory underpinned by the forces of sharī’ah injunctions. These sharī’ah injunctions interweave Islamic financial transactions with genuine concern for a just, fair, and transparent society at the same time as prohibiting involvement in illegal activities which are detrimental to social and environmental wellbeing.

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This article aims at examining the concept of maqāṣid al-sharīʿah to appreciate its contribution to more comprehensive, rational and realistic answers to various contemporary financial issues. In particular the article suggests a framework based on maqāṣid al-sharīʿah to assist Islamic financial institutions (hereafter IFIs) in making decisions on which courses to pursue and how much to commit to them. The framework may also assist IFIs in managing more effectively and efficiently the ever-emerging conflict of expectations from the part of diverse stakeholders.

The structure of this article is as follows. After delineating the fundamentals of maqāṣid al-sharīʿah and the concepts underpinning it, we then focus on the implication of maqāṣid al-sharīʿah for contemporary Islamic finance. This is followed by a more detailed discussion of the ‘pyramid of maṣlaḥah’ as a framework for managing diverse stakeholder expectations in terms of priorities and responsibilities in Islamic banking operation. A brief conclusion is offered in the final section.

The Fundamentals of Maqāṣid al-Sharīʿah

Prior to any elaboration on the role of maqāṣid al-sharīʿah in addressing various Islamic finance challenges, it is pertinent to define maqāṣid al-sharīʿah and introduce its characteristics and categories. The following sections shall focus specifically on delineating the concept.

Definition of Maqāṣid al-Sharīʿah

Although Muslim scholars have agreed that the ultimate objective of maqāṣid al-sharīʿah is to serve the interests (jalb al-maṣāliḥ) of all human beings and to save them from harm (dafʿ al-mafāsid), 1 they choose to define maqāṣid al-sharīʿah from a different perspective. Abū Ḥāmid al-Ghazālī (d. 1111) defined maqāṣid by stressing the sharīʿah’s concern with safeguarding five objectives by stating that:

The very objective of the sharīʿah is to promote the well-being of the people, which lies in safeguarding their faith (dīn), their lives (nafs), their intellect (ʿaql), their posterity (nasl), and their wealth (māl). Whatever ensures the safeguarding of these five serves public interest and is desirable, and whatever hurts them is against public interest and its removal is desirable.2

Al-Shāṭibī (d. 1388), in defining maqāṣid al-sharīʿah, emphasises the epistemological (ʿaqīdah) dimension. According to him:

The primary goal of the sharīʿah is to free man from the grip of his own whims and fancies, so that he may be the servant of Allah by choice, just as he is one without it.3

Ibn ʿĀshūr (1973), on the other hand, defines maqāṣid from a broader dimension. He stated:
The all-purpose principle (maqṣad ʿāmm) of Islamic legislation is to preserve the social order or the community and insure its healthy progress by promoting the well-being and righteousness (ṣalāḥ) of the human being. The wellbeing and virtue of human beings consist of the soundness of their intellects and the righteousness of their deeds, as well as the goodness of the things of the world where they live that are put at their disposal.

The uppermost objectives of the sharīʿah rest within the concept of compassion and guidance, that seeks to establish justice, eliminate prejudice and alleviate hardship. ʿAllāl al-Fāsī (d. 1974) stresses these elements in his definition, which states:

The overall objective of Islamic Law is to populate and civilize the earth and preserve the order of peaceful coexistence therein; to ensure the earth’s ongoing well-being and usefulness through the piety of those who have been placed there as God’s vicegerents; to ensure that people conduct themselves justly, with moral probity and with integrity in thought and action, and that they reform that which needs reform on earth, tap its resources, and plan for the good of all.

By understanding these definitions, it promotes cooperation and mutual supports within the family and society at large. This is manifested in the realisation of maṣlaḥah (public interest) which the Islamic scholars have generally considered to be the all-pervasive value and objective of the sharīʿah and is to all intents and purposes synonymous with compassion. Maṣlaḥah sometimes connotes the same meaning as maqāṣid and the scholars have used the two terms almost interchangeably. To further shed light on our discussion of the objectives of the sharīʿah, especially with regard to their application in the preservation of public interest, the following section elaborates on the principles of maṣlaḥah, serving as an important tool to uphold the sharīʿah.

Principles of Maṣlaḥah (Consideration of Public Interest)

Maṣlaḥah is a juristic device that has always been used in Islamic legal theory to promote public benefit and prevent social evils or corruption. Al-Ghazālī defines maṣlaḥah as follows:

As for maṣlaḥah, it is essentially an expression for the acquisition of benefit or the repulsion of injury or harm, but that is not what we mean by it, because acquisition of benefits and the repulsion of harm represent human goals, that is, the welfare of humans through the attainment of these goals. What we mean by maṣlaḥah, however, is the preservation of the ends of the sharīʿah.

Here al-Ghazālī reinforces the importance of preservation of the ends of the sharīʿah or the objectives of the sharīʿah (including the protection of faith, life, posterity,
intellect and wealth) as the fundamental meaning of maṣlaḥah. Following very closely al-Ghazālī’s taxonomy, al-Shāṭibī, in his book al-Muwāfaqāt, defines maṣlaḥah as a principle which concerns the subsistence of human life, the completion of man’s livelihood and the acquisition of what his emotional and intellectual qualities require of him, in an absolute sense. Al-Shāṭibī has in fact singled out maṣlaḥah as being the only overriding objective of the sharīʿah which is broad enough to comprise all measures that are deemed beneficial to people, including administration of justice and ‘ibādah.10

Characteristics of Maqāṣid al-Sharīʿah

Maqāṣid al-sharīʿah has four main characteristics: The first is that they are the basis of legislation, as legislation has to serve the interests of all human beings (jalb al-maṣāliḥ) and save them from harm (dafʿ al-mafāsid). Scholars argued that identification of this characteristic is based on an inductive reading (istiqrā’) of the texts of the Qurʾān and the Sunnah. Ibn al-Qayyim (d. 1350) says:

The sharīʿah is based on wisdom and achieving people’s welfare in this life and in the hereafter. The sharīʿah is all about justice, mercy, wisdom, and good. Thus, any ruling that replaces justice with injustice, mercy with its opposite, common good with mischief, or wisdom with nonsense, is a ruling that does not belong to the sharīʿah even if it is claimed to be so according to some interpretations.11

The second characteristic is that maqāṣid al-sharīʿah is universal, aiming to serve the interests of mankind and requiring the adherence of all human beings. This is because it is the last revelation, applicable to the whole of mankind everywhere on earth until the end of this world. The supporting evidence is so abundant in the Qurʾān and the Sunnah that it amounts to a thematic recurrence (tawātur maʿnawī). For example, Allah says, “Now [as for you, O Muḥammad,] We have not sent you except to mankind at large” (34:28); “Say [O Muḥammad]: ‘O mankind, verily, I am an apostle to all of you’” (7:158).12

The third characteristic is that maqāṣid al-sharīʿah is inclusive (absolute). It encompasses all human acts whether they are related to ‘ibādah (responsibilities to God) or muʿāmalah (responsibilities concerning with other human being). Imām al-Shāfiʿī (d. 820) stated in his al-Risālah that:

No misfortune will ever descend upon any of the followers of God’s religion for which there is no guidance in the book of God to indicate the right way, for God, Blessed and Most High, said: “A Book we have sent down to you that you may bring forth mankind from darkness to light, by the permission of their Lord, to the path of the Almighty, the Praiseworthy” [15:1–2] And He said: And we sent down to you the Book as a clarification for everything and as a guidance and a mercy and good tidings to the Muslims” [16:89].13
The fourth characteristic of *maqāṣid al-sharīʿah* is that they are definitive, i.e. it has not been derived from one text or evidence, but from a multiplicity of texts and different aspects of evidences. Clear indications of this characteristic can be found in *usūlī* maxims such as: “Acts are judged by intentions” and “Where there is a definitive text, there is no room for interpretation”, as well as in *fiqhī* maxims such as “[The right to] gain comes with responsibility [for loss]” and “Necessity renders prohibited things permissible”.

**Categories of Maqāṣid**

The Islamic scholars have generally divided *maqāṣid al-sharīʿah* into two main categories: general objectives (*maqāṣid ʿāmmah*) and specific objectives (*maqāṣid khāṣṣah*). Ibn ʿĀshūr, in defining general objectives, stated that the general objectives consist of the deeper meanings (*maʿāni*) and inner aspects of wisdom (*ḥikam*) considered by the Lawgiver (*al-shāriʿ*) in all the areas and circumstances of legislation (*ahwāl al-tashrīʿ*); they are such that they are not confined to a particular type of *sharīʿah* command. Thus, they include the general characteristics of the *sharīʿah*, its all-purpose principles, and any aim contemplated by the legislation. They also include certain meanings and notions that are not present in every *sharīʿah* command but in many of them.¹⁴

In *uṣūl al-fiqh*, on which Islamic jurisprudence is based, scholars such as al-Shāṭibī further divide the general objectives or sometimes denote as *maṣlaḥah* into three sub-categories: al-Shāṭibī calls these the essentials (*ḍarūriyyah*), the complementary (*ḥājiyyah*) and the embellishments (*taḥsīniyyah*).¹⁵ The categories are briefly discussed below:

1. **Ḍarūriyyah** (necessities or essentials) is defined as interests of lives which people essentially depend upon, comprising the five aforementioned objectives of the *sharīʿah*: religion (*dīn*); life (*nafs*), intellect (*ʿaql*), posterity (*nasl*) and wealth (*māl*). These are essentials serving as bases for the establishment of welfare in this world and the hereafter. If they are ignored then coherence and order cannot be established and *fasād* (chaos and disorder) shall prevail in this world, and there will be obvious loss in the hereafter. Some scholars argued that though the five *ḍarūriyyāt* are essential for human welfare, necessities are not confined to these five *maqāṣid*, hence; they proposed additional *ḍarūriyyāt* such as equality, freedom and the protection of the environment.¹⁶

2. **Ḥājiyyah** (need or complementary) are interests that supplement the essential interests. It refers to interests whose neglect leads to hardship but not to total disruption of the normal order of life. In other words, these interests, other than the five essentials, are needed in order to alleviate hardship, so that life may be free from distress and predicament. It also acts as provisions that aim

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at removing hardships and/or facilitating life. An example is seen in the sphere of economic transaction where the *sharīʿah* validated certain contracts such as the *salam* sale and also that of lease and hire (*ijārah*) because of the people’s need for them, notwithstanding a certain anomaly that is attendant in both.17

3. *Taḥsīniyyah* (embellishments). The embellishments refer to interests whose realisation leads to refinement and perfection in the customs and conduct of people at all levels of achievement. For example, the *sharīʿah* encourages charity to those in need beyond the level of the obligatory *zakāh*. In customary matters and relations among people, the *sharīʿah* encourages gentleness, pleasant speech and manner, and fair dealing. Other examples include permission to use beautiful, comfortable things; to eat delicious food; to wear fine clothing and so on.18

With regard to the relationship between *darūriyyah*, *ḥājiyyah*, and *taḥsīniyyah*, al-Shāṭibī and other scholars stressed the following:

- *Darūriyyah* are fundamental to *ḥājiyyah* and *taḥsīniyyah*.
- Deficiency in *darūriyyah* brings deficiency to *ḥājiyyah* and *taḥsīniyyah* in an immutable manner.
- Deficiency in *ḥājiyyah* and *taḥsīniyyah* does not necessarily affect *darūriyyah*.
- An absolute deficiency in *ḥājiyyah* and *taḥsīniyyah* may bring deficiency to some extent in *darūriyyah*.
- To keep up *ḥājiyyah* and *taḥsīniyyah* for the proper maintenance of *darūriyyah* is desirable.

The second category of *maqāṣid* is the specific objectives of Islamic legislation (*al-maqāṣid al-khāṣṣah*), where the area of concern is a specific discipline, such as Islamic transactions or family law or private conduct. Ibn ʿĀshūr states that the specific objectives:

consist of the methods (*kayfiyyāt*) intended by the Lawgiver for realising the useful purposes of human beings or preserving their public interests related to their private conduct. The aim here is to prevent people’s pursuit of their personal interests from leading to the undermining of their established public interests, owing to carelessness, whimsical errors, and vain desires.19

Notwithstanding the demarcation made by the scholars between general and specific objectives, the two remain inter-related. In fact there is much overlapping and integration between general and specific objectives of the *sharīʿah*. Hence, to treat any of the objectives as discrete would be rather naïve. Both categories thereby
serve as a main framework governing human lives in this world to achieve ultimate happiness in the hereafter.

Maqāṣid al-Sharīʿah and Islamic Finance

The preceding sections have briefly explained the fundamentals and concepts underpinning maqāṣid al-sharīʿah. The next focus is to evaluate the implication of maqāṣid al-sharīʿah for contemporary Islamic finance. As a shariʿah-oriented business entity, the Islamic bank is vigorously expected to be guided by the objectives of the shariʿah. There are at least two reasons for establishing the right objectives for any IFI. First, the objectives will be used by the management or policy makers of the IFI in the process of formulating corporate objectives and policies. Secondly, these objectives serve as indicators as to whether the particular IFI is upholding true Islamic principles. Indeed, one of the biggest challenges to IFIs today is to come up with products and services that are shariʿah-compliant or legitimate from an Islamic viewpoint without undermining the business concerns of being competitive, profitable, and viable in the long run.

Essentially, maqāṣid al-sharīʿah in Islamic finance fall in general under the second category of maqāṣid, namely: specific objectives (al-maqāṣid al-khāṣṣah), as they deal with specific disciplines. However the general objectives are also relevant and directly related as Islamic finance aims at preserving one of the ḍarūriyyāt (necessities) namely: the preservation of wealth (ḥifẓ al-māl), which is inter-related with other ḍarūriyyāt, especially the preservation of religion (dīn). Therefore, it is necessary to examine the objective of wealth preservation as well as general objectives of Islamic finance as a whole.

Preservation of Wealth (Ḥifẓ al-Māl)

It is an established fact among Islamic scholars that the preservation of wealth is one of the fundamental and universal principles of the shariʿah, falling under the ḍarūriyyah category. Naturally, the shariʿah whose aim is to preserve and promote the human social order could also have high regards to economic wealth. There are many Qurʿānic verses and Prophetic Traditions evidencing that property and wealth have an important status and position in the shariʿah. In fact Islamic Law introduces many rulings aimed at realising the preservation of wealth in both material and socio-psychological dimensions. Muslim jurists asserted that preservation of wealth is to be achieved through at least five main dimensions. These dimensions include:

1. Preservation of wealth through the protection of ownership.
2. Preservation of wealth through acquisition and development.
3. Preservation of wealth from damage.
4. Preservation of wealth through its circulation.
5. Preservation of wealth through its value protection.

Since the above dimensions are integral to the Islamic finance as enshrined by the shari‘ah, the following further elaborates each of the above dimensions.

1. The Preservation of Wealth through the Protection of Ownership

The first important dimension for wealth preservation is protection of ownership. Indeed, ownership through exclusive possession has been one of the basic principles of human civilisation that humans would strive to obtain their needs for securing sustenance and safety. Islam therefore recognises the natural desire of mankind to own good things by outlining clear parameters on how to own, use and protect it through balanced and fair legislation. Allah affirms this in the Qur’ān:

Fair in the eyes of men is the love of things they covet: women and sons; heaped-up hoards of gold and silver [...] (3:14)

Ownership means people’s ability in the eyes of the sharīʿah to utilise something (ʿayn) or a benefit (manfaʿah) by making use of it directly, by exchanging it, or by giving it freely to someone else, thus excluding all obviated disposition. According to Ibn ʿĀshūr, the sharīʿah has identified the following factors as the only means to acquire ownership (tamalluk):

(a) Exclusive possession of something to which no one else has the right, such as cultivating barren land.
(b) Working on a piece of land with its proprietor, such as mughārasah.22
(c) Exchanging two counter-values (ʿiwaḍ) in such sales, and transferring an item from its owner to someone else, such as donation and inheritance.

Since ownership is recognised in Islam, its protection therefore is inevitable. Allah said: “And do not eat up your property among yourselves for vanities” (Qur’ān 2:188). In order to achieve the purpose of protecting ownership, contracts relating to the various kinds of dealings have been instituted to regulate the transfer of financial rights (ḥuqūq māliyyah), whether in exchange of something else or gratis. These contracts have been considered binding because of their formulae, that is, the statements indicating the mutual consent of contracting parties. Certain conditions are required in them for the benefits of both parties. Once a contract has satisfied those conditions, it is valid and produces its legal effect, for the rule is that a contract is binding owing to the existence of its formula. The relevant hadith corresponding to this is: “Muslims are bound by their conditions, except a condition that makes the lawful unlawful and the unlawful lawful.”23
It is equally the duty of everyone to respect ownership of one’s property, for which reason the *sharīʿah* has prescribed compensation for damage to property simply by assessing the damage, regardless whether or not it was intended, for intention has no effect in such situation. In other words, no property should be taken from its owner without his consent and fair compensation should be given for any utilisation of one’s property.

2. *Preservation of Wealth through Acquisition and Development*

Another dimension which is connected to protection of ownership is preservation of wealth through acquisition and development. In fact acquisition and development of wealth have been considered the basis of ownership and property right in Islam and human beings saw that their efforts gave them exclusive right to whatever they could possess as a result. Thus, the Prophet is reported to have said: “If anyone revives a dead land, it belongs to him, and the unjust root has no rights.”

Furthermore, the scholars argued that if wealth preservation is a higher objective of Islamic law, then its acquisition should take precedence over its preservation. There are many qur’ānic verses and *aḥādīth* which certify this, such as “And when the prayer is finished, then you may disperse through the land and seek of the bounty of Allah […]” (Qur’ān 62:10). The Prophet, with regard to the essence of this meaning, said: “How fine is rightly acquired wealth in the possession of an upright man” (Aḥmad b. Ḥanbal, *Musnad*). He also said: “There is no Muslim who plants a seedling or sows a crop, and then an animal or person eats from it, except that it is (recorded) for him as a charity” (al-Bukhārī, *Ṣaḥīḥ*).

Another related aspect of acquisition is development. In fact development and augmentation are connected to asset acquisition. This is particularly true especially if one understands the philosophy behind the imposition of *zakāh* on economic property, which is also the third pillar of Islam. The requirement for Muslims to pay *zakāh* implies the need to develop wealth, for example through investment ensuring an asset to continuously grow and not to deplete. A *ḥadīth* that corresponds to this: “Verily, whoever has charge over an orphan with wealth then let him invest. He should not leave it to be consumed by *zakāh*” (al-Dāraquṭnī and al-Bayhaqī).

3. *Preservation of Wealth from Damage*

As much as the *sharīʿah* takes full account of people’s right to acquire, use and enjoy their property and the corresponding benefits, it also emphasises the need to preserve the property from being damaged and exposed to any form of harm. The preservation of wealth from damage can be looked at from two dimensions: protecting wealth from risk which can cause harm to it; and preventing wealth from damage through its harmful purposes. That is why rules governing the validity
and validation of contracts and the fulfilment of stipulations have been profoundly instituted in Islamic law.26

The concept of protection of wealth and property from risk can be seen in the Qurʾān; for instance, the longest verse in the Qurʾān – 2:282 – clearly directs Muslims to record debts and business dealings and to take witnesses. This prevents the possibility of a party denying what took place, which could lead to a loss of capital. If the dealing takes place during a journey, Allah allows collateral to be taken for the debt, if no record is taken. Such actions are suggested by Allah so that the debtor or business person will become aware and responsible in fulfilling their respective obligations. It is therefore understood that trust of the other party is not sufficient, but steps must be taken to avoid fraudulence and unreasonable losses. This concept is further strengthened by another clear command of Allah: “Spend in the cause of Allah; do not contribute to your destruction with your own hands, but do good, for Allah loves those who do good” (2:195).

In the all the above verses, Allah directed humans not to expose their wealth to the danger of destruction. Such a situation can also occur in business and investment matters, whereby a major risk, if not managed properly, can bring about catastrophic damages that may paralyse a nation’s economy and disrupt the lives of the general public. Therefore, handling a danger or risk efficiently is important for avoiding harm and for the sake of the society. The qurʾānic verses above make it clear that risk management is important and that strategic actions must be taken to handle risk efficiently and promptly.

4. The Preservation of Wealth through its Circulation (rawāj)

Facilitating the circulation of wealth constitutes an important objective of the sharīʿah. In the sharīʿah, circulation here means the transfer of wealth in the community among as many hands as possible without causing any harm to those who have acquired it lawfully.27 The Qurʾān has clearly indicated the need to prevent wealth from remaining in the hands of one person or just moving from one specific person to another:

Whatever [spoils taken] from the people of those villages God has turned over to his apostle – [all of it] belongs to God and the apostle, the near of kin [of deceased believers], the orphans, the needy, and the wayfarer, so that it may not be [a benefit] going round and round among such of you as may [already] be rich. (59:7)

This is also found in the ḥadīth of the Prophet in which he stated: “Whoever monopolises a commodity with the intention of overcharging Muslims is a wrongdoer” (Aḥmad b. Ḥanbal, Musnad).

Indeed, circulation of wealth is a very important element of wealth preservation in Islamic law. It guarantees a balanced and harmonious society and sustainable
economic development. In order to achieve this, the shari‘ah establishes a formula that balances between personal natural desire for ownership and fair access of the whole society to a reasonable portion of wealth. This formula can be looked at on two levels: during the life of its owner and after the owner’s death. The measures include:

- Prescribing financial measures, such as zakāh, zakāt al-fitr, kaffārah, to maintain a balanced society and provide a continuous source of income for its lower class.
- Promoting and rewarding charitable acts such as waqf, hibah, hadiyah, wasiyyah etc. to ensure a healthy circulation of wealth.
- Shifting lending to voluntary sectors, as an act of charity rather than for business.
- Promoting investments and prohibiting hoarding of wealth.
- Prohibiting all types of manipulations or monopolisation that channel wealth to a small segment of wealthy people at the expense of the majority.

Another important means of circulation of wealth is facilitating transactions as much as possible by highlighting their benefits over the minor harm that they might cause. For this reason, the shari‘ah does not require for the validity of sale contracts that the two counter-values (‘iwaḍayn) be available at the same time, such as in the case of deferred payment sale for which the price as a counter-value to the goods may be postponed to be paid at a certain point in future.

5. The Preservation of Wealth through its Value Protection

The emphasis on wealth circulation entails the requirement to protect and preserve its value. Indeed Islamic law put high concerns with the preservation of wealth by protecting its value and natural movement of commodity pricing. Allah affirms this in the Qur‘ān: “And do not withhold from the people the things that are their due” (7:85).

In the verse, the word bakhs has a literal meaning of undervaluing or deceiving or trickery in adding to or reducing from the measurement. As a case in point Islam considers money as a medium of measurement rather than a commodity. Hence specific ruling is prescribed upon money transaction as widely discussed by Muslim jurists under kitāb as-sarf, which denotes exchange of gold and silver (currency exchange). On the other hand commodity exchange is governed under different rules and regulation as discussed in Islamic jurisprudence under the topic of kitāb al-buyū‘, which denotes exchange of commodity.

The following hadith perhaps explains best the importance of preservation of wealth through its value protection:

Islam and Civilisational Renewal
The Prophet appointed a man as governor of Khaybar, who [later] presented him with an excellent type of dates (janib). The Prophet asked, “Are all the dates of Khaybar like this?” He replied, “[No, but] we barter one sā‘ of this (excellent type) for two sā‘ of ours, or two sā‘ of it for three of ours.” Allah’s Apostle said, “Do not do that (as it is a kind of usury); rather, sell the mixed dates (of inferior quality) for money, and then buy the excellent dates with that money.30

In the above ḥadīth, the Prophet impliedly indicated the need to allow market force to determine the actual value of the dates. This would ensure fair determination of the commodity’s price which might be a subject of manipulation and deception due to information asymmetry.

Moreover, the issue of value protection also entails the prohibition of any form of devaluing or overpricing of commodity. Thus, the Prophet prohibited people from buying goods from caravans before they reach the market (talaqqi al-rukbān) and also prohibited najash, which means bidding without real intent of purchase, simply to increase the price.

The Application of Maqāṣid al-Sharīʿah in Islamic Finance

Given the prime importance of the sharīʿah in Islamic finance, the Islamic financial institution therefore assumes a more vital role than its conventional counterpart. The understanding of the maqāṣid al-sharīʿah requires IFIs to submit to the sharīʿah by committing them to every contractual obligation and leading their operation in accordance with high virtue and moral consciousness as stipulated by the sharīʿah. For example, while an individual’s rights in acquiring properties (property rights) are protected, these rights are governed by rules and ethical codes designed to protect the rights of society.31 As such, an Islamic financial institution is not expected to conduct its economic, social and other worldly activities as a self-centred utility maximiser economic agent, as idealised in neoclassical economics; rather the firm is expected to balance between the rights and responsibilities of the individual and those of society.32

Essentially, the philosophy of the Islamic financial institution can be fully understood in the context of the overall objectives of the Islamic economic system as enshrined in the maqāṣid al-sharīʿah.33 Many prominent Islamic economists, like Chapra, Ahmad, Siddiqui, and Naqvi, have asserted that Islamic banking is a subset of the overall Islamic economic system that strives for a just, fair and balanced society as envisioned and deeply inscribed in maqāṣid al-sharīʿah. Accordingly, the many prohibitions (e.g. interest, gambling, excessive risks, etc.) are to provide a level playing field to protect the interests and benefits of all parties involved in market transactions and to promote social harmony.34
It is now commonly acknowledged that the consequences of lack of ethics and low morality are not only financial, but also social, environmental and essentially human damages. The recent financial crisis attested the fact that deceit and infectious greed corrupted the financial markets. Consequently, the crisis has brought IFI into the limelight as a possible and viable alternative. The crisis had a limited impact on Islamic finance, although it did not emerge totally unscathed. Nevertheless IFI faces considerable challenges in responding to the various expectations which will determine whether it becomes a significant alternative to its conventional counterpart. IFI should therefore leverage on its robust foundation and underlying principles, deeply rooted in the teachings of the sharīʿah and as enshrined by its higher objectives or maqāṣid al-sharīʿah.

Essentially, the principles of maqāṣid al-sharīʿah and maṣlaḥah (protection of public interests) by implication reflect how Islam stresses the importance of taking into account public interests rather than merely individual interests. It also provides a framework for decision making and a mechanism for adapting to change, especially for Islamic financial institutions that are supposed to commit to sharīʿah principles. Perhaps the principles of maqāṣid and maṣāliḥ can further contribute in delineating the role of IFI in terms of their responsibilities. They offer guidelines for moral judgement on the part of managers and other stakeholders, particularly in solving conflicts that may arise when pursuing various financial and operational issues.

The ‘Pyramid of Maṣlaḥah’

To shed light on our discussion of the application of the principles of maqāṣid and maṣlaḥah, this article depicts the principles of maṣlaḥah in a pyramid form, illustrated in Figure 1.

The pyramid of maṣlaḥah functions as a framework and general guideline to an ethical filter mechanism by providing three levels of judgements to be used by managers to resolve ethical conflicts which inadvertently emerge while engaging in various financial programmes and initiatives. The three levels also reflect the different degrees of importance in terms of fulfilment of responsibility. The bottom level, which is represented by the essentials (darūriyyah), constitutes the most fundamental responsibility to be fulfilled as compared to the other two categories, namely the complementary (hājiyyah) and the embellishments (taḥsīniyyah).

Therefore, as the pyramid moves upwards, the degree of decision making will be less fundamental, albeit more virtuous, so as to attain the perfection and well-being of society. According to Islamic scholars, the existence of the complementary (hājiyyah) and the embellishments (taḥsīniyyah) depends upon the primary purposes underlying the essentials (protecting and preserving the five objectives of the sharīʿah – faith, life, intellect, posterity, and wealth). The two categories are structurally subservient and substantively complementary to the darūriyyah, to the
extent that any violation affecting the latter produces far-reaching consequences. On the other hand, any damage affecting taḥsīniyyah or ḥājiyyah will result in only minor disturbance in the ḏarūriyyah. Hence, it is essential to preserve the three categories in their order of importance; that is to say, beginning with the ḏarūriyyah and ending with the taḥsīniyyah.

The three levels of the pyramid of maṣlaḥah are not mutually exclusive in the sense that all levels are inter-related and mutually dependent. The arrows pointing upwards and downwards along the pyramid of maṣlaḥah reveal the flexibility and mechanism of change in the decision making in the sense that any element which comprises one level of maṣlaḥah may be elevated upward or pushed downward depending on the different circumstances concerning the public at large. However, it should be noted that the flexibility posed by the principles of maṣlaḥah is confined within the framework of the sharīʿah but not vice versa.37 This reflects the dynamism of the pyramid of maṣlaḥah in assisting decision-making processes within different contexts, time and space.38 If, for instance the circumstances change, inviting firms to respond and consequently reconsider their roles within society, this will necessitate them to re-align all their business institutions (such as mission, vision, policy deployment, decision-making, reporting, corporate affairs, etc.) to the new maṣlaḥah so long as it does not contradict the principles outlined by the sharīʿah.
To further enlighten our argument on the pyramid of *maṣlaḥah*, particularly on how it can be applied to Islamic financial endeavours, we shall analyse the different levels of decision-making processes based on each principle of *maṣlaḥah*.

At the first level, within the scope of the essentials, managers are expected to strive for the preservation and protection of the essential needs (religion, life, intellect, posterity and property) of their stakeholders and public interests in general. For example, banks must always confine their business operations to those that safeguard the values of religion, life, intellect, posterity and property. Accordingly, Islamic banks have a religious, moral and social responsibility to avoid engaging themselves to any business activities, although there may be higher profits, which may cause disruption and chaos to society. Examples include business activities which can endanger the lives and disruption of people’s intellect as a result of environmental degradation, and the manufacturing of illicit drugs for public consumption.

As soon as the scope within the essentials has been fulfilled, the corporations may strive for the second level, the complementary (*ḥājiyyah*) which is deemed beneficial to remove difficulties, even though it may not pose a threat to the very survival of normal order. For example Islamic banks that have fulfilled their essentials level should further extend their responsibilities. In this instance, the essential needs of employees such as fair pay and a safe workplace can be further extended to include continuous training and enhancing human quality programmes. The latter is not really essential in the sense that if managers neglect this kind of commitment, it will not pose severe harm to the employees. However, if the managers assume such a responsibility it is a fulfilment of the complementary interest that will advance the intellectual well-being (knowledge and skills) of the workers. In some cases, such effort can sometimes be considered as the essentials (*maṣlaḥah ḍarūriyyah*). For example, Islamic banking institutions need to provide adequate *ṣharīʿah* training to their employees concerning the Islamic financial instruments offered, so as to protect the interest of faith.

The top level in the pyramid of *maṣlaḥah* is the principle of embellishments (*taḥsīniyyah*). Within the ambit of the embellishments, the Islamic firms are expected to discharge their social responsibilities by engaging in activities or programmes that may lead to improvements and attainments of perfections of public life conditions. Involving in charity or giving donations to the poor and needy; offering interest-free loans, providing scholarships to the less fortunate students and providing sufficient, correct and clear information or advertisement regarding products offered to customers are some of the examples of Islamic banking commitment with respect to achieving the embellishments for society.

On the whole, the pyramid of *maṣlaḥah* implies the need for Islamic financial institutions to engage and manage their businesses and activities according to...
priorities. These priorities evolved from a deep understanding of the objectives of the sharīʿah such that preservation of interests (maṣlaḥah) is dealt with according to the different levels of importance and severity of consequences. For example, one must not focus on attaining embellishments while jeopardising the essentials. Similarly, one must not be obsessed with the attainment of benefits to the extent of creating harm or inflicting injury to others. The discussion of the harm prevention principle, which is pertinent to our discussion of implications of maṣlaḥah to Islamic Finance, is further elaborated in the following section.

