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MAQĀṢID AL-SHARĪ‘AH AND IJTIHĀD AS INSTRUMENTS OF CIVILISATIONAL RENEWAL: A METHODOLOGICAL PERSPECTIVE

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Abstract: This article develops the idea of a *maqāṣid*-based framework for civilisational renewal (*tajdīd haḍārī*), 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 *sharī‘ah* naturally reflect on the *sharī‘ah* itself in that the goals of the *sharī‘ah* arise from the *sharī‘ah* and are in many ways affected by developments in the *sharī‘ah* 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 *sharī‘ah*. 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 *sharī‘ah*. 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 *sharī'ah*. However, the *maqāṣid* still remained marginal to the mainstream *uṣūl al-fiqh*, but made a comeback only in the latter part of the twentieth century.

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

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

Beginning with the meaning and definition of *maqāṣid* and a brief review of its allied expressions such as *ḥikmah*, *'illah*, and *maṣlaḥah*, this article proceeds with a note on the relevance of *maqāṣid* to civilisational renewal (*tajdīd ḥaḍārī*). Next follows a review of the Qur'ān and *Sunnah* with special reference to their rule-based passages, namely the *āyāt al-aḥkām* and *aḥādīth al-aḥkām*. A question is posed whether the placement of Qur'ān verses and *ḥadīth* into these categories could also be made based on the objective and purpose (*maqṣid*) of a particular text, whether of the Qur'ān 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 mawḍū'ī*) as will be explained. This would help ascertain the place of *maqāṣid* not only in Qur'ān interpretation but also as valid criteria of *ḥukm* of the Qur'ān and *ḥadīth*. To link the *maqāṣid* thus directly to *āyāt al-aḥkām* and *aḥādīth al-aḥkām* could also address and overcome the historical marginalisation and neglect of *maqāṣid* in the legal theory of *uṣūl al-fiqh*. Then I expound the development of *maqāṣid* themselves through the reading in the first place of the clear text (*naṣṣ*), and then through juristic reasoning (*ijtihād*). The latter may consist in turn of inductive reasoning (*istiqrā'*), *istidlāl* and *'aql* (human intellect, unrestricted reasoning respectively), and then also of innate human nature (*al-fiṭrah*) that 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 *sharī'ah* that could evolve in tandem with the progress of science and civilisation. The basic hypothesis of this research is thus to expound, from the Islamic jurisprudential perspective, the uses of *maqāṣid* and *ijtihād* as instruments of civilisational renewal. The article ends with a conclusion and recommendations.

Meaning and Definition of *Maqāṣid*

Maqāṣid (singular: *maqṣid*) refers to the goals and purposes of the *sharī'ah* either generally (i.e. *al-maqāṣid al-'āmmah*), or in reference to its particular themes and subjects (*al-maqāṣid al-khāṣṣah*). Three other Arabic words that occur in the relevant literature of *uṣūl al-fiqh* and convey similar meanings to *maqāṣid* are *ḥikmah* (wisdom), *'illah* (effective cause/*ratio legis*), and *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 *sharī'ah* as a whole, or of a particular ruling thereof. It also signifies the objective of legislation, in which case, *ḥikmah* would be synonymous to *maqṣid*. It is unusual, however, to use *maqṣid* or *maqāṣid* in reference to God the Most High, such as *maqāṣid Allāh*, although *maqāṣid al-shārī'* – objectives of the Law-Giver – is commonplace, which is why Muslim jurists normally use *ḥikmah* in reference to Allah. One can, of course, use both *ḥikmah* and *maqṣid* almost interchangeably in reference to the *sharī'ah*.¹

'Illah signifies two meanings, namely *cause*, as in *cause and effect*, but also more technically in the context of legislation it refers to the effective cause and attribute of a ruling (*ḥukm*), of the *sharī'ah* for which it was legislated. For al-Āmidī (d. 1233),

'illah refers to the effective cause, or the *ḥikmah* and benefit the Lawgiver has considered in introducing a law.² This evidently brings 'illah very close to *maqṣid*, as per Muṣṭafā al-Zarqā' who wrote: "'illah could signify the *ḥikmah* of legislation in reference to the attraction of benefit or prevention of harm that may be sought through a legal command or prohibition". This would equate 'illah to *maqṣid* and make it synonymous with the goal and objective, or *ghāyah*, of the *sharī'ah*.³ I may add, however, that 'illah is normally tied to the existing text and status quo of the law, whereas *ḥikmah* in the sense of end-result and purpose looks equally to the present and future and is also not so closely tied to the specificities of the text. In their discussions of the 'illah of analogy (*qiyās*) the *uṣūl* scholars have stated that 'illah must be constant and unchangeable (*munḍabīṭ*) whereas *ḥikmah* need not meet this qualification.⁴

The *uṣūl* writers have used *maṣlaḥah* almost interchangeably with *maqṣid* and many have considered them as convergent and coterminous. *Maṣlaḥah* 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 *maṣlaḥah* only when it begets the purpose or *maqṣid* of the law. Some have said that *maṣlaḥah* is the cause that leads to the *maqṣid* of the Lawgiver, whereas others have held it to be identical with the purpose/*maqṣid* of the Lawgiver. Still others have described *maṣlaḥah* (pl. *maṣālih*) as a utilitarian concept that looks toward material benefits and pleasures palpable to the senses. Most writers thus appear to equate *maṣlaḥah* with *maqṣid*. I have elsewhere tried to draw a distinction between them to say that *maṣlaḥah* tends to be circumstantial and therefore changeable according to time and place, whereas *maqṣid/maqāṣid* tend to have a quality of constancy and permanence that may be lacking in *maṣlaḥah*. Hence one may say that a *maqṣid* may well be the ultimate purpose of *maṣlaḥah* and stand a degree above it. I also think that *maṣlaḥah* is a utilitarian concept for the most part and tends to contemplate material benefits of some kind, whereas *maqṣid* maintains a wider outlook that often rises above utilitarian concerns. And lastly the *maqāṣid* 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 *maṣlaḥah*, namely the unrestricted or unregulated *maṣlaḥah* (i.e. *maṣlaḥah mursalah*), although the accredited *maṣlaḥah* (*maṣlaḥah mu'tabarah*) is by definition textually-founded.⁵

