KEYNOTE ADDRESS

History and Jurisprudence of the *Maqāṣid*: A Critical Appraisal

MOHAMMAD HASHIM KAMALI

Abstract

This article, which was originally delivered as a keynote address at the AJIS symposium on "Theory and Uses of *Maqāṣid al-Sharī'a*" in May 2021, begins with a review of the Qur'an and Sunna on the *maqāṣid*, followed by a similar review of the history of *maqāṣid* and salient contributors to its jurisprudence, while drawing attention to its prolonged marginalization in legal theory. The recent revival of *maqāṣid* in the latter part of the twentieth century is reviewed next, followed by a note on the special appeal of the *maqāṣid*, the end of their historical neglect,

Dr Mohammad Hashim Kamali is a professor and a Founding Chairman and CEO of the International Institute of Advanced Islamic Studies (IAIS), Malaysia. He has held various academic leadership faculty positions at numerous higher education institutions around the world. He has addressed over 170 national and international conferences and has published 20 books and over 160 academic articles.

and a great deal of renewed interest by contemporary Muslim scholars. The relationship of *uṣūl al-fiqh* to *maqāṣid* has also been the subject of renewed interest, as to whether it is one of continued domination or one of complementarity between them. Then follows a section on the classification of *maqāṣid*, how they are appraised and prioritized in relationship to one another; and a review of methodological indicators that can help with the appraisal and ranking of the *maqāṣid* and their application to new issues. The article concludes with an account of *ijtihād maqāṣidi* and its application to contemporary issues.

Maqāṣid in the Qur'an and Sunna

The Qur'an is expressive of *maqāṣid* when it singles out the most important purpose of the Prophethood of Muhammad (peace be upon him) in such terms as: "We have not sent you but a mercy to the worlds" (Q. 21:107). This can also be seen perhaps in the Qur'an's characterization of itself as "a healing to the (spiritual) ailment of the hearts, guidance and mercy for the believers" (Q. 10:57). The two uppermost objectives of compassion (*raḥma*) and guidance (*hudā*) in these verses are then substantiated by other verses and hadiths that seek to establish justice, eliminate prejudice, and alleviate hardship. The Qur'an and Sunna also promote cooperation and mutual support within the family and community. Justice itself is a manifestation of God's mercy as well as an objective of the sharī'a in its own right. Compassion is manifested in the realization of benefits, which the Muslim jurists have generally considered to be the all-pervasive purpose of sharī'a that is almost synonymous with *raḥma*.

More specifically, when the text expounds the rituals of *wuḍū'* (ablution for prayer) it follows on to declare that "God does not intend to inflict hardship on you. He intends cleanliness for you and to accomplish His favour upon you" (Q. 5:6). With regard to the prayer itself, it is declared that "truly *ṣalāt* obstructs promiscuity and evil" (Q. 29:45). With reference to jihad, the Qur'an proclaims its purpose as: "permission is granted to those who fight because they have been wronged" (Q. 22:39).

With reference to just retaliation (*qiṣāṣ*), the text similarly declares that "in *qiṣāṣ* there is life for you, O people of understanding" (Q. 2:179); and with regard to the poor-due (*zakāt*), the text validates it "so that wealth does not circulate only among the wealthy" (Q. 59:7).

Maqāṣid al-Sharīʿa: History and Salient Contributors

The *maqāṣid* did not receive much attention in the early stages of the development of Islamic legal thought and, as such, represent a somewhat belated addition. Reputable textbooks on the *uṣūl al-fiqh* did not even mention the *maqāṣid* in their usual coverage of topics. This is partly due to a certain circumspection of the *fiqh* and *uṣūli* scholars over the *maqāṣid*, which is largely concerned with the purposes and philosophy of the law (*ḥikmat al-tashrīʿ*), rather than the letter of its text. Although the *maqāṣid* are obviously relevant to *ijtihād*, they were not treated as such in conventional expositions. The longer history of *maqāṣid* has thus been a checkered one due mainly to the dominance of *uṣūl al-fiqh* and its textualist orientations.

Islamic legal thought is broadly preoccupied with concerns over conformity to the letter of the divine text, and the legal theory of *uṣūl al-fiqh* has advanced that purpose to a large extent. The literalists tended to view the sharīʿa as a set commands and prohibitions that competent persons (*mukallafīn*) had to observe in the spirit of submission without enquiring into their intentions and purposes. This attitude stood in contrast with the fact that the Qurʾan itself exhibited considerable awareness of the underlying purposes of its laws and often expounded their rationale. The leading Companions of the Prophet also tended to view the sharīʿa both as a set of rules and a value system wherein specific rules were seen as the carriers of higher values. Yet due to the development of scholastic jurisprudence during the first three Islamic centuries, the *maqāṣid* were marginalized. It was not until Abu Hamid al-Ghazali (d. 505/1111) and then Ibrahim al-Shatibi (d. 790/1388) that the *maqāṣid* gained better recognition.

The basic outlook of the *maqāṣid* was not denied by the leading schools and scholars of Islamic law, yet they still remained on the fringes

of mainstream juristic thought. Except for the Zahiris, who maintained that the *maqāṣid* are only known when they are so identified by the clear text, the majority of jurists did not confine them to the clear text alone—for they understood the sharīʿa to be goal-oriented and founded in identifiable causes. A mere conformity to rules that went against their purposes was, therefore, considered unacceptable. A totally different approach to the *maqāṣid* was taken by the *bāṭiniyyah* who held, contrary to the Zahiris, that the essence and purpose of the textual injunctions (*nuṣūṣ*) were to be found, not in the explicit words of the text, but in its inner (*bāṭin*) meaning known only to the Imam.[1] There were also differences of orientation among the leading schools regarding the *maqāṣid*: some were more open to them than others, but elaboration into the goals and purposes of sharīʿa was generally not encouraged. This juristic reticence over the *maqāṣid* might have partly been due to the elements of projection and prognostication that such an exercise was likely to involve. Who could tell, for sure, for example, that this or that is the purpose and overriding objective of the Lawgiver, without engaging in a degree of speculation—unless of course the text itself declared it so? But then, to confine the *maqāṣid* only to the clear text was also not enough.