The Principle of Harm Prevention in Islam

The concept of maṣlaḥah entails the understanding of the Islamic principle of harm prevention. Essentially, the principle states that while engaging in economic and business activities, a firm is prohibited from inflicting injury or causing grief to others. Generally, there are two major sharīʿah axioms imbued in the principle of harm prevention. One is the removal of hardship (rafʿ al-ḥaraj) and the other is prevention of harm (dafʿ al-ḍarar). This concept occupies a central position in the framework of protection of social interest as enshrined in the principles of maṣlaḥah, particularly in averting social harm. As such, a discussion of application of maqāṣid to Islamic finance will be futile if such an important framework is undermined.

This principle is based on an authentic ḥadīth narrated by Ibn Mājah and al-Dāruqṭnī and others on the authority of Saʿd b. Mālik al-Khudrī, who mentioned that the Messenger of Allah said: “There should be neither harming nor reciprocating harm” (Aḥmad b. Ḥanbal, Musnad, and Ibn Mājah, Sunan). Islamic scholars broadly classify harm or damage into two types: the first type is the harm or damage which occurs as a result of a deliberate action by a person upon parties or entities (e.g. environment). The second type is an action by a person with a solemn intention and permissible by the sharīʿah; albeit in good faith, his action may directly or indirectly cause harm to other parties. While the former is strictly prohibited or ḥarām, the latter has to be examined in varying degrees and in various contexts to determine whether the action is permissible or otherwise.

The study on the principle of harm prevention together with the concept of maṣlaḥah has been a subject of wide discussion in the field of Islamic jurisprudence. A number of Islamic legal maxims were derived from this. For the purpose of this study, we simplify the discussion by providing a summary of Islamic maxims which derived from the concept of harm prevention. Table 1 summarises some of the most important Islamic legal maxims which are relevant and significant to our discussion on Islamic financial operation. Examples of their application to various Islamic finance operational related issues are also provided in the corresponding column to further illuminate our understanding of the maxims.
Table 1 The Framework of Harm Prevention in Islam

<table>
<thead>
<tr>
<th>Islamic Maxim</th>
<th>Description</th>
<th>Examples of Application</th>
</tr>
</thead>
<tbody>
<tr>
<td>Harm is repelled as far as possible.</td>
<td>Any potential harm to the society has to be prevented as much as possible. It resembles the proverb ‘prevention is better than cure’. It is easier to prevent something from happening rather than treating it when it has already happened.</td>
<td>Islamic banks must not become involved in any activities that may in the long-run cause harm to society. For example, becoming involved in speculative trading activities which are not linked to the real economic activities such as the derivatives market.</td>
</tr>
<tr>
<td>Harm is put to an end.</td>
<td>Any harm must be stopped or abolished. It is obligatory to remove the harm and try to rectify the damage.</td>
<td>If an Islamic bank identifies any shari'ah violation in its activities, immediate action must be taken to rectify the transaction. Corrective measures must be put in place to ensure such an event may not recur in future.</td>
</tr>
<tr>
<td>No injury to be inflicted when lifting an injury.</td>
<td>In an attempt to remove harm or damage, it must not invoke another type of harm either in the same degree of harm or worse.</td>
<td>In managing risk banks must not use conventional risk management tools which can invoke higher risk such as using derivatives or securitisation techniques like Credit-Default Swaps (CDS) and Mortgage-Backed Securities (MBS), which are proven to have detrimental effects on society in the long-run.</td>
</tr>
<tr>
<td>Severe damage is avoided by a lighter damage.</td>
<td>If harm or damage is unavoidable, the strategy is to choose a lighter damage. Another similar maxim is that the smaller of two harms is chosen.</td>
<td>In the event where an Islamic bank has no other option except to use a controversial contract like tawarruq in managing its liquidity, it may do so because the damage of a collapsed bank due to liquidity crisis is more severe and can be disastrous to the whole financial system.</td>
</tr>
<tr>
<td>To repel a public harm a private damage is preferred.</td>
<td>One has to succumb to the damage which is private in nature in order to prevent social harm. In other words, a firm’s operation should be biased in favour of society if two harmful acts are conflicting.</td>
<td>Avoiding of financing companies that manufacture illicit drugs or activities detrimental to public consumption is deemed necessary even at the expense of undermining individual profits.</td>
</tr>
<tr>
<td>The repealing of harm is preferred to the attainment of benefits.</td>
<td>If there is a conflict between harm and benefit, it is obligatory to repeal or lift the harm first even if by so doing it will remove the benefits. This is because harm can easily spread and cause severe damage, and hence priority ought to be given to the aversion of harm over attaining benefits.</td>
<td>A debt-based instrument like murābahah, given its legal and valid contract from the shari'ah viewpoint, its extensive use accentuates inequality and exposes one to a wide-array of risk as it redistributes wealth in favour of suppliers of capital, irrespective of actual productivity of the finance supplied. Hence, it should be minimised and eventually averted.</td>
</tr>
</tbody>
</table>
Conclusion and Recommendations

This article offers instructive discussion on the framework of maqāṣid al-sharīʿah and its implication to the contemporary discourse on the sharīʿah-based finance. It has been made explicit in our discussion that

- Islamic finance as an institution grounded on the ethical and moral framework of Islamic law assumes a distinctive role in the society.

Furthermore, the framework of maqāṣid al-sharīʿah also implies that

- Islamic financial institutions’ characteristics are shaped by the higher objectives of Islamic law emphasising overall social and economic good and not infectious greed and individualism.

Thus Islamic finance is much more than just refraining from charging interest and conforming to the legal technicalities and requirements on offering Islamic financial products. It is a holistic system which aims at contributing to the fulfilling of the socio-economic objectives and the creation of a just society. In the process of conducting business, Islamic financial institutions seek to bring about a lasting balance between earning and spending in order to achieve betterment for the whole community. This has been manifested as a higher objective of Islamic finance which is deeply inscribed in the maqāṣid al-sharīʿah. The message of Islamic finance is therefore very clear in that:

- Earning profits is commendable as long as it conforms to the principles of fairness and justice, as deeply inscribed in the sharīʿah.

- Furthermore, Islamic guidance enshrined by its principle of justice brings about a balance between the rights of individuals and their duties and responsibilities towards others, and between self-interest and altruistic values.

With respect to managing diverse expectations and interests, the sharīʿah provides a framework for managers to resolve problems arising from the potential conflicting responsibilities towards the various stakeholders. In particular, the pyramid of maṣlaḥah, together with the concept of harm prevention, which we have previously described, serve as a viable and effective model to devise a decision framework for making any trade-offs between the interests of various stakeholders. Therefore, both the pyramid of maṣlaḥah and the harm prevention principle can contribute towards the establishment of guidelines for decision making in managing Islamic financial institutions. They also serve as viable models to devise principles for
making trade-offs between the interests of diverse stakeholders. The framework also allows the managers to weigh and balance the interests at stake so that the various business objectives can be realised without causing harm or inflicting injury to any party.

Notes


5. These attributes correspond to Qur’ān 21:107 and 10:57.


7. Many Islamic legal scholars advocated the principle of public welfare (maṣlaḥah) and the objectives of the sharīʿa’ (maqāṣid) in Islamic jurisprudence (fiqh), among them al-Juwaynī (d. 1085), al-Ghazālī (d. 1111), al-Rāzī (d. 1209), al-Āmidī (d. 1233), al-Salmī (d. 1261), al-Qarāfī (d. 1285), Ibn Taimiyyah (d. 1327), and al-Tāhir Ibn ʿĀshūr (d. 1328), Ibn ʿĀqīqī (d. 1385). See D. Abdel Kader, “Modernity, the Principles of Public Welfare (Maslahah) and the End Goals of Shari’a (Maqasid) in Muslim Legal Thought”, Islam and Christian-Muslim Relations 14, no. 2 (2003), 163–74.

8. The plural of the Arabic word maslahah is masāliḥ which means welfare, interest or benefit. Literally, maslahah is defined as seeking the benefit and repelling harm. The words maslahah and manfaʿah are treated as synonyms. Manfaʿah (benefit or utility), however, is not a technical meaning of maslahah. What Muslim jurists mean by maslahah is the seeking of benefit and the repelling of harm as directed by the Lawgiver. Refer to Imran Ahsan Khan Nyazee, Islamic Jurisprudence (Usul al-Fiqh) (Islamabad: Islamic Research Institute Press, 2000).

9. Refer to Nyazee, Islamic Jurisprudence.


22. *Mughārāsah* is a kind of land tenure or contract in which the landlord gives his barren land to someone to plant fruit trees in it; see ibn ʿĀshūr, *Treatise*.


27. Ibid.

28. Ibid.


34. Ibid.

35. The pyramid of maṣlaḥah looks similar to but not necessarily the same as Abraham Maslow’s (*Toward a Psychology of Being* (New York: Van Nostrand Reinhold, 1968)) hierarchy of needs. He established the theory based on the psychological, safety, love, esteem and self-actualisation needs of man. While the latter is based on naturalistic and materialistic perspectives to life, the former reaffirms the integralspiritual view of the universe to provide a better philosophical framework as an alternative for contemporary man’s interaction with nature and his fellow men. S.H. Azmi (“Traditional Islamic Social Welfare: Its Meaning, History and Contemporary Relevance”, *Islamic Quarterly* 35, no. 3–4 (1991), 165–80) asserts that Maslow’s hierarchy of needs could not be applied totally in the ‘Islamic need-set’ as his hierarchy does not really deal with the “spiritual” needs. Instead he talks of ‘self-actualisation’ and puts that at a higher (and hence less basic) level of needs. K. Ahmad (“Islamic Ethics in a Changing Environment for Managers”, in: K. Ahmad and A.M. Sadeq (eds), *Ethics in Business and Management: Islamic and Mainstream Approaches* (London: ASEAN Academic Press, 2002), 97–109) further reaffirms that Islamic understanding of upward mobility in an organisation is more comprehensive than the simple fulfilment as described by Abraham Maslow’s hierarchy of needs.


38. Contemporary Islamic jurists like Husayn Hamid Hasan, Muhammad Sa’id Ramađan al-Būtí and Muṣṭafā Zayd (as quoted in Mumisa, *Islamic Law*) all affirm the dynamism of maslahah or public interest in Islamic *fiqh*, but it has to be carefully used in shaping the contemporary challenges in the modern world today. The touchstone to judge the validity of maslahah is the Qur’ān and the Sunnah. Al-Būtí in his book *Ḍawābiṭ al-maṣlaḥah fī al-sharīʿah al-islāmiyyah* (Cairo: Mu’assasat al-Risālah, 1982), cautions that maslahah must not be used at random. He maintains that the effective way to preserve the sharīʿah in its ideal form is to determine maslahah by the needs recognised in the sharīʿah, otherwise it will be exposed to extraneous factors which are against the spirit of the Qur’ān and the Sunnah.

39. The corresponding qur’ānic verse to support this is 28:77.

40. Kamali, “Maqasid al-Shari’ah”.


42. According to M. Al-Bugha and M. Misto, *A Discussion on An-Nawawi’s 40 Hadith* (Kuala Lumpur: Prospecta Printers, 1998), in quoting al-Suyūṭī (d. 1505), based on his book *al-Ashbāh wa ‘l-naẓā’ir*, this *ḥadīth* is very significant as it embodies the fundamental principles and maxims of Islamic jurisprudence. Among the *fiqh* arguments deriving from this *ḥadīth* is: If someone has caused damage to another party’s property, it is not permissible for the affected party to retaliate by damaging the property of the person. This is because such action is deemed to aggravate the damages without any benefits in return, hence it is harmful. The alternative is paying compensation to the same value of the damaged property so as to avoid further harm to the property of the owner. See also Zuhrah, *Uṣūl al-fiqḥ*.

THE IMPACT OF MAQĀŠID AL-SHARĪʿAH ON ISLAMIST POLITICAL THOUGHT: IMPLICATIONS FOR ISLAM–WEST RELATIONS

Halim Rane*

Abstract: Although most of the more conservative, first generation Islamist political parties have experienced a decline in voter confidence in recent years, there has not been a commensurate decline in support for Islam to play a role in the politics of Muslim countries. In this context, a second generation of Islamic-oriented (as opposed to ‘Islamist’) political parties have emerged which espouse a maqāṣid-oriented approach in response to both domestic and international factors. Muslim political leaders have asserted such principles and goals as democracy, good governance, economic prosperity, socio-economic justice, human rights and pluralism as Islamic objectives. By establishing their policies on these objectives they have also attracted broader constituencies that include Muslims and non-Muslims, secularists and Islamists, and have eased some of the apprehensions Western governments have with Islam in Muslim politics.

Introduction

Over the past several decades, the study of international relations has taken a keen interest in political developments in the Muslim world and their implications for Islam–West relations. Much of the focus has been on the resurgence of Islam as a social and political force and particularly the rise of Islamist political parties. Infused with ideas about Islam as the solution to the social, economic and political problems of Muslim countries, the first generation of Islamist political parties were able to capitalise on a wave of post-colonial public frustration with the existing political order and a longing for stability, justice and prosperity envisioned through the implementation of the shari‘ah and the establishment of an Islamic state. In recent decades, Islamists have lost significant political ground to what Nasr,1 Bubalo, Fealy and Mason,2 and others have called ‘Muslim democrats’ – Muslim political

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parties that do not pursue the establishment of a *sharīʿah* state but “viable electoral platforms and stable governing coalitions to serve individual and collective interests – Islamic as well as secular”.

For Nasr, ‘Muslim democrats’ include the Pakistan Muslim League (PML), Turkey’s Justice and Development Party (AKP), and Malaysia’s United Malays National Organisation (UMNO) – parties with a secular foundation (AKP excluded) that have come to occupy the centre of politics in Muslim countries by pragmatically integrating Muslim religious values into their political platforms. This strategy has attracted voters who previously supported Islamist political parties, while their secular foundation has enabled their pursuit of Islamisation policies without attracting the ire of Western governments.

For Bubalo, Fealy, and Mason, however, ‘Muslim democrats’ include Egypt’s Muslim Brotherhood (MB), Indonesia’s Prosperous Justice Party (PKS), and Turkey’s AKP – parties that have not come from a secular origin and have adopted Muslim values for political expediency but have a genuine Islamic foundation and have genuinely internalised the principles of democracy. The long-standing assumption of Western policy makers that Islamists should be excluded from participation in politics because they will use the democratic process to ultimately impose theocracy is turned on its head by Bubalo, Fealy and Mason as well as others such as Irfan Ahmad who contend that democracy has actually transformed the ideology of such political parties as the MB, PKS, AKP as well as India’s Jamaat-e-Islami respectively. Others have also discussed this phenomenon in terms of ‘mainstream Islamists’ – political parties or groups “that engage or seek to engage in the legal political processes of their countries and have publically eschewed the use of violence” – including Egypt’s MB, Jordan’s Islamic Action Front (IAF), and Morocco’s Justice and Development Party (PJD).

This article explores these emerging trends in political Islam more deeply and discusses their implications for Islam–West relations. It looks beyond Muslim democratic parties that have incorporated Muslim values as a pragmatic political tactic as well as Islamist parties whose political thought has evolved only to the stage of accepting democracy and rejecting the use of violence. This article’s focus is on a second generation of Islamic-oriented political parties which, in response to internal and external forces, have distinguished themselves from first generation Islamists not only in terms of their broader political platforms but also in their approach to Islam. The politics and policies of second generation Islamic-oriented political parties demonstrate a *maqāsid*-oriented approach. These parties are Islamic in orientation and identity but regard democracy, economic prosperity, good governance, human rights, and pluralism as Islamic objectives, rather than the implementation of *sharīʿah* law or creating an Islamic state in the modern, conventional sense. Also, unlike most of their first generation counterparts, second generation Islamic-oriented
parties advocate positive relations with the West. Through their maqāṣid-oriented approaches, they are not only redefining the concepts of Islamic democracy and political Islam but also the fate of Islam itself in the socio-political context.

This article draws on almost two decades of US foreign policy documents on political Islam and relations with the Muslim world as well as interviews conducted with key representatives of Turkey’s Justice and Development Party (AKP), Malaysia’s People’s Justice Party (PKR), and Indonesia’s Prosperous Justice Party (PKS). It begins with an overview of Islam–West relations drawing on salient implications of European colonial rule of the Muslim world as well as the post-colonial era. The article then examines US foreign policy on Islam and the Muslim world from the first policy document in 1992 until US President Barack Obama’s landmark address on ‘a new beginning’ delivered in Cairo in 2009. It discusses the rise of the second generation of Islamic-oriented political parties in the context of the failure of the first generation, the revival of the maqāṣid, and its implications for political Islam and relations with the West. The article contends that while the adoption of a maqāṣid-oriented approach by certain Islamic-oriented political parties combined with a more accommodationist approach from Washington is likely to reduce confrontation between the United States and political Islam, tension between Washington and the Muslim world will continue so long as access to oil and support for Israel remain the two central pillars of US foreign policy.

Islam–West Relations

Throughout much of its history, Islam has displayed a strong syncretistic inclination, embracing and building upon the intellectual, institutional and infrastructural contributions of non-Muslim civilisations, including the Greeks, Romans, Persians, Indians, and Chinese. A dramatic reversal of this outlook came with the onset of European colonisation of the Muslim world. Since that time until today, Muslim perceptions of the West have been dominated by negative sentiments, confrontation, and suspicion. An aversion to values, norms, systems and institutions perceived as ‘Western’ has since been prevalent among Muslim masses. Colonisation left an intellectual legacy on both Muslim and non-Muslim thinking characterised by a view of the other as a distinct, contrasting and opposing entity. Orientalism, as termed by Edward Said, continues to have a profound impact on Islam–West relations not only in terms of Western perceptions of Islam, but also in the reverse.7

A popular perception among Muslims is that European colonial rule attempted to remove Islam from Muslim societies and replace an Islamic identity and culture with Western norms and values. The rise and success of Islamist political parties in Muslim countries is, therefore, seen by many Muslims as completing the process of independence from European colonial rule and achieving meaningful freedom.
The parties that achieved independence from colonial rule and came to power were largely seen, in a cultural sense, as an extension of the former colonial rulers. For many Muslims, the process of independence was not complete and only the election of Islamic or Islamist parties that reflect the identity and values of the people would finally mark the country’s true independence from colonisation.

From the perspective of the majority of Muslims around the world, Islam can and should be part of the process of their democratisation. This includes the participation of Islamist parties in politics. A study conducted in 2009 by WPO, PIPA and CISSM found that the majority of Muslims interviewed support Islamist participation in politics. To the statement that “all people should have the right to organise themselves into political parties and run candidates, including Islamist groups” the majority in all countries surveyed agreed, including in Azerbaijan (75%), Jordan (50%), Indonesia (81%), Palestine (69%), Pakistan (83%) and Turkey (53%). Minorities of respondents agreed with the alternative statement that “Islamist groups should not be allowed to organise and run candidates because their ultimate goals are not consistent with democracy”: Azerbaijan (24%), Jordan (26%), Indonesia (8%), Palestine (30%), Pakistan (16%) and Turkey (30%).

With few exceptions, however, the United States has demonstrated a marked reluctance to accept Islamist political parties or even to engage with them. Only as a matter of political necessity has the United States accepted a role for Islamist parties, as in post-Saddam Hussein Iraq, in order to avert the intensification of civil strife and to construct at least a semblance of a representative government. The United States has also accepted the AKP in Turkey, a NATO member and until recently the lone friend of Israel in the region. Beyond these cases, the United States has had only limited engagement with even mainstream Islamists such as Jordan’s IAF and Morocco’s PJD. In other cases, such as Egypt’s MB and Hamas in Palestine, US engagement is stifled by Egypt and Israel’s self-serving arguments that lifting the restrictions and restraints on such groups would endanger stability and security in the region.

The reassertion of Islamic identity among Muslims and the re-emergence of Islam as a social and political force over the past several decades has been met by the West with concern and even perceived as a threat. The perceived Islamic threat is in terms of stability of allies and security of access to vital resources, but it is also a matter of ideology. The role that Muslims envision for Islam in politics goes against the grain of the secularising mission of modernity. The infusion of Islam in the politics of Muslim countries, otherwise referred to as political Islam, runs “counter to the entire modern history of the Western tradition of secularising revolutions” and represents “a divergence and/or infringement upon neutral secular public space, as a throwback to pre-modern forms of Muslim political order”. The central concern or threat has come from political Islam’s call for an Islamic state based on the
The uncertainty as to what this precisely means has created extensive anxiety among Western policy makers.

Ideological factors have been evident since the West’s first major encounter with political Islam in the modern era: the overthrow of the Shah of Iran (then a key Western ally in the Middle East) by revolutionary Islam and the establishment of the Islamic Republic of Iran in 1979. Americans have historically been alarmed by revolutions in general due to their radical nature and the inherent challenge they present to the status quo based on order and the predominance of the United States. Foreign-policy elites in the United States have, therefore, displayed “hostility toward revolutions that have diverged from the American constitutional, liberal, and capitalist norm”. In the case of Iran’s Islamic revolution, security concerns were not foremost in the minds of US policy makers, but rather, the challenge it presented to the ‘existing order’ and the clash of worldviews it represented: ‘Islamic-theocratic’ versus ‘Western-secular’. The Carter administration, in power at the time, regarded the idea of an Islamic state to be “absurd” as it “ran counter to the entire modern history of the Western tradition of secularising revolutions”. Carter’s response is indicative of the West’s perception at the time that secularism had become a global norm and religion was no longer relevant in politics. At the same time, Islamist groups, Shi’ite as well as Sunnite, were celebrating Iran’s Islamic revolution, which became a source of inspiration for Muslims globally.

The 1980s passed with a deterioration in relations between the United States and Iran. Washington sought to contain the Islamic revolution based on a fear of it spreading through the Middle East and used Iraq under Saddam Hussein as a bulwark. However, during the subsequent Reagan administration, the United States was still without a defined policy on political Islam. US policy makers tended to regard the new phenomenon opportunistically. On the one hand, Iran was perceived as a threat and enemy, but on the other, jihadist forces or mujahedeen (Arab.: mujahidūn) in Afghanistan and Islamists in Indonesia were used in proxy wars against the Soviet Union and the spread of communism. The case of Afghanistan, in particular, demonstrates not only the pragmatism of US policy at the time in supporting the mujahedeen but also the priority given by US foreign policy to realism over moralism – or strategic matters over and above such principles as democracy and human rights.

The Islamic State

The idea of an Islamic state characterised by the implementation of the sharī‘ah is a modern phenomenon developed by Abū ’l-A‘lā Mawdūdī (d. 1979) in the context of British colonialism and the identity politics of the Indian subcontinent in the years preceding partition. In response to Muslim League calls for a Muslim state of
Pakistan, Hindu calls for a secular India, and communist calls for a socialist state, Mawdūdī perceived a threat to the Islamic identity and called for the establishment of ‘Allah’s government’, ḥukūmat-i ilāhiya or an Islamic state. Although the concept became a central pillar of Islamists across the Muslim world by the latter half of the twentieth century, so without foundation in Islamic thought was his Islamic state that Mawdūdī initially struggled to convince the Indian ʿulamā’ and those in his own party of its legitimacy. He was forced to engage in an elaborate reconceptualising of the concepts of God, Lordship, worship, and religion in relation to politics in order to lay the theological foundations for his case.

Mawdūdī’s concept of an Islamic state found support among other influential Islamic thinkers and leaders. Along with Mawdūdī, Sayyid Quṭb (d. 1966) in Egypt, and Ayatollah Khomeini (Rūḥ-Allāh Khumaynī, d. 1989) in Iran popularised the vision of an Islamic state among Muslim masses globally and made it the central pillar of the Islamic resurgence of the late twentieth century. In the context of Southeast Asia, for instance, Kamal Hassan remarks that several factors contributed significantly to the spread of the concept of an Islamic state including the translation of Mawdūdī’s and Sayyid Quṭb’s work into Malay, Indonesian and English where Muslim students studying in the West encountered such writings through the Muslim Student Associations on their university campuses; the adoption of Mawdūdī’s and Sayyid Quṭb’s books as required reading by such institutions as the International Islamic University Malaysia; and the adoption of their ideas among Muslim youth movements such as ABIM and political parties such as PAS. Hassan finds “clear influence of Maududi’s ideas” on PAS, particularly the concepts of Islamic state and God’s sovereignty.

Amid the ascendency of the concept of the Islamic state as envisioned by Mawdūdī, Sayyid Quṭb, and Khomeini, Islamic scholars of political science were already questioning the vision. Louay Safi cautioned as early as 1991 that Muslims were confusing the concept of state with that of ʿummah. He contends that an Islamic state is one in which “legal order is based on and derived from the principles of the sharīʿah”, which he adds “should not, however, be interpreted to mean that the Islamic state’s purpose is to impose a narrowly defined code of behaviour on society”. In terms of legislation, the domain of the state is to regulate individual behaviour in relation to the society as a whole or what might be termed maṣlaḥah mursalah (public good), while matters of morality and worship (akhlāq and ʿibādāt) as well as the regulation of behaviour between members of society (muʿāmalāt) fall within the domain of the ʿummah or civil society. Thus, the purpose of the Islamic state is to “facilitate the realisation of the human mission […] to coordinate the activities of the ʿummah in ways that will enable a society to cope with economic and political challenges and to enhance the quality of life in the community”. It is the pursuit of these objectives within the framework of sharīʿah that makes
a state ‘Islamic’. However, the legitimacy of the state is derived from the will of the ummah, including the ‘ulama’, which historically controlled or at least held influence over judicial, educational and social institutions and thereby the power to enact law remained the domain of the people rather than the ruler. Moreover, as the legitimacy of the state depends upon the extent to which its organisation and power reflects the will of the ummah, Islamic legitimacy is conferred upon political systems based on elected representative rule.23

Islam in Muslim Politics

Not only did the first generation of Islamist political parties fail to deliver on good governance and socio-economic advancement in accordance with the expectations of the masses but their approach, rhetoric and policies attracted distrust and opposition from a range of constituencies including secularists, moderate Muslims, and non-Muslim minorities as well as Western governments. The twenty-first century has witnessed those labelled as Islamists lose considerable political ground to more centrist Muslim political parties that have incorporated Muslim values into their political programme or have otherwise Islamised certain public policies. The work of Nasr, for instance, documents this trend in the context of Pakistan in 1997, Bangladesh in 2001, Turkey in 2002, Indonesia in 2004 and Malaysia in 2004. He rightly identifies that those most likely to attract the Muslim vote are parties that successfully “integrate Muslim values and moderate Islamic politics into broader right-of-centre platforms that go beyond exclusively religious concerns”.24

In Malaysia, for instance, Abdullah Ahmad Badawi won a landslide victory over PAS in the 2004 elections. UMNO won 50 per cent of the seats and the Barisan Nasional coalition led by UMNO won 90 per cent of the seats. PAS, however, managed to secure only 3 per cent of the seats in Parliament. This can be attributed to a combination of two decades of Islamisation policies and economic prosperity under former Prime Minister Mahathir Mohamad along with Abdullah’s personal Islamic credentials, education, and Islam Hadhari policy.25 This marked a reversal of the previous election in 1999 when PAS was able to capitalise on the discontent among Malay voters over perceived corruption of the Mahathir government and particularly the perception of unjust mistreatment of Anwar Ibrahim by the government and judiciary, increasing the party’s seats in parliament from 8 to 27.26 In the most recent 2008 elections, PAS won 14 per cent of the vote, increasing its seats in parliament to 23.

However, this cannot be interpreted as a shift back to conservative Islam among Malay voters. On the one hand, Abdullah’s Islam Hadhari came under criticism from the opposition PAS party which carried some weight among Malay voters.27 More importantly, though, the once-dominant ‘ulama’ among PAS’ leadership have
been offset by a new generation of educated, professional and pragmatic leaders. They have been instrumental in the party dropping its rhetoric about an Islamic state, engaging with non-Muslim voters, and joining the People’s Front coalition with the PKR and DAP based on a multi-ethnic platform. PKR is internally discordant with the DAP (Democratic Action Party), a Chinese party with no Islamic credentials, having a lead role in the coalition. Writing in 2006, PKR’s advisor and (unofficial) leader Anwar Ibrahim advocated a *maqāṣid*-oriented approach which he thought was in contrast with the more literal approach historically displayed by PAS. It is also noteworthy, however, that the new generation of PAS leadership, including the Deputy President Nasharuddin Mat Isa, endorse a *maqāṣid*-oriented approach, although the party still adheres to the vision of establishing an Islamic state in the modern conventional sense characterised by the implementation of *shari‘ah* laws.

Moreover, even while Islamists were enjoying some political successes in the 1990s, their victories came amid discussion about the failure of political Islam. The two central counts concerning the failure have been political Islam’s inability to provide an effective blueprint for an Islamic state based on the *shari‘ah* and the abandonment of the pan-Islamic or caliphate model and contentment with a world order based on nation-states. However, this is largely a failure only to the extent that it has not met the vision of Mawdūdī and Sayyid Quṭb. The real failure is that political Islam has not met the basic qur’ānic vision of establishing a just and equitable social order. The implementation of the *shari‘ah* should not be seen as the yardstick for the success of political Islam. Even when the *shari‘ah* (in its modern, conventional conception) is fully or near-fully implemented, as in the case of Afghanistan under the Taliban, Iran, Pakistan, Saudi Arabia, or Sudan, the state has not fulfilled basic Islamic ideals as discussed by the late Fazlur Rahman (d. 1988), Louay Safi and others. Rather, such states are among the poorest in terms of performance on key social, economic and political measures. No positive correlation is observable between a more full or comprehensive implementation of the *shari‘ah* and progress towards a more just and equitable social order in terms of human, gender and minority rights; political participation and stability; good governance and government accountability and transparency; economic advancement; equitable distribution of wealth; educational attainment; and national power. In large part, the problem is that these values, goals and standards are not the emphasised priorities of the modern conventional conception of the *shari‘ah*. Rather, they are often associated with the West, devalued, dismissed by Islamists and not included as part of the Islamic agenda.

The first generation of Islamist political parties that based their political programme on issues of public morality, the implementation of *ḥudūd* laws, and establishment of Islamic states have lost the confidence of the Muslim electorate due to their lack of effective response to the major social, political and economic problems.
of Muslim countries; their inability to connect with non-Muslim minorities and secularists; and the suspicion and concern they evoke among Western powers. Today, Muslims do not necessarily vote on the basis of religious identity but according to their values and interests. If Islam is to contribute positively to society and state an alternative approach is needed that is inspired by or derived from Islam and integrates democratic political institutions that have been most successfully developed by Western nations.38

**US Foreign Policy**

A defined US foreign policy on political Islam did not emerge until 1992 during the administration of Bush Senior. To put this development into context, by that time Islamist political parties were already in power in Sudan via a military coup; making significant electoral gains in Egypt, Jordan, and Tunisia; and had won the parliamentary elections in Algeria where civil war had erupted in response to a military coup to prevent the democratically elected FIS party from taking power. Additionally, the mujahedeen in Afghanistan were claiming victory against the world’s other superpower, the Soviet Union, and secular Iraq had failed to dislodge Islamic rule in Iran as hoped by Britain and the United States. Further, Islamist opposition groups in Indonesia were becoming more vocal against the secular regime of Suharto, pushing him to pursue Islamisation policies, while in Malaysia, Mahathir was countering the Islamist challenge posed by PAS with Islamisation policies of his own which included the establishment of Islamic banks, the International Islamic University Malaysia, and the national ḥalāl certification regime.