Early pioneers of the *maqāṣid*, such as Abū Ḥāmid al-Ghazālī (d. 1111), 'Izz al-Dīn 'Abd al-Salām (d. 1262), and al-Shāṭibī (d. 1388), who wrote on the *maqāṣid* did not attempt a definition for it on the assumption perhaps of the linguistic clarity of the word itself. This can no longer be an adequate explanation due mainly to the sheer scope and diversity of writings on the subject that has developed ever since, both in the Arabic and other languages. Hence the need for a definition, which was, however belatedly, attempted by twentieth-century scholars such as Ibn 'Āshūr,

‘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 *maqṣid* that such a prominent contributor to the subject did not attempt a definition. The renowned *ḥadīth*-cum-legal maxim, *al-umūr^{al} bi-maqṣidiḥā* (human affairs are judged by reference to their purposes) was commonplace and frequently cited from early times.⁶

Ibn ‘Āshūr (d. 1973) defined the general objectives (*maqāṣid ‘āmmah*) of the *sharī'ah* as “the deeper meanings (*ma‘ānī*) and inner wisdom (*ḥikam*) that the Lawgiver has contemplated in respect of all or most of the *sharī'ah* 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 *sharī'ah* ordinances”.⁸ The two definitions differ only slightly in that according to al-Fāsī none of the laws of the *sharī'ah* is without a purpose, whereas Ibn ‘Āshūr put it that “all or most of the ordinances of *sharī'ah*” have their purposes. Al-Fāsī's usage of “hidden meanings – *al-asrār*” invites criticism as it would fail to meet Ibn ‘Āshūr's four conditions that the general goals of the *sharī'ah* must qualify. These are: firm, evident, general, and exclusive (*thābit, zhāhir, ‘āmm, tard*). Other jurists have generally concurred with the analysis that virtually all of the laws of the *sharī'ah* 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-sharī'ah* 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-Zuhaylī has given a more detailed definition of *maqāṣid* as “the ultimate goals, aims, consequences and meanings which the *sharī'ah* 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 *sharī'ah* has been promulgated in order to realise benefit (*maṣlaḥah*) 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 *sharī'ah* 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” (*hudā^{an} wa raḥmat^{an}*) (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 (*qīṣāṣ*) 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”.¹³ 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”.¹⁴

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

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

al-aḥkām were thus confined to practical rulings (*aḥkām 'amalī*) whose violation could also be proved by admissible evidence. But since the Qur'ān 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 Qur'ān on the essence of faith, prophethood, moral themes, encouragement and warning (*targhīb wa tarhīb*), stories and parables and matters of concern to the hereafter and so forth that share a common purpose. All of these could become part of the data that could justify extraction of the *āyāt al-aḥkām* from a much wider selection of verses.¹⁶

The *tafsīr mawḍū'ī* 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 *mawḍū'ī*, 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 *tafsīr*, and it is of interest to us here simply because identification of goal and purpose can only be done with a full knowledge of the theme and subject-matter in the first place, and our *tafsīr maqāṣidī* can be seen as complementary and supportive of the existing works. The wider framework proposed here for identification of the *āyāt al-aḥkām* would permit in turn, the moral and spiritual teachings of the Qur'ān 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 '*illah*' 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 *ta'līl* 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 '*illah*' of a ruling, known as *maṣālik al-'illah*, draws a distinction between '*illah*' and *ḥikmah*, validating the former and disqualifying the latter: the '*illah*' must be constant and unchangeable (*muṇḍabīṭ*), but the *ḥikmah* is changeable and therefore fails to provide a reliable basis of *ḥukm* and legislation. The *ḥikmah*, although essentially more logical, is thus not accepted as a substitute for '*illah*'. To illustrate, the Qur'ān grants the traveller during the fasting month a concession not to fast, but to observe it when he is no longer travelling. The '*illah*' of this concession is deemed to be the fact of travelling itself, and not as it were, the hardship that it involves, on the analysis that people tend to vary in their tolerance of hardship. Hence hardship, although the effective cause and *ḥikmah* of the concession, is disqualified and travelling itself is identified

as the ‘correct’ *‘illah*. To take a *maqāṣidī* approach to the identification of *‘illah*, it is proposed that the *ḥikmah* should in principle be accepted as a substitute to *‘illah*. The purpose of the concession in question is evidently to prevent hardship, and travelling itself can sometimes become (as in our times of fast and comfortable means of transport) rather a juristic façade and less than satisfactory for it to be a valid *‘illah*.