It was not until the early fourth Islamic century that *maqāṣid* were used in, for instance, the juristic writings of Abu ʿAbd Allah al-Tirmidhi al-Hakim (d. 320/932). Recurrent references to it later appeared in the works of Imam al-Haramayn al-Juwayni (d. 478/1085), who was the first to classify the *maqāṣid* into the three categories of essential, complementary, and embellishments (*ḍarūriyyāt, ḥājiyyāt, taḥsīniyyāt*) that has gained recognition ever since. Al-Juwayni's ideas were further developed by his pupil, Abu Hamid al-Ghazali, who wrote at length on public interest (*manfaʿah*) and ratiocination (*taʿlil*). Al-Ghazali was generally critical of *manfaʿah* as a proof but validated it if it promoted the *maqāṣid* of sharīʿa. As for the *maqāṣid* themselves, al-Ghazali wrote categorically that the sharīʿa protected five objectives as a matter of priority: namely faith, life, intellect, lineage, and property.[2]

A number of prominent scholars continued to contribute to the *maqāṣid.* Sayf al-Din al-Amidi (d. 631/1233) identified the *maqāṣid* as a criterion of preference (*al-tarjīḥ*) among conflicting analogies and elaborated

on an internal order of priorities among the various classes of *maqāṣid*. Al-Amidi also confined the essential *maqāṣid* to only five. The Maliki jurist Shihab al-Din al-Qarafi (d. 684/1285) added a sixth to the existing list, namely the protection of honour (*al-ʿird*), and this was endorsed by Taj al-Din ʿAbd al-Wahhab ibn al-Subki (d. 771/1370) and later by Muhammad ibn ʿAli al-Shawkani (d. 1250/1834). Al-Ghazali's list of the five essential *maqāṣid* was based on his reading of the relevant parts of the Qur'an and the Sunnah on the prescribed penalties (*ḥudūd*). The value that each of these penalties sought to vindicate was consequently identified as an essential value. Al-Qarafi's latest addition (*al-ʿird*) was initially thought to have been covered under lineage (*al-nasl*, also *al-nasab*), but he explained that the sharīʿa had enacted a separate *hadd* punishment for slanderous accusation (*al-qadhf*), which justified the addition.[3] ʿIzz al-Din ʿAbd al-Salam al-Sulami's (d. 660/1262) renowned work, *Qawāʿid al-Aḥkām*, was in his own characterization a work on "*maqāṣid al-aḥkām*" and addressed the various aspects of the *maqāṣid* especially in relationship to the *ʿillah* (effective cause) and *manfaʿah* (public interest) in greater detail. Thus he wrote at the outset of his work that "the greatest of all the objectives of the Qur'an is to facilitate benefits (*manafiʿ*) and the means to secure them and that the realization of benefit also included the prevention of evil."[4] Al-Sulami added that all the obligations of sharīʿa (*al-takālīf*) were predicated on securing benefits for the people in this world and the next. For God Most High is Himself in no need of benefits. The sharīʿa is, therefore, concerned, from beginning to end, with the benefits of God's creatures—which is also the "mega *maqṣad*" of sharīʿa.

Revival of *Maqāṣid* Since the 1980s

Maqāṣid became the focus of renewed attention during the closing decades of the twentieth century, which saw unprecedented developments that may be divided into five phases as follows. The first of these was exploratory and historical. Literature that fell under this category mainly consolidated the works of previous scholars on the subject. Much attention was thus paid to the contributions of Imams Malik and al-Shafiʿi, and those of Imam al-Haramayn al-Juwayni, Abu Hamid al-Ghazali,

'Izz al-Din Abd al-Salam, Ibn Taymiyyah, Ibn Qayyim al-Jawziyyah, and many others. The Maliki scholar Abu Ishaq Ibrahim al-Shatibi's work, *al-Muwāfaqāt*, stands out as a landmark contribution to the subject.

The second phase in the scholarly writings on *maqāṣid* paid attention mainly to epistemology and construction of a comprehensive theory of *maqāṣid*. This has involved reflections on the methodology of *maqāṣid* that consists of its definition, sources and methods of identification, conditions of validity, classification, and the means (*wasā'il*) by which the *maqāṣid* are realised and implemented. Much attention is also paid in this phase to the relationship of *maqāṣid*, *uṣūl al-fiqh*, and *ijtihād*. Even though scholarly contributions to the methodology of *maqāṣid* started at an early stage and important developments took place, it still remains a work in progress.

The third phase under review is marked by the use of *maqāṣid* as an evaluative tool by which to measure the accuracy or otherwise of the existing interpretations of sharī'a. *Maqāṣid* have a role to play regarding the existing interpretations of the Qur'an and Sunna, for instance, and how some of the *tafsīr* works tend to be dominated by a degree of literalism at the expense of the higher purposes of the text. The same effort is then extended to other areas of the sharī'a, including the *uṣūl al-fiqh*, criminal law, commercial law, and so forth, leading in some cases to a re-evaluation of the existing interpretations. Only some progress on selected themes has been made regarding the *uṣūl al-fiqh* and commercial law with reference to Islamic banking and finance (IBF), but much of this too is a work in progress. There is a great show of interest in the *maqāṣid* but when it comes to implementation, it is the more conventional rules of applied law or *fiqh* that are usually implemented, partly due to the fact that the *maqāṣid* articulate a set of values but not actual legal rulings. The *maqāṣid* as such may be more influential at the level of policy making, legislation, and *ijtihād*.

The fourth phase in the development of *maqāṣid* is concerned with their implementation in the various areas of concern to sharī'a. The available literature in this field identifies correct procedures for the application of *maqāṣid*, often involving changes in the older approaches that followed conventional interpretations. This aspect of the *maqāṣid* is also

concerned with coming to grips with the rapid changes often brought by technology and science, post-modernity and globalization, often at the expense of the higher purpose of sharīʿa. This has stressed in turn the need for innovative ijtihād for the application of *maqāṣid* to particular subjects. Modern writings on *maqāṣid*, dissertations, book chapters and articles, study courses and conferences continue to manifest the revival of *maqāṣid*. A significant body of literature covering different aspects of the subject has consequently developed. The *maqāṣid* discourse has also become multi-disciplinary as it is no longer confined to law and jurisprudence but extends to humanities, social and natural sciences, banking and finance, and so forth.

Interesting developments are also taking place in IBF wherein the regulatory authorities are showing interest in the implementation of *maqāṣid*, yet uncertainties are encountered in how this can be done. This is partly due to the fact that the *maqāṣid* have largely remained theoretical. Whether one speaks of the essential *maqāṣid* (*ḍarūriyyāt*), or complementary *maqāṣid* (*ḥājiyyāt*), how they can be integrated into the IBF practices and products often raises new questions. A basic critique often encountered here is that the Islamic banks practice the *fiqh* rules but tend to turn a blind eye to the purposes of those rules, that the IBF is littered by *riba*-oriented practices and need to be aligned with the *maqāṣid* of *sharīʿa*. A certain shortfall is also noted regarding the application of *maqāṣid* to particular contracts. What are the *maqāṣid*, one might ask, of *murābahah* (cost plus profit sale) and that of the deferred sale (BBA), or of *mushārakah* and *mudārabah*, etc., contracts that are largely practiced in IBF? These questions need to be answered, in our view, before one can meaningfully speak of the implementation of *maqāṣid* in the IBF operations. Parallel interest-levels in the implementation of *maqāṣid* are noted in the fields of bioethics, genetic engineering and genetically modified organisms (GMOs), information technology and so forth—all raising questions on how they can be meaningfully brought into conformity with the *maqāṣid* of *sharīʿa*.

The last of the five phases is a rather negative one, marked by excessive referencing to *maqāṣid* by those who mention the word without much understanding of it. Anyone who likes an idea then claims it to be

one of the *maqāṣid*! This kind of excess in the use of *maqāṣid* is a problem. Scholars and writers, universities and the media should make an effort to enhance accuracy in the uses of *maqāṣid*. Further improvement in the methodology of *maqāṣid* will also serve as a check on arbitrariness in the use of *maqāṣid*.