In June 1992, the then Assistant Secretary of State, Edward Djerejian, delivered an address at Meridian House entitled “The United States, Islam, and the Middle East in a Changing World”. The document is framed in a post-Cold War context with Russia as a partner in the new world order. Two major goals of the United States in the Near East are articulated as: (1) “a just, lasting and comprehensive peace between Israel and all her neighbours, including the Palestinians”; and (2) “viable security arrangements which will assure stability and unimpeded commercial access to the vast oil reserves of the Arabian Peninsula and Persian Gulf”.39

About half-way through the document, a third pillar of US policy is added: “support for human rights, pluralism, women’s and minority rights, and popular participation in government and our rejection of extremism, oppression, and terrorism”.40 The factors that underpin this policy are listed as “diversity”, “interaction”, and “common aspirations”. The United States would relate to others on the basis of understanding and tolerance, accepting differences in values and interests; working across a range of fields including political, economic, social, cultural, and military; and recognising the need for cooperation to realise common goals. The United States pledges its
support to those parties that share its fundamental values of “steps towards free elections, creating independent judiciaries, promoting the rule of law, reducing restrictions on the press, respecting the rights of minorities, and guaranteeing individual rights”.  

The document also emphasises that the foreign policy of the United States is neutral in terms of religion; that religion is not a determinant, positive or negative. It makes clear that the United States differs with those, regardless of religion, who engage in terrorism, oppress minorities, preach intolerance, or violate internationally accepted standards of conduct regarding human rights; who are insensitive to the need for political pluralism; who cloak their message in another brand of authoritarianism; who substitute religious and political confrontation for constructive engagement with the rest of the world; who do not share our commitment to peaceful resolution of conflict, especially the Arab-Israeli conflict; and who would pursue their goals through repression or violence.  

It is noteworthy that the address was not matched by a corresponding policy shift and that the “liberal themes in Djerejian’s speech were not translated into practical policy guidelines” as “American officials were reluctant to apply the new discourse while formulating American foreign policy”. Fawaz Gerges comments that the Bush Senior administration “did not exert any pressure on its traditional Muslim clients to open the political process, accommodate the opposition, and expand popular participation in government”. However, the document did establish a broad and positive framework that set a benchmark that was reiterated by succeeding administrations.  

During the Clinton era, a number of policy statements concerning Islam–West relations and political Islam were issued. Certain key points were reiterated including that the United States was not hostile towards Islam but towards violence and terrorism, there is essential harmony between Islamic and Western values, and encouragement for Muslim states to emulate Turkey and Pakistan rather than Iran and Sudan. The Clinton administration was indifferent to Islamists in the main, provided their focus was on domestic issues and not concerned with matters that would negatively impact on US national interests. Gerges notes that “most Clinton administration officials stressed their concern with the potential implications of Islamists’ foreign-policy agenda, not their internal politics”. Additionally, like those in the era of Bush Senior, Clinton officials held the view that political Islam is a consequence of a lack of economic, educational, and political opportunities in the Muslim world rather than a product of Islam per se.  

However, in a major address on political Islam to the Washington Institute for Near East Policy delivered in May 1994, Clinton’s National Security Advisor, Anthony Lake, expressed the challenge in the Middle East in terms of a clash
between the forces of good and evil. While the Clinton administration did not always accept the claims of Israel, Egypt, and Algeria that mainstream Islamists were engaged in terror, policy makers at the time failed to distinguish between Islamists committed to the ballot and those who carried out violence. Gerges finds that this generalisation of Islamists contributed to “the ambiguity in United States policy statements on political Islam”.

In its declarations of a war on terror, the Bush Junior administration offered repeated reassurances that the United States was not at war with Islam. However, the invasion and occupation of Iraq and Afghanistan undermined the Muslim world’s confidence and trust in the United States. Moreover, the failure of the United States to defend the outcome of democratic elections in Palestine in 2006 reinforced the reputation of the United States as having double-standards on the issue of democracy in the Muslim world. Similarly, the cases of torture at United States-run prisons in Abu Ghraib, Bagram, and Guantanamo Bay resulted in the dismissal of United States rhetoric about human rights as hypocrisy.

The Obama administration has arguably made significant efforts to mend Islam–West relations. His inauguration address announced a new beginning: “To the Muslim world, we seek a new way forward, based on mutual interest and mutual respect” and his first overseas address was delivered in the parliament of Turkey, a secular Muslim nation located at the crossroads of Europe and the Middle East, with a democratic government that both respects and reflects the Islamic values of the Turkish people.

The defining speech, however, was Obama’s address on a ‘new beginning’ with the Muslim world delivered at Cairo University in June 2009. Among the most important dimensions of this address was its acknowledgement of past wrongs and grievances and its placing Islam–West relations in context. Obama clearly articulates his vision for the future on the basis of “mutual interest and mutual respect, and one based upon the truth that America and Islam are not exclusive and need not be in competition. Instead, they overlap, and share common principles – principles of justice and progress; tolerance and the dignity of all human beings.”

He outlines seven sources of tension, issues that the Muslim world and the West must confront together: violent extremism, the Israel–Palestine conflict, the proliferation of nuclear weapons, democritisation, religious freedom, women’s rights, and economic development and opportunities. In terms of US engagement with political Islam, Obama’s Cairo address did set out some general principles. It states that the United States does not seek to impose any political system but that all people desire a government that allows freedom of expression and political participation, upholds the rule of law and an equitable judiciary, adheres to standards of accountability and transparency, and generally respects human rights.
However, this US administration does not support the participation of ‘Islamists’ in the political process of Muslim countries. A realist perspective of international politics continues to prevail in Washington which seeks to maintain the status quo, however unprincipled it may seem, rather than risk the possibility of jeopardising the two central pillars of US foreign policy – access to oil and support for Israel. A notable exception to this position is Turkey. Does the United States’ acceptance of the AKP in the aftermath of the party’s electoral victories in 2002 and 2007 indicate a shift in US foreign policy given that the AKP is widely seen as Islamic in orientation in spite of its self-identification as a conservative democratic party? Alternatively, has the AKP found the acceptable approach to Islam that appropriately balances Islamic values with secular democratic principles? Or is Turkey of sufficient strategic importance to the United States that values and principles are irrelevant?

The Maqāṣid Revival

There is a maturing of US foreign policy towards political Islam under Obama which coincides with the emergence of a second generation of Islamic-oriented political parties that are not inherently secular and have adopted Muslim values and Islamised public policies for pragmatic political purposes. Nor are they Islamist and have adopted democracy as a political tactic. Parties such as Turkey’s AKP and Indonesia’s PKS are developing politics based on a maqāṣid-oriented approach by which democracy, good governance, economic prosperity, socio-economic justice, human rights and pluralism are regarded as Islamic objectives. Malaysia’s PKR faces opposition from one of its coalition members, DAP, in taking an Islamic platform over issues of governance, although its other coalition member, PAS, is a strong advocate of Islamic government. A maqāṣid-oriented approach is essentially goal-oriented and holistic. As opposed to reading verses of the Qur’ān in isolation, the maqāṣid approach requires a comprehensive reading of the text as an integrated whole in order to identify the higher objectives and then interpreting particular verses on a given topic according to the identified maqāṣid or objectives, intent or purpose.52

Since the turn of the century, an emerging trend among Islamic intellectuals has been the adoption of a maqāṣid-oriented approach as a means of articulating the essence and objectives of Islam in response to contemporary conditions and realities. The first major contribution to the maqāṣid in the modern era was Muhammad al-Tahir Ibn ’Ashur’s Maqāṣid al-sharīʿat al-islāmiyyah, first published in 1946, which was translated into English and republished in 2006. Also recently published are a number of books on Abū Isḥāq al-Shāṭibī’s theory of maqāṣid including Muhammad Khālid Masʿūd’s Shatibi’s Philosophy of Islamic Law and ʿAbd al-Raysūnī’s Imam al-Shatibi’s Theory of the Higher Objectives and Intents of Islamic
Law. Contemporary scholars including Kamali, Ramadan, Baderin, and this author have also discussed the *maqāṣid* approach in reference to Islamic legal thought, human rights, *jihād* and conflict resolution.53

The *maqāṣid* can be traced back to the administrative approach of the second caliph, 'Umar b. al-Khaṭṭāb (r. 634–644) and the Mālikī ‘school’ of Islamic jurisprudence, which emphasises public interest or *maṣlaḥah*.54 The concept of *maqāṣid* was developed by the eleventh-century theologian Abū Hāmid al-Ghazālī (d. 1111) in reference to five fundamental protections: life, religion, property, progeny, and intellect. However, this conception was revised and expanded in the fourteenth century by Ibn Taymiyyah (d. 1328) and was developed as a new philosophy of Islamic law by Abū Isḥāq al-Shāṭibī (d. 1388).

In fact, the expansion of *maqāṣid* beyond al-Ghazālī’s conception began with ‘Īzz al-Dīn ‘Abd al-Salām’s (d. 1261) work on the *qawā'id al-aḥkām* or ‘legal maxims’, which broadened the discussion of *maqāṣid* in terms of promoting benefit and preventing harm. *Maqāṣid* was then expanded in the fourteenth century by Ibn Taymiyyah, who identified a more open-ended list of values that included fulfilment of contracts, preservation of kinship ties, honouring the rights of one’s neighbours, sincerity, trustworthiness and moral purity. He objected to the essential objectives of Islamic law being limited to the five *maqāṣid* expounded by al-Ghazālī, stating that these five or six do not represent the highest or most significant of objectives.

The work of al-Shāṭibī, however, made a profound contribution to developing the theory of *maqāṣid* by focusing on the concept of *maṣlaḥah*, or ‘public interest’, as an approach to overcoming the rigidity imposed by literalism and *qiyās* (analogy). The *maqāṣid* theory of al-Shāṭibī is based on an inductive reading of the Qur’ān in order to identify the higher objectives, intent and purpose of the divine laws, which are intended to preserve human interests in both this world and the next.

In the modern era, Ibn ‘Āshūr’s (d. 1973) *Maqāṣid al-sharī‘ah al-islāmīyah* is arguably the most important attempt of the twentieth century to further develop the theory of *maqāṣid*. Expressing the need for an objective-based approach to Islamic law in light of modern realities, he introduces to the theory of *maqāṣid* the preservation of the family system, freedom of belief, orderliness, natural disposition, civility, human rights, freedom and equality as objectives of Islamic law. In contemporary times, Yūsuf al-Qaraḍāwī has further extended the *maqāṣid* list to include social welfare support, freedom, human dignity and human fraternity, while Mohammad Hashim Kamali has added to this list the protection of fundamental rights and liberties, economic development and research, and development in science and technology. Kamali contends that the *maqāṣid* remains dynamic and open to expansion according to the priorities of every age.55

In order to understand the current *maqāṣid* revival, the socio-political context of its development in the fourteenth century should be explained. The thirteenth
century was a period of turmoil for the Muslim world, particularly for those regions that suffered the invasion of the Mongols. By contrast the fourteenth century was a period of relative peace and political stability that allowed intellectual activity to resume. Much of this work sought to re-evaluate tradition in light of the social, political, financial, commercial, and religious changes that had occurred. Masʿūd discusses these changes in some detail and summarises their impact on legal thought as follows:

The spread of Sufi tariqas had contributed to idleness and an exaggerated ideal of Islamic piety that constricted the concept of legal obligation. The influence of Razism increased the influence of Shafiʿi and Ashʿari schools of thought. The establishment of the madrassa system promoted education and widened its scope. The economic changes, especially the new developments in the Mediterranean trade, challenged the Andalusian Maliki legal concepts and theories on trade and commerce. In a number of situations, the new trade practices came into apparent conflict with the prevailing doctrines of Islamic law.

With dramatically changing realities and conditions over a 1,400-year history, the challenge for Muslims has been to develop an approach to the law that would ensure its continued relevance and vibrancy. During the formative years of Islamic law, the eighth to the tenth century, jurists could have a wider degree of confidence in a methodology that relied heavily on qiṣṣa. In a critique of the continuity of this approach, AbdulHamid AbuSulayman writes that due to their close proximity to the time and space of the Prophet, the classical jurists could, to a greater extent, engage in literalism and be somewhat confident in analogy as a reliable methodology. However, “when contemporary jurists function in the same manner and even repeat the old instructions word for word, there is obviously a lack of appreciation for the changes that have taken place”.

Like the twelfth and thirteenth centuries, the nineteenth and twentieth centuries had a profound impact on the Muslim world on account of the significant and lasting impacts of European colonial rule – psychologically, socio-culturally, economically, and politically. It left a legacy of anti-Western sentiments, fragmentation of legal codes, inter-religious and inter-ethnic conflict, poverty and underdevelopment, and unrepresentative authoritarian rule. The struggle to reassert an Islamic identity in the context of society and state gave rise to political Islam and the concept of the Islamic state based on the application of sharīʿah as the state’s law code. The popularity of Islamists with Muslim masses prompted secular ruling elites to appeal to Islam with various gestures and policy initiatives. While this phenomenon pushed Muslim societies in the direction of Islamisation, Islamic political thought did not advance much beyond the original conceptions of Mawdūdī and Sayyid Quṭb aside from the general embracing of democratic political participation and rejection of violence for political means. The failure of the conventional vision to sufficiently
address the needs, aspirations, and expectations of Muslim electorates along with the declining electoral success of Islamists encouraged a maturation of Islamic political thought which has seen the emergence of a second generation of Islamic-oriented political parties that espouse a *maqāṣid*-oriented approach.

**Islamic-Oriented Political Parties: The Second Generation**

The role of *maqāṣid* in political Islam has not been driven by the ‘ulamā’ or even Islamic intellectuals. Rather, this phenomenon can be attributed to Islamic-oriented political leaders like Anwar Ibrahim and Recep Tayyip Erdoğan. Their approach to politics and policies have been accepted by Muslims as Islamically legitimate largely on account of their personal qualities, their sound Islamic credentials, involvement in various Islamic groups and movements, and their personal commitment to the Islamic faith. That these leaders have developed an Islamic politics of the kind that characterises their respective parties is highly significant in terms of the trajectory of political Islam.

A *maqāṣid*-oriented approach can be observed among Turkey’s AKP, Malaysia’s PKR, and Indonesia’s PKS. It should be highlighted that the AKP does not regard itself as Islamist or even Islamic but rather a conservative democratic party. PKR has also not declared itself as an Islamic party. However, Islamic beliefs and values are a deeply important part of the identity of most Turkish people and the success of the AKP in Turkey is due to the fact that this party and its leadership respects and reflects the beliefs and values of the people. Its political programme is not focused on the issues of implementing *ḥudūd* laws or establishing an Islamic state in the modern conventional sense, but issues of greater substance and centrality to Islam. Turkey’s constitution does not permit political parties on the basis of religion or ethnicity, and as demonstrated by successive military coups that have removed Islamist parties from power, the secular constitution is staunchly defended by the military in Turkey. While the AKP is restrained by the Turkish constitution and military from openly defining itself as an Islamic party, according to experts “Islamic ideas and an Islamic worldview are still included in the identity of its leadership and might also be included in the AKP’s deep-seated philosophy”. In this sense, the AKP exhibits a *maqāṣid*-oriented approach, although the party does not and cannot use the term. Individual members of the party acknowledge the consistency between their party’s policies, Islam’s higher objectives, and what have become universal norms and ideals.

The AKP came to power in 2002 winning 34 per cent of the vote. Proving its democratic credentials, the AKP held scheduled elections in 2007 and achieved an overwhelming victory winning 47 per cent of vote. The party has a comprehensive and progressive political programme that covers fundamental rights and freedoms;
the economy; public administration; foreign policy; and social policies that include education, culture and art, health, social security, labour, equal participation and rights for women, family and social services, youth and sports, urbanisation and housing, environmental protection, science and technology, written and visual media, and road safety. The AKP aims to achieve its political programme through the promotion of universal rights and freedoms; addressing Turkey’s social, economic and administrative problems; mobilising the country’s human and physical resources; raising living standards of all and reducing the income distribution gap; supporting civil society and including non-governmental organisations in public administration; and ensuring public sector transparency and accountability.\(^6\)

With respect to foreign policy, the AKP recognises Turkey’s strategic location between the Middle East and Europe and seeks to maintain positive relations with both.\(^6\) The AKP sees Turkey as an important contributor to the security and stability in the region and increasingly central to more positive relations between Islam and the West. The AKP is committed to achieving Turkey’s membership in the European Union\(^6\) and maintaining the country’s importance within NATO. It seeks to maintain Turkey’s positive relations with the United States, expanding the relationship from one based primarily on defence cooperation to also include economic matters, investment, science and technology. Simultaneously, the AKP desires positive relations with the Russian Federation, China, Southeast Asia and the Middle East.\(^5\)

Certain political parties in other Muslim countries that do not face the same constitutional constraints as Turkey’s AKP are more overt in their commitment to a maqāṣid-oriented approach. Unlike Turkey’s AKP, which is the ruling party, parties such as Malaysia’s PKR and Indonesia’s PKS have never formed a government, but they are proposing policies that advance justice, human rights, education, government accountability and transparency and economic development, which they regard as the maqāṣid or higher objectives of Islam. In Malaysia’s most recent elections in 2008, the PKR won 19 per cent of the vote, 31 of the 222-seat Parliament. In Indonesia’s most recent elections in 2009, the PKS won 8 per cent of the vote, 57 seats of the 550-seat Parliament, and as part of the governing coalition the party has four ministers in the government.

This writer’s interview with a PKR member in Kuala Lumpur indicated that the maqāṣid-based overtures of this party differentiates it from the first generation of Islamist parties in that service to the people – such as education for the people, health care, and welfare services – takes a more prominent place in the party’s official objectives.\(^6\) Similarly, the maqāṣid approach is central to the politics of the PKS in Indonesia. In the words of Luthfi Hasan Ishaq, president of the party, “the international community is now concerned about the [issues] similar to the maqāṣid, the universal values. It’s time to declare the original objectives of Islamic teaching...
The advocates of *maqāṣid* argue that Islam is consistent with good governance and socio-economic development and have shown that such an approach is attractive to a broad constituency that includes non-Muslims as well as Islamists. The *maqāṣid* is gaining ground among Islamist political parties because “the traditional approach has failed and secondly [because of] pressures from the realities of non-Muslims [...] we are now living in a very globalised world and it is inter-connected with other parts of the world”.68

PKS president Ishaaq is critical of such countries as Sudan, Pakistan, and Afghanistan that adopt the title of ‘Islamic state’ and argues that “it is not necessary to have the name [Islamic state] but move to develop, to serve the interests of the communities of the nation [...]. Just serve the nation, the basic needs should be fulfilled, the services should be provided. This is Islam.”69 Another advocate of the *maqāṣid*-oriented approach adds that the *maqāṣid* is the best approach as it can be easily understood not only by the Muslims but by the non-Muslims alike. If you approach from a fundamentalist angle then it becomes very difficult to explain.70

**Implication for Political Islam and Relations with the West**

In addition to providing the scope and flexibility to effectively operate amidst diverse and competing internal social forces, the *maqāṣid* approach also advocates to avoid objection from external forces that generally hold pejorative views and are suspicious of Islamic-oriented parties. PKS president Ishaaq acknowledges that Western countries such as the United States and Australia are better able to identify with parties such as the PKS that adopt the universal values enshrined in the *maqāṣid* than the first generation Islamists that retain literalist views of *shari‘ah* and an Islamic state. The Islamic values derived from a *maqāṣid* perspective, he explains, as “*al-Ma‘ruf*, the acceptable values [that] everybody will accept even if they don’t believe in God”.71

However, a *maqāṣid* approach does not necessarily translate into a wholesale adoption of policies that are conciliatory or compatible with the West. The one issue that even second generation Islamic-oriented political parties remain at odds with the United States is the Israel–Palestine conflict. In large part, this is due to an internalisation of and commitment to such principles as a just peace, freedom and independence. Former MP and founding member of the AKP in Turkey, Hüseyin Kansu, explains that “what we want in the region and in the world is peace and serenity [...]. Israel should leave all those areas occupied after the 1967 war – the Golan Heights, West Bank, Jerusalem and Gaza Strip. Still they control Gaza. Israel
should leave all these lands and Palestine must be an independent state. Both Israel and Palestine must respect their borders, and peace should come to the region; they should live in a civilised way.” He regards the question of Palestine as the foreign policy issue on which Turkey differs most significantly with the United States.72

Islamic parties that I have known are vocal on the Israel–Palestine conflict stating that Israel must withdraw from the occupied territories before talks. Most would like to have a peaceful resolution of the problem, as they do not want to see the continued injustice, occupation and human rights violations being perpetuated.73 When I posed the same question to the President of the PKS in Indonesia, he responded with reference to the Israel–Palestine conflict and emphasised his party’s policy on the basis of a commitment of freedom and independence: “Under the Indonesian constitution and the Indonesian government, we stand with the independence movement and against any aggression or colonisation in the world; so we stand with this one […]. Nothing changes in Palestine, no positive development […]. So we stand with them [the Palestinians] until they get their independence in the near future, inshâ’ allâh.”74

Conclusions and Recommendations

There has been a revival of interest in the maqāṣid since the turn of the century. In the political context this has been driven by Islamic political leaders in response to internal domestic and external international dynamics. The AKP, PRK and PKS demonstrate the viability of Islamic democracy; they argue that Islamic-oriented political parties can uphold both the principles of democracy and Islam while maintaining positive relations with both the Muslim world and the West. While Turkey’s AKP has proven itself through democratic ascension to power and re-election without reference to Islam or Islamic concepts, the two other parties favour the maqāṣid approach more explicitly

- Collectively, these parties represent a second generation of Islamic-oriented political parties that are inspired by Islam and committed to advancing justice, human rights, good governance and economic prosperity in the interest of their respective people. They are not only redefining the concepts of Islamic democracy and political Islam but also the fate of Islam itself in the socio-political context.
- Additionally, these parties advocate positive relations with the West and their policies are mostly unopposed to those outlined in US foreign policy documents. However, they display a high level of self-confidence, are acutely aware of and responsive to the sentiments of their constituencies, and are

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disinclined to support US foreign policy where it is in disagreement with their values and principles.

For the United States, democracy and human rights form a minor, third pillar of foreign policy, dwarfed by the central pillars of stability of oil supplies and security of Israel. In the absence of any strategic value to the United States, religio-political reform is unlikely to hasten the United States’ reluctant recovery from its aversion to political Islam.

• However, an embracing of a \textit{maqāṣid} approach in Muslim politics and governance should not be based on relations with the West but its benefits to Muslim states and societies in terms of promoting collective well-being, spiritual and material prosperity, and a reconnection with the essence of Islamic teachings.

\textbf{Notes}

4. Lawrence Davidson, “American Foreign Policy and the Rise of Islamic Politics”, \textit{Arab Studies Quarterly} 31, no. 1 (Winter 2009), 5.
12. Gerges, America, 64.
15. Ibid., 63.
16. Ibid., 64.
19. Ibid., 155.
22. Ibid., 227.
23. Ibid., 231–3.
26. William Case and Liew Chin-Tong, “How Committed is PAS to Democracy and How Do We Know It?”, *Contemporary Southeast Asia* 28, no. 3 (December 2006), 389.
37. Ibid., 198.
38. Ibid., 201.
40. Ibid.
41. Ibid.
42. Ibid.
44. Ibid., 85.
45. Ibid., 103.
46. Ibid., 90.
47. Ibid., 50.
51. Ibid.
53. See Mohammad Hashim Kamali, *An Introduction to Shariah* (Kuala Lumpur: Ilmiah, 2006); Tariq Ramadan, *Radical Reform* (Oxford: Oxford University Press, 2008); Mashood Baderin,
THE IMPACT OF MAQĀSID AL-SHARĪʿAH ON ISLAMIST POLITICAL THOUGHT


55. Kamali, An Introduction, 118.
56. Muhammed Khalid Masud, Shatibi’s Philosophy of Islamic Law (Kuala Lumpur: Islamic Book Trust, 1995), 86.
57. Ibid.
61. Interviews conducted with senior members of the AKP in Istanbul in February 2010.
65. Justice and Development Party, “Political Program”.
68. Interview with Dr Muhammad Nur Manuty in Kuala Lumpur on 5 February 2010.
70. Interview with Syed Husin Ali in Kuala Lumpur on 3 February 2010.
71. Interview with Luthfi Hasan Ishaq in Jakarta on 9 April 2010.
72. Interview with Hüseyin Kansu in Istanbul on 8 February 2010.
74. Interview with Luthfi Hasan Ishaq in Jakarta on 9 April 2010.
THE MAQṢAD OF ḤIFẒ AL-DĪN: IS LIBERAL RELIGIOUS FREEDOM SUFFICIENT FOR THE SHARĪʿAH?

Andrew F. March*

Abstract: This article examines some treatments of the meaning and extension of the Islamic legal purpose (maqṣad) of protecting religion (ḥifẓ al-dīn), with an eye towards Islamic legal theorists’ explicit or implicit encounter with modern liberal and secularist understandings of what it means to ‘protect religion’. The theory of the ‘purposes of divine law’ (maqāṣid al-sharīʿah), which the author refers to as a form of ‘Complex Purposivism’ in legal interpretation and argumentation, is often viewed as a panacea for modern reformers and pragmatists who want to establish Islamic legitimacy for new substantive moral, legal and political commitments in new socio-political conditions, because it allows Muslims to ask not whether a given norm has been expressly endorsed within the texts, but whether it is compatible with the deeper goods and interests which God wants to protect through the Law.

Introduction: Maqāṣid al-Shariʿah and Muslim Minorities in Liberal Democracies

The theory of the ‘purposes of Divine law’ (maqāṣid al-shariʿah) is perhaps the most popular trend in contemporary Islamic legal and political thought, with dozens of books and doctoral dissertations written on the theory of the maqāṣid and its application in every possible area from criminal law to the ethics of genetic engineering. It is a fully legitimate and popular discourse even amongst very conservative scholars, but the idea that the shariʿah should not be understood solely as embodied in specific rules (e.g., the thief’s hand must be cut off) nor in terms of a painstaking, thorough extraction of those rules from the revelatory texts according to the methods of classical legal theory (uṣūl al-fiqh), but rather defined in terms of the overall ‘purposes’ (maqāṣid) for which God revealed the Law is often viewed as a panacea for modern reformers and pragmatists. For those who want to establish Islamic legitimacy for new substantive moral, legal and political

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commitments in new socio-political conditions, this idea allows Muslims to ask not whether a given norm has been expressly endorsed as compatible with the texts, but whether it is compatible with the deeper goods and interests which God wants to protect through the Law. Consider a few statements to this effect:

Among the ways in which *maqāsid* and *maqāsid*-based thinking can serve the Islamic call and those engaged in it is by giving them greater flexibility and innovativeness in relation to the means and approaches which they employ. Things which can be classified purely as methods and means, including those which are mentioned explicitly in revelation, admit of change, modification and adjustment.3

I understand Islamic law to be a drive for a just, productive, developed, humane, spiritual, clean, cohesive, friendly, and highly democratic society. […] The validity of any method of *ijtihād* [juridico-ethical reasoning and argumentation] is determined based on its degree of realization of *maqāsid al-shari‘ah*. The practical outcome is Islamic rulings which are conducive to the values of justice, moral behavior, magnanimity, co-existence, and human development, which are ‘*maqāsid*’ in their own right.4

Towards realizing the features of openness and self-renewal in the system of Islamic law, this book suggests the change of rulings with the change of the jurist’s worldview or cognitive culture.5

The attractiveness of the *maqāsid* approach to Islamic normativity is particularly stressed in the context of the Muslim minority condition. A prominent Muslim think tank, based in London and the Washington DC area, the International Institute of Islamic Thought (IIIT), has an on-going publication series in Arabic and English of prominent texts on the *maqāsid* and a translation series of *maqāsid* texts from Arabic to English (and other languages spoken by Muslim communities). The coordinator of this translation project declares that “knowledge of the *maqāsid* is a prerequisite for any attempt to address and resolve contemporary issues challenging Islamic thought. Indeed such knowledge can help in the process of developing a much needed objectives-based fiqh for minorities.”6

In this vein, consider Tunisian Islamist activist Rāshid al-Ghannūshi’s statements about political legitimacy and participating in non-Islamic governments:

An Islamic government is based on a number of values which if accomplished in their totality would result in a perfect or near-perfect system. But it may not be possible for all such values to be implemented, and therefore some must suffice in certain circumstances in order for a just government to exist. A just government, even if not Islamic, is considered very close to the Islamic one, because justice is the most important feature of an Islamic government, and it has been said that justice is the law of God.7
Ghannūshī’s argument, based on his understanding of the theory of the maqāṣid, holds that the Muslim’s duty is “to work towards preserving whatever can be preserved of the aims of sharī‘ah” understood broadly as the five basic human interests of life, religion, property, intellect and lineage. This emphasis on the ultimate purposes of divine Law serves to deflect attention from both particular, technical rulings of Islamic law and the un-Islamic forms of behaviour permitted in non-Muslim states. Instead, non-Islamic governments can been seen as sufficiently just because of the general human interests which they protect (such interests include for Ghannūshī, both in Muslim majority and minority political contexts, “independence, development, social solidarity, civil liberties, human rights, political pluralism, independence of the judiciary, freedom of the press, or liberty for mosques and Islamic activities”), possibly resulting in a legitimate form of governance which he calls “the government of rationale” as opposed to “the government of sharī‘ah”. The crucial measure of Ghannūshī’s doctrine of how to share political space with non-Muslims is how he addresses the question of social coalitions with non-Muslims. Here, he sides firmly with liberal secular groups over other non-liberal religious ones:

Can any Muslim community afford to hesitate in participating in the establishment of a secular democratic system if it is unable to establish an Islamic democratic one? The answer is no. It is the religious duty of Muslims, as individuals and as communities, to contribute to the efforts to establish such a system.8

This goes for Muslim minorities in particular, who have no hope of establishing Islamic rule.

The best option for such minorities is to enter into alliances with secular democratic groups. They can then work towards the establishment of a secular democratic government which will respect human rights, ensuring security and freedom of expression and belief – essential requirements of mankind that Islam has come to fulfil.9

The centrality of the maqāṣid for theorising an Islamic approach to the minority condition which is itself not “political in the wrong way” from an Islamic juridical perspective is stressed by the most prominent scholars to have written on both Islamic legal theory and the jurisprudence of Muslim minorities, such as ʿAbd-Allāh Ibn Bayyah,10 Yusuf al-Qaraḍāwī11 and Ṭāhā Jābir al-ʿAlwānī.12 The idea of the maqāṣid also figures prominently in the thought of non-traditional scholars writing for a broader audience, such as Tariq Ramadan13 and the American convert Umar Faruq Abd-Allah.14

Perhaps the core ethical question for the encounter between Islamic and Western conceptions of political ethics, both for Muslims and for non-Muslims, pertains to the appropriate understanding of religious freedom. Short of full legal and political
autonomy for Muslim minorities, within which they would be allowed to apply Islamic law to themselves, how is it possible for believing Muslims to regard the non-Islamic politico-legal system, particularly with regard to its distribution of freedom to Muslims to ‘manifest’ or ‘uphold’ their religion (izhār al-dīn, iqāmat al-dīn), as just or as acceptable for deeper reasons than mere ḍarūrah or the obligation to obey the social contract?

It is natural to turn to the idea of the maqāṣid here, as evidenced in some of the above quotations. Given that the sharīʿah exists to protect or preserve religion (ḥifẓ al-dīn) as the most central and basic of its five primary purposes, that Islamic scholars have often used the theory of the maqāṣid to justify a principled and purposive flexibility in legal reasoning, and that scholars concerned with the minority condition have declared an eagerness to turn to the theory of the maqāṣid to theorise a permanent Muslim presence in non-Muslim polities, it is natural to ask how this general purpose of the Law can be attained in a secular liberal state. Just as very few Muslims will insist on the canonical punishments for homicide (diyyah or qiṣāṣ) or theft (qaṭʿ al-yad) but rather accept that the protections secular positive law enacts for life and property are acceptable, why can ‘liberal religious freedom’ not be said to protect and preserve religion as the sharīʿah demands?