Maqāṣid and Sunnah

What has been said concerning a *maqāṣidī* approach to qur’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 *aḥādīth al-aḥkām*. These are also *ḥadīths* which lay down practical rulings, commands, and prohibitions that demand performance and constitute the actionable laws (*aḥkām ‘amaliyyah*) of the *Sunnah*. A great deal of the legal *ḥadīth* support and supplement the legal verses of the Qur’ān by way either of elaboration, specification, or qualification of the qur’ānic injunctions of concern to human conduct. These may include worship matters (*‘ibādāt*) and civil transactions (*mu ‘āmalāt*), but they also introduce, albeit on a limited scale, new rulings of the *sharī‘ah* on which the Qur’ān may be silent.¹⁹

Aḥādīth al-aḥkām are larger in number compared to the *āyāt al-aḥkām*. According to an estimate attributed to Abū Ḥāmid al-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 *aḥādīth*, would much depend on the methodology and purpose of the selection.²⁰ Unlike the Qur’ān which does not pose any question over the authenticity of its text, the *ḥadīth* does, and so does the selection of *aḥādīth al-aḥkām* from the large bulk of *ḥadīth*: if one proposes a *maqāṣidī* approach to the selection of *aḥādīth al-aḥkām*, one would need to verify the authenticity of the *ḥadīth* in the first place. Yet the issue over authenticity of the *aḥādīth al-aḥkām* may not be as challenging as that of the bulk of the *ḥadīth* itself. This is because the *aḥādīth al-aḥkām* are generally verified and adopted into the body of *fiqh* and the applied laws of the *sharī‘ah*, often endorsed by general consensus and continuous practice.

Since the thematic *tafsīr* (*tafsīr mawḍū‘ī*) has already gained general acceptance in the genres of Qur’ān 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 *aḥkām*

category at least, would be left for an independent attempt at classification on the basis of theme and purpose. If one were to assimilate the general purpose, spirit and rationale of the *ḥadīth* consistently with the Qur'ān, the criteria of selection of *ḥadīth* 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 *ḥadīth* is larger compared to the Qur'ān as a great deal of *ḥadīth* are known to have addressed particular situations that may or may not amount to laying down a general law or *ḥukm* of the *sharī'ah*. It is therefore important that in reading the *ḥadīth*, one is aware of its original occasion and context, and avoid, as Ibn 'Āshūr has warned, the temptation of engaging in literalism. "For holding on to the literalist understanding of *Sunnah* may miss out on implementing the spirit and purpose thereof, and worse still, if one unwittingly moves in the opposite direction, even through apparent adherence to its text."²¹ Ibn 'Āshūr 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 (*ta'mīm*) and particularisation (*takhṣīs*) of the rulings of the *Sunnah*. This was partly the reason why the Prophet discouraged his Companions from writing down his *ḥadīth*.²² It is advisable therefore to read the detailed rulings of *ḥadīth* in light of the general purposes and objectives of the *sharī'ah*. 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 *ḥadīth* 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 'Umar b. al-Khaṭṭāb resisted the pressing demands of his fellow Companions when he refused to do the same with the fertile lands of Iraq. 'Umar 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.²³
- (b) The same tendency could be seen in the ruling of *ḥadīth* on price control (*tas'ir*). 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.²⁴ But the opposite of this was ruled by the Successors (*tābi'ūn*), 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 *ḥadīth*, “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-Ḥanafīyyah 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 *ḥadīth* 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 *ḥadīth*. 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 *ḥadīth* 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 (*takhṣīs*) of the general terms of the above *ḥadīth*.²⁸
- (d) A woman who experiences menstruation during the *ḥajj* is allowed to continue, according to the instructions of a *ḥadīth*, with the rest of the *ḥajj* rituals except for circumambulation (*tawāf*) around the Kaʿbah.²⁹ Ibn Taymiyyah’s analysis of this ruling of *ḥadīth* 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 *sharī'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 *sharī'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 *sharī'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 *sharī'ah* do not overrule their *maṣlaḥah* 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 *sharī'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 (*'umrān*). 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 *sharī'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 fulfil one’s responsibility towards one’s family and society is equated with an act of worship that earns God’s pleasure: “I shall not let go to waste (without due reward) the work of a worker among you, man or woman [...]” (3:109).

On the prudent management of wealth, Muslims are directed to “let not those who are weak of judgment waste away the wealth God has made a means of sustenance for you” (4:5). Cooperation in good works among peoples and nations is a qur’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.”³²

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 (*‘aql* – also unrestricted reasoning – *istidlāl*), inductive reasoning (*istiqrā’*), and innate human nature (*fīṭrah*).

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 ‘Āshūr similarly described the *maqāṣid* as either “certain, or uncertain close to certainty – *qaṭ’ī aw ḥannī qarīb min al-qaṭ’ī*”.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* (*ḍaruriyyāt*), 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 *sharī'ah* 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 Qur'ān or *ḥadīth*. Failing which, recourse may be had to what al-Shāfi'ī and al-Juwaynī have termed as sound reasoning (*istidlāl*) and which 'Izz al-Dīn b. 'Abd al-Salām has termed variously as reason (*al-'aql*), experience (*al-tajrīb*) and innate perception (*al-ḥiṣrah*). These are roughly equivalent terms to that of al-Shāfi'ī'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 (*zuhūr* – it can be seen for what it is), constancy (*inḍibāt* – obtains in all situations), and exclusiveness (*ittirād* – 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.³⁶ In the event of a conflict arising between the evidential bases of two *maqṣids*, recourse may be had to the rules of interpretation pertaining to conflict and preference (*al-ta'arūḍ wa'l-tarjīḥ*).
2. *Inductive reasoning* (*istiqrā'*): Al-Shāfi'ī (d. 1388) proposed *istiqrā'* as a reliable identifier of *maqāṣid* next to the clear text. A *maqṣid* or goal of *sharī'ah* may be identified by a clear text, failing which recourse may be had to a general reading of the text: There may be various textual references to a subject, all of which may be in the nature of allusions rather than decisive declarations. Yet when read together their collective meaning and weight leaves little doubt as to

the purpose on which they concur. A decisive conclusion may, in other words, be drawn from a plurality of speculative expressions. Al-Shāṭibī illustrates this by saying that nowhere in the Qur'ān is there a specific declaration to say that the *sharī'ah* has been enacted for the benefit of mankind. Yet this is a definitive conclusion drawn from a general reading of the Qur'ān.³⁷