Maqāṣid and *Uṣūl al-Fiqh*

The historical neglect of *maqāṣid* is brought into sharp relief by El-Messawi, who wrote about a doctoral candidate at al-Azhar University in the late 1960s who had to change the title of his dissertation that included the word '*maqāṣid*'. He had to then use the word *ahdāf* instead, as the former did not appeal to some members of the examining committee who were suspicious of *maqāṣid*. Since that time, many of the *uṣūl al-fiqh* doctrines such as consensus (*ijmāʿ*), analogy (*qiyās*) and even *ijtihād* have also become burdened with difficult conditions. The *maqāṣid* are seen, instead, to relate well to the wider concerns of modernity and civilization.[5] As for the relationship of *maqāṣid* to *uṣūl al-fiqh*, some commentators thought of them as complementary and noted that the *uṣūl al-fiqh* should act as a facilitator of *maqāṣid*. Hasan Jabir thus observed: while the *uṣūl al-fiqh* shows the ways of extracting rules from the Qur'an, this was by itself not enough without the aid of the *maqāṣid*, if the Qur'an and Sunna were to guide the *ummah* during new times and climes. This would necessitate studying the primary sources in light of the broader universals of *maqāṣid*.[6]

Bin Bayyah's opinion on the relationship of *uṣūl al-fiqh* to *maqāṣid* is that they are inseparable from one another, albeit that *maqāṣid* are a distinctive chapter in the larger matrix of *uṣūl al-fiqh*, alongside other chapters such as *istiṣlāḥ* and *qiyās*. Ibn ʿAshur thought, on the other hand, that the *maqāṣid* should be accorded an independent status. Having discussed both Ibn ʿAshur and Bin Bayyah, al-Raysuni sided with the former, adding that the *maqāṣid* are being taught as a separate course at many universities in Morocco, Algeria, Mauritania, Pakistan, Saudi Arabia, al-Azhar of Egypt, and elsewhere, and treated as a distinctive subject in its own right.[7]

Ibn Ashur's plea for the independence of *maqāṣid* was not entirely without precedent, however, as earlier scholars (including al-Qarafi, Ibn Taymiyyah and Ibn Qayyim al-Jawziyyah) had made comments that pointed in the same direction.[8] A critic suggested that al-Shatibi had not given the *maqāṣid* independent status when he discussed them in the fourth volume of his four-volume *al-Muwāfaqāt*; that in effect he had treated it as an extension of *uṣūl al-fiqh.* Al-Shatibi had, in other words, accentuated the importance of *maqāṣid* without claiming that it was either separate or independent.[9]

Varied Classifications of *Maqāṣid*

Muslim jurists have classified the entire range of *maqāṣid* into three categories in descending order of importance, beginning with the essential *maqāṣid* (*ḍarūriyyāt*), followed by the complementary purposes (*ḥajiyyāt,*) and then the embellishments (*taḥsīniyyāt*). The essential *maqāṣid* are indispensable to normal order in society as also the survival and well-being of individuals—their destruction will precipitate collapse of the normal order. The *sharīʿa* protects these values and takes measures for their preservation and advancement. Jihad is thus validated in order to protect religion, and so is just retaliation (*qiṣāṣ*) to protect life. Theft, adultery and wine-drinking are punishable offences as they pose a threat to the protection of property, the family, and rationality respectively. Furthermore, the *sharīʿa* encourages work and trading activity in order to enable the individual to earn a living, and it takes measures to ensure the smooth flow of commercial transactions in the market. Islamic family laws are likewise an embodiment largely of guidelines that make the family a safe refuge for all of its members. *Sharīʿa* also encourages pursuit of knowledge and education to ensure the people's intellectual well-being, the advancement of arts, and civilization. All of the laws of *sharīʿa* are, in other words, related to the protection of these five universal *ḍarūriyyāt*.

The complementary purposes (*ḥājiyyāt*) are mainly designed to remove severity and hardship that do not, however, pose a threat to the survival of normal order. A great deal of the *sharīʿa* concessions (*rukhas*),

such as the shortening of the obligatory prayer (ṣalāt) and breaking the Ramadan fast which the sharīʿa has granted to the sick, disabled, elderly and traveler etc., are aimed at preventing hardship, but they are not essential since people can live without them if they had to. The sharīʿa has granted such concessions in almost all the areas of obligatory worship (ʿibādāt). In the sphere of civil transactions (muʿāmalāt), the sharīʿa has validated certain contracts, such as the forward sale (salam) and lease and hire (ijārah) because the people's need for them notwithstands a certain anomaly that is attendant in both. In family law the sharīʿa permits divorce in situations of necessity by way of a concession, which is aimed at ensuring the well-being of the family against intolerable conflict.

A complementary purpose is elevated into an essential one when it concerns the public at large. For example, the validity of ijārah may be of secondary importance to an individual but it is an essential interest for the society at large. Similarly, certain concessions that are granted in worship matters (ʿibādāt) may be secondary to the survival of an individual but become a matter of primary importance for the community as a whole. In the event of a conflict arising between these various classes of purposes, the lesser ones may be sacrificed in order to protect the greater ones. When there is a plurality of conflicting interests and none appears to be preferable, then, according to a legal maxim, "prevention of harm takes priority over the realization of benefit."[10] This is because the sharīʿa is more emphatic on the prevention of harm, as can be seen in the hadith where the Prophet (peace be upon him) said: "When I order you to do something, do it to the extent of your ability, but when I forbid you from something, then avoid it (altogether)."[11]

The third class of "desirable" maqāṣid seek to attain refinement and perfection in the customs and conduct of people at all levels of achievement. Sharīʿa thus encourages cleanliness of body and attire for purposes of prayer and recommends, for instance, the wearing of perfume when attending congregational Friday prayers; as it also discourages the consumption of raw garlic on that occasion. In customary matters and relations among people, sharīʿa encourages gentleness (rifq, samāḥah), pleasant speech and manners (ḥusn al-khuluq), and fair dealing (iḥsān). The judge and head of state are similarly advised not to be too eager in

the enforcement of penalties. The purpose of all this is attainment of beauty and perfection in people's lives.

The embellishments are perhaps of special importance, as they relate to all of the higher *maqāṣid.* One can perform the obligatory prayer, for example, with proper concentration and giving each of its parts their due, or perform it in a hasty and thoughtless manner, and the difference between them is that the first is espoused with the attainment of both the essential and the desirable, and the second can at best be a discharge of duty. One can extend this analysis to almost every area of human conduct and implementation of almost all of the rulings of *sharī'a.* The classification of *maqāṣid* as such need not be confined to the *sharī'a* injunctions or to religious matters but can extend to customary, social, political, economic, and cultural affairs and so forth. From this analysis, it also appears that classifying a certain purpose or interest under one or the other of these categories is likely to be relative and involve a degree of value judgment.