But, of course, religious freedom is much more complex than murder or theft. Just what are Muslims being asked to accept when they are asked to assert that ‘liberal’ religious freedom fulfils the maqṣad of ḥifẓ al-dīn?

For reasons of simplicity, let us begin with a mainstream liberal perspective on toleration, secularism and religious pluralism. Such a perspective will involve a commitment to quite substantial self-restraint on the part of the state and the majority culture. A liberal will assume that citizens have rights to cultural and religious freedom, that the state should not demand that citizens make public proclamations which might violate their conscience and that cultural assimilation should be limited in purpose and strictly non-coercive. Such a perspective will also, however, involve quite substantial limits to that self-restraint. A liberal will be sceptical of radical legal pluralism in a single society if that pluralism is likely to lead to concerns about the equal civil rights of some citizens. She will not assume that all non-coercive cultural and religious assimilation is prima facie an injustice or misfortune. And she will likely have a concern for the social and moral agreement which contributes to the long-term stability of a sufficiently just, sufficiently democratic political community. Many areas of detail in the legal and public policy application of these broad commitments will, of course, be the subject of disagreement even amongst individuals who share this broadly liberal perspective.

Such a conception of religious freedom places the following demands and constraints on Muslim minorities:
that Islamic conceptions of morality may only be cultivated and encouraged within Muslim families and communities through non-coercive means;
• that the public sphere in non-Muslim liberal democracies cannot be expected to accommodate all Islamic religious sensibilities by limiting freedom of expression.

This is the most familiar liberal conception of religious freedom, which inclines towards a negative conception of liberty. The more general beliefs associated with this conception of liberty include the following:

• Religious communities do not determine the civil rights of their members.
• Religious communities cannot be guaranteed protection from public criticism of their beliefs, from ‘moral injury’ inflicted by the disapproved behaviour of others (including blasphemy or mockery), or from the exit of individual members from the group.
• ‘Religious freedom’ cannot be interpreted as the right of a religious community to fully and successfully realise its entire conception of the good without regard for the preferences of those who dissent from the interpretation of that conception.
• Religious freedom implies a right not only to reject one’s own religion in favour of another, but to reject religion altogether.

This writer believes that almost all of the disputed areas of the application of free religious practice – including the rights of religious groups to discriminate within their own institutions, the right to religious dress in schools, the right to parallel religious schooling, the right to religious arbitration of civil contracts and the issue of offensive speech – fall within this broad understanding of the ‘(religious) freedom of the moderns’.

What is required in order to argue that the maqṣad al-sharīʿah of ‘preserving religion’ is satisfied by this modern, liberal conception of religious freedom? Let us first take a quick look at the classical treatment of what is meant by ‘ḥīfẓ al-dīn’.

**Ḥīfẓ al-Dīn in Mainstream Islamic Legal Theory: The Philosophical Logic of ‘Preserving Religion’ as Positive Religious Liberty**

To this point, we have referred to the maqāṣid as a framework which justifies legal change in reformist discourses. However, it should not be understood that the function of maqāṣid-reasoning is to liberalise the sharīʿah by making it less restrictive in all cases. In fact, the opposite is more likely insofar as the mandate to ‘protect and preserve’ various fundamental interests turns the jurist’s attention away
from the justification of rulings through reference to specific texts and towards the policy of 'blocking the means' (sadd al-dharāʿī) to the corruption of those interests. It is true that maqāṣid-reasoning opens the door to considering new means for advancing stable goals and interests, but it is also simply the case that the jurist now sees more things as harmful to reason, religion and the other ‘universal necessary interests’. If before the jurist clung to a narrow, formalist prohibition on alcohol based on the Qur’ān, he now sees countless potential sources of harm to reason.

In a sense, this does in fact make the Law less restrictive – less restrictive on those who seek to ‘command the right and forbid the wrong’ rather than less restrictive on those who might seek to dip their toes in the waters of the wrong.

It is certainly the case that classical and modern traditionalist legal theorists have generally used the idea of ‘preserving religion’ as one of the five core objectives of the Law as a way of demonstrating the underlying logic and wisdom of the traditional rulings of criminal and public law. As such these discussions tend to be an invaluable source of the philosophy of religious freedom in orthodox Islamic thought. This is a philosophy of a deeply communitarian, ‘positive’ conception of religious freedom where ‘preserving religion’ refers to fully realising all of its possible objectives and removing any and all potential sources of harm. Or, in the words of al-Shāṭibī, “preserving religion involves calling to it with promises and warnings,16 fighting those who resist it and those tumours who rot it from within, and repairing any accidental unforeseen defects”.17

What is ‘Religion’?

Islamic scholars tend to regard important concepts as having various definitions depending on their sphere of use, for example, ‘linguistic’ meanings versus ‘legal’ (sharʿī) meanings. What is relevant for our purposes is the meaning of “religion” as the scholars understand it for juridical and theological purposes. This sharʿī definition of religion is the most expansive possible: “Religion consists of divine rules which God has revealed through prophets to guide mankind to truth in matters of belief and to good in matters of behaviour and social relations. Religion constrains mankind by these rules and brings them into submission to their commands and prohibitions so that they may attain the happiness of this world and the next.”18 Complete, perfect religion is composed of four elements: faith (īmān), external submission (islām), belief in right doctrines (iʿtiqād) and works (ʿamal).

The jurists clearly specify the necessary human personal and social goods which are advanced by the various elements of religion, beginning with the metaphysical, or perhaps theologico-anthropological claim that “since religiosity is part of innate human nature (fitrāh), all mankind must affiliate itself with some religion or another and opposing this innate nature is pure deviation”.19 The only question is whether it is the true one or one of the false ones. The only sense in which the jurists
believe ‘preserving religion’ to be one of the aims of the shari’ah is insofar as it is understood that only Islam is recognised by God as the final religion valid for all time. Thus:

Religion in the sense of divine revelation sent down through prophets is necessary to guide human minds to truth. Religion in the sense of belief in God is necessary for individual human life in order for the soul to find security and tranquillity from the kind of anxiety and stress which can lead to a nervous breakdown or even suicide. It is also necessary for social life because it guarantees the establishment of legislation which protects social relations from all ills which might corrupt them. Religion in the sense of divinely legislated laws is necessary in order to provide rules of justice and equality between persons and to protect them from the traps of human whims and passions. Indeed, mundane interests alone suffice to prove the necessity of religion in the lives of individuals and societies.20

Following al-Shāṭibī, the jurists then divide the modes through which the shari’ah protects the interest humans have in the integrity and flourishing of religion into the positive establishment of certain elements of religion (al-ḥifẓ min jānib al-wujūd) and the removal of potential harms (al-ḥifẓ min jānib al-ʿadam). The former has a literal meaning of providing for the ‘existence’ and the latter has a literal meaning of providing for the ‘absence’. We shall call them ‘positive preservation’ and ‘negative preservation’, respectively.

‘Positive Preservation’ (al-ḥifẓ min jānib al-wujūd): Creation of Necessary Elements

Consistent with the general structure of maqāṣidī thinking, jurists discuss three levels of goods necessary for the preservation of religion – the necessities (darūriyyāt), the needs (ḥājiyyāt) and the improvements (taḥsīniyyāt) or embellishments (tazyīniyyāt).

Some accounts of the ‘positive preservation’ of religion emphasise the individual perfection of faith and works as a believer. On this account, the first level (darūrī) consists of faith in God which is necessary for any act to be valid, or to ‘count’ with God. God has provided for two primary paths for the attainment of this foundational good – first, human reason itself which is capable of perceiving empirical, sensory truths, and, second, revelation which is necessary for attaining knowledge of the unseen world. The first, necessary level of protecting religion is thus the “establishment of faith in the hearts” of human subjects and includes the ‘first pillar’ of Islam, the declaration of God’s unity and Muḥammad’s prophethood. Building on this faith, the second level (ḥājī) consists of worship, that being “obedience with the goal of submission and self-abasement (al-khuḍūʿ wa ’l-tadhallul), both considered a basic necessary part of the establishment, perfection and preservation of religion because they include both the inner and outer aspects of mankind’s behaviour”.21 This second level of worship includes the remaining basic pillars of
Islam, prayer, zakāh, fasting and the pilgrimage to Mecca. Finally, the third level (taḥsīnī) consists of supererogatory prayers, pilgrimages, good works and acts of charity which might contribute to the perfection of religion when the earlier stages of belief have been achieved.22

Other accounts of the ‘positive preservation’ of religion are more expansive and collective, describing it as ‘upholding its pillars and establishing its rules’. A common approach is to view the ‘positive preservation’ of religion as consisting of three broad fields of thought and action: (1) acting in accordance with it (al-ʿamal bihi), (2) judging in accordance with it (al-ḥukm bihi), and (3) calling others to it (al-daʿwah ilayhi).23 Contemporary Saudi Arabia-based scholar Muḥammad al-Yūbī, author of a widely-read study of the maqāṣid, adds (4) jihād (fī sabīlihi), which more commonly appears in other accounts of the maqāṣid as belonging to ‘negative preservation’.24

The first (al-ʿamal bihi) simply refers to the performance of all individual and collective religious obligations at a minimum and the performance of all encouraged acts as an aspiration. The second (al-ḥukm bihi) is a statement of revelation’s absolute authority over all moral, legal and political values. “How can religion be preserved if it is not the judge over human acts?” Al-Yūbī uses this obligation to register a strong rejection of any form of secularism: “Judging by other than that which God has revealed, removing religion from [any area of] life and substituting for it human whim and individual opinions – what possible greater loss for religion or crime against it could there be?”25 Referring all moral questions to revelation preserves religion in three specific forms: it preserves the faith, and thus salvation, of the individual; it preserves religion in society by applying the entirety of Islamic laws and rituals and making them sovereign over all aspects of life; and it prevents all other ideas, religions and moralities from appearing and spreading in an Islamic society.26 Iḥmaydān carefully catalogues the deleterious effects of abandoning the sharīʿah in the areas of spirituality/religiosity,27 society,28 politics,29 economics30 and the afterlife.

Calling to Islam (al-daʿwah ilayhi) is equally a prerequisite for upholding and spreading religion. This obligation is given a grounding in revelatory texts, but is also linked both to the obligation to spread an inherently universal religion and to the need to constantly confront and repel the tireless efforts of Islam’s enemies to ‘distort the truths of Islam’. Daʿwah is given four specific tasks linked to the ‘positive preservation of religion’: educating the ignorant, uncovering and dispelling errors in circulation about Islam, disrupting the opportunity of the enemies of Islam to spread false and destructive ideas about Islam, and realising Islam’s universality for all times and places.31 However, “calling to this religion will not always meet with acceptance but also with rejection. Indeed, some will impose stumbling blocks and powerful obstacles in its way, forbidding others to enter, blocking their access
to its concepts, all insurmountable obstacles which those who wish to accept Islam cannot overcome. [...] In fact, things will always progress beyond this to the point of domination over Muslims and warfare against them [for their religion].” And thus jihād is necessary for the protection and preservation of religion.

Al-Yūbī’s discussion of jihād and its importance for the maqṣad of preserving religion includes some observations which are instructive for our consideration of the minority condition. As part of his explication of the necessity of jihād, al-Yūbī notes various evils associated with non-Muslims ruling over Muslims (tasalluṭ al-kuffār ʿalā al-muʾminīn): (a) Muslims are forbidden from upholding the rites of their religion (qiyām bi-shaʿā’ir dīnihim) and in general are restricted and oppressed (tadyīq ʿalayhim); (b) laws and rulings contrary to and incompatible with Islam are implemented; (c) religion is renounced and forsaken thus debasing and degrading the religious in the eyes of others; (d) the face of religion is distorted and thus an aversion is created towards it on the part of others; and (e) religion is encircled and restricted to a certain sphere. This condition and its dangers arising from the rulership of non-Muslims over Muslims is al-Yūbī’s primary argument for linking the communal obligation of jihād to the shariʿah objective of preserving religion.

‘Negative Preservation’ (al-ḥifẓ min jānib al-ʿadam): Removal of Harms

Generally, jurists speak of four forms of preserving religion via the removal of harms:

1. jihād (although as we saw above some include jihād amongst the positive forms of preserving religion),
2. the killing of self-declared and self-obscuring apostates,
3. combating “pernicious innovations” (bidʿah) and punishing such innovators (mubtadiʿūn) and occultists, and
4. forbidding sinful behaviour and punishing its perpetrators through both ḥudūd and taʿzīr punishments.

A single principle of religious obligation underlies all of these modes of preserving religion: the idea of ‘commanding the right and forbidding the wrong’ (al-amr bi ‘l-maʿruf wa ‘l-nahī ʿan al-munkar), the activist and interventionist conception of enforcing religious morality which might be said to be the single principle underpinning all Islamic political, ethical and legal thought, particularly when we consider the claim that the maqṣad of preserving religion “is the most important of the maqāṣid, indeed the core, spirit, foundation and root of all the maqāṣid”.

Indeed, ‘commanding the right and forbidding the wrong’, particularly through jihād in its wider sense, is often held to be the characteristic of the Muslim community which distinguishes it as superior to all prior religious communities.
An important point follows here. Strictly speaking, then, there is no separate, distinct branch of legal and ethical thought concerned with how Muslims are commanded to “preserve religion”. Rather, the entire edifice of Islamic public and criminal law is what is meant by the obligation to preserve religion through the removal of specific harms – “preserving religion by ‘providing for the absence’ (min jānib al-ʿadam) is simply to repel everything which opposes religion in word and deed”.37 “Preserving religion means salvaging it […] from anything that might undermine and confuse beliefs and distort behavior.”38

The function of maqāṣid reasoning is thus primarily to explicate the wisdom and rationale of the rules, “revealing the perfection of Islamic law”.39 For example, hostile apostasy that openly challenges the validity of Islam invokes the ultimate penalty, whereas the mere unbeliever by birth (kāfir aslī) is allowed to live because

Apostasy is a means by which cracks enter the ranks of the Muslims and their internal front is fractured. This is a great evil and corruption because the most dangerous thing for a community is chaos, disruption in its [common] beliefs, intellectual disarray and a lack of trust in what preserves its order. The apostasy of a Muslim is much more dangerous than mere unbelief because the apostate has had the full opportunity to be exposed to the proof and evidence which made him believe in Islam by free choice alone and thus there is no excuse for him as there is for the unbeliever by birth who has not had this opportunity. We thus view atheist ideas circulating in Muslim lands as much more dangerous than mere transparent unbelief in Islam [on the part of non-Muslims] because doubt in one’s system and the fragmentation of the internal ranks is one of the primary reasons for the victory of the enemy. It is for this reason that Islam does not leave the apostate freedom to apostatise in contrast to its firm respect for the freedom of conscience of the unbeliever by birth.40

Blasphemy is punished and the honour of the Prophet Muḥammad is protected because

When the honour of the Prophet is violated then respect for and aggrandisement of the Prophet’s mission collapses, and thus so collapses everything which he achieved. […] The collapse of the honour and glorification of the Prophet is the collapse of religion itself. This demands vindication […] He who blasphemes against the Prophet and attacks his honour (yasubb al-rasūl wa yaqaʿ fi ʿirdhī) is trying to corrupt people’s religion and by means of that to also corrupt their worldly existence. Whether or not they succeed, the person trying to corrupt another’s religion is therefore seeking to ‘sow corruption on Earth’.41 Defaming religion and casting ugly aspersions on the Prophet so that people will have an aversion towards him is amongst the greatest of corruptions. Furthermore, blasphemy is a form of sacrilege against the Prophet and a wrong42 against God, His Prophet and His believers. It is an attempt on the part of infidels to subvert the Islamic order, to humiliate
believers, to remove the glory of religion and debase the word of God [...] all of which are amongst the most grievous forms of ‘corruption on Earth’.

Similar communitarian-consequentialist justifications for suppressing deviant behaviour are commonly given for the cases of heretics, “hypocrites”, “shameless muftis” and all those who sin by violating the most important tenets of the Law.

What is Involved in Arguing to Modern Religious Liberty from the \textit{Sharīʿah} Objective of ‘Preserving Religion’?

I introduced earlier the theory of the \textit{maqāṣid} as a potential device for creative, reformist Islamic thinking about norms and legitimacy in new conditions. The preceding section should convince us that, if what we mean by ‘reform’ is something along the lines of modern human rights standards regarding freedom of religion and conscience, the move from the \textit{maqāṣid} to ‘human rights’ (in the modern liberal formulation) is hardly an easy move. In fact, we can see how the \textit{maqāṣid} can be used to justify classical \textit{madhhab}-rulings which are not originally grounded in clear textual commands, like the ruling on apostasy. As is well-known, and as I will discuss below, the textual foundation for the ruling of death for the apostate rests on no Qur’ānic text and the \textit{ḥadīth} involved are easily interpreted not as grounding a permanent principle of executing apostates merely for apostasy but rather a temporally-limited policy of confronting political and military treason mixed with religious apostasy. The point to be stressed here is only that the \textit{maqāṣid} discourse is one open to a wide range of methodological and ideological trends.

When discussing the relationship of the \textit{maqāṣid} to ‘human rights’, conservative scholars usually invoke the \textit{maqāṣid} theory in an apologetic vein. This can take a few forms, which I paraphrase here as: (1) “Islam invented human rights. We have our own authentic standards.” And: (2) “The \textit{maqāṣid} remind us of our God-given rights to criticize the government and have security of person and property which are presently being denied by autocratic secular regimes.” The human rights which are discussed are those convenient for a conservative Muslim conscience, but knotty issues such as apostasy, blasphemy, heresy and the general right of persons to reject Islamic morality or religion altogether are not brought into question.

However, still speaking of the human rights debate for Muslim majority societies, it is most certainly the case that when joined with other values and the motivation to move beyond strict adherence to the classical rulings and categories on issues of religious freedom and equality, the \textit{maqāṣid} are a helpful and valuable framework. Rāshid al-Ghannūshī, quoted earlier, states in a well-known work that “the Universal Declaration of Human Rights, in its broad outlines, meets with wide acceptance among Muslims, if their legal framework (\textit{fiqh}) has been correctly interpreted”.

\footnotesize{\textit{Islam and Civilisational Renewal}}
This correct modernising interpretation of Islamic law in the conditions of modern international law is declared to rest largely on al-Shāṭibī’s conception of the maqāṣid: “And if we are to offer the best interpretations of the shari‘ah in order to set up a legal framework for the liberties and duties of humankind, we will find that the contemporary scholars of Islam almost all agree with the lucidity of the theoretical framework assembled by the venerable al-Shāṭibī in his Muwāfaqāt.” Unlike more conservative scholars who formulaically assume that the classical legal rulings represent the shari‘ah’s wisdom on matters of religious freedom, Ghanūshī is willing to reopen even core issues of apostasy and the right of non-Muslims to proselytise (da‘wah).

A much more explicit statement for the reform of Islamic criminal law in the direction of modern human rights standards based to a large extent on reference to the logic of the maqāṣid has come in the writings of prominent Islamic legal theorist Mohammad Hashim Kamali. In a forceful critique of the implementation of the traditional Islamic criminal code in the Malaysian state of Kelantan, Kamali writes:

At its present time in history and in the face of the crisis that has afflicted the liberality and calibre of Islamic thought, the ummah is faced with difficult choices. We either choose to retain the eternal message of Islam, to uphold its civilisational ideals, and invest our energy in the task of reconstructing a society in that image, or lower our sights to see only the concrete rules and specific details. This latter alternative is not only unwise but also methodologically unsound as it attaches higher priority to details and makes them the focus of attention at the expense of the broader and more important objectives of Islam. [...] To fall into the trap of literalism such that would blur our vision of the ideals and objectives of Shari‘ah (maqāṣid al-shari‘ah) in total dedication to specific details violates the wisdom (hikmah) of Islam which takes such a high profile in the Qur‘an and the exemplary Sunnah of the Prophet. To devise effective deterrents against criminality and aggression must be the overriding objective of an Islamic penal policy, just as they are of the hudūd penalties. The deterrent and punitive efforts need also to be moderated with considerations of care and compassion, such that would nurture the prospects of reformation and return, whenever possible, to normal life in society. If this is undertaken with diligence, then I believe that the Muslim community would have observed the basic purpose and meaning of hudūd Allah. If the specific punishments [of classical criminal law] are temporarily suspended for fear of indulgence in uncertainty and doubt, while in the meantime efforts are made which would pave the way for a more comprehensive understanding and implementation of Shari‘ah, this would be a worthwhile endeavour and, I believe, ultimately more meaningful.

Kamali has developed similar arguments about the capacity for maqāṣid reasoning to move Islamic law, including criminal law, on the most sensitive matters of religious transgression, in a liberalising direction throughout his many writings. Whereas for
more conservative traditionalists, the imperative of preserving religion allows them to use the *maqāṣid* as warrant for restrictions on more and more behaviours which might at variable distances serve as the means to undermining religious morality, for Kamali the logic of the *maqāṣid* provides Muslims with a firm intellectual framework for replacing traditional rules or practices with others less offensive to a modern conscience.

Evidence for the capacity of *maqāṣid*-style reasoning to facilitate reforms of Islamic law which we might justly refer to as ‘liberalising’ can be found in two important areas: just war doctrine, and treatment of the punishment for apostasy. In both cases, many jurists in the modern period have argued that the underlying purposes behind the traditional doctrines demonstrate that if those purposes can be achieved through other means, it is permissible to replace even doctrines which have grounding in revelatory texts. Thus, for many legal ‘Modernists’, the underlying purpose behind the *jihād* doctrine was not the eradication of disbelief or the universalisation of Islamic legal order, but the preservation of Islam in a hostile world and the spreading of the Islamic mission (*daʿwah*) to new communities. Such Modernist jurists argue that in the contemporary period, Islam is no longer in danger of eradication and that where the right to proselytise is protected there is no need for aggressive warfare.52 Similarly, many scholars argue that the original purpose of the capital punishment for apostasy was solely to protect the community from outright armed rebellion (*fitnah*). Where apostasy is merely a matter of private conscience and is not linked to a general rebellion against the state and the social order, there is no justification for executing the apostate.53

However, the primary concern of this article is not with legal change in Muslim majority societies where the burden of proof to justify revisions of long-standing understandings of the Law sits so heavily on the side of reformers but rather in Muslim minority contexts where it is not quite so clear what the conservative status quo on issues of public and criminal law is. Here I believe that the least one can say is that the idea of seeing Islamic law as a set of rulings which advance certain purposes and objectives gives even very conservative Muslim thinkers (those who might be reluctant to argue for the revision of traditional rulings for the majority context) a framework for creative engagement with the non-Muslim political and legal contexts from an Islamic jurisprudential perspective, bearing in mind that concepts such as *maṣlaḥah* and the *maqāṣid* are most conventionally invoked by Islamic jurists as tools for extending the Law into new social contexts where the original texts of revelation are silent. The notion of *maqāṣid* reasoning as ‘Complex Purposivism’ underscores this: the five most important necessary interests protected by the Law – religion, property, reason, progeny and life – all have their echoes in the legal and political systems of secular liberal democracies, but what their protection
requires is bound to be informed even in the minority context by the long-standing jurisprudence developed in the majority context.

What we are proposing here is thus an understanding of maqāṣid-reasoning as a framework of argumentation about the relative legitimacy of various legal and political institutions in non-Muslim liberal democracies given that even very conservative Islamic jurists (including those contributing to the fiqh al-aqalliyyāt discourse) regard the Muslim presence in Europe and North America as a social phenomenon requiring original jurisprudence. The plausibility of this is demonstrated also in the way that jurists speak of the jurisprudence of the minority condition as itself having certain maqāṣid which are served and advanced by certain conceptual tools from classical legal theory. For example, ʿAbd-Allāh Ibn Bayyah, along with al-Qaraḍāwī the most prestigious senior scholar writing on fiqh al-aqalliyyāt, posits that the very idea of a minoritarian jurisprudence has the ‘maqāṣid’ of (1) preserving religious life at the group and individual levels; (2) subtle and gradual daʿwah; (3) civil interaction with the Other; and (4) good relations between the individual and the group. Iraqi scholar (and politician) Šalāḥ ʿAbd al-Razzāq begins his study into the ethics of the minority condition by positing the following maqāṣid of fiqh al-aqalliyyāt: (1) treating problems such that the solutions are in perfect harmony with Western reality in terms of culture, law, politics, society, and economy; (2) the preservation of Islamic identity; (3) highlighting Islam’s flexibility and dynamism and its ability to co-exist with and acclimate to other cultures and civilisations; (4) making sure that Islam remains capable of great personal influence in people’s lives and that daʿwah remains a powerful force; and (5) that Muslim minorities in the West should play an influential role in their societies and participate in public life, especially in politics, economics, and culture. Al-Qaraḍāwī echoes these goals through vaguer statements about the insufficiency of majoritarian jurisprudence and the need for law to change with circumstance. For all of these writers, the tools provided by classical legal theory include the theory of the maqāṣid conjoined with other tools such as Islamic legal maxims which stress ease and facilitation (taysīr) in enforcing the Law. “This fiqh must balance between looking at individual texts on the one hand, but also at the spirit of Islam, the goals of sharīʿah, the universal ends (al-maqāṣid al-kulliyyah), and the general goals.”

However, as noted above, it appears that to this point such scholars have not mobilised these jurisprudential tools for a general theoretical inquiry into what kind of conception of religious freedom in the West could be regarded as sufficient (if not ideal) for the goal of preserving religion. What might be the components of such a framework of argumentation which is cautiously and critically open to Western legal frameworks while using the theory of the maqāṣid to structure Islamic moral inquiry and political action?
Most obviously, this would be a framework which would begin by taking seriously distinctions between different types of goals, agents, means and obstructions as part of a process of unpacking the cohesive and integral logic of ‘preserving religion’-as-positive-liberty elaborated earlier.

**Conclusion and Recommendations for the Muslim Minority Context**

An intellectually serious account of whether the *sharīʿah* ‘purpose’ of preserving religion can be attained within non-Muslim societies might proceed by imagining all of the possible ways in which religion might not be preserved in a non-Muslim society (from a society which merely protects Muslim apostates to one which actively persecutes Muslims merely for proclaiming belief in Islam), by positing a principled ‘minimum’ which falls short of full self-governance on majoritarian *sharīʿah* lines but also represents a coherent account of fair religious liberty, by ranking and prioritising various components of the communal ‘preservation of religion’, by interrogating existing legal and political arrangements according to those standards, and then by considering how different means of advancement and resistance are appropriate for different kinds of obstructions.

A framework of this kind might replicate the classical dichotomy between how a non-Muslim environment sets out to provide ‘positive’ protections for religion and remove ‘negative’ ones (*ḥifẓ min jānib al-wujūd*; *ḥifẓ min jānib al-ʿadam*). By way of positive provision (*wujūd*), liberals and Muslims might agree that a religiously diverse society ought to provide equal access to the public sphere, representation in media outlets and access to the institutions of state. Areas where the state allows groups and communities to provide for their own institutions might also fall under the rubric of positive provision (*wujūd*), and thus liberals and Muslims might agree that Muslim communities ought to be allowed to: create religious schools, proselytise, enjoy full rights of speech and dissemination subject only to the same restrictions as other groups, and build mosques, seminaries and research centres. By way of restrictions or removal of harms (*ʿadam*), liberals and Muslims might agree that in a religiously diverse society where Muslims are a minority there should be no coerced public declarations of controversial metaphysical views in shared institutions, no faith tests or requirements of religious homogeneity for public officials and no punishment for conversion out of the majority religion. Areas where the state allows groups and communities to respond to harms might also fall under the rubric of negative provision (*ʿadam*), and thus liberals and Muslims might agree that Muslim communities ought to be allowed to: publicly dissuade individuals from leaving their religious community, impose non-violent deterrent punishments on apostates and sinners such as boycotts or exclusion from institutions, arrange internal institutions such as mosques and seminaries on hierarchical and
authoritarian grounds, or publicly condemn dissenters, sinners and heretics even in theologically harsh terms.

However, here is exactly where such a framework will inevitably come into contact with any kind of liberal secular one. By way of positive provision (wujūd) Muslims might argue that in order for religion to be genuinely preserved the state must provide them with mandatory religiously homogeneous schools to the exclusion of public education, legal recognition for the right of Muslim communal and religious leaders to represent exclusively all Muslims in dealings with the state, and full legal and political autonomy to apply Islamic law within the Muslim community, including criminal law. By way of restrictions or removal of harms (ʿadam), Muslims might argue that ‘preserving religion’ requires that the non-Muslim state suppress all speech offensive to a Muslim sensibility, including novels, cartoons and source-critical historical scholarship, prevent non-Muslims from actively proselytising amongst Muslims and create a common public space free of sexually immoral behaviour. They might even argue that a commitment to ‘religious freedom’ requires all of these things lest the ‘religious freedom’ on offer be dismissed as an arbitrary, sectarian, liberal-secular conception of ‘freedom’ no more intuitively justifiable than the one demanded by Islamic law.

Between these two extremes – perfect consensus and perfect antagonism – the kind of maqāṣidī framework that we have outlined is a likely candidate for structuring Islamic juridical thought on inevitable ‘hard cases’ like schooling and offensive speech. Ideally, an Islamic juridical theory would be able to distinguish between blasphemous or offensive speech which the state inscribes as part of its public language of justification, from offensive speech which public officials routinely feel free to engage in, to offensive speech in civil society which the state merely refrains from suppressing and punishing. Moreover, a minoritarian Islamic juridical theory ought to be able to distinguish various forms of political action in response to such speech: from protest to positive public representations of religion to political bargaining to murder. Similarly, such a theory ought to be able to distinguish the right to religious schooling from the right to restrict all community members to this form of schooling, and state regulations of religious schooling based on certain civic public interests from state regulations based on purely theological objections to Islamic teachings.

Indeed, there is evidence of the use and attractiveness of this form of argumentation by Islamic intellectuals. In addition to the above-quoted remarks by Rāshid al-Ghannūshī on the potential legitimacy and justness of certain non-Muslim legal systems, Tariq Ramadan has argued for the justness of present European positive law treatments of religious freedom. Using the language of Islamic legal theory, in particular the notion of Purposivism, he writes that “the Islamic sciences were but a means for meeting Muslims’ needs to protect their Faith, lives and
religious practice”58 In this context, he argues that European positive law provides a framework both for protecting religion and for negotiating the boundaries of religious practice. He also advances a hierarchy inspired by the theory of Purposivism for evaluating the relative losses at stake in those *shari’ah*-derived practices which are not protected.

Thus, “it is possible to assert that five fundamental rights are secured: (1) the right to practice Islam; (2) the right to knowledge; (3) the right to found organizations; (4) the right to autonomous representation; (5) the right to appeal to the law”.59 And, although “Muslims obviously cannot apply all the global principles and rulings prescribed by the Qur’ān and the *Sunnah* in the field of social affairs […] it should be noted that the majority of [religiously prohibited activities] are not imposed on Muslims but are rather *legally allowed* […] [and thus] the abode of Europe appears as a space within which Muslims can live in security with some fundamental rights both acquired and protected. As a minority in a non-Muslim environment they are able to practice and to respect the more important rulings of the Islamic teaching.”60

The purpose of my presentation here of a possible framework is not to suggest that the only intellectually serious use of the theory of the *maqāṣid* to approach the possibilities for preserving religion in a secular liberal democracy will exactly replicate the kinds of distinctions and evaluations which liberal theories of religious freedom make. Rather, what I would like to suggest is that if we are interested in the views of more conservative and traditionalist believers towards religious freedom and public space in a religious and morally diverse society, as well as already semi-secularised ‘post-legal’ Muslims, then we ought to look to the theory of the *maqāṣid* as a flexible, complex form of legal argumentation which has the capacity to provide for an Islamic response to the modern liberal conception of religious freedom which is somewhere in between enthusiastic full endorsement and a mere agreement to obey the law out of unfortunate social and demographic necessity (*ḍarūrah*).