Similarly, the Qur'ān 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 *sharī'ah* requirements, even in the absence of clear evidence. One should in such cases look for evidence in the clear text, failing which one resorts to a general reading of the text and ascertain its purpose. For instance, if human dignity (*karāmah*), equality (*musāwah*), justice ('*adl*), and fair treatment (*iḥsān*) are the overriding objectives of the *sharī'ah*, then the question arises as to how they are reflected in the contested positions at issue.

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

3. *Human intellect* ('*aql*): 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 '*aql* 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 ('*ibādāt*').³⁸ The discourse on this point tends to run parallel, for the most part, with the one that has arisen concerning the proof of *maṣlaḥah/maqṣid*. Al-Ghazālī (d. 1111) went on record to say "It is by means of '*aql* 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. 'Izz al-Dīn 'Abd al-Salām (d. 1262) observed that "temporal benefits and harms are mostly known and

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 Shāfi'ī, schools all of whom accepted *istiṣlāḥ* (consideration of public interest) as a valid basis of law and judgment in the *sharī'ah*. The Shāfi'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-Shāfi'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-'aql*) is informed by the senses, but has the capacity to go beyond the data of the senses, although it falls short of the wider reaches of revelation (*al-wahy*). The intellect performs a number of functions. It perceives that which is unseen based on that which is seen, derives universals from concrete particulars, recognises self-evident truth, and associates causes and effects. It is a criterion of responsibility, and the criterion by which God has honoured human beings above the rest of His creation. It is also the only means by which human beings can know the *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. *Fiṭrah* 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. *Fiṭrah* 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 the rest of His creatures (Qur'ān 17:70). This is also manifested in Islam's designation of itself as *dīn al-fiṭrah*, a religion that strikes harmony with enlightened human nature.

In his *Kitāb al-najāt*, Ibn Sīnā (d. 1037) tends to equate *fiṭrah* with intellect (*'aql*) in a passage where he speaks of intuitive intellect (*fiṭrah*) endowed in someone who is brought into this world without prior exposure to society, its realities and customs. Then he perceives and comprehends concrete realities and cases. Something is then presented to him of which he becomes doubtful – if doubt is possible for him – his innate understanding will not affirm it. If on the other hand, doubt is not possible, his innate understanding must of necessity affirm it. Ibn Sīnā admits, however, that not everything affirmed by *fiṭrah* is true; what is true is the capacity of innate human reason to discern values, good and bad, in what is perceived by the senses.⁴⁴

Ibn 'Āshūr (d. 1974) linked the *maqāṣid* to *al-fiṭrah*, quoting a Qur'ānic text, and concluded that both the *sharī'ah* and its *maqāṣid* bear harmony with *al-fiṭrah*.⁴⁵

And so, set thy face steadfast towards the one true faith, turning away from all that is false, in accordance with the natural disposition (*fiṭrah*) which God has endowed in humankind. Allow no change to alter (or corrupt) what God has endowed (Qur'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 'Āshūr, *fiṭrah* also refers to the natural disposition (*khilqah*) and the natural order (*niẓām*) that God endowed in every creature. The human *fiṭrah* consists both of inward and outward manifestations. Walking on two feet is just as much an aspect of man's physical *fiṭrah* as is his intellect and reason. Similarly relating effects to their causes and drawing conclusions from them is an intellectual *fiṭrah*. He argued that the *sharī'ah* injunctions aim at harmony with human nature but also seek to liberate and enlighten it against superstition and corrupting influences. For example, survival of the species, cooperation for the common good, protection of life and lineage all correspond to natural human proclivities. Similarly, building the earth and a virtuous civilisation therein, pursuit of knowledge and intellectual creativity correspond with the human *fiṭrah*.⁴⁶ Islam does not aim to suppress nor eradicate these nor the innate human nature.

Ibn 'Āshūr refers to the laws of Hammurabi, of ancient Egypt, Moses, Zoroaster, as well as ancient India etc., but adds that none had the characteristics of universality that would transcend their geographic and socio-cultural confines in which they appeared. Islam on the other hand emerged in an era and setting that had preserved its simplicity in isolation from major civilisational spheres of the ancient world. Islam emerged in an Arabian setting but never confined its outlook to that context, and as the Qur'ān proclaimed, brought a universal message for human guidance. Islam recognised the diversity of peoples and cultures, their laws and languages (Qur'ān 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 (*ummat^{an} wasaṭ^{an}*), committed to moderation and justice (2:143). "The essence of all virtues (*faḍā'il*) and sound *fiṭrah* lies in moderation in all matters."⁴⁷ Ibn 'Āshūr's commentator, el-Messawi, observed that through Ibn 'Āshūr's understanding of *fiṭrah*, one can see how he conceived the universality of Islam and "the proposition that the *sharī'ah* objectives (*maqāṣid*) are grounded in man's *fiṭrah* [...] [signifying] a cardinal attribute of the *sharī'ah*".⁴⁸