Maqāṣid have been further classified into the general purposes (*al-maqāṣid al-'āmmah*) and particular purposes (*al-maqāṣid al-khāṣṣah*). The former are those that characterize the whole of Islam and sharī'a, as they are on the whole broad and comprehensive. Prevention of harm (*ḍarar*) is a general goal of sharī'a, and applies to all areas and subjects. Particular purposes are theme-specific and relate to specific subjects, such as family matters, financial transactions, witnessing, and the like.

Maqāṣid are further classified into the definitive (*al-qaṭ'iyyah*) and speculative purposes (*al-ẓanniyah*). The former are supported by clear evidence in the Qur'an and Sunna, such as protection of property and honor of individuals, administration of justice, right to financial support among close relatives, and the like. *Maqāṣid* that relate evidently to *daru-riyyat* may be regarded as definitive (*qaṭ'i*). Those that are identified by induction (*istiqrā'*) from the clear injunctions (*nuṣūṣ*) may also be added to this category. As for the *maqāṣid* that cannot be included in either of these two categories, they may still be seen as definitive if there be general consensus or clear legislation in their support. Additional *maqāṣid* that are identified outside this range may be classified as speculative (*ẓanni*), and may remain in that category unless they are elevated to

the rank of definitive through consensus or legislation. In the event of a clash between objectives, the definitive *maqāṣid* take priority over the speculative. An order of priority is also suggested among the definitive *maqāṣid* in favor of those which preserve faith and life over the other three, and protection of the intellect is also prioritized over the family and property.

Al-Shatibi has also classified the *maqāṣid* into the aims and purposes of the Lawgiver (*maqāṣid al-shariʿ*) and the human purposes (*maqāṣid al-mukallaf*). To say that securing human welfare is God's illustrious purpose behind the laws of sharīʿa illustrates the former, whereas acquisition of knowledge in order to gain employment illustrates the latter class of *maqāṣid*.

Maqāṣid have also been classified into the primary objectives (*maqāṣid aṣliyyah*) and subsidiary goals (*maqāṣid tabʿiyyah*). The former refer to the primary and normative goals that the Lawgiver, or a human agent, has originally intended. For example, the primary purpose of knowledge (*ʿilm*) is to know God and the proper manner of worshipping Him and also to explore and understand His creation. The secondary goals are those which complement and support the primary ones. The primary purpose of marriage is procreation, for example, whereas its secondary purpose may be sexual satisfaction.[12]

Notwithstanding the foregoing, some arbitrariness may be difficult to avoid in such classifications. Like the benefits (*maṣāliḥ*), the *maqāṣid* are open-ended and still in need of a more accurate methodology to ensure unwarranted indulgence through personal or partisan bias. This is a matter largely of correct understanding, so collective *ijtihād* and consultation seem the best ways of ensuring accuracy and precision. To this end it would be reassuring to secure the advice and approval of a learned council on the veracity of a *maqṣad* for policy-making and legislation.

Identification of *Maqāṣid*

As already indicated, Muslim jurists have differed in their approaches to identifying *maqāṣid*. The first approach to be noted is the textualist approach, which confines the identification of *maqāṣid* to clear scriptural

sources. The *maqāṣid*, according to this view, have no existence outside this framework. Provided that a command is explicit and normative (*taṣrīḥī, ibtidā'ī*), it conveys the objective/*maqṣad* of the Lawgiver in the affirmative sense. Prohibitions are indicative of the *maqāṣid* in the negative sense in that the purpose of a prohibitive injunction is to suppress and avert the evil that the text in question has contemplated. This is generally accepted, but there are certain tendencies within this general framework. While the Zahiris tend to confine the *maqāṣid* to the obvious text, the majority of jurists takes into consideration both the text and the effective cause (*'illah*) and rationale of the text.[13] The chief exponent of the *maqāṣid*, al-Shatibi, has spoken affirmatively of the need to observe the explicit injunctions, but then added that adherence to the obvious text should not be so rigid as to alienate the rationale and purpose of the text from its words and sentences. Rigidity of this kind, al-Shatibi added, was itself contrary to the objective (*maqṣad*) of the Lawgiver, just as would be the case with regard to neglecting the clear text itself. When the text, whether a command or prohibition, is read in conjunction with its objective and rationale, this is a firm approach, one that bears harmony with the intention of the Lawgiver.[14] Al-Shatibi added that the *maqāṣid* known from a comprehensive reading of the text are of two types, namely primary (*aṣliyyah*) and secondary (*tab'iyyah*). The former are the essential *maqāṣid* or *ḍarūriyyāt,* which the *mukallaf* must observe and protect regardless of personal predilections, whereas the secondary *maqāṣid* are those which leave the *mukallaf* with some flexibility and choice.

As noted earlier, al-Shatibi has identified induction (*istiqrā'*) as one of the most important methods of identifying the *maqāṣid.* There may be various textual references to a subject, none of which may be decisive. Yet their collective weight is such that leaves little doubt as to the meaning they convey. A decisive conclusion may, in other words, be arrived at from a plurality of speculative expressions. Al-Shatibi illustrates this by saying that nowhere in the Qur'an is there a declaration to the effect that the *sharī'a* has been enacted for the benefit of the people. Yet this is a definitive conclusion drawn from the collective reading of a variety of textual proclamations.[15] Al-Shatibi then adds that benefits should be

understood in their broadest sense that include all benefits pertaining to this world and the hereafter, those of the individual and the community, material, moral and spiritual, and those which pertain to the present as well as the interests of the future generations. This broad meaning of benefits also includes the prevention and elimination of harm. These benefits cannot always be ascertained by the human reason alone, without the aid and guidance of divine revelation.[16]

On a similar note, the ruling of the *sharī'a* that the validity of an act of devotion (*'ibāda*) cannot be established by means of *ijtihād* is an inductive conclusion drawn from the detailed available evidence on the subject, as there is no specific injunction in the sources to that effect. These conclusions are of great overall importance; they are not open to doubt, nor is their credibility a matter of speculative reasoning.[17]

Al-Shatibi's inductive method is not confined to the identification of purposes but also extends to commands and prohibitions, which may either be obtained from the clear text, or from a collective reading of a number of textual proclamations that may occur in a variety of contexts.[18] Al-Shatibi then goes a step further to say that the inductive conclusions and positions so established are the general premises and overriding objectives of the *sharī'a*, and thus have a higher order of importance than specific rules. It thus becomes evident that induction is the principal method al-Shatibi employs (and his signal contribution) for identifying the *maqāṣid*.

Conditions of Validity

In order to be valid, a *maqṣad* must qualify certain conditions, which Ibn 'Ashur identified as follows: 1) certain (*thābit, yaqīnī*), which means that the *maqṣad* in question is clear and proven by strong evidence and not subject to disagreement and disputation; 2) apparent (*ẓāhir*), in that the *maqṣad* in question is not a hidden factor but evident and can be shown and brought to attention when challenged, for instance, by academia or before a court; 3) general (*'āmm*), in that it applies to all that fall within its ambit and it is not focused on particular individuals, groups or partisan interests; and 4) exclusive (*tard*), in that it includes all that belongs

to it, and excludes all that does not. Then it is further added that the intended purpose must not exceed the limits of moderation, and entails neither laxity nor hardship.[19]

When these conditions are applied to particular subjects, say of good governance, peace, and sustainable development, all three would, in principle, seem to qualify but may each raise more particular questions. In the case of good governance, for instance, what are the essential requirements of good governance that merit consideration? Commentators may well differ over the meaning and structure of an Islamic state or government, and whether constitutionalism and rule of law can be included under its heading. One would need a good knowledge of the subject to be able to fulfil Ibn 'Ashur's conditions; but we still say in principle that good governance is an important *maqṣad*, without claiming certainty over all its details. Even with regard to the five essential purposes (*ḍarūriyyāt*), they are *ḍarūrī* in principle but certainty can hardly be claimed over all their related details.