In closing then, I would like to offer some recommendations as to the yardstick for the contemporary discussion of *maqāṣid*-oriented policies:

- **Clear goals** belonging to a moral obligation to ‘preserve religion’ would include ensuring access to knowledge of Islam, perpetuating religiosity across generations, the construction of the religious institutions of a Muslim civil society (mosques, publishing houses, centres of research, seminars, lobbying groups), minimising social costs for living a Muslim life and for converting into Islam, and enlarging the ranks of Muslim communities.
- **Maqāṣid reasoning** would have to identify when preserving religion is the obligation of various kinds of agents, including: individual Muslims, individual
non-Muslims, Muslim communities and civil society institutions, non-Muslim communities and civil society institutions, and the non-Muslim state.

• There would have to be serious consideration of appropriate means for advancing this goal, including: coercive laws, persuasion, proselytism, Islamic religious schools, direct action, political participation, methods of social pressure, or violence.

• Finally, a strong theory would have something to say about the different kinds of obstructions to preserving religion which Muslim minority communities face: the mere impact of a dominant non-Muslim culture, the ‘moral injury’ of others acting in alien and disapproved ways, the temptation of social and personal freedoms, the lack of communal control over the circulation of information and beliefs, direct efforts of other groups to ‘seduce’ (fitnah) Muslims away from Islam, laws which limit communal or family control over the education and rights of members, laws which limit the right to worship and behave Islamically in public, hostile representations or descriptions of Islam and Muslims in non-Muslim media, and coercive state laws which force Muslims to declare abandonment of Islam.

Notes


2. “The approach to scriptural interpretation that proceeds from what classical jurists identified as the maqāṣid al-sharīʿah has acquired almost panacean expectations among modern Muslims. This is based on the belief that interpretations that are violent, intolerant or misogynistic, or culturally, economically or politically stultifying or ineffective are almost invariably grounded in a literalism that cannot stand in the face of appeals to the broader aims and objectives of the law” (Sherman A. Jackson, “Literalism, Empiricism, and Induction: Apprehending and Concretizing Islamic Law’s Maqāṣid al-Sharīʿah in the Modern World”, Michigan State Law Review (2006), 1469–86, at p. 1470).


5. Ibid., 256. Emphasis added.


8. Ibid.

9. Ibid., 94. Occasionally, scholars will go so far as to say that because of the freedom Muslims enjoy in the West and the proliferation of Islamic societies and foundations available to them Western countries should be viewed as part of the ‘Abode of Islam’ (dār al-islām); see Ṣalāḥ ʿAbd al-Razzāq,


13. “The great responsibility of Muslims in the West is to give an adapted European shape to their identity […] Keeping in mind […] the three levels of maslahā, namely the [three levels of interests theorized to be the maqāṣid of Islamic law] […] Muslims, whether scholars or organization leaders, must provide European Muslims with the appropriate teachings and rulings to enable to protect and fulfil their identity” (Tariq Ramadan, To Be a European Muslim (Leicester UK: The Islamic Foundation, 1999), 196. See also Tariq Ramadan, Western Muslims and the Future of Islam (New York: Oxford University Press, 2004), 161–3.


15. Attia, for example, notes that “maqāṣid-based thinking contributes to the expansion of the process of assessment in qiyās”. Using the example of the prohibition on wine being linked to the maqṣad of preserving reason (ḥifẓ al-ʿaql), Attia notes that one possibility emerging from this is a “process of broad qiyās [whereby] we apply the legal prohibition to everything which negatively influences one’s reasoning capacity even if it does not inebriate as drugs do. Indeed, we can expand it still further by applying the same prohibition to everything which harms the mind, including superstitions, magic arts, brainwashing operations, baseless imitation of one’s forebears, and the like” (Attia, Toward s, 165–6.)

16. al-targhīb wa ‘l-tarhīb: this common phrase means to ‘incite desire and fear’, or to use the carrot and the stick. The idea here is that Muslim proselytisers should inspire desire for what God gives and promises and at the same time fear of His disapproval and punishment.


21. Ibid., 29.

22. For this account of the ‘positive preservation’ of religion, see ibid., 28–31. According to a recent reconstruction, the views of the theologian Ibn Taymiyyah (d. 1328) bear comparison. His conception of the ‘positive preservation’ of religion consists of two main pillars: “belief in God, love for Him, exaltation of Him, and knowledge of His names and characteristics” and “seeking protection in religion, studying it and calling to it” (Yūsuf Ahmad Muḥammad al-Badawī, Maqāṣid al-sharīʿah ‘ind Ibn Taymiyyah (Amman: Dār al-Naʿāfīs, 2000), 448–50).


25. Ibid., 198. Iḥmaydān’s views bear comparison: “The sharīʿah must be integral and not fragmented. No abrogation, replacement, distortion or equivalence [with other systems] will be accepted, for there is no law above the Law of God” (Iḥmaydān, Maqāṣid al-sharīʿah, 95).

26. “Judging according to religion and applying its rulings closes the door to the ‘people of arbitrary whim’ (ahl al-ahwā’), destructive schools of thought and misguided ideas, and forbids them from spreading their beliefs and manifesting their edicts for when they know that they are in a state which upholds the laws of God and repels everything contrary to it, they will refrain from their

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erroneous writings out of fear of punishment. Whereas when religion is constrained and removed from judgment and replaced with positive law, then they can spread their poisonous ideas under the veil of academic research or intellectual freedom” (al-Yūbī, Maqāṣid al-sharīʿah, 199).

27. Including the hardening of hearts, the spreading of error and hypocrisy and loss of desire for repentance (Iḥmaydān, Maqāṣid al-sharīʿah, 96).

28. “The chaos and disruption of aggression against life, property and honor, the spreading of enmity and rancour, and the misery of fear and hunger” (ibid., 97). Here Iḥmaydān invokes the common claim that the preservation of religion is the linchpin for the preservation of the other four primary universal necessities advanced by the sharīʿah: life, property, honour and reason.

29. In effect: strengthening unbelievers and enemies of Islam over Muslims in various ways.

30. Opening the door to corruption through usury, disrupting the balance of social justice, breaking the bonds of family and society and killing the spirit of monetary jihād in society.

31. al-Yūbī, Maqāṣid al-sharīʿah, 202. Iḥmaydān, Maqāṣid al-sharīʿah, 97, followed by a long discussion (to p. 105) on various technical issues related to the performance of daʿwah with heavy scriptural citation.

32. al-Yūbī, Maqāṣid al-sharīʿah, 203.

33. The most constant definition of which is something like: “Fighting unbelievers for the glorification of the word of God” (al-Naʿīm and Muḥammad, Maqāṣid al-sharīʿah, 33; Iḥmaydān, Maqāṣid al-sharīʿah, 106).

34. I am translating zandīq (pl.: zanādiqah) as ‘self-obscuring apostates’ consistent with al-Naʿīm and Muḥammad’s explication as “manifesting Islam while hiding unbelief”. I understand this term to refer to theologians and philosophers who publicly proclaim their orthodoxy but convey heterodox beliefs through their writings esoterically. For example, Abū Ḥāmid al-Ghazālī’s classical text Faysal al-tafriqah bayn al-islām wa ’l-zandaqah treats the problem of the Ismāʿīlīs and philosophers who refer to themselves as Muslims but advance unacceptable doctrines esoterically. I refrain from translating this term as ‘heretics’ since I believe this to be expressed by the term ‘mubtadiʿūn: purveyors of bidʿah or ibtidāʿ, literally ‘innovation’. I believe the idea of persons openly advancing new theological doctrines in defiance of existing orthodoxy to best reflect the concept of ‘heresy’.

35. The ḥudūd are the mandatory punishments for certain crimes (adultery, theft, drinking wine, false accusation of adultery) stipulated in the revelatory texts. Taʿzīr punishments are discretionary punishments which judges and rulers may impose on grounds of public policy.

36. al-Yūbī, Maqāṣid al-sharīʿah, 192.

37. Ibid., 206. Emphasis added.


40. al-Naʿīm and Muḥammad, Maqāṣid al-sharīʿah, 35. For a similar account, see Iḥmaydān, Maqāṣid al-sharīʿah, 116.

41. This phrase ‘fasād fī ’l-ard’ is taken from a verse in the Qur’ān often used to establish capital punishment for those who rebel against the state or provoke such rebellion through propaganda or incitement. It has served as a very flexible and supple legal tool in the hands of Islamic governments, including most recently the Islamic Republic of Iran, to justify charges of treason against political and ideological dissenters.

42. Ādhā is more commonly used for ‘harm’ or ‘injury’ but out of concern for the theological complexities arising from the idea that God could be harmed or injured by human actions I will translate it as ‘a wrong against’. God can certainly be wronged by humans (Islamic law speaks of many public, communal or ritual obligations as ‘the rights of God’) even where He cannot be harmed by them.

43. al-Badawī, Maqāṣid al-sharīʿah, 455–6.

44. Iḥmaydān includes as his fifth means for preserving religion the thwarting of “shameless muftis” (al-muftī al-mājin), those who “corrupt religion and exploit the ignorant” by devising juridical ruses (hiyal) to get around religious obligations (Iḥmaydān, Maqāṣid al-sharīʿah, 128). It is common
for *maqāsid* works to devote long sections or even chapters condemning the practice of devising such legal ruses (*al-taḥāyul*); see for example, Ibn ʿAshūr, *Treatise*, ch. 22, especially 180–3.


46. Johnston describes the position of Egyptian writer Muhammad ʿAmārah in this way (Muhammad ʿAmārah, *al-Islām wa ḥuqūq al-insān: ḍarūrāt…lā ḥuqūq* (Cairo: Dār al-Shurūq, 1989)).

47. See also Muḥammad al-Zuḥaylī, et al., *Ḥuqūq al-insān: miḥwar maqāṣid al-sharīʿah* (Doha: Ministry of Awqāf and Islamic Affairs of Qatar, 2002), where human rights are defined exclusively in terms of the interests God has chosen to protect through the Law.


51. Including: S.A. Rahman, *Punishment of Apostasy in Islam* (New Delhi: Kitab Bhavan, 1973). However, a knotty issue for Islamic thinkers who argue against the punishment for apostasy in this way is identifying exactly when public proclamation of un-Islamic beliefs and doctrines becomes a form of harm to the integrity of the social order even short of armed rebellion.


53. See, for example, S.A. Rahman, *Punishment of Apostasy in Islam* (New Delhi: Kitab Bhavan, 1973). However, a knotty issue for Islamic thinkers who argue against the punishment for apostasy in this way is identifying exactly when public proclamation of un-Islamic beliefs and doctrines becomes a form of harm to the integrity of the social order even short of armed rebellion.

54. Because these populations are largely the result of immigration over the past fifty years jurists do not tend to treat them the way they might treat ‘native’ Muslim minorities in such countries as India, Israel or various Africa countries, where juridical reflection tends to focus on communal self-governance.

55. Ibid., 135–7.

56. Ibid., 139–40. Emphasis in original.

57. Ibn Bayyah, *Ṣināʿat al-fatwā* (Beirut: Dār al-Raḍū, 1973). However, a knotty issue for Islamic thinkers who argue against the punishment for apostasy in this way is identifying exactly when public proclamation of un-Islamic beliefs and doctrines becomes a form of harm to the integrity of the social order even short of armed rebellion.


59. Ibid., 135–7.

60. Ibid., 139–40. Emphasis in original.
The following paragraphs basically supplement this writer’s discussion on the methodology of *maqāṣid* which featured in the first article of this volume, albeit with a more specialised focus. Here we shall look at the *maqāṣid* in conjunction with two themes, one of which highlights a certain violation of the *maqāṣid* in the issuance of ṣukūk, and the other expounding an affirmative reading of *maqāṣid* in conjunction with the larger theme of civilisational renewal. Both of these view the *maqāṣid* from slightly different angles. The discussion below features four sections.

**Purposes (*maqāṣid*) Imbedded in Contracts**

The purpose and *maqṣid* of an act or transaction is, to begin with, imbedded in the act itself and any search for the *maqṣid* of an act or transaction should naturally start by looking at the transaction itself. A contract of sale, for example, aims at the transfer of ownership and a marriage contract aims at procreation and companionship. These are the *maqāṣid aṣlī*, or original intents of these contracts. A sale contract that seeks to alter or depart from this purpose vitiates itself. The purpose of sale is transfer of ownership, but when sale is used for the purpose of securing *ri.bā*, such as in a double sale (‘*inah*) which disguises *ri.bā* then the *maqṣid* and purpose of the transaction as well as its ‘*illah* are no longer self-evident. The inner or hidden intent of the ‘*inah* in question exists and is known to the perpetrator of ‘*inah* but not so to outside observers.

Most of the ṣukūk issuances that we see in the Islamic finance world proceed on the given assumption that they are asset-backed and proceed over real underlying assets, and also that when securitised and parcelled out into smaller segments the purchaser of ṣukūk acquires ownership. Now when ṣukūk is issued such that the underlying assets are actually not assets but unsecured receivables or equities yet

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disguised in the name of real assets, then the ṣukūk transaction in question has departed from its original purpose and a distortion occurred that conflated the original and the disguised purposes of ṣukūk. This is apparently the explanation for the default ṣukūk or the ṣukūk bubble of 2008 story that plagued the ṣukūk universe. In many cases, companies and originators sold assets that consisted of a beneficial interest only when fearing bankruptcy and collapse. They issued ṣukūk based on collapsing assets, or some beneficial interest shown to be risk-averse, and they ended up with bankruptcy and default. Their lack of transparency and distortion often escaped market scrutiny and the rating agencies. The basic fault line here, and one that relates to the maqāṣid, is the discrepancy between the letter and the spirit of the ṣukūk transaction and the manner in which they are structured. A total departure has arisen, in other words, from the true purpose (maqṣid) of ṣukūk, a departure that is, from an asset-backed to an asset-based transaction disguised as ṣukūk. The unscrupulous financial engineering that the Islamic finance world has experienced in recent years has given rise to real issues of distancing the form from the substance of Islamic transaction amounting to distortion and interference with the original maqṣid of a transaction and contract.

**Rationality, Cause and Maqāṣid**

Causation and the search for cause and rationale is an integral part of rationality and an inherent trait also of the human intellect. People are naturally inclined to ask for causes and purposes of what happens to them and around them and why.

The cause and ʿillah of an act are not unrelated to its goal and purpose – just as both the cause and purpose are also rooted in human rationality and human intellect. Yet the purpose of an act may not be the same as the cause thereof, just as a cause can also exist without any purpose. The cause of say a traffic accident may not espouse any rational purpose, nor can one say for sure that there is any purpose involved. Yet the ruling (ḥukm) that may be imposed by the authorities on the traffic offender may not even relate to the question of cause and purpose, but only to the consequences of the accident and the ensuing injury that resulted.

Note also that maqāṣid tend to be futuristic and look toward the ultimate goal, as opposed to the effective cause (ʿillah) which tends to look toward status quo ante. They differ in that respect, but the maqṣid strikes a note in common with ʿillah in that both are hidden from the naked eye and need to be discovered. As already indicated, both the maqṣid and ʿillah of acts and transactions are normally located in the acts themselves and discovering them is usually not difficult, but it becomes so when there is intermediacy and tampering that seek to conceal them.
**Hz̄ukm** (Ruling) and **Maqāṣid** (Purpose)

As already indicated, a judgment or *ḥukm* differs from both the *ʿillah* and *maqṣid*—as *ḥukm* can subsume both yet may supersede and go beyond them. A *ḥukm* cannot normally be issued without the identification of an effective cause or *ʿillah*. Yet in certain circumstances a *ḥukm* can be issued, even when the *ʿillah* is not known, by looking to the effect, consequence and purpose of an act or transaction. Referring to the traffic accident as an example again, although its cause might remain unknown, it has led to extensive damage and a judgment can still be issued by looking at its consequences. A judgment of this kind must, however, have a clear purpose (*maqṣid*) as to what it seeks to achieve, even if it does not have a known cause, or that the cause is known but is considered immaterial. A judgment may, moreover, seek to realise one or several purposes (*maqāṣid*). A punitive sentence or fines that are imposed on the perpetrator of a traffic accident may serve one or more of the following purposes: to save life, to ensure traffic regularity, to punish the violator, to raise funds for road repairs, etc. A judgment (*ḥukm*) as such is a composite phenomenon that subsumes a variety of factors, including the *ʿillah* and *maqṣid*. It thus appears that *ʿillah* and *maqṣid* can go hand in hand and co-exist but they are not identical and can exist separately, even independently, from one another. The legal text is normally informed by its purpose/s but is typically driven by the concerns of objectivity and equal application to all similar cases. It is more often the judge who plays a significant role in securing the goal and purpose (*maqṣid*) of the law in particular cases. Thus in a case, say, of fraud, petty theft, drug trafficking and bodily injury, the sentencing judge would normally want to know what purpose he wants to pursue apart from the standard application of a legal text, and would use the margin of his judicial discretion to secure it.

**Tajdīd Haḍārī and Maqāṣid**

When one speaks of *maqāṣid* in conjunction with civilisational renewal (*tajdīd haḍārī*), one is necessarily concerned with the nature and meaning of the expressions used and their subject matter, that is, of *tajdīd* and *haḍārī*, respectively. *Tajdīd* in the sense of renewal should mean just that; it cannot mean restoring something old, nor continuing with the existing status quo without any change, and making such the basis of one’s action in the name of *tajdīd*. For that would negate the natural meaning and purpose of *tajdīd*. Thus it is important to know the meaning of *tajdīd* and also the context in which it is employed. When *tajdīd* is combined with *haḍārī*, it is given a civilisational context whereby *haḍārī* acts as a qualifier on *tajdīd* and gives it a panoramic outlook and scope. The composite expression *tajdīd haḍārī* would thus imply that the purely religious context in which *tajdīd* was initially
conceived and contextualised in the Islamic juridical discourse is now shifted, and
to all intents and purposes, substituted by the wider context of civilisation. Some
of the salient aspects of civilisation in reference, for example, to Malaysia are
the language, religion and culture of its people in conjunction with the notion of
common citizenship. Civilisational (ḥadārī) in this context may also include a sense
of shared history, values and customary practices that find acceptance among the
various ethno-religious groups of Malaysia. And then the introduction of its parallel
concept, that is, of Islam Hadhari in Malaysia, is also relevant to our understanding
of tajdid hadārī. This would, in particular, draw attention to the ten sub-themes of
Islam Hadhari that would, in turn, inform the purpose (maqṣid) and objective of
tajdid hadārī in its Malaysian milieu.

The ten principles of Islam Hadhari are multifarious and subsume more than
one maqṣid or purpose, not all of which may even be pursued or realised at the
same time. The scope and context of tajdid thus become exceedingly wide. To
visualise the maqṣid side by side with tajdid hadārī, one’s attention is drawn,
moreover, to the identification of the purpose/s of each of the ten principles of
Islam Hadhari in the light of tajdid while paying attention, in the meantime, to the
values that the maqṣid themselves may contemplate. This would, in turn, refer to
an understanding of the five essential themes of the maqṣid al-sharīʿah, namely
the ʿdarūriyyāt, in conjunction with tajdid hadārī. To refer to the first of these ten
principles, namely of faith in God and piety as an example, the questions to ask
would be: how do we articulate the notions of tajdid and maqṣid in conjunction
with belief in God (ʿīmān) and piety (taqwā) while looking, in the meantime, at the
broader scenario of Malaysia’s pluralist society. To give a cursory answer to this may
pose some difficulty, yet relevant details of concern to some of the questions can
be found in the present writer’s IAINS Malaysia: Exploring the Intellectual Horizons
of Civilisational Islam (2nd ed., Kuala Lumpur, 2009). The spiritual renewal of
Islam and the essence of piety in its Malaysian milieu draw one’s attention to the
substance and form of religious practices and the widespread focus on ritualism at
the expense sometimes of spirituality and faith. The question thus arises as to how
in our mosques, schools and universities we negotiate renewal and reform into this
broader civilisational understanding of the religion. One is likely to think of the
kind of tajdid that restores the balance between the form and substance of Islam
vis-à-vis the ubiquitous manifestations of secular modernity and globalisation. Our
understanding of tajdid in the context of religion would have to be authentic and
credible, and different to some extent, to tajdid when it applies to the other nine
principles of Islam Hadhari. This is because spirituality and religion are different
from the concepts, for instance, of minority rights, economic development and
the like. The application of tajdid to religion needs to be informed by an authentic
understanding of the religion in the first place but then also of exploring more
meaningful and effective methods of communication with the youth and other strata of society, as well as situations when Muslims may be a minority in a larger non-Muslim environment. How can the teaching of Islam, its meaning and purpose be contextualised in Muslim majority countries and pluralist societies in order to enhance the spirit of social harmony and respect for the different other?

**Note**

1. These are as follows: faith in God and piety, a just and trustworthy government, balanced economic development, a rigorous approach to the mastery of knowledge, moral and cultural integrity, protection of the rights of minorities and women, free and independent people, a good quality of life, protection of the natural environment, and strong defence capabilities.
What is CSR?

What follows is a comparative understanding of Western and Islamic thought on CSR and the increasing awareness of it in Malaysia. This commitment from a policy angle may be described as being in line with maqāṣid al-sharīʿah or the goals and purposes of Islamic law.

The term ‘CSR’ was popularised in the early 1970s after the formation of many multinational corporations, and its definition is widely debated. A corporation in today’s globalised world can no longer hold the view that solving social problems is the duty of governments and social agencies and that managers are only to serve the interests of stakeholders and no-one else. This view is deeply-rooted in self-interest. Globalisation has contributed to an increase in socioeconomic problems and corporations are expected to demonstrate corporate governance and social responsibility. Firms have quickly realised that ignoring the needs and interests of multiple stakeholders and the society at large is detrimental. This is because the public perception of a company, especially a large one, is crucial. The corporate social contract theory used to justify CSR argues that business and society are equal partners. There is an interdependent relationship. Proponents of CSR also say that it would help boost the company’s image, competitive edge and other strategic concerns without jeopardising the interests of primary stakeholders.

Islamic Basis for CSR

Islamic CSR is inextricably linked to the Islamic worldview which stresses the teachings of the Qurʾān and the Prophet Muḥammad as guiding principles in all aspects of a Muslim’s life. In contrast to Western humanistic theories, Islam’s approach to CSR is a holistic one based on the revealed sources. Hence, the fundamentals such as ʿaqīdah (creed), ʿibādah (acts of worship) and akhlāq (morality and ethics) are permanent but their manifestations in our day-to-day living in activities such as economics and business may be changeable, subject to the goals and purposes of Islamic law. According to Abū Ḥāmid al-Ghazālī (d. 1111), “the objective of the sharīʿah is to promote the well-being of all mankind which...
lies in safeguarding their faith [...] their human self (nafs), their intellect (ʿaqīl), their posterity (nasl) and their wealth (māl). Whatever ensures the safeguard of these five serves public interest and is desirable.”

Islam encourages its followers to contribute actively to this worldly life through wealth formation and economic advancement but qualifies this with the simultaneous call for social justice: “God commands you to do justice and be fair (to others)” (Qurʾān 16:90). Hence there is textual evidence that calls for activities that improve the wellbeing of all members of society. Malaysian Islamic economist Dusuki observed that “the concept of CSR in Islam encompasses a broader meaning embracing the taqwā (God consciousness) dimension by which a corporation as a group of individuals, assumes the roles and responsibility as servants and vicegerents in all situations.”

The Western theorists, in turn, depend on the social contract theory and the normative stakeholder theory, both of which include a moral or philosophical dimension to guide the operation and management of a corporation. However, the view that the ‘social contract’ between business and society needs to be renegotiated when preferences change, or the assumption that the interests of stakeholders can be compromised, is problematic. Companies sometimes face crossroads, and without an absolute guiding principle they are faced with a dilemma. This contention may be illustrated with an example: corporations are encouraged to respect the local culture or values of the country in which they operate. When offering bribes is the norm in a particular country, corporations are then required to alter their behaviours to meet the expectations of that particular society. Bribing then becomes acceptable. Some Western philosophers assert that one should give up the effort of developing moral standards or a code of ethics for businesses. Instead corporations should have the freedom to determine their own moral responsibilities in any way they deem appropriate. Islam does not support this. Today, there are companies both Muslim and non-Muslim who stand their ground, and make known their standards and guiding principles and they do not waiver.

**CSR and Muslims**

Islam does not vilify profit-making; it merely disagrees with its maximisation as the core objective of a company. There must be a balance between the rights and duties of the individual and their commitments to the community that they live in. Striking a balance would mean that corporations must consider the question of the common good in their decision-making processes at every level. However, like all other value systems, there is a gap between theory and practice because data from Muslim countries have demonstrated that not all teachings of Islam are adhered to. The equal treatment of women is an area where many Islamic countries do not
fare well. This is also true when it comes to basic human rights and transparency of the judicial process, says the World Values Survey. Transparency International also found that Islamic countries are often highly corrupt. Nonetheless these findings are almost certainly not related directly to Islam *per se* but are more likely to be due to other socio-political factors related to the nature of government and the development of civil society since many non-Islamic countries also perform badly along these dimensions.

**CSR is More than Philanthropy**

More often than not, CSR is mistaken for acts of charity by corporations. Bursa Malaysia has explained that CSR is about how a corporate entity makes its money (through resource management for example) and *not* so much how it spends it. CSR is not about compliance or philanthropy or public relations. It often involves cultural transformation in a company as it integrates CSR concepts into its operations and decision making. Corporations need strong exemplary leadership and passion for CSR to be part of the organisation’s culture. A key element of CSR is the fact that it is discretionary. That is why there is a need to incentivise companies. This does not refer to business activities that are mandated by law or moral or ethical in nature (and perhaps therefore expected). Rather, we are referring to a voluntary commitment a business makes in choosing and implementing these practices and making these contributions.

**CSR Awards in Malaysia**

From 2006, the Malaysian Government now requires all Public Listed Companies to disclose their CSR activities. In 2007, the Ministry of Women, Family and Community Development launched the Prime Minister’s CSR Awards to recognise companies that have made a difference to the communities in which they operate through their CSR programmes. A total of 70 companies sent in entries for the 2009 award, involving close to 150 different projects. The Education category received the most entries, followed by Social Welfare, Environment, Workplace Practices, Small Company CSR, Empowerment of Women, Media Coverage, and Culture and Heritage. Apparently the number of submissions for the 2009 awards was nearly as high as it had been in 2007, despite the global economic meltdown. Each submission is assessed on three main considerations:

- the positive impact the CSR initiative has on the communities at which it is targeted;
- the sustainability of the project; and
• the level of commitment and involvement displayed by the companies in these projects.

This demonstrates clearly that the government’s policy on CSR was motivated by the need to encourage corporations to be committed to CSR by educating their employees on social responsibility and tweaking resource management styles and policies with various stakeholders to impact positively on communities and the general environment. This is in line with the maqāṣid-approach which seeks to improve the welfare and benefit of society.

Recommendations

• While this is encouraging, Malaysia has still a long way to go to ensure that corporations act responsibly and fulfil a goal or maqṣad of the sharīʿah, once the objective has been identified.
• A consultative approach to the identification of the maqāṣid is advisable.
• Policy makers would do well, according to Mohammad Hashim Kamali, to verify the veracity of a maqṣid that is identified for the purpose of policy making and legislation through consultation with the people and those with relevant specialised knowledge.3

Notes

Malaysia’s Need for an Enlightened National Policy on Interreligious Peace: A Dictate of *Maqāṣidī al-Sharīʿah*

Osman Bakar∗

As a nation, Malaysia is characteristically pluralistic and diverse in its cultural makeup. It is precariously balanced in its ethnic and religious compositions displaying a distributive pattern of cultural diversity in its demographic map in a way that is matched by few countries. Its pattern of cultural diversity is particularly distinguished by the fact that there is a close identification of religion with race. Malaysia is only barely a Muslim-majority country. It has a large non-Muslim population comprised mostly of Buddhists, Hindus, and Christians. There are other religious minorities such as Confucians, Taoists, and Sikhs though these are much smaller in size.

Most of the Muslims belong to the largest ethnic group, namely the Malays, while most of the Buddhists are ethnic Chinese and most of the Hindus are ethnic Indians. This close identification of religion with race has the important effect of making the two issues of inter-ethnic and interreligious peace closely intertwined. The issue of interreligious peace is therefore closely related to that of inter-ethnic peaceful coexistence. The two are intricately dependent on each other. In the light of this unique socio-cultural fact, the formidable challenge it poses to the future of stability and peace in Malaysia is well recognised.

Unfortunately, however, till now Malaysia does not have an enlightened national policy on interreligious peace that seeks to effectively address the delicate issues of interreligious relations. This is not to say that successive Malaysian leaders over the five decades of national independence have been unduly concerned with issues of national unity. On the contrary, these issues have been of paramount concern to the national leaderships. The only drawback perhaps is the apparent marginalisation of the religious dimension of national unity issues in government policies. This marginalisation is attested by the fact that since independence interreligious relations and their underlying issues have never occupied a central place in national discourses on inter-communal peace and national unity. While the country may be said to have an ‘enlightened’ and a pragmatic policy on inter-ethnic cooperation and peace, it does not have one on interreligious relations and peace.

True enough, save for the 13 May 1969 racial riots, Malaysia has been spared both ethnic and religious strife and conflict in the last fifty years. Even in the case of this sole national tragedy of real significance in the country’s communal relations

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it was more of an ethnic conflict than a religious one. It is also true that Malaysians of different religious groups have interacted with each other peacefully in their daily lives – educational, business, political, and the workplace – but all these achievements have nothing to do with some well-defined policy on interreligious understanding and cooperation that the government of the day has put in place and enforced. It is to the credit of the Malaysian people that in spite of the absence of such a policy, relative interreligious peace has prevailed in the country. But of late many voices in the country have been heard expressing concerns about the sliding trends and developments in the country’s interreligious relations that they feel must no longer be ignored if the relatively good national record of the absence of religious strife and conflicts were to be maintained and further improved.

If Malaysia is to have a proper national policy on interreligious relations and peace that one can really appreciate as enlightened in its approach and content then its leaders, both political and religious, need to address the various shortcomings in the past approaches or attitudes towards the challenge of religious diversity and pluralism in the country. In this Viewpoint I would like to identify and discuss two outstanding shortcomings visible in these past approaches and attitudes. The first shortcoming is what may be described as the government’s ‘hands off policy’ when it comes to dealing with interreligious encounters and initiatives and contested religious issues. The government is over-cautious in its approach to interreligious issues to the point of being seen as avoiding confronting the real issues in interreligious relations in Malaysia. The second shortcoming is the subordination of the pursuit of interreligious peace to that of inter-ethnic peace.

Let me now deal briefly with the first shortcoming. The government’s ‘hands off policy’ is to discourage or restrain citizens from conducting public discourses and debates on interreligious issues particularly when these issues involve the religion of Islam. The rationale for the discouragement or restraint is the fear that such discourses could easily run out of control to the point where there would not be anymore due mutual respect shown towards the religious sensitivities of the different religious communities. The ultimate concern in the mind of past Administrations is praiseworthy though, which is the maintenance of public order and interreligious peaceful existence.

But what in practice amounts to their ‘non-policy policy’ on interreligious issues has one major consequence on Malaysia’s profile on the management of religious diversity and pluralism. It has the negative effect of discouraging and stifling or even intimidating interreligious dialogues in the country. Despite more than fifty years of national independence interreligious dialogue, as distinct from other forms of intercultural dialogues in which Malaysians have performed quite well, has not taken root in the country’s multi-religious society to enable it to become an important aspect of Malaysian culture. On the contrary, opposition to interreligious dialogue
from the conservative religious establishment has appeared to become stronger in recent years. In the absence of such a kind of dialogue, what prevailed in the public mind was the state-nourished view that religions are far more separated from each other than they are united. In other words, it is the view that there are more differences between religions than there are similarities or commonalities.