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

- (a) Some have urged the use of pre-school facilities for children at an early age of three so as to help them become quickly intelligent. Entering school at age three may be good socialisation, but it is premature, and may even deprive children of their childhood. The *fiṭrah* of small children is that they learn by playing, not by studying. Excessive after-school tutoring also tends to rob children of their natural inclinations; they then grow up deprived and emotionally imbalanced.
- (b) The incessant drive for technological progress has taken industrial powers to over-utilisation of natural resources. The urge to gain a technological edge over a rival industry or country often results in disgraceful sacrifice of human lives and values. The arms manufacturers of the world stand out for their total disregard of natural human rights and values. Environmental degradation and the ever-increasing incidents of natural disasters are proof of these excesses and those of the oil-producing countries and companies in their aggressive drive for commercial gain. The natural balance demanded by *fiṭrah* has been disturbed, and in some cases to the point of irreversibility.
- (c) Mainstream media and advertisements have turned women into sex symbols that denigrate their human dignity. One can advertise an elegant car, for

instance, for what it is without the addition of a half naked girl to the picture. Yet the imbalances of greed and abusive advertising exceed natural *fiṭrah*, and worse still, puts a car above the price of human dignity.

- (d) Similar tendencies of upsetting the natural balance of values could be seen in the overtures of feminist movements. In their quest for freedom, the children's needs for their mothers' time and attention, and priorities of motherhood are sometimes neglected, and society bears the costs. Children grow up emotionally imbalanced. They play in motorcycle gangs, dancing in nightclubs, taking drugs and so on.

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 *sharī'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 *sharī'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 *sharī'ah* – something that the *uṣūl al-fiqh* methodology has been unable to avoid. Human welfare should remain as the mega-purpose of the *sharī'ah*. To quote al-Shāṭibī:

Since it is established that the rules of the *sharī'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-maqāl* that the ultimate purpose of the law is simply to advocate the truth and encourage acting upon it. In an interesting essay on Ibn Rushd, al-Raysūnī observed that Ibn Rushd called attention through these statements to the cardinal purposes of the *sharī'ah* (*al-maqāṣid al-'ulyā li 'l-sharī'ah*), the moral and spiritual aspects of conduct

that are emphasised in the Qur'ān and accentuate the merits of faith, purity and wisdom (cf. Qur'ān 62:2).⁵⁰ The key Ḥanbālī scholar, Ibn Qayyim al-Jawziyyah, also emphasised the primacy of ethical norms to the whole structure of Islamic values:

The *sharī'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 *sharī'ah*, even if it is claimed to be so according to some interpretations.⁵¹

Ibn 'Āshūr identified the greatest purpose (*al-maqṣid al-a'ẓam*) of the *sharī'ah* as "achievement of well-being and integrity and prevention of harm and corruption".⁵² He further identified it as the general objective (*al-maqṣid al- 'āmm*) of the *sharī'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 *sharī'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.⁵³

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".⁵⁴ Ibn 'Āshūr's contemporary, 'Allāl al-Fāsī, also identified as a cardinal purpose of the *sharī'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.⁵⁵

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*.⁵⁶

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 *sharī'ah* "what is indispensable for the accomplishment of a *wājib* becomes a part of that *wājib*, and the means to *ḥarām* also becomes *ḥarām*".⁵⁷

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.⁵⁸

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*, *ḥuqūq*, *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 *Muwāfaqāt*, and Ibn 'Āshūr's *Maqāṣid* – and use the same theoretical classifications – *maṣāliḥ*, *darūrāt*, *ḥājiyyāt*, *taḥsīniyyāt*, *maqāṣid* '*ummah*, *maqāṣid khāṣṣah* and so on".⁵⁹ 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) *ḥadīth* and the different conclusions drawn from them.

"A *maqāṣidī* approach to jurisprudence," as Jasser Auda commented, "is a holistic approach that does not restrict itself to [any] one narration or partial ruling, but rather refers to general principle and common ground. Implementing the higher purposes of unity and reconciliation of Muslims has a higher priority over implementing *fiqhī* details."⁶⁰ The leading Lebanese Ayatollah, the late Muḥammad Mahdī Shāms al-Dīn proscribed, "based on the higher and fundamental purposes of reconciliation, unity and justice",⁶¹ 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

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 (*ijmā'*). 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 *maqāṣidī* 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 Atiyya, '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*."⁶² 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 (*ḍarūrī*, *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'* *ma'nawī*) of the numerous references to these (five *maqāṣid*) in the Qur'ān and *ḥadīth*.⁶³ 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 *taqṣīm* (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*.⁶⁴ Besides, the *maqāṣid* is not the same as '*illah*: whereas '*illah* looks basically to the existing status

quo, a *maqāṣid* goes beyond that, and one would not want to burden the *maqāṣid* to the same technicalities as the *uṣūl al-fiqh* applied to identification of 'illah.

It is well to remember that al-Shāṭibī himself tried to avoid the *uṣūl* methodology of 'illah as he viewed the *maqāṣid* differently to 'illah: 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 'Āshūr adds *fiṭrah*, or when Qaraḍāwī adds justice and freedom, and al-Najjar protection of the environment to the range of *maqāṣid* – they have presumably done so in light of their general knowledge and insight into the sources of Islam. They have not subsumed the *maqāṣid* under the *uṣūl* methodologies of 'illah. 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 (*istiqrā'*), unrestricted reasoning (*istidlāl*), human intellect ('*aql*'), and innate human nature (*fiṭrah*) as indicators and identifiers of *maqāṣid*. It is advisable also to preserve the inherent versatility and dynamism of *maqāṣid* in tandem with our quest for improvement, civilisational renewal and reform.