As for the textual guidelines on good governance, broadly the Qur'an denounces oppressive and corrupt rulers, commands justice and observance of all the commands and prohibitions, and demands respecting people's rights and obligations—which can hardly be realized without good governance. This may perhaps provide a tentatively affirmative response, perhaps based on inductive reasoning, that good government is indeed a requirement and therefore a valid *maqṣad* of *sharī'a*, without specifying at this point whether it is an essential or a complementary purpose. Whereas good government is, in the present writer's view, an essential purpose in principle, other (more detailed) aspects of good government may qualify as complementary or as only desirable. There are guidelines in the legal maxims of fiqh (*qawā'id kulliyyah fiqhiyyah*) and wider structure of *sharī'a* that may be of help in providing the needed responses.

Questions over the identification of *maqāṣid* may be relatively easier to address in relationship to contracts and transactions, as the basic *fiqh* literature on nominate contracts provides the raw materials to work with. But the same question becomes somewhat more challenging in relationship to newer topics, such as 'sustainable development,' or

'protection of the environment.' For reasons already expounded above, the *fiqh* literature on the *maqāṣid* is not without its own ambiguities, leaving researchers with little choice but to explore fresh responses to pressing questions.

Widening the Scope of *Maqāṣid*

Taqi al-Din ibn Taymiyyah (d. 728/1328) was the first to depart from the notion of confining the *maqāṣid* to a specific number. He added, to the existing list of the *maqāṣid*, such other values as fulfilment of contracts, preservation of the ties of kinship, honoring the rights of neighbors, the love of God, sincerity, trustworthiness, and moral purity.[20] Ibn Taymiyyah thus revised the scope of *maqāṣid* from a designated number into an open-ended list of values. His approach is generally accepted by contemporary scholars, including Muhammad Tahir Ibn ʿAshur, Ahmad al-Raysuni, Yusuf al-Qaradawi and others.[21] Al-Qaradawi has also included social welfare support (*al-takāful al-ijtimāʿi*), freedom, human dignity, and human fraternity among the *maqāṣid* of *sharīʿa*, on the analysis that these are all upheld by both the detailed and the overall weight of evidence in the Qur'an and Sunna.[22] The present writer has proposed to add economic development and strengthening of research and development in technology and science to the existing *maqāṣid*, as they are crucially important to the standing of the *ummah* in the world community. It thus appears that the *maqāṣid* remain open to further enhancement that will depend, to some extent, on the priorities of every society and generation.

The unprecedented advance of modernity, technology, and science has brought human societies almost everywhere face to face with new issues, which are broadly not addressed in the existing *fiqh* texts. Questions thus arise about whether one can consider peace and security, women's rights, rights of minorities, protection of the environment, and the United Nations Sustainable Development Goals (SDG) among the *maqāṣid* of our time for the Muslim community. These are admittedly not simple monolithic themes and may call for fuller understanding before adequate responses can be given. What is quite obvious is the need that

the *maqāṣid* discourse be moved beyond its conventional typologies to address new and pressing issues of great importance to contemporary Muslims and Islamic civilization.

Appraisal and Ranking

The relative strength or weakness of the various types of *maqāṣid* in relationship to one another and its reference to the rulings/*aḥkām* of *sharī'a* is a subject on which the *maqāṣid* literature remains under-developed. For the rulings of *sharī'a* found in the Qur'an, Sunna, and juristic *ijtihād* are not evaluated nor prioritized in the light of their *maqṣad*. The question, for instance, as to which are the original and normative purposes (*maqāṣid aṣliyyah*) as opposed to those that may be classified as subsidiary goals (*maqāṣid far'iyyah*) and even the distinction between the means and the ends of a *maqṣad* can sometimes be less than self-evident. Ibn 'Ashur has observed in this connection that except for some occasional references made to them by 'Izz al-Din 'Abd al-Salam al-Sulami in his *Qawā'id al-Aḥkām* and Shihab al-Din al-Qarafi in his *Kitāb al-Furuq*, appraisal of the various classes of *maqāṣid* has largely remained wanting of development.[23] Early contributions to this subject are confined to a classification of themes into the renowned five or six headings of the essential goals (*ḍaruriyyāt*) whereas the other two categories of the complementary (*ḥajiyyāt*) and the embellishments (*taḥsīniyāt*) are not thematically identified in any order or number. This triple classification contemplates the intrinsic merit of the *maqāṣid* involved. Questions may also arise as to where, for example, can personal freedom or equality be placed in this classification. It is even possible, indeed likely, that equality and freedom be placed under both the necessary and normative *maqāṣid* (*ḍarurī, aṣlī*) and would as such stretch across categories.

There are other indicators that can also be used to help with identifying the correct placement of the various rulings of *sharī'a*, its commands and prohibitions, rights and duties, etc., under one or the other of the *maqāṣid* categories. These indicators are summarized as follows:

1 The presence or absence of a text or a textual indicator in the Qur'an, hadith or the precedent of Companions may provide important

pointers to help determining the grade and value of a ruling or *maqṣad* and its placement under a relevant classification.

2 Another indicator is to refer to the benefit (*manfaʿa*) or the mischief (*mafsada*) a particular *ḥukm* is likely to realize or prevent. This would involve a rational evaluation of benefits and harms in the light of prevailing social conditions. One may need to ascertain whether the benefit in question is comprehensive and general (*kullī*) that concerns the largest number of people and relates to a vital aspect of life, or whether it is a partial benefit (*juz'ī*) that lacks those attributes. To promote justice is a general and a vital benefit, and so is consultation (*shūrā*) in governance, but certain rulings of *fiqh* on sale or interest free loan (*qarḍ ḥasan*) may not include the largest number nor the most vital interests of the people. To ascertain the goal and purpose (*maqṣad*) of *sharīʿa* in the validation of a *ḥukm* is thus not always known from the knowledge of the *ḥukm* itself but needs to be verified through an overall knowledge of the *sharīʿa*, rationality, and *ijtihād.*[24]

3 The existing fiqh literature and fatwa collections on the renowned scale of five values (obligatory, recommended, reprehensible, permissible, and forbidden) could also help in the relative appraisal of *maqāṣid*. Additional information of interest can also be found in the literature relating to the pillars and essentials of Islam (*arkān al-khamsa*), or even the *fiqh* classification of transgressions into the major and minor sins (*al-kabā'ir wa'l-ṣaghā'ir*).