In the past, the government’s appeal to the general public was to help promote religious tolerance through an inculcation of respect for existing differences between religions. But for some reason the content of this respect was never explained and thus left vague in the public mind. Without a concrete positive content and a strong ideational foundation, the respect in question could only be a fragile one. It is the acceptance of commonalities between religions that can help nurture true mutual respect. But these commonalities can only be unveiled to the public mind through an accumulative process of mutual understanding such as can be attained through healthy interreligious dialogues. Since such dialogues were absent, religious tolerance could hardly be developed on the basis of commonalities or shared perspectives which in the context of the social reality of the times remained largely hidden from the public eye.

What Malaysia now needs are more, and not less, interreligious dialogues. In fact, it is now long overdue for Malaysia to have a well-established and robust dialogue culture. Malaysia also needs to have more interreligious encounters and agendas in the form of conversations and discourses aimed at a far better mutual understanding between followers of the different religions and social initiatives such as educational and welfare works aimed at the common good of all citizens. All these interreligious initiatives can only be described as good for Malaysia. Far from intending to disrupt the interreligious peaceful coexistence and the level of religious harmony already in place in Malaysian society, these various initiatives are meant to improve upon them. These will certainly help to contribute to the realisation of Malaysian national unity and therefore also to the objectives of the 1Malaysia policy currently pursued by the administration of Prime Minister Mohd Najib Tun Abdul Razak.

Understandably, in pursuing the kind of interreligious encounters and agendas I have just outlined, caution is called for. The needed caution is all the more understandable if we were to realise that the level of cultural literacy of the kind needed in multi-religious societies is still wanting among Malaysians. Still, I am sure there are many ordinary Malaysian citizens who are as concerned as the government with the likely abuses of freedom in interreligious encounters and agendas. This concern and caution notwithstanding, this group of citizens would also argue that there is really no better alternative to dialogue, however risky it might be.

Not doing anything to promote interreligious dialogue and cooperation is no less a danger to Malaysia’s interreligious peace and harmony and therefore to
its national unity than pursuing actively such dialogues and discourses without restraint and regulations. The only real choice for Malaysians, especially for the country’s political and religious leaders, is to pursue interreligious dialogues and various other kinds of initiatives with a sense of social responsibility. It is mainly the responsibility of the government to formulate a national policy on interreligious peace that would include outlining the place and role of interreligious dialogue in nation building and providing enough guidelines to lay a solid foundation for the healthy development of a national dialogue culture.

The second shortcoming in past government approaches to the societal problem of religious diversity and pluralism is to view it as of lesser strategic importance to national unity than the issue of inter-ethnic relations. The subordination of religious to ethnic considerations in the tackling of national issues is clearly reflected in many government policies, particularly in the educational and economic sectors. It is my strong view that this policy needs to be thoroughly reviewed. This would require current positions on the interrelationship between religion and ethnicity in the Malaysian context to be reviewed as well. It is not the aim of this recommendation to do away altogether with the ethnic factor in the formulation of national policies. To do so would be unrealistic and unnatural, and even futile, since ethnic consciousness is something natural to man. Ethnicity and ethnic considerations will always have a place and a role to play in Malaysia’s national policies and in national life.

Rather, the recommendation made here is that on a wide range of national issues and problems religion ought to be recognised as a far more relevant and potent societal force than ethnicity in providing their solutions. Even the inter-ethnic relations themselves in both content and direction can best be served by religion, more particularly by shared spiritual and moral-ethical values to be found in Malaysia’s religions. Community leaders representative of the different religious and ethnic groups are urged to reexamine their views on the respective roles of religion and ethnicity in Malaysian society and to highlight their new roles in a more concrete manner than hitherto presented in addressing such fundamental issues as interreligious peace and harmony, national development, national unity, and civilisational development.

The fact that Malaysians are becoming more assertive in religious matters than ever before and the fact that religious revival is to be observed not only among Muslims but also among followers of other religions dictate the reexamination of the role of religion in Malaysian society as a matter of great urgency. The new religious assertiveness has caused increasing interreligious tension in the country. The Malaysian government is therefore called upon to formulate a viable national policy on interreligious relations with the help of the nation’s experts in the related fields in question.
Such a policy would be in full accord with the *maqāṣid al-sharīʿah* which has been traditionally understood as the higher objectives of Islamic divine law and its universal philosophy. *Maqāṣid al-sharīʿah* constitutes the core of Islamic societal teachings. The policy in question, if it were to be enlightened by the *maqāṣid al-sharīʿah* would seek to diffuse interreligious tension and to create in its place a socio-cultural environment which is conducive to interreligious harmony, societal peace, and social justice. This is because all of these much sought after societal goals are embodied in the *maqāṣid al-sharīʿah*.

To inculcate a true appreciation and respect among Malaysians for Islam’s position as the official religion of the country, there is nothing better that Muslims can do than to offer to share with their fellow non-Muslim citizens the universal values and wisdom contained in the *maqāṣid al-sharīʿah*. In short, *maqāṣid al-sharīʿah* dictates the formulation of an enlightened national policy on interreligious peace for Malaysia. In consequence, the panel or council of experts to be chosen to help formulate the policy in question must include experts on the higher objectives of Islamic law.
Closely connected to a discussion of the practical goals and objectives of Islamic law or *maqāṣid al-sharīʿah* – the subject of this journal’s Special Issue – and to the question of Islam’s civilisational renewal (*tajdīd haḍārī*) is the critical topic of openness for dialogue with those who hold views that are different from our own.

Recent years have witnessed several initiatives by both Muslims and non-Muslims toward getting to know and respect each other better – especially (but by no means only) in the aftermath of Pope Benedict XVI’s controversial ‘Regensburg lecture’ of 12 September 2006.1 Dialogue between Muslims and non-Muslims has now become one of the key realities of daily life, resulting in many international conferences and much publicised high-level meetings between representatives of Islamic thought and spirituality and of the other major religions.

However, the practical outcome of such initially auspicious events is all too often relatively meagre. In order to make intercivilisational dialogue more meaningful – and long-lasting – it would also be necessary to look inward. In line with such an approach, each member of such a dialogue project could ask himself about the ‘dialogueability’ among members of one’s own civilisation, faith, and society in this regard. The manner in which we tend to deal with real (or imagined) dissent within our own ranks determines logically the way in which we are facing ‘the Other’.

Catholic Christians, for instance, sometimes complain about real or perceived restrictions in countries dominated by another faith or worldview – quite recently, this happened also in this country, Malaysia. At times, they also deplore the supposed ‘moral decadence’ of Western secular societies. Certain revelations of the last decades – and in particular under the pontificates of the present pope as well as that of his predecessor John Paul II – however, have clearly shown that the Church, too, is not immune to moral transgressions and even criminal behaviour from a certain number of its clerics. We need only to recall the seemingly fathomless morass of sexual perversion and paedophilia among apparently larger than previously thought sectors of the clergy worldwide, along with hypocrisy and attempts to cover-up, the support of rather unsavoury regimes during the Cold War, sinister financial transactions, or the silencing of dissent and voices of reform. This might say nothing about the majority of priests and regulars who have remained blameless and display

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selfless charity, but it nevertheless places on the Church the responsibility of clearing up the mess among its own ranks before ‘throwing the first stone’.

On the other hand, however, a think tank like IAIS Malaysia which has a mainly Muslim audience in mind, cannot lay back, taking delight in the moral failures of ‘the Other’, the ‘evil West’. In order to be a credible partner for interfaith dialogue – not to mention the moral and spiritual tenets of Islam in toto – Muslims too need to look inward, into their own societies.

The questions which they could ask themselves are: How have Muslims dealt with dissent in the past and present? Is the political instability of many Muslim countries in the Middle East (and beyond) the result of such insecurity in dealing with opposition within their own ranks? Why do internal conflicts often result in violence and bloodshed? Is the centuries-old conflict between Sunnites and Shi’ites, for instance, to be seen as one of the outcomes of such a problem of dealing with dissent? What about the plight of religious minorities within such a bleak setting (Ahmadis and Baha’is in Pakistan and Iran, respectively, come to mind)?

Moreover, what about the role of the sharīʿah within such a scenario? Is it really invoked in order to help people or rather as a sign of a ‘holier-than-thou’ attitude. People from another religious tradition know well the story of Jesus, when he was asked one day by his Disciples why he carried out his healing of the sick and other beneficial works on the Sabbath, the Jewish day of rest. He is said to have replied, “The Sabbath was made for humankind, and not humankind for the Sabbath”.² Now if we were to ‘islamise’ this, one could well say that Islamic law is there to help Muslims on their way to become closer to God (which is actually also closest to the etymology of the Arabic word sharīʿah, so often invoked by its supposed supporters).

In short, right answers and right solutions to such and other questions would certainly help to clear up the rather sad image that Islam – and sometimes even religion in general – is currently ‘enjoying’ among many people worldwide. Truly, Muslims – as well as people of other faiths – have a special responsibility.

Among the overall solutions for such a depressing scenario would be the move toward more open and inclusive Muslim societies – based on more positive precedents of the past and lessons learned in the present. From among the Muslim-dominated nations, post-Suharto Indonesia has perhaps made the most promising progress – promising also because Indonesia is numerically the strongest Muslim nation on this planet. Malaysia, too, has shown – especially after the 2008 general elections – that it can deal with certain changes in the political spectrum.

However, all too often Islam – a world religion with universal moral and spiritual tenets – is ‘hijacked’ not only by radicals of various sorts,³ but also by political settings and countries that do not usually feature in the headlines of the international media as ‘rogue states’. Unfortunately, some of those players consider Islam the
domain of one particular ethnic group, making it therefore rather difficult for non-Muslim citizens to feel at home or to connect with their Muslim compatriots – although they too are loyal taxpayers and perhaps living even for centuries in the country. Some others like to harp on about the real (or imagined) Sunnite–Shi’ite divide in order to perpetuate their grip on power. Other systems, in turn, tend to focus on one particular Muslim ‘legal school’ (*madhhab*) as the only acceptable thing on earth, sometimes even outlawing the remaining three orthodox ‘schools’ of Sunnite jurisprudence. Although all this often takes place ‘in the name of Islam’, the damage to the image of that religion and to that of the *ummah* – the global Muslim community – is often devastating.

History has shown – and continues to show – that societies that are inclusive and based on cultured dialogue are much more resilient and stable in times of social and economic challenges and crises. In turn, societies that are based on prejudice and the prevalence of one particular interpretation of reality, tend to be unstable and prone to aggression toward ‘the Other’. Sometimes internal tensions even result in wars with neighbouring countries.

**Some Recommendations**

As this writer has argued in a previous Viewpoint, Malaysia, for instance, is currently at such a crossroads. The *1Malaysia* policy of the country’s Najib administration, combined with a renewed effort by IAIS Malaysia to present Tun Abdullah Ahmad Badawi’s *Islam Hadhari* concept to the local Muslims (hopefully also in Malay, the language where all this would matter most) are certainly steps in the right direction.

The Najib administration has recognised the danger of the emergence of two ‘parallel societies’ in Malaysia: one dominated by those interested in a more open and inclusive society and another made up by self-appointed supposedly orthodox ‘religious leaders’ who consider their brand of Islam the one and only.

- The Najib administration and its *1Malaysia* approach, however, need the support of all well-meaning people, in this country and abroad – and in order to get such support Putrajaya needs to tap all resources and reach out also to those who harbour different views.
- Based on the demands of *maqāṣid al-sharīʿah*, and in terms of opening up Malaysian society at large and the Malay-Muslim setting in particular, Malaysia’s current administration has recognised the signs of our times.
- What remains to be done is to convey this *maqāṣid*-based inclusive concept of Islam to the less educated, mostly rural constituency.
- Indeed, although this is often seen as an issue too sensitive to tackle, to do so would amount to true leadership for which generations to come – Muslims
as well as non-Muslims – would be grateful. It would be a new ‘struggle for independence’, keeping Malaysia together and building a climate of trust and mutual respect. It would certainly add to the credibility of Islam when doing dialogue with ‘the Other’.

Notes

Three Relationships (Continued)

Eric Winkel*

We continue from this feature in the previous issue of ICR,¹ which posited three relationships, human beings to human beings, human beings to the rest of the creation, and finally to the Creator. The first relationship is one of contract, the second of taskhīr (to be defined below), and the third of covenant.

For the second relationship, the description is no longer ‘contract’ but taskhīr. The term ‘subjugation’ in English is more accurately the antonym of taskhīr. This shows us how far we have strayed. We think we own a house, but the house owns us. We forget that the word ‘mortgage’ means ‘gripped until death’. The American author and leading transcendentalist of his time, Henry David Thoreau (d. 1862), saw a contrast between those who had been subjugated to their possessions and those who were unencumbered. Here is his imagery:

How many a poor immortal soul have I met well-nigh crushed and smothered under its load, creeping down the road of life, pushing before it a barn seventy-five feet by forty, its Augean stables never cleansed, and one hundred acres of land, tillage, mowing, pasture, and woodlot! The portionless, who struggle with no such unnecessary inherited encumbrances, find it labour enough to subdue and cultivate a few cubic feet of flesh.²

Ibn al-ʿArabī (d. 1240), the famous Andalusian Sufi and philosopher, points out that the subjugation of the animals to us means we take on a great burden. It is not the animal that needs us – the wild horse runs away when you try to halter it. The man is subjugated to his horse and his donkey, and he looks after her by bringing her water, providing fodder, and seeking for her to have situations where she is healthy.³

There is also subjugation among human beings, and it too shows us how far we have gone astray.

The level of king requires that he be subjugated to his people for what they want from him […]. And the level of the citizens and the people requires that the king be subjugated to their safeguarding and defence, and fighting their enemies, and presiding as judge over what happens among them in litigations and seeking rights.⁴

According to Ibn al-ʿArabī,⁵ al-Qushayrī (d. 1074), the famous philosopher and Sufi from Persia, once told the story that a man saw someone riding on a donkey and hitting the head of the donkey, so he stopped him from doing that, and the donkey

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said to him, “Do make him stop, because he is hitting his head.” For Ibn al-ʿArabī, the qurʾānic concept of taskhīr is where one party is put in a certain position which creates benefit for a second party. Because we recognise this benefit, we work hard to care for and tend to the first party. We recognise too that we are dependent on the first party. Anyone who beats the donkey’s head has missed completely the qurʾānic conception of taskhīr. Such a person has failed to recognise who the real head (boss) is.

In this view of taskhīr, we are subjugated not just to each other and to animals, but to the Earth, recalling the prophetic ḥadīth, “Be considerate to the Earth, for she is your mother.” Practices that are authentic, then, include returning plant life to the dirt, keeping fields fallow, preventing erosion, and putting nothing toxic into the Earth. Contrast this with the opposite mentality of factory farming and monoculture. The contemporary Indian philosopher, environmental activist, and eco-feminist Vandana Shiva says,

> We need to start distinguishing between those economies that bring life and those that bring death. We’ve got suicidal economies – 200,000 Indian farmers have committed suicide after the WTO and World Bank’s policies. Why suicide? Corporate seeds aren’t about increasing productivity; they are about increasing debt. I call it ‘Corporate Feudalism’ – the corporations are joining with feudal structures we thought we’d left behind after Independence. I’ve sat in front of 2,500 widows in the Punjab, the wives of farmers who have committed suicide. These farmers consume pesticide in the field – ‘pesticide’ ironically translates as ‘medicine’ [davā, from the Arabic dawā] in our language. The land in that area has turned into a suicide belt. This is the same land where Gandhi started the cotton movement, where he spun for freedom.6

The mentality of death pervading corporation and factory farming tells us to extract all life from the dirt, leave behind poisons and erosion and a dust bowl, and then cut down another forest to make another ground to be exploited.

Activists use metaphors such as ‘rape’, ‘plunder’, and ‘stealing’ to describe the interactions between corporations and land, and they apply as well to interactions with individuals. In terms of taskhīr, we ask whether we expended more wealth on the subject than we received, whether we returned to the subject more than we received, because it is we, after all, who depend on the subject. That our mothers, our biological mothers and our Earth mother, are long suffering and patient with their children is no excuse for ugly behaviour. In the chapter on the earthquake, we read that Earth will on that day give her report (Qurʾān 99:4). The Prophet said, “She will testify to what each one did on her back.”7

One of the environmental lessons of the Qurʾān is in the story of the Marib Dam. A great civilisation had grown around the irrigated area, which was rich and fecund.
The phrase *qurratu zāhiratan* (Qur’ān 34:18) is interpreted by the eminent exegete al-Ṭabarānī (d. 970) as

cities near to each other and interconnected. When a man leaves one city, the other becomes visible, so they did not need for their journey to *al-Shām* [Syria] any provisions. And a woman would leave with her spindle, with a basket on her head, and spin for awhile, and she would return to her house after the basket had been filled with fruits (falling into the basket). Between *al-Shām* and the land of Sabā' [*Sheba', in Yemen] it was like that.¹⁸

But some wanted the stopping places to be far apart, so that they could enrich themselves by supplying provisions. Al-Ṭabarānī says they “grew reckless toward their good fortune”.

As a consequence, “they darkened their souls” (Qur’ān 34:19), that is, by leaving thankfulness and obedience; and one could say, by ungratefulness.

“So we made them legends” for those after them to speak about their situation and their affairs. Of them and their homes, no trace remains. He [Allah] said, “We scattered them completely dispersed,” that is, we separated them into different countries completely apart from each other, and that is that they were driven out of the country, and they ended up being symbols for the Arabs, who say, “The people were scattered”, *aydī saba* or *ayādī Sabā’*.¹⁹

The dominant paradigm among environmentalists seems to be ‘sustainability’. There is, however, an assumption that needs to be addressed by the Muslim. Conservation and sustainability assume that there is a limited amount of a resource, and that with this scarcity, we should make sure it lasts for us later and for the next generations. The paradigm that clashes with this view assumes that resources are not limited, and that science and technology (meaning, the new religion) will magically come to our rescue. I think that the focus on scarcity is not correct – but neither is the unlimited growth paradigm, because both operate in a mechanical world where God is absent. Another world view, one found among First Peoples and some Muslims too, is that our correct relationship, with respect to the environment, to God is thankfulness. In their address to the United Nations in Geneva, the Native American Iroquois or ‘Six Nations people’ said,

We believe that man is real, a part of the Creation, and that his duty is to support Life in conjunction with the other beings. That is why we call ourselves *Ongwhehonwhe* – Real People. The original instructions direct that we who walk about on the Earth are to express a great respect, an affection, and a gratitude toward all the spirits which create and support Life. We give a greeting and thanksgiving to the many supporters of our own lives – the corn, beans, squash, the winds, the sun. When people cease to respect and
express gratitude for these many things, then all life will be destroyed, and human life on this planet will come to an end.10

Concluding Remarks and Recommendations

We ‘darken our souls’ when we abandon thankfulness. The commentators see this as a pair: we abandon thankfulness and we stop refraining ourselves from disobedience. These are not abstract: these are very real, practical activities.

- ‘Thankfulness’ is recognising that blessing comes from God.11 Our relationship to farming changes when we act with thankfulness.
- Similarly, refraining from disobedience means many concrete practices: practise land ownership according to the shari‘ah and do no harm through pollution (e.g., fertilisers, pesticides, GM seeds) to the land, the waters, and the people, to name just three.

For this one, we are all in the same boat. According to the hadith, ‘‘Ā’ishah heard that the Prophet had once said: ‘When the bad appears on the earth, Allah will send down on the people of the Earth his calamity’. She said, ‘And if among them are people who obey Allah?’ He said, ‘Yes (still).’”12

Notes

4. Ibid.
5. Ibid., 4:460.
8. See http://altafsir.com/Tafasir.asp?tMadhNo=0&tTafsirNo=91&tSoraNo=34&tAyahNo=18&tDisplay=yes&UserProfile=0&LanguageId=1 (accessed on 14 July 2010).
11. With reference to Qur’ān 34:13, Ibn Kathīr, in his Tafsīr Qur’ān al-Karīm, reports the following ḥadīth: “David said, ‘Lord, how shall I thank you, when thankfulness is a blessing from you?’ He said, ‘Now you have thanked me, when you said that blessing comes from me’. And He said, ‘But few of my creatures are thankful’”; available online at http://altafsir.com/Tafsir.asp?tMadhNo=0&tTafsirNo=7&tSoraNo=34&tAyahNo=13&tDisplay=yes&UserProfile=0&LanguageId=1 (accessed on 14 July 2010).

BOOK REVIEWS

Kim Beng Phar, Islamic Statehood and Maqasid al-Shariah in Malaysia. A Zero-Sum Game?

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There has been an increasing interest in and a growing literature on the concept of maqāṣid al-sharīʿah. The literature has leaned towards theoretical rather than empirical studies, and therefore empirical studies on the application of maqāṣid al-sharīʿah as a guiding principle for legal and/or political government are highly welcomed. In his book Islamic Statehood and Maqasid al-Shariah in Malaysia. A Zero-Sum Game? Kim Beng Phar sets out to show that as far as the case of Malaysia is concerned, such application is still far ahead.

The main argument of the author is that the Islamic discourse in Malaysia needs to integrate maqāṣid al-sharīʿah in order to “significantly broaden the scope and methodology of Islamic legislations” (p. 47). Although the term of maqāṣid al-sharīʿah has not been absent, the discourse has yet to be permeated with its spirit. In his view, the main driving forces within this discourse, UMNO and PAS, have both resorted to a simplistic, selective and reductionist reading of Islam each trying to “out-Islamize the other with bold Islamic plans, symbols, and rhetoric, which in turn lend themselves to callous application” (p. 51).

In preparing the ground for the argument, Kim Beng Phar gives brief introductions and historical background to the political and legislative situation in Malaysia and to concepts such as al-amr bi 'l-maʿrūf wal-nahy 'an al-munkar and the Islamic state. The author makes the observation that there are several participants in the discourse on identity politics in Malaysia. Nevertheless, it seems to boil down to the opposing views of the two main actors, UMNO and PAS, although the general public is not always confident with either one’s Islamic credentials. Historically, the author traces the view of Islamic law as punitive back to the establishment of the Malacca kingdom, and after independence this view was paired with the reductionist view on Islamic governance held by influential thinkers such as Mawdūdī, Sayyid Qūṭb and al-Qaraḍāwī from the mid-twentieth century onwards. The second heritage is colonial rule which divided the power of Muslim rulers by splitting up a court system into a double system of state legislatures and federal legislature with an
ongoing tension between them. This tension between secular federal law and the implementation of shari’i rule has been the feed for PAS, with mixed luck since most of their field of interest falls within the Federal List. The initiatives of PAS, in turn, compelled UMNO to compete by issuing a federal policy of a call to a vision of ‘Islamic modernity’, which, due to the dispersed pattern of power limits, the federal government, however, has no power to enforce. In the view of the author then, when PAS is reducing Islam basically to a question of implementing the hudūd, UMNO is forced into the same discourse reducing it to a “bidding war” (p. 28). As a result, the ethos of maqāṣid al-sharī‘ah is not allowed to manifest itself.

Before examining the concept of maqāṣid al-sharī‘ah, the author clarifies his views on the shari‘ah as neither static nor exhaustible. Although he later accounts for the historical development of theories on the maqāṣid, he seemingly adopts the view that “shariah involves five key goals” (p. 34) thus endorsing a surprisingly static view. While fiqh is a result of human endeavour based on the sources of the shari‘ah, the theories of the maqāṣid may also be regarded as such endeavours, as is the case with many other maxims (qawā‘id), derived from early Islamic legal thought which was to a large extent case based – although not theoretically, on some, maybe unexpressed, guiding principles. The broad discussion over the years of the precise content of the maqāṣid and over the priority between the different values suggested to be the basis of the maqāṣid, testifies to the possibility that even the maqāṣid may be fluctuating. Even this perspective needs to be included in a dynamic Islamic discourse.

Kim Beng Phar’s brief text shows some shortcomings at the level of precision when it comes to certain concepts. What precisely does the author understand by “strict Islam” or “moderate Islam”? Sometimes discussions are blurred by tags such as these. The way the term ijtihād is used may serve as a case in point. As an example the author refers to Tun Dr Mahathir’s idea on the importance of acquiring scientific knowledge that apparently found no ready audience (p. 46). In this regard, it would be helpful to differentiate between ijtihād in the general sense of rendering an opinion and in the particular juristic sense of issuing a ḥukm sharī‘. If Tun Mahathir, in this instance, as alleged, was discredited for not mastering the Arabic language, it is highly questionable if this can be traced back to restrictions put on ijtihād as a juristic method. The ideal state of affairs, according to Kim Beng Phar, was the original and pioneering spirit in which the Companions of Muḥammad exercised ijtihād taking their lead directly from the Qur’an and the Sunnah and pursuing public benefit. There is little doubt that such direct leadership requires access to the multilayered content through the language of the original source, and hence a fundamental requirement for juristic ijtihād most naturally must be linguistic skills.
Has the size and scope of an article, but resembles a pamphlet both in terms of format and contents. It raises a vital issue, not only in the Malaysian context, but, I would say, in the global Islamic discourse. In failing to discuss more explicitly how the maqāṣid should be included in the discourse, the author runs, however, the risk of becoming another participant in the rhetorical game he is criticising both UMNO and PAS for. It is as if the author has laid down a conceptual framework for an analysis that we are nevertheless still waiting for. For instance, he lashes out at PAS’s hudūd initiative, but fails to demonstrate how this initiative clashes with the maqāṣid approach. After all, the proponents of the hudūd initiative may very well further the argument that these regulations are meant to protect the five key goals of the shari‘ah, as these are outlined by the author (pp. 34–5). Few Muslims would argue against Islam promoting general welfare and good values. That general message of the book is therefore easily brought home. The interesting argument, put forward in apt wordings, about the nature and scope of the Malaysian discourse in view of the maqāṣid al-sharī‘ah would however benefit from further substantiations.


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I received this book for review right in time for this special issue on maqāṣid, which is fitting, as the concept of istihsān is often interchangeable with maqāṣid (p. 34), as in al-Ghazālī’s description of maṣlahah consisting of ‘five essential values’, which we tend to call today maqāṣid or ‘objectives’. The book is a complete and well-documented history of the term and the concept. As such, it is a necessary reference for anyone studying Islamic law. I found especially valuable the author’s knowledge of the lineages in the ‘schools of Sunnite jurisprudence’, especially in the Ḥanafi ‘school’. The book will help any student trying to situate the legal scholars over the centuries.

The author shows how the concept is linked to ijtihād and thereby affirms the open nature of the ‘door of ijtihād’. The author gives us a list of scholars who provided qualifications for the mujtahid, but points out that al-Shāṭibī “ignored these lists and reduced the conditions of ijtihād to one comprehensive point: the precise comprehension of the maqāṣid and in the light of this comprehension the ability to deduce rules from the sources” (p. 301).
The author presents the very complicated and involved history of the concept in Islamic law in a clear narrative. However, there are areas when the reader needs more evaluation. For example, in the section on *ijtihād* by the Companions we follow some decisions made by ʿUmar. Even though

Muslim men are allowed to marry women from among the People of the Book (Christian and Jewish women), as stated in the Qur’ān (5:6), ʿUmar accepts this in principle, but he prohibited it because he believed it would be detrimental to Muslim women. In this example, we see conformity to *maslahah*, together with the principle of understanding and applying verses and *hadīth* by considering all the *naṣṣ*. ʿUmar has given a ruling that is in opposition to the general ruling of the *naṣṣ* in this special situation, according to the objective and spirit of the Sharīʿah. (p. 91)

This is certainly an important case and an evaluation is needed. What were the historical reactions to this over the centuries? Is there a connection between this and the Malaysian legal position on the matter of inter-marriage today? This case seems to be different from the decision not to cut the hand off the thief during famine, because in that case, the idea is that there is an unspoken precondition that the penalty is for the thief who knowingly steals something out of greed, not out of necessity. This might tie into the ‘moratorium’ called for by Tariq Ramadan. Many legal scholars rejected the Call vehemently, seeing it as a call to put aside a part of the law. Historically, and obviously, not every adulterer or thief was penalised. The reason is not because the authorities had put aside the *sharīʿah* but because they were quick to let doubt (*shubh*) preclude the very serious penalty.

ʿUmar also did not apply the general ruling about conquered lands, leaving the land “in the hands of its owners” and levying taxes “to pay the wages of judges, officials and soldiers. The taxes would also be used to help widows, orphans and those in need; in this ʿUmar was forward thinking, believing that these taxes would be for the benefit of future generations. In this example of *ijtihād*, ʿUmar has abandoned the general ruling and adopted a ruling that would implement the *maslahah* for the future of the Muslims” (p. 93). Again, this is a very important case and needs to be evaluated, not only historically but for contemporary reference as well.

Both the concept and the author’s descriptions go to the heart of the question of finding ‘Islamic’ solutions to problems. There are no clear answers, as evidenced by the intricate and wide-ranging debates over the centuries, but this book provides us with a map of Islamic law.
Ervand Abrahamian, A History of Modern Iran
ISBN: 9780521528917. £10.80

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Ervand Abrahamian, the author of this well-written book and a member of Iran’s
ethic Armenian minority, is Distinguished Professor of History at Baruch College
and Graduate Center of City University of New York. His previous publications,
among them The Iranian Mojahedin (1989), Khomeinism (1993) and Tortured
Confessions (1999), feature more or less the left-wing political perspective of their
author – especially in terms of socio-political and socio-economic analysis.

Another reviewer – Edward Mortimer, Senior Vice-President of the Salzburg
Global Seminar – pointedly stated that “Ervand Abrahamian has done for Iran what
de Tocqueville did for France, showing how the revolution continued the work of the
ancien régime through the ever increasing power of the state.” In addition to
this, other scholars in Iranian Studies, among them this reviewer who lived in Iran
for several years during the 1980s,1 have also argued that Iran’s foreign policy
under the post-1979 regime, too, shows remarkable signs of continuity (rather than
a break) with the previous Pahlavi era. In true Marxist analysis – but in the case
of Iran’s history since the late Qajar era – actually based on historical facts rather
than myths, Abrahamian argues throughout his book – as its main thesis – that the
history of Iran since the late 1800s is actually the history of the growth of the state.
The late Qajar period – the Pahlavi years – the current regime… all of them building
on the policies of their predecessor, even if day-to-day political announcements and
propaganda directed at the masses might suggest the contrary.

Iran at the beginning of the twenty-first century thus emerges as one of the
most powerful states in the Middle East. As this writer has argued elsewhere,2 this
regional pre-eminence of Iran is not the result of any chimerical Iran-sponsored
‘Shi’ite Crescent’, heralding the ‘fall’ of Shi’ite-dominated or majority countries
like Lebanon, Bahrain, or Iraq to a supposed remote-controlling regime in Tehran,
but rather based on purely altruistic national Iranian self-interest. The historically
informed observer will therefore notice an unbroken development: from the
pre-Islamic Sassanid period and its conflict with Rome – the Western ‘superpower’
of those days – over the Safavid period (from the sixteenth to eighteenth century)
which brought about this link between Iranian nationalism and Shi’ism that is
often thought to be the characteristic hallmark of Iranian identity, to the Pahlavi
regime which despite its dependence on the West was actually aiming at regional
domination, to finally the regime of an ‘Islamic republic’ under Khomeini and now

Islam and Civilisational Renewal
Ahmadinejad. The latter two merely used, mobilised and instrumentalised Shi’ite sentiments, anti-Western sensitivities among Sunnites, along with ‘converts’ to Shi’ism, throughout the Middle East and beyond, to further the national rather than religious interests of their home country – Iran. How deep national interest is currently determining Iranian foreign policy became clear also to a wider audience in Iran’s support of (Christian) Armenia in its epic conflict with (Shi’ite) Azerbaijan in the early 1990s (a support which continues to this day), or, long before that, in the so-called ‘Iran-Contra Affair’ and Tehran’s secret arms dealing with supposed archenemy Israel and the United States while the Ayatollah’s child soldiers were bleeding to death in their fight against Saddam Hussein’s Iraq. Policy-makers in the West would therefore be well-advised to see in Iran’s resurgence the superpower pretensions of a regional power.