I now propose to review the scope of *maqāṣid* from its designated list of five towards an open-ended scale of values. This is because *maqāṣid* in the sense of goals and purposes of the *sharī'ah* can logically not be limited to a particular number, simply because the *sharī'ah* itself is not limited in that order. Our understanding of the *sharī'ah* 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 *sharī'ah* 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 *maqāṣid* so long ago observed that anyone who reads the Qur'ān will find a variety of other values that also merit consideration well beyond the scope of the five essentials. Thus he added such other themes as fulfilment of contracts, trustworthiness (*amānah*), honouring one's neighbours, sincerity, and moral rectitude, and maintained that *maqāṣid* are open-ended and evolving.⁶⁵ Ibn Taymiyyah's approach has been supported by leading twentieth-century jurists, including Ibn 'Āshūr, Muḥammad al-Ghazālī, al-Qaraḍāwī, al-Raysūnī, Attia, Muḥammad Sirāj, Khamlishi and many others.⁶⁶

Al-Qaraḍāwī added to the five leading *maqāṣid* such other values as justice, human dignity and human rights, especially the rights of the oppressed, freedom, and social welfare assistance, all of which find support in the Qur'ān.⁶⁷ Ghazālī, Khamlishi, Attia and Sirāj also made a strong case for the inclusion of equality and justice among the higher *maqāṣid*. Sirāj ranked equality only slightly below freedom and justice. The starting point is justice, which is however not possible

without equality.⁶⁸ I also propose world peace, economic development, science research, and fundamental constitutional rights to be added to the leading *maqāṣid*.⁶⁹

Ibn 'Āshūr 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 *ummah*'s well-being and international standing depend on its economic and scientific success, these should also be included in the *maqāṣid*. And then again, if the well-being of the *ummah* necessitates its unity, this too should be included.⁷⁰ 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?⁷¹

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 Qur'ān and *Sunnah*. Similarly, the affairs of community and state can hardly be regulated without the guarantee of freedom. Since the Qur'ān advocates freedom, it too should be recognised as a goal and *maqṣid* of the *sharī'ah*.⁷²

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*.⁷³

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 *sharī'ah* 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 *sharī'ah* 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 *sharī'ah*-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 *Sharī'ah*: History and Methodology” (2008); “*Maqāṣid al-Sharī'ah* 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 *sharī'ah* 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