4 Another way of evaluating the applied aspect of *maqāṣid*, as already noted, is by reference to punishments by which the *sharīʿa* may vindicate a certain value and purpose. The prescribed penalties of *ḥudūd* have, in fact, been used by the early writers on *maqāṣid*. But even among the *ḥudūd* offences, there are some, such as slanderous accusation (*qadhf*) and wine drinking (*shurb*) that carry lesser punishments. This would suggest that the values protected by them belong to the second order of *maqāṣid* (i.e. *ḥājiyyāt*).[25]

5 *Sharīʿa* rulings (*aḥkām*) can also be evaluated and the *maqāṣid* they pursue identified by reference to the strength or weakness of a promise of reward or a warning (*al-waʿd wa'l-waʿīd*) that the text may contain. For a promise of reward may have an educational value, or if made in an emphatic language may be suggestive of an essential

maqṣad. For example, the Qur'an promises a great reward for being good to one's parents, and there is an equally emphatic warning for those who annoy them. The Qur'an and Sunna are also emphatic on helping the poor. The immediate purpose in both of these may accordingly be evaluated as essential or complementary, under the family and religion, respectively. Compare these with the promise of reward for one who provides food for animals and birds. The *maqṣad* in the former is to protect the family, an essential *maqṣad*, and compassion to animals in the latter, which may fall under *taḥsīniyyāt.*

Compassion to animals tends to acquire a higher profile in some hadith texts, one of which warns of a severe punishment for a woman who had starved her cat by tying her to a pole until she died, or a promise of great reward (of entry to paradise) for a man who had saved the life of a dog that was dying of thirst in the desert. There are also hadith texts that promise a great reward for apparently small acts of merit, such as recital of a certain verse at a certain time, or for so many times. The goal and purpose that such promises pursue are often detectable from the context. Yet the weight attached to such acts is often symbolic, not necessarily focusing on the acts in question but the principles and purposes they visualize, such as mercy and compassion, or the remembrance of God. The expressions may also be educational or else intended to make an impact on the audience.[26]

It is further understood from the foregoing that a goal and purpose of a lower order can take an unusually higher profile in stressful and life-threatening situations, in which case, one would need to ascertain the immediacy of the *maqṣad* in question within its surrounding circumstances, and say, for instance, in the matter of saving the life of a dying animal, that a *taḥsīnī* objective is elevated to the rank of *ḍarūrī*. This does not change our basic position, however, that clemency to animals generally falls under the category of *taḥsīniyyāt.*

6   The value of a **ḥukm** and the goal pursued by it can also be ascertained by reference to repetition in the Qur'an and hadith. References to justice, for example, compassion and tolerance/patience (**ṣabr**), are abundant in the text. The same can be said of charity beyond the obligatory **zakāt** which occurs frequently in the Qur'an and

hadith. One may add here the proviso, however, that repetition in the sphere of obligatory duties (**wājib** and **ḥarām**) is relatively less important but tends to play a greater role with reference to **mandūb** and **makrūh** (recommended and reprehensible). For when a **wājib** or a **ḥarām** is conveyed in a clear text, further repetition may not necessarily add anything to it (although the Hanafis do take notice of repetition, side by side with textual clarity—thus they raise the **wājib** into an emphatic duty or **farḍ** and the **makrūh** to the level of **makrūh taḥrīmī** as opposed to **makrūh tanzīhī,** which is closer to the permissible or **mubāh**).[27] Repetition thus tends to play a more important role with regard to ethics than it does with regard to clear legal injunctions.

Ijtihād Maqāṣidī

Ijtihād maqāṣidī is a relatively new phrase, mainly occurring in the works of twentieth-century scholars, including al-Raysuni, ʿAtiyah, Selim el-Awa, and Mahdi Shamsuddin, who recommend a certain expansion of the *uṣūli ijtihād* to embrace the wider arena of *ijtihād maqāṣidī* (also *ijtihād maṣlaḥī*). In this effort, the scholar/*mujtahid* develops new rulings based on his understanding of *maṣlaḥa* and *maqāṣid*, provided that he/she is knowledgeable of the sharīʿa. When *ijtihād maqāṣidī* is recognised as a valid form of *ijtihād*, it will, to a large extent, subsume the argument for the independence of the *maqāṣid* as a proof of *sharīʿa* separately from the *uṣūl al-fiqh*.

With reference to the protection of intellect (*ḥifẓ al-ʿaql*), for instance, which is an essential *sharīʿa* purpose, one may include the introduction of modern sciences into the educational programmes of the Islamic institutions of learning, as well as the use of new methods of enquiry that promote the faculty of intellect. This would mean actualization of *ḥifẓ al-ʿaql* in a novel way rather than sticking to the hallowed example of the prohibition of wine-drinking given as a means of the protection of intellect.[28]

Shamsuddin has also stressed in this connection the importance of inference (*istinbāṭ*): The Qurʾan and Sunna are its most important

sources, but the modalities of inference have been overly restricted by *uṣūlī* stipulations, which need to be revised and made more receptive to the influence of new developments in education and science. A wider understanding of *istinbāṭ* is therefore recommended. Two areas of interest highlighted are the fiqhi legal maxims, which can be a rich resource for *maqāṣid*-based *ijtihād*.[29] The other and even more important area is the general principles of the Qur'an, such as justice, being good to others (*iḥsān*), and human dignity and equality, which have largely been sidelined through the *uṣūlī* restrictions on rules of interpretation, or through stipulations attached to the application of *istiḥsān*, *istiṣlāḥ*, and *qiyās*.[30]

With reference to *qiyās*, al-Raysuni, al-Turabi (d. 2016) and Shamsuddin have looked into the prospects of how a more flexible reading of *qiyās* can be used to connect *qiyās* with the *maqāṣid*. The prohibition of liquor drinking in the Qur'an (Q. 5:90), for instance, has been rather narrowly constructed in traditional *uṣūl al-fiqh* manuals. A combined reading of the *uṣūl al-fiqh* and *maqāṣid* can, on the other hand, be attempted to extend the rationale of the text to new subjects and areas. One of the *maqāṣid*, namely the protection of intellect, is thus used to prohibit all substances that compromise the intellectual faculty of a person, even if the substance in question is not an intoxicant. Irrational ceremonies and superstitious practices in the name of ancestral legacy, and use of amulets for curing illnesses etc., are also thereby proscribed. Moving further, one may even refer to broader textual dispensations on the elimination of harm and prejudice (*ḍarar*) to arrive at the same conclusions, without necessarily stretching the meaning of the particular text on drinking.

Ijtihād Maqāṣidi: Case Studies

Instances of *maqāṣid*-based *ijtihād* that revise older *fiqhi* positions in the light of changed realities are found in some of al-Qaradawi's responses to particular questions that are summarized below. In all of these, a fresh *ijtihādi* ruling has been constructed based on their relevant *maqāṣid*. The purpose has been to derive new rulings that are more appropriate to the modern context, in ways that shows Islam's responsiveness to legitimate modern expectations.[31]

1   *Christmas Greeting*

A PhD student from Germany wrote to al-Qaradawi that he was a practicing Muslim alongside many others. Was it permissible for them to send Christmas greeting cards to their non-Muslim friends and neighbours and also exchange gifts with them: "We receive gifts from them and it is discourteous if we do not respond in a similar fashion."