Abrahamian’s book is an eye-opener and reads like a thriller – without featuring the often lengthy and boring lecturing of several of his other left-wing colleagues among the analysts. It shows how – since the late Qajar era, over the Pahlavis, to the current regime – the power of the central government in Tehran has grown rather than diminished. This growth of central authority has led to higher tax revenue and, subsequently, to drastic increases in military expenditure and internal structural development. The current high level of development would have been impossible without reference to the roots that had been planted in the Pahlavi era. Abrahamian, therefore, is also right when he considers the 1978/79 revolution not as the result of some sort of religious sentiment, but rather the outcome of failed socio-economic policies – a revolution in which several (and quite dissimilar and at times antipodal) segments of Iranian society took part, but which was merely ‘high-jacked’ by the Shi’ite clerics.

There are, however, also some shortcomings for which the editor in particular seems to be responsible and which could have been easily avoided. For example it seems reasonable to suggest that, for a book aimed beyond Iranicists, it is unacceptable from an editorial point of view (not to speak from that of professionalism) that a reputable publisher like Cambridge University Press has apparently left almost untouched the author’s haphazard and inconsistent (and often even unintelligible) style of transliteration. On the other hand, the volume contains also several very telling illustrations – postal stamps from the Pahlavi and post-1979 periods – which demonstrate further the prevalent policies of the time.

In sum then, specialist and general readers alike – together with, hopefully, policy-makers in the West – will certainly profit greatly from this slim but meaty volume as this authoritative overview of twentieth-century Iran fills a gap in the literature of Iranian Studies and as it opens new vistas and avenues for addressing the question of Iran’s future.
Notes

2. Ibid., 81–2, 95.

P. Lim Pui Huen, Johor: Local Histories, Local Landscapes, 1855–1957
(Singapore: Straits Times Press, 2009), 240 pp. ISBN: 9789814266260. SG$55.00

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On 15 July 2010, IAIS Malaysia hosted a public seminar on “The Impact of Globalisation on Contemporary Muslim Societies”, which was attended by more than 300 guests, among them foreign diplomats and academics. The highlight of this event, however, was the Royal Address by HRH Raja Zarith Sofiah binti Almarhum Sultan Idris Shah II, the consort of the Sultan of Johor. In her speech, entitled “Globalisation: Building Bridges Between Islam and the West”, HRH Raja Zarith Sofiah pointed out that mutual understanding is also important if Muslims are to rid themselves of their stereotypical image as terrorists and extremists, whereas Muslims must know that they share a common history with people of other faiths. Elsewhere, this reviewer, too, has been trying to emphasise the important role played by Malaysia’s monarchy within the context of the contemporary discourse on extremism.1 As a matter of fact, Malaysia’s system of constitutional monarchy has always understood itself – and indeed functioned – as a mediator and a bridge. Johor Darul Ta’zim – the ‘Abode of Dignity’ – and its Sultans had always been such a bridge between civilisations. Johor is also one of those Malaysian states that are still marked by mutual respect between the races and mutual love between the royal family and their subjects.2 One of the heroes of Johor’s more recent history, HRH Sultan Abu Bakr, the great moderniser, is also fondly known as the ‘Father of Modern Johor’, as many historians accredited Johor’s development in the nineteenth century to his enlightened leadership. He initiated policies and provided aids to ethnic Chinese entrepreneurs to stimulate the development of the state’s agricultural economy which was founded by Chinese migrants from Southern China in the 1840s. He also took charge of the development of Johor’s infrastructure, administrative system, and military and civil service, all of which were modelled closely along Western lines. Sultan Abu Bakar was also noted for his diplomatic skills, and both the British and Malay rulers had approached him for advice in making important decisions. He was also an avid traveller and became...
the first Malay ruler to travel to Europe during his first visit to England in 1866. Abu Bakar’s friendship with Queen Victoria played an important role in shaping Johor’s relationships with Britain: Johor was to be the only state in Malaya to maintain autonomy in its internal affairs as the British Colonial Government pushed for greater control over the other Malay States.

The author of this splendidly illustrated volume, Datin P. Lim Pui Huen, comes from a family with deep roots in Johor, one of the most developed and fastest-growing states in contemporary Malaysia. Her grandfather, Wong Ah Fook, was one of its early pioneers and his son, Dato’ S.Q. Wong, was a member of the Council of State for more than twenty years. Her husband, Dato’ Lim Kee Jin, served as State Physician for an even longer period. Previously, she has written about secret societies, clan associations, Chinese genealogies, and the Second World War in Malaya. Her writings – including this volume – and her biography of her grandfather reveal her connections to Johor and her fascination with its history. They also reveal an absorbing interest in the theme of continuity and connectedness between past and present, tradition and modernity, and people of different communities, with different ethnic and religious backgrounds. As a matter of fact, this book grew out of the support of many such people who obligingly scoured their memories, searched their photo albums, peeled pictures from their walls and willingly subjected themselves to long interviews with the author.

How Johor was transformed from virgin jungle into a vigorous economy and a harmonious society, and how Johor Bahru – the state capital – grew from a village on the shoreline into a bustling metropolis, separated from neighbouring Singapore only by the Causeway – that is the story told in this book. Visionary leadership by the Sultans of Johor and the various state governments along with the energy and entrepreneurial spirit of its people kept Johor always a step ahead – whether as the world’s largest producer of pepper and gambier or as Malaysia’s largest rubber producer – not to mention its leading role in the struggle for Malaya’s independence from British colonial rule in the later 1940s and 1950s. Moreover, in both World Wars, the Royal Johor Military Force (Timbalan Setia Negeri of Johor – until today the only state in Malaysia that has its own military force – fought bravely on the world’s theatres of war.

Johor was always modern in its policies and multicultural in its outlook. Although also deeply committed to Malay tradition and Islamic religion, the Sultanate of Johor was at the same time welcoming to technological development and progress. In Johor, we encounter an open multicultural society that sets this state so refreshingly apart from certain regions that seem to be marked by bigotry, ethnic inbreeding and racial prejudice. This reviewer, who over the last 15 years or so has had the privilege of enjoying the friendship of Johorians from all sectors of life, would also argue that Johor is still multicultural Malaysia at its best. Moreover, in spite of
huge losses for the Barisan Nasional (BN) coalition government in other – mostly northern – parts of West Malaysia in the 12th Malaysian national elections of March 2008, the world seems to be still in order in Johor. There, Malays, Chinese, and Indians seem to understand (and appreciate) perhaps a bit better than elsewhere what it means to live in a multicultural setting – and what would be the rather grim alternatives.

This book then is a history of and a tribute to this interaction of people and of a landscape that has come together to make Johor what it is today. Archival documents, maps and photographs as well as many family albums and personal memories contribute to this treasure chest, a multifaceted account of the history of Johor, which became a separate entity and state in 1855. The nineteenth century’s ‘opening up’ is shown by referring to the export of gambier, pepper and rubber, the building of modern palaces, mosques, schools and government offices in the state capital Johor Bahru and in other towns, such as Muar, the merits of its own Armed Forces and Civil Service, a measure of external independence as an Unfederated Malay State under British protectorate rule, a range of sports and pastimes which even included a Grand Prix, the local writers and an active press in English and other languages, a railway that already in 1909 linked Johor Bahru to Penang, and the Causeway to Singapore, built in 1924.

Moreover, Johor’s confusing experiences in the period just before, during and after the brutal Japanese Occupation (1942–45) are seen by the author as contributing to its role in the 1957 achievement of Malaya’s political independence. As a matter of fact, many of the heroes of the Malayan independence struggle hailed from Johor. Dato’ Sir Onn bin Jaafar (1895–1962), for instance, was the Chief Minister of Johor and the founder of the United Malays National Organisation (UMNO), which came into being at Istana Besar – the Royal Palace – in Johor Bahru on 11–12 May 1946. His son was Tun Hussein Onn, the third Prime Minister of Malaysia, and his grandson is Hishammuddin Hussein, currently the Malaysian Minister of Home Affairs.

Those who love Johor – like the writer of these lines who has manifold wonderful memories of its people – a state where Malaysia’s three component races live peacefully together, will also love this beautiful book which is a fitting tribute to Johor’s strong commitment toward building a strong, truly independent and multicultural Malaysia.

Notes

At the time of writing, this reviewer was working (for the IAIS Occasional Paper Series) together with friends from Muar, Johor, on a pictorial biography of the late Abdulqadir bin Said, a soldier and member of the police force, who was highly decorated by several Sultans of Johor, a member of UMNO who also served as liaison with MCA, the ethnic-Chinese Barisan Nasional component party. He was fluent in Cantonese (from which he used to translate simultaneously during joint UMNO–MCA meetings) and at various incidences travelled to Taiwan with his friends from MCA, representing UMNO.


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Arun Bala has produced a significant and timely book addressing the roots of contemporary civilisational misunderstanding between European-American exceptionalism and the emergent global cosmopolitan worldview. Bala is a reputable physicist who taught history and philosophy of science at the National University of Singapore, and presently heads a project at Singapore’s Institute of Southeast Asian Studies studying the Chinese, Indian and Islamic scientific traditions with their role in the rise of modern science in Europe. His book brims with concise condensations of controversies in the history of science that convey the gist of complex issues in a fluid digestible style. It unveils vast historical perspectives linking continents and weaving through centuries, replete with comparative analyses of major intellectual, scientific and cosmological topics. It also sparkles with genuine insights proffered as hypotheses awaiting criticism and testing.

Arun Bala presents in 183 pages an incisive corrective to the prevailing Eurocentric bias of ‘modernity’ coupled with his call to broaden and deepen the basis for a vital truly universal science. This is a richly nutritious read opening new vistas upon our current civilisational dilemma and its implications for late-modernity. His work is also humbling and ego-deflating for proponents of one’s own particular civilisational uniqueness when claiming a unique copyright for scientific originality – whether European, Islamic, or Asian. This review can only touch on several of his more important themes and arguments with an eye to the challenge posed for renewal of civilisations.

Bala asks “Why did modern science develop in Europe and not elsewhere?” – or more crudely, “Why didn’t the Chinese or the Muslims beat Europeans to
the Scientific Revolution?” So – “Is modern science a multicultural or European phenomenon […] or a dialogical product that can be seen as both?” (p. 47). But if contemporary scientific knowledge is taken to be universal and global and uniquely associated with Western culture, having displaced all other traditions of science which existed in non-European civilisations, then does it constitute “the only possible universal and cosmopolitan tradition of science” (p. 11)?

Bala proceeds to dismantle the hegemonic claims of ‘modern science’ as it unfolded from the seventeenth century onward in western Europe and diffused round the globe by European imperialism over the nineteenth and twentieth centuries, currently cemented into place by Euro-American capitalism in its neo-liberal free market incarnation. He dissects the dominant one-sided interpretations of the Renaissance and Copernican Revolution, which laid the basis for the emergence of the modern physical worldview at the heart of contemporary science. He highlights the prevailing view that presumed cultural deficiencies and inhibiting social and religious factors precluded the emergence of modern science in other major scientific traditions before the birth of modern science. These ‘traditional’ scientific teachings include the Egyptian, Greek, Arabic, Indian and Chinese traditions. (By ‘Arabic’ Bala denotes the Islamic tradition largely written in the Arabic language, but not exclusively.)

This widespread urge to identify deficiencies and obstacles in non-European traditions arises from the presupposition that modern science constitutes ‘the only possible universal’ scientific tradition. Religion in particular is frequently seen as a negative factor inhibiting the emergence of the modern scientific worldview, as well as a major cause for the decline of traditional science (whether in India or in Islam).

Bala uncovers the progressive links between the Ashʿarite theologian al-Ghazālī’s critique of falsafah and its Aristotelian conception of causation – whereby regularities of perceived connections became viewed not as necessary cause-and-effect, but as ‘the habits of God’ – and which led ultimately to Newton’s view that God created atoms and laid down laws mediating their interactions.

Bala observes that the new science arrived at this conclusion by induction, replacing God’s habits by human habit and custom; and he cites Professor Osman Bakar who had already pointed to the close parallel between Hume’s view and the teachings of Ashʿarite theologians. Furthermore, the very concept of universal natural law discoverable by empirical methods should be seen as conditioned by debates between philosophy and theology in Islam (pp. 119–23).

Dogmatic errors die slow deaths, and the ‘porter’ theory of Islamic civilisation bearing Greek science and thought into Renaissance Europe is still alive and well in Western universities. It is only the prevailing distortion of Eurocentric histories of Islam “as merely having the role of preserving and transmitting the Greek heritage” (p. 109) which leads Euro-American historians of science to “ignore the wider
context of the philosophical and scientific ideas they inherited from the Arabic tradition” (p. 108), and to emphasise only their own older Hellenic roots for these ideas while ignoring the seminal contribution of other civilisations. Bala accurately portrays such arrogant supposition as “aggrandizement”, and he systematically dismantles this fanciful delusion by his detailed marshalling of evidence regarding Indian, Islamic and Chinese scientific and intellectual achievements.

Incidentally, he observes that the ‘myth’ of the Middle Ages in Europe with “its view of Arabic civilization as a mere carrier and European civilization as the legitimate heir of the Greek tradition” (p. 61), was invented in order to avoid the charge that translations of Arabic texts into Latin brought the transmission of Islamic thought and science into Europe. The confluence of Muslim science and philosophy, along with Chinese technologies through (Mongol occupied) Eastern Europe, initiated the Renaissance and the birth of modern science in Europe. In chapter 10 ‘Integrating Hellenic and Indian Traditions’, Bala reminds us that Islamic scientific and intellectual experience actually represents a creative fusion of Indian, Persian, Greek and Chinese traditions, elements that mingled and cross-fertilised under the umbrella of the Islamic religious and cultural synthesis.

In chapter 8 ‘The Alhazen Optical Revolution’, Bala treats the remarkable work of Ibn al-Haytham (d. 1030) and his profound influence on optical science in Europe from the thirteenth century onward paving the way to major advances by Huygens and Newton. This brings Bala to a fresh appreciation of how Muslim scientists privileged mathematical realism, sensory observation, and the accurate unbiased observation of nature. Beyond this, he links Alhazen’s achievements with Enlightenment epistemology which enthroned vision as the master sense in modern thought and inspired Descartes’ visualist paradigm, and the perspectival, aesthetic and epistemic methods in art and architecture. Here again, Bala is forced to complain of the lack of objectivity of Euro-American thinkers in failing to give historical recognition to the great originality of Ibn al-Haytham “in creating the ocularcentric perceptual and conceptual reorientation to nature […]. The main problem appears to be the dominant Eurocentric orientation of historical studies in science, which makes it difficult to accommodate and acknowledge the dialogical influences that have conditioned both modern science and its philosophy” (p. 93).

In two major chapters (chapter 7 ‘The Narrow Copernican Revolution’ and chapter 13 ‘The Wider Copernican Revolution’) Bala covers the fundamental shifts in planetary and astronomical models and changing notions of impetus, gravitation, and mathematic realism unfolding from Copernicus through Galileo, Kepler, Descartes and Newton. Here he integrates his summary of remarkable advances accomplished by Indian mathematical astronomers from Aryabhara (d. 550), Brahmagupta (d. 670) and Bhaskara II (d. 1185), who impacted directly
upon Islamic thinkers. Chapter 13 consists largely of an extended critique of Thomas Kuhn’s portrayal of the birth of modern science from Copernicus until Newton, with Bala taking him to task for adhering to dogmatic Eurocentrism. The significance of this chapter is difficult to exaggerate. Bala’s independence of mind is demonstrated in his discussion of the alchemical and occult roots of the heliocentric vision entertained by Copernicus and motivating Newton, which Bala traces to the impact of Hermetic philosophy rooted in ancient Egyptian solar cosmology (pp. 152–7, 162, 173–4). He rightly dismisses T. Kuhn’s identification of such ultimately Egyptian elements as merely neoplatonic (i.e. Greek), this being an instance of Eurocentric aggrandizement.

Bala provides an informed historical critique and persuasive intellectual synthesis which attains a sustained level of consistent plausibility. His work will surprise and intrigue many, deflate the self-assured vain confidence of others, and mightily enlighten those thirsting for a global perspective on our human search for a more adequate model of the universe. What is at stake in these pages is nothing less than the urgent need to forge new ‘corridors of communication’ between civilisations and polities – beyond the trite outmoded notions of competition or clash, and toward conversations yielding reciprocal cooperation and mutual convergence. Arun Bala is to be congratulated for the vigour and originality of his thoughts and for the energy and conviction which dish them out to nourish his readers.


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The word ‘sustainability’ has blossomed into so many ideas (some count 500) that it risks losing any scientific value. The authors of *Sustainability Science for Watershed Landscapes* take a concept of positive sustainability that posits sustainable growth as neither an objective nor a constraint. Their most important contribution is their effort “to embrace policy sciences” (p. 3, Ravago et al.).

We seem to have in the field research and studies that are scientific, and writing that is political, activist, and advocatory. Even within this volume, it is not obvious that the two directions can merge or even speak to each other. On the political side, we have a particular analysis of a problem:

‘greedy growth,’ the proliferation of government entities, projects and regulatory policies to transfer rents from taxpayers to the ‘iron triangle’ of politicians, bureaucrats, and special interests. (Ravago et al., p. 16)
The authors describe this iron triangle:


With this iron triangle, money speaks and corporations get their way:

Politically influential entrepreneurs are able to obtain exemptions or easy passage through the barriers. For example, even though the poultry lobby has managed to use the WTO apparatus to protect themselves from importation of low market-valued chicken parts, McDonalds has succeeded in exempting themselves. Similarly, Coca-Cola and other large companies have managed to secure low-cost sugar, even as potential small-scale candy makers and canned fruit manufacturers are unable to access the same benefit. While Monsanto and Cargill may be able to accelerate the Bureau of Plant and Industry quarantine procedures and other restrictions on importing seeds, farmers who want to experiment with new varieties would face great difficulty in doing so. (Ravago et al., p. 23)

What is unclear is how ‘science’ is going to break the iron triangle. What is worse, we know how ‘science’ can get implicated into the iron triangle. A partial answer is policy science, and that means finding ways to get the science into policy. And one way is to work for a ‘virtuous circle’ with transparency and accountability. “The third condition for the endurance of the virtuous circle is for transparency and accountability to become more than buzz words. Transparency includes information systems that reveal what the government is doing, what the economic consequences are, what groups enjoy the benefits, and who bears the costs” (Ravago et al., p. 29). Governments that have declared themselves interested in transparency could then be approached this way.

The apparent split between “science” and “politics” is seen by the public. They do not see governments working from science, and so they assume failures are failures of science, not politics (such as the iron triangle). The authors describe it this way:

Because of these so-called ‘boundaries’ between scientists and decision makers, knowledge and action are de-coupled because of failures to integrate, communicate, and translate information effectively into action. As a result, knowledge systems are used ineffectively. This has caused crop yields, fishery stocks, and water levels in aquifers to decline. Because of such failures, scientific information is unjustly viewed by the public as lacking in ‘salience, credibility, and legitimacy’. (Kido et al., p. 128)

In a way mirroring the apparent split, other contributions to this volume are highly technical, local studies. How they fit into the big picture – or into the iron triangle picture – is not clear. However, the beginnings of a real solution may be emerging. “A central challenge of sustainability science is how to make research practical and
action-based as well as advancing the frontiers of scientific knowledge” (Burnett et al., p. 341). These technical and local studies explore the positive ways information can be used by the actors involved. Knowing differences in water content of soil under rubber, tea, secondary forest and grassland sites, for example (Guardiola-Claramonte et al., p. 245) is important for policy. Understanding how feral pigs lead to mosquito proliferation (by consuming the inner cores of native ferns [Bruland et al., p. 256]) is important for policy.

When governments are able to access solid science and the ‘knowledge systems’ of scientists, they are able to make policies that are beneficial. There is still a political dimension for activists, but certainly there is a need for policy-relevant science. This volume is an important start toward the integration of science and policy.

**Jonas Adelin Jørgensen, Jesus Imandars and Christ Bhaktas: Two Case Studies of Interreligious Hermeneutics and Identity in Global Christianity. Studies in the Intercultural History of Christianity 146**

(Frankfurt am Main: Peter Lang, 2008). xii+481 pp. ISBN: 9783631584866. US$107.95

**Mika Vähäkangas Centre for Theology and Religion, Lund University**

The end of colonialism, the previously unparalleled level of religious plurality due to both migration and internal diversification of various societies, and lastly the shift of the centre of gravity to the global South in terms of the membership of Christian churches are changes with which Western academic Christian theology has to come to grips with. The high tide of colonialism, and its theological equivalent – ethnocentric religious arrogance – was followed by the end of colonial era, reflected also in theology. When one combined the suddenly grown religious pluralism in the West and the remorse for the colonial past an outcome was a number of liberal (or, at times, seemingly liberal) pluralistic or relativistic theologies of religion. That could be called ‘post-colonial’ in the sense of being _epi_-colonial.

To reach a real post-colonial stage in theologies of religions, i.e. leaving colonial heritage behind, a new generation seems to be needed – born after the colonial era, and to whom religious plurality is a self-evident fact. Jonas Adelin Jørgensen, a Copenhagen missiologist and systematic theologian, belongs to that generation. He analyses the faith and the practice of two types of believers on the border-zone between Christianity and other religions: Jesus _imandars_ of Dhaka, Bangladesh and Christ _bhaktas_ of Chennai, India. They both confess Jesus as their focus of faith while clinging to their identities as Muslims and Hindus.
Jørgensen has collected a highly interesting corpus of interview and observation material from both cities, from several groups. The outcome of his description and analysis of the sources is that while these followers of Christ reject organisational Christianity, in the content of faith they come surprisingly close to (some forms) of especially Protestant internalised piety. His interpretation of their faith does not at least overemphasise their variation from what in the West has been labelled as ‘classical Christianity’. Jørgensen’s treatment of the Jesus imandars and Christ bhaktas makes highly interesting reading, even though it contains relatively much redundant material due to a rather rigid form of presentation.

However intriguing the analysis of empirical data is, his study contributes more to systematic theology. Jørgensen breaks the old western tradition of philosophy as the primary discussion partner to theology, and rather makes use of empirical realities, like in much of the Two-Thirds World theology. Unlike some older liberation theologies discussing with social theories, Jørgensen bases theological debate on his own research, done in order to feed data to theological discussion.

There are a number of theological insights provided by this approach. Firstly, in these cases contextualisation takes place through a syncretistic process, and the author considers contextualisation to be a syncretistic process by nature. The syncretistic nature of the process, however, does not necessarily result in doctrinally “illegitimate” syncretism, Jørgensen argues. What remains open, however, is what are the exact limits and criteria for ‘legitimate’ syncretism in terms of doctrine. Secondly, syncretism should not be understood as an opposite of Christian identity but rather as a way of constructing a relevant Christian identity. This is understandable when considering the previous point because a goal of contextualisation is construction of a viable local Christian identity. Thirdly, this syncretistic process between foreign Christian and local non-Christian traditions takes place in a multi-faceted way, i.e. the same people use several different strategies to work on their world-views and identities. This need not mean internal contradictions but rather that the believer is able to locate issues on different levels. Fourthly, the fact that one is committed to his faith does not necessarily make him a rigorous bigot. Rather, commitment may serve as a foundation for openness for change and learning from other religious traditions.

Jørgensen moves on to produce a sketch of a model for interreligious hermeneutics on the basis of his findings. The outcome is interesting, and it serves as a fresh start for another round of considerations on theology of religions. One remains looking forward to how he will develop his ideas further.

Despite the number of typos and grammatical mistakes and the sheer length of the book, Jørgensen’s study belongs to the list of highly recommended studies on interreligious relations.
EVENTS AND SIGNIFICANT DEVELOPMENTS

International Conference on ‘Muslims in Multicultural Societies’
(14–16 June 2010, Singapore)

Zarina Nalla, IAIS Malaysia

The three-day conference was jointly organised by the Islamic Religious Council of Singapore (MUIS), Oxford University, the University of Melbourne, and the Department of Malay Studies at the National University of Singapore. It served as a platform for other Muslim communities to share their experiences and to exchange ideas as pertaining to models, systems and processes for the further development of Muslims in multicultural societies.

Among the speakers were Dr Ibrahim Chao from Taipei (Representative at the Economic and Cultural Representative Office, Riyadh, Saudi Arabia), Professor Reuven Firestone (Professor of Medieval Jewish and Islamic Studies, Hebrew Union College, Institute of Religion, Los Angeles, United States), and Professor Yoginder Sikand (Research Associate at the Centre for the Study of Social Exclusion and Inclusive Policy, National Law School of India University, Bangalore, India). Other familiar speakers included Professor Tariq Ramadan (Professor of Contemporary Islamic Studies, Oriental Institute, St Antony’s College, Oxford University, United Kingdom), Professor Abdullah Saeed (Sultan of Oman Professor of Arab and Islamic Studies and Director of the National Centre of Excellence for Islamic Studies, Australia) and Professor Azyumardi Azra (Professor of History and Director of the School of Postgraduate Studies, Syarif Hidayatullah State Islamic University, Jakarta, Indonesia). Unfortunately, there was no representation from Malaysia.

The two theme papers – “Islam and Multiculturalism” and “Institutional and Community Capabilities for Viable Futures” – were presented by Ustaz Mohamed Fatris Bakaram, Deputy Mufti (MUIS), and Dr Albakri Ahmad, Dean of the MUIS Academy, respectively.

The conference was an attempt to address the following questions:

• What is the vision for the future of Muslim communities living in multicultural or pluralistic societies?
• How do Muslim communities in multicultural societies find inspiration in Islam to help them to be active contributors in the development and transformation of those societies?
• What are some of the reforms in religious thinking and practice which have facilitated this process?
• What are some of the successful models in institution building and civic engagement which have facilitated the progress of Muslim communities?

Initially, different definitions of multiculturalism surfaced at the conference. The Deputy Mufti of Singapore, for instance, explained that multiculturalism is not a foreign concept in Islamic history as, according to him, Medinan society at the time of the Prophet was a multicultural one. The lesson learnt was that major conferences should – prior to such events – ideally iron out parameters, definitions and terminologies.

Ustaz Fatris argued that what is usually referred to as the ‘Constitution of Medina’ was the first of its kind. He articulated clearly the Islamic position with regard to social interaction. The ‘Constitution’ also demonstrated an understanding of common space, shared responsibilities and brotherhood. Moreover, he encouraged Muslims living in all communities – especially in non-Muslim majority countries – to overcome the psychological stigma that plagues some of them and actively participate in and contribute to society at large. He also countered those who argue that Muslims can only participate fully if ‘Islamic law’ has supremacy in such a country. He went on to argue that the concepts of supremacy of Islamic rule and culture need re-examination. There is no historical basis for the claim that the Prophet Muhammad migrated to Medina with the objective of establishing an ‘Islamic state’.

Professor Abdullah Saeed explained that there can be four responses to diversity: to exclude (‘you are different and therefore must be left out’), to assimilate (‘you should become like us’), to tolerate (a concept encountered in multicultural contexts), and finally to understand and accept, a view promoted by pluralism as there is an emphasis on common citizenship. The fourth response is the ideal one, it seeks to understand and engage the other while maintaining differences. There should not be a need to water down respective identities. Saeed also contended that the ideas Dār al-Islām (‘Abode of Islam’) and Dār al-Ḥarb (‘Abode of War’, i.e. the lands of the non-Muslims) can no longer be relevant in today’s world. There needs to be a radical re-reading of the Qur’ān and Sunnah based on current contexts; Islamic law needs to be re-interpreted to face the challenges of the nation-state and the concept of common citizenship.

Professor Reuben Firestone explained how Islam as a religious tradition is much more inclusive than Judaism and how Muslims were most creative and productive
when interaction with other civilisations was at its peak. His answer to the perennial question of what caused the ‘decline’ of Muslim civilisation was that there was a general decrease of curiosity and interest in developing new resources for administration and ways of functioning. This was followed by insular behaviour. When new syntheses and cultural development were discouraged, creativity was not cherished and rewarded. Consequently, seeds of decay were planted.

Among the participants, there was consensus that there is an acute need for intra-Muslim dialogue and understanding, the lack of it doing serious damage to Islam as a whole. Moreover, there was consensus that Muslims should not abandon the prophetic tradition and heritage, and that Islam should not be considered an ‘imported religion’, but rather be an inclusive part of modern society. Moreover, there must be taken conscious steps in order to strengthen the ‘middle path’ (ummat wasat); Qur’an 2:143). Professor Ayumardi, for instance, made references to the work done by MUIS in this regard which provides a useful model for other Muslim communities to emulate. Moreover, it was argued that it would be critical for Muslims to strengthen Islamic-based civil societies. Muslims are in need of self-funding, self-regulating NGOs that can bridge the gap between state and society.

**Conference ‘Towards Building an Inclusive Malaysian Chinese Society’**

*Kuala Lumpur, 17 July 2010*

*Eric Winkel, IAIS Malaysia*

This conference was well-organised and provided an overview of the different communities of Chinese in Malaysia. The keynote speaker was internationally renowned historian Professor Wang Gungwu – University Professor at the National University of Singapore, Chairman of the Managing Board of the Lee Kuan Yew School of Public Policy, Chairman of the East Asian Institute, Emeritus Professor of the Australian National University at Canberra, and previously also Distinguished Professorial Fellow at the Institute of Southeast Asian Studies (ISEAS) where he is now Chairman of the Board of Trustees.

Wang described four groups and traced their influence on Malaysian society and internationally. The first group were male immigrants from China over the last 2,000 years who assimilated completely, becoming essentially Malay. Group B were pointedly not assimilated, because – under European domination – the colonial powers wanted to create and maintain a distinctively Chinese bloc of traders who would be their connection to China. The colonial powers, therefore, for their own interests, promulgated a separate ‘racial category’: the Chinese. Group C is probably the largest group now. Chinese immigrants were needed in the Industrial Revolution, and this group generally maintained a Chinese ethnic and cultural identity along
with a national identity. While the British sent workers from India to Sabah and Sarawak who generally stayed in the Malay Peninsula, the Chinese often did go all the way to Borneo to settle. Group D, in turn, is not that large. They are people who see themselves primarily in national Malaysian terms, not as ethnic Chinese. The efforts of the last few years to build a multi-cultural, multi-ethnic Malaysia play into historical demographic trends. The Malaysian government encourages the two groups, C and D. Group C are Chinese who identify themselves as Chinese and vote in an ethnic bloc, but also have a national Malaysian identity and help the nation develop harmoniously. Group D is interesting because they fall out of the cracks of government politics, not belonging to any ethnic bloc, and yet they contribute to national harmony by putting their ‘Malaysian-ness’ foremost.

Speakers then addressed issues of the Chinese communities in Sabah and Sarawak, respectively. This writer was interested to learn how outside historical events impinged on the Chinese demographics of the region. Somewhat similar to the above-mentioned Group A are the Sino-natives, or Chinese-Iban.