1. Cf., Ṣāḥib al-Dīn bin 'Abd al-Raḥmān, *Maqāṣid al-sharī'ah fī aḥkām al-buyū'* (Kuala Lumpur: International Islamic University Malaysia (IIUM) Press, 2009), 16–17.
2. Sayf al-Dīn al-Āmidī, *al-Iḥkām fī uṣūl al-aḥkām*, ed. 'Abd al-Razzāq 'Afīfī, 4 vols (Beirut: al-Maktab al-Islāmī, 1982, 2nd ed.), 3:180.
3. Muṣṭafa Aḥmad al-Zarqā', *al-Madkhal al-fiqhī al-'amm* (Damascus: Dār al-Qalam, 1998), 1:392. Without engaging in technicalities, the *uṣūl* scholars define *'illah* as an attribute of the *ḥukm* which is constant and evident (*ẓāhir*) and bears a proper (*munāsib*) relationship to the ruling of the text.
4. See for details Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge: Islamic Texts Society, 2003), 274f.
5. Cf. Mohammad Hashim Kamali, *Shari'ah Law: An Introduction* (Oxford: Oneworld Publications, 2008), ch. on *maqāṣid*, 123–41.
6. Aḥmad al-Raysūnī, *Naẓariyyāt al-maqāṣid 'ind al-Imām al-Shāṭibī*, Engl. tr. as *Imam al-Shatibi's Theory of the of the Higher Objectives and Intents of Islamic Law* by Nancy Roberts (Herndon VA: International Institute of Islamic Thought, 2006), 17.
7. Muḥammad al-Ṭāḥir Ibn 'Ashūr, *Maqāṣid al-sharī'at al-islāmiyyah*, ed. Muḥammad al-Ṭāḥir al-Missāwī (Amman: al-Basā'ir li 'l-Intāj al-'Ilmī, 1998), 171. This book was first published in 1946, whereas 'Allāl al-Fāsī's book (see note below) was published in 1963.
8. 'Allāl al-Fāsī, *Maqāṣid al-sharī'at al-islāmiyyah wa makārimuhā* (Casablanca: Maktabat al-Waḥdat al-'Arabiyyah, n.d.), 3.
9. Cf. 'Abd al-Raḥmān Ibrāhīm Zayd al-Kīlānī, *Qawā'id al-maqāṣid 'ind al-Imām al-Shāṭibī* (Damascus: Dār al-Fikr, 2000), 128.
10. Yūsuf al-Qaraḍāwī, *Fiqh al-zakāt* (Beirut: Mu'assasat al-Risālah, 2000), 1:31.
11. Muḥammad al-Zuhaylī, *Maqāṣid al-sharī'ah: Asās li-ḥuqūq al-insān*, Kitab al-Ummah Series No. 87 (Doha: Ministry of *Awqāf* and Islamic Affairs of Qatar, 2003), 70.
12. al-Raysūnī, *Naẓariyyāt*, 19. For a more detailed discussion of Raysūnī's definition and its critique see Mohammad Hashim Kamali, "Law and Ethics in Islam: The Role of the *Maqāṣid*", in: Kari Vogt, Lena Larson, and Christian Moe (eds), *New Directions in Islamic Thought: Exploring Reform and Muslim Tradition* (London: I.B. Tauris, 2009), 23–47.
13. Muḥammad b. Ismā'īl al-Bukhārī, *Ṣaḥīḥ al-Bukhārī* (Beirut: Dār al-Ma'rifa, 1961), *ḥadīth* no. 3,344; *Ṣaḥīḥ Muslim*, ed. Muḥammad Fu'ād 'Abd al-Bāqī (Beirut: Dār Iḥyā' al-Turāth, 1980), *ḥadīth* no.1,064.
14. al-Fāsī, *Maqāṣid*, 88.
15. Cf., Ḥasan Turābī, *al-Taḥṣīr al-tawḥīdī*, 20, as quoted in Jasser Auda, *Maqasid al-Shariah as Philosophy of Islamic Law: A Systems Approach* (London and Washington: International Institute of Islamic Thought, 2008), 232.
16. Historical accounts and stories of bygone nations and prophets occupy almost eight of the 30 parts of the Qur'ān and they are replete with moral guidance, sincerity in belief, leadership qualities, educational themes and insights into the consequences of how people conducted themselves. To marginalise these would seem to be tantamount to marginalising the moral substance of qur'ānic teachings. See for a discussion, Ridwan Jamal al-Atrash, "Al-Maqāṣid al-aṣliyyah fī 'l-Qur'ān al-Karīm 'ind al-Imām Ibn 'Ashūr", in: *Maqāṣid al-Sharī'ah and its Realization in Contemporary Societies* [proceedings of the 'International Conference on Islamic Jurisprudence and the Challenges of the 21st Century', International Islamic University Malaysia, IIUM, Kuala Lumpur, 8–10 August 2006] (Kuala Lumpur: IIUM, 2006), 2:540–541.
17. The *uṣūl* methods for identification of effective causes include *takhrīj al-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 *qiyās*).
18. See for details on *ta' līl*, Kamali, *Principles*, 46f. and on the *uṣūlī* treatment of *maqāṣid*, Kamali, *Shari'ah Law*, 124f.
 19. For example, the right of preemption (*ḥaqq al-shuf'*), 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.
 21. Yūsuf al-Qaraḍāwī, *Kayfa nata' āmalu ma' al-sunnah* (Cairo: Dār al-Wafā', 1990), 135.
 22. Ibn 'Āshūr, *Maqāṣid*, 322. See also Mohamed El-Tahir El-Mesawi, "Maqāṣid al-sharī'ah: An Uṣūlī Doctrine", in: *Maqāṣid al-Sharī'ah and its Realization in Contemporary Societies* [proceedings of the 'International Conference on Islamic Jurisprudence and the Challenges of the 21st Century', International Islamic University Malaysia, IIUM, Kuala Lumpur, 8–10 August 2006] (Kuala Lumpur: IIUM, 2006), 3:80.
 23. Ibid., 130.
 24. The *ḥadīth* of *tas'ir* is recorded by Abū Dawūd, *Sunan Abī Dawūd* (various edns), *ḥadīth* no. 3,457 – also recorded by Tirmidhī and Ibn Mājah.
 25. Taqī al-Dīn Ibn Taymiyyah, *Majmū' al-fatāwā* (Riyadh: Ministry of Islamic Affairs, 1998), 10:2. See for details also Mohammad Hashim Kamali, "Tas'ir or Price Controls in Islamic Law", *The American Journal of Islamic Social Sciences* 11 (1994), 25–38.
 26. al-Bukhārī, *Ṣaḥīḥ*, *ḥadīth* no. 6764; and Muslim, *Ṣaḥīḥ*, *ḥadīth* no. 1,614.
 27. Ibn Qayyim al-Jawziyyah, *Aḥkām ahl al-dhimmah* (Beirut: Dār al-'Ilm li 'l-Malāyīn, 1981), 2:462–3.
 28. Ibid., 2:464. See also Khālid bin Manṣūr al-Dāris, "Āthār maqāṣid al-sharī'ah fī fahm al-ḥadīth al-nabawī al-Imām Ibn Taymiyyah numājizān", in: *Maqāṣid al-Sharī'ah and its Realization in Contemporary Societies* [proceedings of the 'International Conference on Islamic Jurisprudence and the Challenges of the 21st Century', International Islamic University Malaysia, IIUM, Kuala Lumpur, 8–10 August 2006] (Kuala Lumpur: IIUM, 2006), 2:429–430.
 29. al-Bukhārī, *Ṣaḥīḥ*, *ḥadīth* no. 294, and Muslim, *Ṣaḥīḥ*, *ḥadīth* no. 1,211.
 30. Ibn Taymiyyah, *Majmū' al-fatāwā*, 26:224.
 31. Ibid., 28:126. See also al-Dāris, "Āthār, 2:433–4.
 32. Excerpt from the Prophet's sermon on the occasion of the 'Farewell Pilgrimage'. See also Gamal Eldin Attia, *Towards Realisation of the Higher Intents of Islamic Law. Maqāṣid al-Sharī'ah: A Functional Approach*, tr. Nancy Roberts (Herndon VA: International Institute of Islamic Thought, 2007), 142.
 33. In the Arabic original: "*uṣūl al-dīn wa qawā'id al-sharī'ah wa kulliyāt al-millāh*", see Abū Ishāq Ibrāhīm b. Mūsā al-Shāṭibī, *al-Muwāfaqāt fī uṣūl al-sharī'ah*, ed. 'Abd-Allāh Darrāz, 4 vols (Beirut: Dār al-Ma'rifah, 1975, 2nd ed.), 2:25.
 34. Ibn 'Āshūr, *Maqāṣid*, 225.
 35. This is the view of Abū Ḥāmid al-Ghazālī who validated *maṣlaḥah* only if it promoted the *maqāṣid*.
 36. Cf., Ibn 'Āshūr, *Maqāṣid*, 51; Attia, *Towards*, 16.
 37. al-Shāṭibī, *al-Muwāfaqāt*, 1:243; see also Yūsuf al-Qaraḍāwī, *Madkhal li-dirāsāt al-sharī'ah al-islāmiyyah* (Cairo: Maktabah Wahbah, 1990), 64–5; Kamali, *Shari'ah Law*, 132.
 38. This is the view of al-Juwaynī, al-Sarakhsī, al-Sulamī and Ibn Taymiyyah. It is also noted that since Imam Mālik accepted *maṣlaḥah mursalah* as a basis of law and judgment, he can be assumed to have accepted *aql* as a proof also of *maqāṣid*. See for details Zāhir al-Dīn bin 'Abd al-Raḥmān, *Maqāṣid*, 102f.
 39. Abū Ḥāmid al-Ghazālī, *Iḥyā' ulūm al-dīn* (Cairo: al-Maktabat al-Tijāriyyat al-Kubrā, n.d.), 4:115.
 40. 'Izz al-Dīn 'Abd al-Salām, *Qawā'id al-aḥkām fī masāliḥ al-anām*, ed. 'Abd al-Laṭīf 'Abd al-Raḥmān (Beirut: Dār al-Kutub al-'Ilmiyyah, 1999), 1:8.
 41. Cf., Zāhir al-Dīn bin 'Abd al-Raḥmān, *Maqāṣid*, 104.