In his response al-Qaradawi began with quoting the Qur'an where Muslims are permitted to act justly and be good to non-Muslims who have not been aggressive toward them, but prohibited such if the non-Muslim had been aggressive (Q. 60:8-9). Al-Qaradawi added that the prohibition in this verse contemplated the polytheists of Mecca who committed acts of aggression against the Prophet and his Companions. The verse under review advised the believers to be good (*tabarru*) to all non-aggressors, which means something better than a measure-for-measure response. Al-Qaradawi also cited the hadith in which Asma', the daughter of Abu Bakr, came to the Prophet and said that her mother, who was still an associator (*mushrikah*), kept showing her affection. Should she also reciprocate in a like manner?—to which the Prophet responded that she should. The Qur'an also refers to non-Muslims: "And if they greet you, then you greet them with a greeting more courteous or equal" (Q. 4:86). In reference to Ibn Taymiyyah's restrictive views on this, al-Qaradawi commented: "Had Ibn Taymiyyah lived in our time" and saw how the world has shrunk and Muslims are in constant interaction with non-Muslims, he might have revised his views. Al-Qaradawi also mentioned that many Christians themselves celebrated Christmas as a social occasion rather than a particularly religious one.

What is seen here is a direct recourse to the Qur'an, especially to the *maqṣad* of fairness and good relations with peaceful non-Muslims. The means (*wasilah*) at issue was exchange of Christmas cards and gifts. Al-Qaradawi offered a fresh interpretation that delivered the desired response and purpose.

2   *Inheritance*

A Muslim convert asked al-Qaradawi whether a Muslim may inherit from a non-Muslim, adding that he was a British Christian and embraced Islam ten years earlier. His mother died and left a little inheritance which he refused to take based on the ruling that Muslims and non-Muslims may not inherit one another. Now his father also died and left a big estate behind and he was the sole heir. British law entitled him to all of it. Should he refuse it and leave it to non-Muslims while he was in need of it himself and could spend it on his Muslim family and other Islamic welfare objectives?

Al-Qaradawi responded that the majority position on this was based on the hadith that Muslims and non-Muslims do not inherit one another. This has also been the practice of Companions and upheld by the leading schools of Islamic law. Some of the leading Companions, including ʿUmar al-Khattab, Muʾadh b. Jabal and Muʾawiyah b. Abu Sufyan, however, entitled the Muslims to inherit from non-Muslims but not vice versa. Al-Qaradawi wrote that he also preferred this latter position, even if the majority have not supported it, just as he also preferred the Hanafi interpretation of the hadith wherein *kāfir* is understood to mean a *kāfir ḥarbī* (a non-Muslim who is at war with Muslims, not all non-Muslims). He further added that the criterion of inheritance was material assistance (*al-naṣrah*) and not unity in faith. This is why a *dhimmī* does not inherit a *ḥarbī*, even if they were of the same religion. To entitle a Muslim to inherit from his non-Muslim relative will also help prospective converts not to turn away from Islam for reasons only of losing their inheritance rights.[32]

In this ruling, assistance is the purpose; the means (*wasilah*) is inheritance of a Muslim from a non-Muslim relative, and the *ḥukm* (ruling) so issued begets that purpose.

3   *Organ donation*

Is it permissible to graft a part of the human body onto that of another who is in dire need of it, with the donor's consent?

Al-Qaradawi's response: There are two views on this, one prohibitive and the other permissive. The former maintains that a

Muslim does not have the right to destroy or mutilate a part of his own body (cf., Q. 2:195), and the renowned hadith: "all that belongs to a Muslim is prohibited to another Muslim, his blood, his property and his honour." This is unlike personal property whose owner is entitled to give, sell, or donate as he wishes. The permissive view maintains, however, that the criterion here is the greater benefit that may accrue the proposed donation, especially when the harm is minor or negligible to the donor but which may well save the recipient's life. Modern medicine has also changed the conditions of earlier times whereby grafting of a body part could be fatal to the donor. This is not necessarily the case now. Hence the prohibition collapses when the fear of fatality is no longer present.[33] Al-Qaradawi concluded: "we concur with the permissive position provided that the surgical operation is carried by qualified and skilled physicians as there is greater benefit and saving of human life therein."[34]

In this *maqāṣid*-based *ijtihād*, the purpose is saving life, and transfer of a body part through surgical mutilation is the means. The affirmative ruling or fatwa so issued actualizes the purpose in question.

Conclusion

Many of the *uṣūl al-fiqh* doctrines, such as general consensus (*ijma'*), analogical reasoning (*qiyās*) and even ijtihād have in course of time become burdened with difficult conditions. By comparison to *uṣūl al-fiqh*, the *maqāṣid* are not burdened with methodological technicality and literalist readings of the text. As such the *maqāṣid* integrate a degree of versatility and comprehension into the reading of the sharī'a that is, in many ways, meet the people's needs without the need to negotiate complex methodologies. Methodological accuracy is, however, needed even in the use of *maqāṣid* as careless referencing to *maqāṣid* has also become problematic due to the outburst of interest in the utilization of *maqāṣid* in recent decades. The *maqāṣid* are not as well-endowed in methodological resources as the *uṣūl al-fiqh* are. So each have their strengths and weaknesses, and a careful researcher can utilise both, if need be, and each in their best capacities.

We now propose the following by way of actionable recommendations:

- A purpose-oriented approach is important for a better understanding of the sharīʿa simply because new issues keep arising with the rapid advancement of science and civilisation. With regard to contemporary human rights, for instance, many questions have arisen that require fresh responses, and they relate closely to the *maqāṣid*.

- Twentieth century Islamic scholarship has enhanced the hitherto-underdeveloped methodology of the *maqāṣid*. It may be justified to say as a result that a ruling of *ijtihād* can be founded on *maqāṣid* by a duly qualified scholar who is knowledgeable both of the *maqāṣid* and *uṣūl al-fiqh*.

- Scholars and writers, universities and the media should make an effort to enhance accuracy in the uses of *maqāṣid*. Further improvement in the methodology of *maqāṣid* will also serve as a check on arbitrariness in the application of *maqāṣid*.

- Muslim countries and jurisdictions should recognise and encourage the *maqāṣid* as a valid basis of legislation and ijtihād, side by side with the *uṣūl al-fiqh* and other disciplines. For the *maqāṣid* have yet to find their way into the working modalities of Muslim legislative assemblies and parliaments.

- The use of questionable means for the procurement of *maqāṣid* have become frequent and often misleading. Due care is therefore called for to avoid distortion in the pursuit and enforcement of alleged but unproven *maqāṣid*.

- Generalization should be avoided. Every country and jurisdiction should be able to find its own bearings with the *maqāṣid*. The macro and micro aspects of *maqāṣid*-based decision making should also be adequately informed by, and coordinated with, one another.