The names of buildings and streets in Malaysia became very much alive during the lecture on English-educated Chinese – Loke Yew, Chow Kit, H.S. Lee. In 1948, Sir Henry Lovell Goldsworthy Gurney (1898–1951) – he too has a street in Kuala Lumpur named after him – the British High Commissioner in Malaya who was assassinated by communist terrorists during the Malayan Emergency, advised the Colonial Office on the Chinese based on the following pattern: assimilated Chinese, no problem; Chinese locally-born and loyal to Malaya, no problem; the English-educated, no problem. However, concerning the non-English speaking Chinese he argued that they “can only be regarded as a menace”. The status of the English-educated was high up until the 1969 general elections, the speaker argued. In recent years, however, the division between English-educated and Chinese-educated is fading.

Dr Rosey Wang Ma gave an especially fascinating presentation. She referred to the Chinese–Muslim dichotomy as artificial. In fact, Islam has an uninterrupted history in China of 1,300 years – being thus fully half a millennium older than the history of Islam in Indonesia. With colonialism, the status of Islam in the eyes of the Chinese in Southeast Asia declined, with official colonial segregation of ethnic groups. Islam was identified with the Malays – and unfortunately this meant it was identified as disadvantaged. Without Chinese Muslim immigrants (the Hui), Islam became seen as Malay Jiao, the ‘Malay religion’. Today this has not really changed, because from the Constitution and onward ‘Islam’ is identified with ‘Malay-ness’, especially by the Malays themselves. Dr Rosey Wang Ma had a number of anecdotes to demonstrate this further: in one encounter, the teacher cannot figure out ‘who’ Dr Rosey’s own child is – “You are a Muslim, right? So, your father must be Malay.” “No, he’s Chinese.” “Is at least your mother Malay?” “No, she too is Chinese.”
And then, when her kids did not eat at a non-ḥalāl restaurant on a field trip, the organisers complained that they should have ticked ‘Malay’ in the bangsa (race) box. (One could well add to this, that Western converts to Islam living for many years in Malaysia often face similar, often offensive, ‘treatment’ from the part of Malay ‘born Muslims’.)

The hopeful solution is deeper appreciation of the closeness of Islamic values and Confucian philosophical ethics. These similarities made Islam an integrated part of China from the seventh century onward. Slides showing Chinese-Arabic calligraphy, pagoda-roofed mosques, and vases combining Islamic and Chinese motifs demonstrate conclusively the possibility of a Chinese Muslim identity. Dr Rosey Wang Ma ended with a plea to the Chinese community to accept this “community that combines Chinese and Islamic characteristics with a Malaysian flavour. What is important is for the Chinese community to accept their choice, and not dismiss them into another ethnic boundary.”

Meeting Between IAIS Malaysia and the Cordoba Foundation (TCF)  
(London, 16 August 2010)

Amjad Saleem, The Cordoba Foundation (TCF)

On 16 August 2010, a meeting took place at the London Muslim Centre (LMC), in Whitechapel, London, between the Institute of Advanced Islamic Studies (IAIS) and The Cordoba Foundation (TCF). In attendance were Mohammad Hashim Kamali (representing IAIS Malaysia), accompanied by his wife, Anas Altikriti (TCF), Amjad Saleem (TCF), and Abdullah Faliq (TCF).

The meeting’s discussions included brief introductions to each organisation, their mandates and work outline along with descriptions and identifications of areas of synergy and collaboration. The topics discussed and agreed upon included the following:

- There are areas of commonality for research;
- there is a need to develop a framework of cooperation and a paper exploring the potential areas for cooperation, especially with reference to being representatives of each other in the respective countries, Malaysia and the United Kingdom;
- both organisations will link each other on their respective websites;
- IAIS Malaysia is to create a space for TCF in its journal and other publications (and vice versa);
- there would be potential collaboration with regard to IAIS Malaysia’s Occasional Paper Series (OPS) and Monograph Series;
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- IAIS and TCF could promote each other’s works and publications in their respective regions. Publications and articles that highlight new areas of research and collaboration should be identified;
- Professor Kamali, IAIS Malaysia, and TCF could help with developing a workshop (and toolkit) for non-Muslims on the topic of ‘Justice in Islam’, which could also function as a precursor for a joint conference and publication;
- Professor Kamali has been invited to join TCF’s new board of advisers, whereas Anas Altikriti has been invited to write about the LMC in IAIS Malaysia’s publications and to become a member of the International Advisory Board of IAIS Malaysia;
- a basic agreement to look at a joint conference, including its theme/title/programme.
- The next step in the cooperation between TCF and IAIS Malaysia is to develop this conceptual framework and to discuss it further.

Visit to Malaysia by His Eminence Shaykh Dr Ahmad Badr al-Din Hassoun, Grand Mufti of the Syrian Arab Republic (2–9 October 2010)

Karim D. Crow, IAIS Malaysia

From 2 to 9 October 2010 His Eminence Grand Mufti Hassoun was present in Kuala Lumpur attending the ‘International Consultation on Faith, Shared Wisdom and International Law’ organised by the International Movement for a Just World (Malaysia) and three other academic or non-governmental centres from Australia, Sri Lanka and India. Mufti Hassoun and his family were guests of the Government of Malaysia and met with a number of government ministers, officials and civic groups. They were also lunching with YAB Prime Minister Najib Tun Razak in Putrajaya. His presence at the ‘International Consultation’ (see this writer’s other report in this issue) injected an elevated note of spiritual and ethical remembrance, and all the participants from around the world warmly welcomed the Mufti’s message of the oneness of ‘Adamic humanity’, the need for sincere faith, and the power of love to heal divisions or misunderstandings. His Eminence gave several interviews for the media highlighting his profoundly Islamic vision of respect for all religions. The highpoint of his visit may have been his lecture delivered at IAIS on 8 October on “Islam and the Challenges of the 21st Century” which sparked great interest and left a lasting impression of Shaykh Hassoun’s lofty humanity and his deep generosity of spirit.
International Consultation on Faith, Shared Wisdom and International Law (Kuala Lumpur, 3–7 October 2010)

Karim D. Crow, IAIS Malaysia

This event convened at Le Meridien Hotel in Kuala Lumpur and was organised by the International Movement for a Just World (Malaysia), the Centre for Dialogue at La Trobe University (Australia), the Weeramantry International Centre for Peace Education and Research (Sri Lanka), and the Sri Ramanuja Mission Trust (India). This international gathering of prominent thinkers, civic organisations, and religious and legal thinkers had a strong Asia-Pacific focus, and received support by current and former political leaders of Asia, including the Government of Malaysia. Over sixty individuals gathered in Kuala Lumpur for intensive discussions aimed at translating the shared wisdom of the world’s major religions and ethical traditions into concrete steps to promote a peaceful and ecologically sustainable world order, supported by clearly articulated principles of international law. Among the prominent persons attending were the Rt Hon Malcom Fraser (Australia’s Prime Minister from 1975 to 1983), His Eminence Shaykh Dr Ahmad Badr al-Din Hassoun (Grand Mufti of the Syrian Arab Republic), and Professor Mohammad Hashim Kamali (Chairman and CEO, IAIS Malaysia). Over four days separate working groups addressed major areas of human concern with new thinking and urgency, evolving commonly agreed-upon statements accepted by all that were integrated into a mutually agreed platform. This statement of common concern is to be disseminated to international bodies, the United Nations secretariat, and governments. Their hope is that the essential values held in common by humanity’s religious and ethical traditions may become reflected within the international legal order promoting human security, peace and a sustainable environment.

Conference on ‘Rethinking Sharīʿah: Who Speaks for Islam? Identifying the Key Voices and Their Resonance in the Muslim World’ (Georgetown University, Washington DC, 7 October 2010)

Osman Bakar, IAIS Malaysia

This event took place at the Edmund A. Walsh School of Foreign Service, Georgetown University, Washington DC, and was organised by the School’s Prince AlWaleed Bin Talal Center for Muslim–Christian Understanding. Its subtheme, ‘Identifying the Key Voices and their Resonance in the Islamic World’, provides an indication to the scope as well as the focus of the intended discussion.

The School’s Inter-Cultural Center (ICC) Auditorium was fully packed with hundreds of participants who came from all over the United States. The very good
attendance proved one thing. The post-September 11 US-American interest in Islam in its various aspects and manifestations, especially among the academia, is growing exponentially. This writer is perhaps particularly qualified to say this as he has taught at the AlWaleed Center for five years (2000–05), and even after he has left it he continues to be in close touch with it in his capacity as a member of the Center’s Academic Council.

In fact, the writer of these lines was able to attend the recent conference because he was at the University to attend the annual meeting of the Academic Council the following day. For several years now, it has been the practice of the Center to hold a one-day conference on Islam in conjunction with the Academic Council Meeting. In the view of this writer, there has been a lot of progress in the achievement of these conferences, not only in terms of the number of participants but also in the quality and seriousness of the discussions.

According to Jonathan Brown, the director of the conference who is a recently-appointed Assistant Professor of Islam and Muslim–Christian Relations at the AlWaleed Center, the theme of the conference has been inspired by the title of one of Professor John Esposito’s more recent books, *Who Speaks for Islam? What a Billion Muslims Really Think* (co-authored with Dalia Mogahed). This time though, the same question is being posed but with specific reference to the issue of the *shari’a*. In his welcoming address, Esposito, the Center’s Director, tried to rationalise the importance of the conference by situating issues of the *shari’a* in Islamic historical space spanning 14 centuries since the time of the Prophet Muḥammad and highlighting the need to comprehend the increasingly contested positions in the global discourse on the *shari’a* among both Muslims and non-Muslims. We find in the conference’s programme the same rationalisation of the conference theme when it says that “on issues ranging from extremist violence to women’s rights, both Muslims and non-Muslims interested in the effects of Islamic law on issues of state and society are faced with the question of who speaks for Islamic law today”.

The conference comprised three discussion panels. In Panel 1, moderated by Jonathan Brown, were two panellists and one respondent. The two panellists were Intisar A. Rabb, an Assistant Professor of Law at the Boston College Law School with a PhD from Princeton University, and Sherman Jackson, presently Arthur F. Thurnau Professor of Arabic and Islamic Studies and Visiting Professor of Law and Professor of Afro-American Studies at the University of Michigan, both of whom are Afro-American Muslims. The respondent was Mohsen Kadivar, a Visiting Professor of Religion at Duke University since the end of 2009, who is a philosopher, theologian, and jurist and one of the leading intellectuals of the Iranian reform movement. He taught at the Qom seminaries and several universities in Tehran for 25 years.
Panel 1 sought to address two questions: “Who defines and interprets Islamic law?” and “Who speaks for Islamic law?” In relation to these two questions, the panellists were also asked to address the question of what are the roles of the ʿulamāʾ and non-ʿulamāʾ or ‘lay intellectuals’.

In Panel 2, the panellists were Clark Lombardi, Associate Professor of Law and Adjunct Professor of International Relations at the University of Washington, and Ihsan Yılmaz, Associate Professor of Political Science at Fatih University, Istanbul. The respondent was Amira Sonbol, Professor of History at the AlWaleed Center who is currently seconded to the Qatar branch of the School of Foreign Service. This panel tried to look at specific cases in several Muslim countries where by means of state legal organs using sharīʿah language and methods a body of Islamically justified law is being produced as state law.

Panel 3 featured three panellists and two respondents who were asked to address the question “What is the future of Islamic law in the Muslim world and in the West among Muslim-minority communities?” The panellists were Andrew March, Associate Professor of Political Science, Yale University, Mohammad Fadel, Professor of Law at the University of Toronto, and Mathias Rohe, Professor of Civil Law, Private International Law, and Comparative Law at the University of Erlangen-Nürnberg, Germany. Professor Esposito and Lama Abu-Odeh, Professor of Law at Georgetown University Law Center, acted as respondents. Certainly of much interest to many participants was the issue of the future of Islamic law in the West. In the view of this writer, Professor Rohe’s discussion of the issue was of exceptionally high quality.

On the whole, it was a fruitful conference. Participants left better informed about the current state of the global discourse on the sharīʿah. The conference’s organisers had tried to excite a thoughtful discussion by posing a number of pertinent questions related to the theme. However, not all of these questions were adequately addressed. In the course of the discussions, new questions emerged that need follow-up discussions. I thought two presentations stood above the others in terms of depth of content and raising new thoughtful questions. Sherman Jackson’s presentation has raised up the issue of the delineating contours or parameters of Islam, the sharīʿah, and Jurisprudence (fiqh), the understanding of which is important if we are to answer well the question “who speaks for Islam?” Professor Rohe made emphatic remarks that there are possible avenues in European civil law for the realisation of Islamic law in the West and that he could see possible fruitful encounters between civil law and Islamic law to the benefit of both.
OBITUARIES

Mahmood Ahmad Ghazi (1950–2010)

Abdullah Al-Ahsan, International Islamic University Malaysia

The profound scholar of Islamic law and thought, Mahmood Ahmad Ghazi, passed away at the age of sixty on 26 September 2010 due to cardiac illness in Islamabad, Pakistan. At the time of his death Professor Ghazi was a judge on the Federal Sharīʿah Court of Pakistan and Chairman of the Sharīʿah Board of the State Bank of Pakistan. Previously, he served for many years as President and Vice-President of the International Islamic University at Islamabad and as Minister of Religious Affairs in the Federal Government of Pakistan. Dr Ghazi also contributed in various capacities to higher education and legal reforms in several Muslim countries such as Malaysia, Qatar, and Saudi Arabia.

Professor Ghazi had his early education in Karachi and Islamabad where he attended several religious schools and took his Matriculation, Intermediate and BA examinations as a private candidate. He then earned both his MA and PhD in Islamic Studies from the Punjab University in Lahore. Fluent in Arabic, English, French, Persian, and his native Urdu, Professor Ghazi published in both English and Urdu. His latest contribution to scholarship was an Urdu compilation of a series of lectures delivered in Islamabad over several years published in four volumes entitled Discourses on the Qurʾan, Life of the Prophet, Hadith, and Fiqh. Earlier English publications include Islamic Renaissance in South Asia – an analysis of Shāh Wali-Allāh and his early followers; The Sanusiyyah Movement in North Africa, his translation from French of Muhammad Hamidullah’s work Life and Work of the Prophet of Islam, and several books on uṣūl al-fiqh. He also published numerous articles on a wide variety of topics covering the sharīʿah and Muslim minorities, religion, state and society, the contemporary Islamic state, Islamic law and international relations, and on the Islamic law of war and jihād.

May Allah bestow His Mercy upon Mahmood Ahmad Ghazi and reward him for all his noble efforts in the service of humanity. An outstanding educator, judge and thinker, his untimely demise is an irreplaceable loss for the Muslim world. He leaves behind a mother, wife, and five daughters.
Mohamed Fathi Osman (1928–2010)

Eric Winkel, IAIS Malaysia

Professor Mohamed Fathi Osman passed away Saturday, 11 September 2010 in Los Angeles, California. He was an Egyptian author and scholar whose work focused on cooperation between Islam and other religions and whose writings include an overview of the Qurʾān for the general public, Concepts of the Qurʾān: A Topical Reading. His writings, including 40 books written in English and Arabic, were aimed at making Islamic civilisation and culture more accessible to non-Muslims and at showing Muslims that their religion provided the flexibility to adapt to modern times.

Fathi Osman was born on 17 March 1928, in Minya, Egypt. His undergraduate degree from Cairo University was awarded in 1948. He was on the faculty of Al-Azhar in the 1960s and received a PhD from Princeton University in 1976. He will also be remembered as a great scholar of the sharīʿah in contemporary Muslim society. In the 1980s he pioneered the field of fiqh al-aqalliyyāt, the jurisprudence of Muslim minorities.

One of his former colleagues, Reuven Firestone, directed attention to two major directions of Osman’s works: “The first was to make the case to non-Muslims that Islam is a complex civilisation and should not be seen as a flat ‘other’. The second, directed to Muslims, was to demonstrate through his scholarship that Islam is flexible and can accommodate modernity and still remain authentic to Islamic values and practices.” In an interview at the Center of Muslim–Jewish Engagement, Osman himself stated: “My central understanding in Islamic pluralism is that the basic idea that all human beings have the same origin and God has conferred dignity on humans as a race collectively as the Qurʾān states in Sūrah 17 Verse 70. It is the belief of the Muslim that all humans have dignity conferred on them by the Creator. This is different from considering them equal on either the basis of nationality or humanity. In these cases there is room for arguing about this equality or whether there are exceptions based on racial or geographical reasons, while in Islam it is a matter of faith and it is from God.”

He was a Resident Scholar at Omar Ibn Al Khattab Foundation and Founder of the Institute for the Study of Islam in the Contemporary World. At the University of Southern California’s Center of Muslim–Jewish Engagement he was the Senior Muslim Scholar.

Professor Mohamed Fathi Osman leaves behind his wife, Dr Aida, and daughter, Dr Ghada Osman, a professor of Arabic Studies at San Diego State University.
Emeritus Professor Mohammed Arkoun passed away in Paris on the evening of 14 September 2010 from cancer at the age of 82 years. An influential scholar of Islamic studies in Europe and in the Arab world, he made life-long contributions toward rethinking Islam in the contemporary world. Among Professor Arkoun’s numerous distinctions were being decorated as an Officer of the French Légion d’honneur in July 1996 and delivering the Gifford Lectures in 2001. He was also a noted connoisseur of classical Islamic music.

Coming from humble origins in the Berber village of Taourirt-Mimoun (Kabylie, Algeria), Arkoun studied at the Faculty of Literature at the University of Algiers, then at the Sorbonne in Paris (Agrégé in Arab Language and Literature, 1956, and PhD, 1968). From 1972 through 1992 he taught as Professor at the New Sorbonne University in Paris and was a Visiting Professor or a Fellow at several universities worldwide, among them Princeton, Los Angeles, Temple University, Rome, and Amsterdam. He was instrumental in establishing the Institute for Study of Islam and Societies of the Muslim World (IISMM) in Paris. From 1990 to 1998 he served as a member of the National Committee of Ethics of the French Republic. A profound humanist inspired by an inborn Mediterranean sensibility, Professor Arkoun was noted both for his intellectual rigour and lively humour.

Arkoun established his scholarly reputation early in the 1960s with solid studies of the ethical philosophy of the Iranian thinker Ibn Miskawayh (932–1030). He authored numerous books in French, English and Arabic (with translations into Dutch and Indonesian), including most recently: Rethinking Islam (Boulder CO, 1994), L’immigration: défis et richesses (Paris, 1998), The Unthought in Contemporary Islamic Thought (London, 2002), and Islam: To Reform or to Subvert (London: Saqi Books, 2006). As editor of one of the prime academic journals, Arabica (Paris), he made a lasting contribution in widening the scope and depth of western language scholarship on Islam. The works which arguably made the most impact were Lectures du Coran (Readings of the Qur’ān; 1st ed. Paris, 1982; 2nd ed. Aleef, Tunis, 1991) wherein he discerned multiple levels of historical, sociological and anthropological perspectives; and his seminal Pour une critique de la raison islamique (Towards a Critique of Islamic Reason; Paris, 1984). During his academic career spanning over 30 years Arkoun advocated Islamic modernism and humanism, and became a noted critic of the inherent tensions in being Muslim and being modern. This outstanding Algerian Berber thinker was laid to rest in Casablanca on 17 September 2010.
NOTES ON THE CONTRIBUTORS

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Osman Bakar is the Deputy CEO of IAIS Malaysia and Emeritus Professor of Philosophy of Science at Kuala Lumpur’s University of Malaya. He received an undergraduate degree and an MSc in Mathematics from the University of London. He then graduated from Temple University with an MA in Comparative Religion and a PhD in Philosophy of Science and Islamic Philosophy. Bakar is currently Professor of Islamic Thought at the International Institute of Islamic Thought and Civilisation (ISTAC) in the International Islamic University Malaysia (IIUM) as well as Senior Fellow at the Prince AlWaleed Center for Muslim–Christian Understanding, Georgetown University, Washington DC. He was also the holder of the Malaysia Chair of Islam in Southeast Asia at Georgetown University. Previously, Bakar was also Deputy Vice-Chancellor of the University of Malaya. He is the author of 15 books and nearly 200 articles.

Said Bouheraoua is the Senior Islamic Finance Consultant in Southeast Asia for Dananeer, an independent Islamic finance consulting and training company based in Luxembourg, a major European and international finance centre. He is also a Senior Researcher at the International Sharīʿah Research Academy for Islamic finance which is the research arm of Bank Negara, the Malaysian Central Bank. He is also member of the Sharīʿah Committee for the Affin Islamic Bank, Malaysia.
Dr Bouheraoua’s main research interests are Islamic Law of Transaction, Islamic Banking and Alternative Dispute Resolution. He obtained his PhD in the Theory of *Ijtihād* (interpretation of Islamic law) from the International Islamic University of Malaysia where he is currently an associate professor. Dr Bouheraoua is also a member of Dananeer’s *Sharīʿah* Committee.

**Mohammad Hashim Kamali** is the Founding Chairman and CEO of IAIS Malaysia. He graduated from Kabul University, before going on to complete an LLM in Comparative Law and a PhD in Islamic and Middle Eastern Law in the University of London from 1969 to 1979. Kamali was a Professor of Islamic Law and Jurisprudence at the International Islamic University Malaysia (IIUM) (1985–2007) and also Dean of the International Institute of Islamic Thought and Civilisation (ISTAC). He has taught at the Institute of Islamic Studies, McGill University, and has also held Visiting Professorships at Capital University, Ohio, and at the Wissenschaftskolleg, Berlin. Professor Kamali was a signatory of the international ‘Common Word’ document between Christians and Muslims and was a member of the Constitution Review Commission of Afghanistan (2003) and he also served as an expert on the new constitutions of Iraq, the Maldives and Iraq. He has published about 140 academic articles and 20 books, many of which are standard textbooks at English-speaking universities worldwide.

**Ahmad Kazemi-Moussavi**, a Canadian-Iranian scholar, is currently Professor of Islamic Law and Persian Language in the University of Maryland, United States. Prior to this, he had been a Full Professor at ISTAC in Kuala Lumpur (1992–2005). Born and educated in Iran, he received his bachelor degree in law from Tehran University. Subsequently, he served as a judge for five years before transferring to the Imperial Iranian Ministry of Foreign Affairs in 1968. Before retiring from diplomatic service in 1980, in the aftermath of the events that had led to the change of regime in his native country, he had served at the Imperial Iranian embassy in Canada. He received his PhD in Islamic Studies from Montreal’s McGill University (1991). Subsequently, he taught at McGill and Tehran University before joining ISTAC’s faculty in 1992, first as an Associate Professor and subsequently Full Professor. He is the author of several books, including *Religious Authority in Shi’ite Islam* (ISTAC, 1996).

**Andrew F. March** is an Assistant Professor in the Department of Political Science at Yale University in the United States, where he teaches political theory with special interests in contemporary liberalism, religion and political theory, and Islamic law and political thought. He has a PhD in Politics from Oxford University, where he studied on a Marshall Scholarship. His doctoral dissertation, “Islamic Doctrines of
Citizenship in Liberal Democracies: The Search for an Overlapping Consensus”, won the 2006 Aaron Wildavsky Award for Best Dissertation in Religion and Politics from the American Political Science Association. It was published by Oxford University Press in 2009. His research and writing interests are in various fields of contemporary political theory and Islamic legal and political thought. Currently, he is working on a new book project entitled Explaining Disbelief: Moral Epistemology and the Moral Other in the Islamic Tradition.

Christoph Marcinkowski, award-winning German scholar of Islamic and Middle Eastern, as well as Southeast Asian and Security Studies, is Principal Research Fellow and Co-Chair (Publications) at IAIS Malaysia. He holds an MA in Iranian Studies, Islamic Studies, and Political Science from the Free University of Berlin, Germany, and a PhD in Islamic Civilisation from ISTAC, where he served also as Associate Professor of Islamic History. He has held numerous distinguished fellowships, such as at New York’s Columbia University, Switzerland’s University of Fribourg, Singapore’s Nanyang Technological University, the National University of Singapore, and Kuala Lumpur’s University of Malaya. Professor Marcinkowski has published ten books, among them The Islamic World and the West (Vienna: LIT, 2009), Shi’ite Identities (Vienna: LIT, 2010), and Malaysia and the European Union (Vienna: LIT, 2011, in press), as well as about 100 articles and book chapters. Currently, he is working on two new volumes on Shi’ite organisations in Germany and the European Union, respectively.

Zarina Nalla is currently a Policy and Project Development Consultant with IAIS Malaysia. She holds a BA (First Class Honours, 1994) in Islamic Studies and Political Science from the International Islamic University Malaysia, an MA (1996) in Economics and International Relations from the School of Oriental and African Studies (SOAS), University of London, and an MBA (2002) from the University of Birmingham. After graduation, she joined the Institute of Strategic and International Studies Malaysia (ISIS) as a Researcher attached to then CEO and Chairman of ISIS, Dr Noordin Sopiee. She next gained corporate exposure by joining a consulting firm in Singapore. In 2007, she assisted Professor Mohammad Hashim Kamali in the establishment of IAIS Malaysia and served as its Chief Operating Officer until 2010. She helped organise and lead IAIS’ study on what is known in Malaysia as the ‘conversion issue’ – the debut project of the Islam and Policy Unit (IPU). She continues to be engaged in policy research and has spoken on gender issues, interfaith relations and the education system in Malaysia.

Halim Rane is currently the Deputy Director of the Griffith Islamic Research Unit and a Lecturer in the Islamic National Centre of Excellence Studies at Griffith
University, Queensland, Australia. He is also a member of the Key Centre for Ethics, Law, Justice, and Governance, as well as an Associate Investigator with the Australian Research Council (ARC) Centre of Excellence in Policing and Security. Rane’s PhD thesis entitled “Reconstructing Jihad amid Competing International Norms: Implications for a Resolution of the Israel–Palestine Conflict”, incorporates theory and methods from the fields of international relations and Islamic studies and presents a constructivist perspective of conflict resolution. His MA thesis was on the Australian press portrayal of Islam and Muslims. His undergraduate degree is in the fields of sociology and Islamic studies, attained in 1998 from the International Islamic University Malaysia. His research interests include political Islam, the Israel–Palestine conflict, Islamic thought and the higher objectives (maqāṣid) of Islamic law, and issues pertaining to Islam and the mass media.

Eric Winkel is since May 2009 Principal Research Fellow at IAIS Malaysia. After obtaining his PhD in Government and International Studies from the University of South Carolina in the United States he worked with the International Institute of Islamic Thought (IIIT) in Herndon, Virginia, and later the International Islamic University Malaysia (IIUM) on ideas of Islamisation. He has taught at universities in the United States, Mexico, and Pakistan as a Senior Fulbright Scholar and again recently at the National College of Arts in Lahore. His primary study focus over the last 20 years was on Ibn ʿArabī’s (d. 1240) Futūḥāt al-makkiyyah. His publications include Islam and the Living Law (Oxford University Press, 1996), Mysteries of Purity: Ibn al-ʿArabī’s Asrār al-Ṭahārah (Cross Cultural Publications, 1995), and a novel, Damascus Steel (CAR&D, 2001). His current work is an attempt to connect the world of the new sciences with the study of civilisational renewal.
AIMS OF THE JOURNAL

Islam and Civilisational Renewal (ICR) was established in order to link up the unique Islamic tradition of more than 1,400 years of dialogue, pluralism, and coexistence with other world civilisations.

ICR advances civilisational renewal, based on Malaysia’s Islam Hadhari (Civilisational Islam) initiative and its ten component principles:

1. Faith in God and piety
2. A just and trustworthy government
3. A free and independent people
4. A rigorous pursuit and mastery of knowledge
5. Balanced and comprehensive economic development
6. A good quality of life
7. Protection of the rights of women and minorities
8. Cultural and moral integrity
9. Safeguarding the natural resources and the environment
10. Strong defence capabilities

ICR aims at becoming a platform of policy-relevant contemporary research that will contribute to a better understanding of Islam’s universal teachings through inter-faith and inter-civilisational dialogue.
CALL FOR PAPERS

Islam and Civilisational Renewal (ICR) invites scholarly contributions of articles, reviews, or viewpoints which offer pragmatic approaches and concrete policy guidelines for Malaysia, the OIC countries, civic non-governmental organisations, and the private corporate sector. The principal research focus of IAIS is to advance civilisational renewal through informed research and interdisciplinary reflection with a policy orientation for the wellbeing of Muslim communities, as well as reaching out to non-Muslims by dialogue over mutual needs and concerns.

Our enquiry and recommendations seek to be realistic and practical, yet simultaneously rooted in Islam’s intellectual and spiritual resources, Muslim political and social thought, inter-faith exchanges, inter-civilisational studies, and global challenges of modernity.

Based at the International Institute of Advanced Islamic Studies (IAIS) in Kuala Lumpur, ICR’s inaugural issue appeared in October 2008 with contributions from distinguished scholars including Mohammed Hashim Kamali, Osman Bakar, Syed Farid Alatas and Christoph Marcinkowski.

ICR invites contributions on the following topics:

- issues of good governance and Islamic law reform in Muslim societies
- science, technology, development and the environment
- minorities and culture-specific studies
- ethical, religious or faith-based issues posed by modernity
- inter-faith, inter-civilisational, and Sunni–Shi’ah dialogue and rapprochement.

A complete list of topics may be consulted at: http://www.iais.org.my/research.html. Contributions should be submitted as an e-mail attachment in Word for Windows (Mac files must be converted) to: journal@iais.org.my as well as a hard copy (double-spaced and consecutively numbered on one side only) to: Associate Editor – ICR, International Institute of Advanced Islamic Studies (IAIS) Malaysia, Jalan Elmu, Off Jalan Universiti, 59100 Kuala Lumpur, Malaysia.

ICR is published in English and it is essential that to help ensure a smooth peer-review process and quick publication all manuscripts are submitted in grammatically correct English. For this purpose, non-native English speakers should have their manuscripts checked before submitting them for consideration. The Editorial Board holds the right to make any necessary changes in the approved articles for publication upon consultation with the writers.
GUIDELINES FOR CONTRIBUTORS

Islam and Civilisational Renewal (ICR) publishes original research works. Contributors to ICR should take the following guidelines into consideration:

Form

- Articles should not have been published elsewhere or sent for publication. Articles that have been a part of a dissertation can be considered if there is a major modification and adjustment.
- Articles should be between 6,000 and 8,000 words. Authors should also include a 100 to 150 word abstract, outlining the aims, scope and conclusions but not containing sentences from the article. Book reviews should not exceed 1,200 words, and Viewpoints 1,500 words.
- All submissions must include a separate page with the author’s name and current affiliation as they should appear in the journal and contact information (e-mail address, phone and fax numbers, and mailing address: all to remain confidential).
- Contributors will receive a free copy of the Journal issue in which their article appears.
- Authors are requested to extract actionable policy recommendations from their research – preferably in brief bullet point format in the conclusion.
- Languages based on Arabic script should be transliterated following the system applied in the Journal of Islamic Studies, Oxford (see Transliteration Table). In terms of capitalisation in languages other than English in bibliographical references, authors are encouraged to consult the Chicago Manual of Style (ch. 10).

Content

- The Journal is devoted to civilisational renewal, in particular of Muslim communities, while, at the same time, reaching out to non-Muslims.
- Submitted articles should be scholarly, but also accessible to a wider audience.
- Articles should be of relevance to contemporary practical issues faced by Muslim communities, such as Islam and its encounter with the West, but also science, technology and ethics.
**TRANSLITERATION TABLE**

**Consonants**

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1. When not final
2. -at in construct state
3. (article) al-

**Vowels**

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<th>Ottoman Turkish</th>
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**Urdu Aspirated Sounds**

For aspirated sounds not used in Arabic, Persian and Turkish add h after the letter and underline both the letters e.g. ˁˁ, ˁˁ, ˁˁ.

For Ottoman Turkish, modern Turkish orthography may be used.
SUBSCRIPTION RATES 2011

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