42. Imām al-Haramayn al-Juwaynī, *al-Burhān fī uṣūl al-fiqh* (Doha: Dār al-Qalam, 1978), 2:114.
43. Ibid., 2:117.
44. Abū 'Alī Ibn Sīnā, *Kitāb al-najāt fī 'l-hikmah al-manṭiqiyyah wa 'l-ṭabī'īyah wa 'l-ilāhiyyah*, ed. Majīd Fakhrī (Beirut: Dār al-Āfāq al-Jadīdah, 1985), 99.
45. Ibn 'Ashūr, *Maqāṣid*, 58.
46. Ibid., 266.
47. Ibid., 268.
48. El-Mesawi, "Maqāṣid, 3:84.
49. al-Shāṭibī, *al-Muwāfaqāt*, 2:385.
50. Aḥmad al-Raysūnī, "al-Manhaj al-maqāṣidī fī fiqh Ibn Rushd", in: *Qaḍāyā islāmiyyah mu 'āshirah*, as quoted in Attia, *Towards*, 97–9.
51. Ibn Qayyim al-Jawziyyah, *I'lām al-muwaqqi 'n 'an rabb al-'ālamīn*, ed. Ṭaha 'Abd al-Ra'ūf Sa'd (Beirut: Dār al-Jil, 1973), 1:333.
52. Ibn 'Ashūr, *Maqāṣid*, 64.
53. Ibid., 78.
54. El-Mesawi, "Maqāṣid, 3:90.
55. 'Allāl al-Fāsī, *Maqāṣid*, 41. See also Attia, *Towards*, 102–3.
56. al-Raysūnī, *Nazarīyyāt*, 294f.
57. See for details on commands and prohibitions and their consequences Mohammad Hashim Kamali, *Principles*, 196f.
58. Cf., Aḥmad al-Raysūnī, *al-Fikr al-maqāṣidī* (Rabat: Jarīdat al-Zaman, 1999), 129f.
59. Auda, *Maqasid*, 244.
60. Ibid.
61. Muḥammad Maḥdī Shams al-Dīn "Maqāṣid al-sharī'ah", in *Maqāṣid al-sharī'ah*, ed. 'Abd al-Jabbār al-Rifa'ī (Damascus: Dār al-Fikr, 2001) 26.
62. Yunus Soualhi, "The Question of Methodology in the Science of *Maqāṣid*", in: *Maqāṣid al-Sharī'ah and its Realization in Contemporary Societies* [proceedings of the 'International Conference on Islamic Jurisprudence and the Challenges of the 21st Century', International Islamic University Malaysia, IIUM, Kuala Lumpur, 8–10 August 2006] (Kuala Lumpur: IIUM, 2006), 2:62.
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-'illah*) in the context of *qiyās*. Some *uṣūl* texts, however, record close to forty conditions that the 'illah must fulfil for it to be valid. To follow all of those would actually make *qiyās* and 'illah both redundant as the new case (*far'*) 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.
65. Ibn Taymiyyah, *Majmū' al-fatāwā*, 32:134. See for further details also Kamali, *Principles*, 402f.
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".
69. Cf., Kamali, *Principles*, 402.
70. Ibn 'Ashūr, *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 Muḥammad 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, *Nazarīyyāt*, 47f.
74. These chapters are found in Kamali, *Shari'ah Law*, 41ff.; and Mohammad Hashim Kamali, "Maqāṣid al-Sharī'ah Made Simple", Occasional Paper Series 13 (London and Washington: International Institute of Islamic Thought, 2008), 26ff.; and "Law and Ethics in Islam: the Role of the *Maqāṣid*", in: Kari Vogt, Lena Larsen, and Christian Moe (eds), *New Directions in Islamic Thought: Exploring Reform and Muslim Tradition* (London: I.B. Tauris, 2009), 23–47.