Endnotes

1   Cf. Ahmad al-Raysuni, *Naẓariyyat al-Maqāṣid ʿind al-Imām al-Shāṭibi* (Rabat: Matbaʿat al-Najah al-Jadidah, 1411/1991), 149.

2   Abu Hamid Muhammad al-Ghazali, *al-Mustaṣfā min ʿIlm al-Uṣūl* (Cairo: al-Maktabah al-Tijariyyah, 1356/1937), 1:287.

3   Yusuf al-Qaradawi, *al-Madkhal li Dirāsāt al-Sharīʿah al-Islāmiyyah* (Cairo: Maktabah Wahbah, 1411/1990), 73.

4   ʿIzz al-Din ʿAbd al-Salam al-Sulami, *Qawāʿid al-Aḥkām fi Maṣāliḥ al-Anām*, ed. Taha ʿAbd al-Raʾuf Saʿd (Cairo: al-Matbaʿah al-Husayniyyah, 1351 AH), 1:8.

5   Cf., Mazin Muwaffaq Hashim, *Maqāṣid al-Sharīʿah: Madkhal ʿUmrānī* (Herndon: International Institute of Islamic Thought, 2014/1435), 91.

6   Cf., Hasan Jabir, *al-Maqāṣid al-Kulliyyah fi ḍawʾ Qirāʾah al-Manẓūmiyyah liʾl-Qurʾān al-Karīm* (Beirut: Dar al-Hiwar, 2011), 107; Hashim, *Maqāṣid: Madkhal ʿUmrani*, 108-109.

7   Ahmad al-Raysuni, *Muḥāḍarāt fi Maqāṣid*, 272.

8   Al-Qarafi observed that "the foundations of sharīʿah are of two types, one is the *uṣūl al-fiqh* and the other the legal maxims of *fiqh*, which are numerous and enormously helpful in ascertaining the wisdom and underlying meanings (*asrār al-sharʿ wa ḥikamuh*) of sharīʿah" (*al-Furuq*, 1-2:3). As an explanatory note, it may be said that at that time, legal maxims were an integral part of the *maqāṣid* but have since been recognized to belong mainly to *fiqh*. Ibn Taymiyyah observed that in addition to the rulings (*aḥkām*) of *sharīʿah* that are evidently important, the wisdom and meanings (*al-ḥikam waʾl-maʿānī*) on which they are founded is the most noble of all *sharīʿah* sciences (*min ashraf al-ʿulūm*). Ibn Qayyim pointed at the textual injunctions of *sharīʿah*, which are inclusive of comprehensive purposes; and one who masters them would not need to rely on speculative evidence, opinion, and analogy (Ibn Taymiyyah and Ibn Qayyim as quoted in Jamal al-Din Atiyah, *Naḥw tafʾil maqāṣid al-sharīʿah*, 235).

9   al-Shatibi, *Manhajiyyatu Maqāṣid*, 87.

10 Cf. al-Qaradawi, *al-Madkhal*, 70-71.

11 al-Nasaʾi, *Sunan*, Manāsik, Wujūb al-Ḥajj.

12 Cf., al-Shatibi, *Muwafaqat*, IV,179.

13 Abu Ishaq Ibrahim al-Shatibi, *al-Muwāfaqāt fi uṣūl al-shariʿah*, ed. Shaykh ʿAbd Allah Diraz (Cairo: al-Maktabah al-Tijariyyah al-Kubra, n.d.), 2:393.

14 Ibid., 3:394.

15 Ibid., 2:6; see also Ibn Qayyim al-Jawziyyah, *Iʿlam al-muwaqqiʿīn ʿan rabb al-ʿālamīn*, ed. Muhammad Munir al-Dimashqi (Cairo: Idarat al-Tibaʿah al-Muniriyyah, n.d.), vol. 1; Qaradawi, *Madkhal*, 58.

16   al-Shatibi, *Muwāfaqāt*, 1:243; Qaradawi, *Madkhal*, 64-65.

17   al-Shatbi, *Muwāfaqāt*, 2:49-51; *idem, al-I'tisām* (Mecca: al-Maktabah al-Tijariyyah, n.d.), 2:131-35.

18   al-Shatibi, *Muwāfaqāt,* 3:148.

19   Ibn 'Ashur, *Maqāṣid*, 63; al-Qahtani, *Understanding Maqāṣid al-Shari'a*, 120.

20   Taqi al-Din ibn Taymiyyah, *Majmu' Fatāwā Shaykh al-Islam Ibn Taymiyyah*, compiled by 'Abd al-Rahman ibn Qasim (Beirut: Mu'assasat al-Risalah, 1398 AH), 32:134.

21   Cf., al-Raysuni, *Naẓariyyat al-maqāṣid*, 44.

22   Qaradawi, *Madkhal*, 75.

23   Ibn 'Ashur, *Maqāṣid al-Sharī'ah*, 331.

24   Cf. 'Abd al-Hamid al-Najjar, "Taf'īl al-Maqāṣid al-Shari'ah fi Mu'allajāt al-Qadāyā al-Mu'āsirah li'l-Ummah," in Int'l Islamic University Malaysia Conference Proceedings, Kuala Lumpur, 2006, vol. 1: Maqāṣid al-Shari'ah.

25   Cf. M.H. Kamali, *Punishment in Islamic Law: An Enquiry Into the Hudud Bill of Kelantan* (University of Michigan Press, 2006), 41-42.

26   Cf. al-Najjar, "Taf'il Maqāṣid," 26-27.

27   See for details, Kamali, *Principles of Islamic Jurisprudence*, rev. ed. (Cambridge: Islamic Texts Society, 2005), chapter on *hukm shar'ī*.

28   al-Raysuni, *al-Fikr al-Maqāṣidi*, 96, also cited in 'Atiyah, *Nahwa Taf'īl*, 191.

29   Legal maxims such as "Harm must be eliminated," "Necessity makes the unlawful lawful," "Necessity is to be measured according to its [true] proportions," and "credibility is attached to purposes and meanings, not to words and forms," can enrich the contemporary expositions of human rights from an Islamic perspective. Atiyah, *Nahwa Taf'il*, 190-191 has discussed Mahdi Shamuddin's views in some detail. See also al-Khadimi, *Fuṣūl fī-l-Ijtihād*, 55.

30   Cf., 'Atiyah, *Naḥwa Taf'il Maqāṣid*, 189-91. See also al-Khadimi, *Fuṣūl fī-l-Ijtihād*, 152.

31   Yusuf al-Qaradawi, *Dirāsah fi Fiqh Maqāṣid al-Sharī'ah: Bayn al-Maqāṣid al-Kulliyyah wa al-Nuṣūṣ al-Juz'iyyah* (Cairo: Dar al-Shurouq, 2008), 269-276.

32   al-Qaradawi, *Dirāsah fi Fiqh al Maqāṣid*, 280-281.

33   This also illustrates the maxim that "the *aḥkām* of sharī'a are founded on their effective causes and collapse when the effective cause is no longer obtained." Fear of fatality is the effective cause in this case.

34   al-Qaradawi, *Dirāsah*, 229-232.