

Yusuf al-Qaradawi's Jurisprudence of Priorities: A Critical Assessment

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Abstract

According to Yusuf al-Qaradawi – a prominent Muslim jurist of the contemporary period, the jurisprudence of priorities is intended to mitigate excess and negligence in legal reasoning. This article examines the fundamental principles of the jurisprudence of priorities as propounded by Yusuf al-Qaradawi in relation to the foundational sources of Islamic law. The purpose of this article is to dissect the constituent legal principles of the jurisprudence of priorities and critically evaluate their validity and coherence against the textual and rational evidences of Islamic law. This article argues that the fundamental principles

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of the jurisprudence of priorities are validated in the sources of Islamic law, and do facilitate the mitigation of excess and negligence in legal reasoning.

Keywords: Yusuf al-Qaradawi, Islamic law, jurisprudence, *ijtihād*, *fiqh*, shariah

Introduction and a Review of Literature

A prominent contemporary Muslim jurist – Yusuf al-Qaradawi (d. 2022) posits that Muslims have become complacent and stagnant in the modern period.¹ In important respects, al-Qaradawi considers Muslims themselves to be responsible for their own failings. One such failing, according to him, is the negligence of what he considers to be the Islamic priorities. Following a long line of prominent premodern and modern scholars,² al-Qaradawi is credited with reviving a discourse known as the jurisprudence of priorities (*fiqh al-awlawiyyāt*) in the contemporary period in order to address the prevalent imbalances of priorities and disorder³ in legal reasoning (*ijtihād*). For al-Qaradawi, the jurisprudence of priorities is:

...of the utmost degree of importance, for it treats – from an Islamic legal perspective – the problem of disorder and imbalance in evaluating and arranging thoughts and acts. It tackles the issue of prioritising matters; what should be considered primary and what is relegated to a secondary position in the scale of the divine commandments and prophetic teachings.⁴

According to al-Qaradawi, the objective of his thesis is to, “serve the purpose of moderating thought, correcting attitudes and laying down the basis”⁵ for the jurisprudence of priorities. The underlying principle of the jurisprudence of priorities (i.e., the principle of priority) was advocated (without its designated term of *fiqh al-awlawiyyāt*) by a number of earlier scholars – such as Abu Hamid al-Ghazali (d. 505/1111) and Ahmad ibn Taymiyyah (d. 728/1328) in the premodern period, and Muhammad

‘Abduh (d. 1905) and Muhammad al-Ghazali (d. 1996) in the modern period.⁶ However, it was Yusuf al-Qaradawi who took a particular interest in the form and function of the jurisprudence of priorities in the modern period.⁷

Al-Qaradawi's work in Arabic, *Fī Fiqh al-Awlawiyyāt: Dirāsah Jadīdah fī Daw' al-Qur'ān wa-al-Sunnah*,⁸ translated in English as *Jurisprudence of Priorities*⁹ is the first book written to address this concept of prioritisation using the specific term of *fiqh al-awlawiyyāt* (the jurisprudence of priorities). In this work, al-Qaradawi aims to lay down “the basis”¹⁰ of the jurisprudence of priorities and briefly articulate its fundamental principles (*uṣūl*). The second work by al-Qaradawi that treats the jurisprudence of priorities (to a lesser degree than the former) is in Arabic titled, *Awlawiyyāt li-l-Ḥarakah al-Islāmiyyah*,¹¹ and translated into English as *The Priorities of the Islamic Movement in the Coming Phase*.¹² In both works, al-Qaradawi advances principles of the jurisprudence of priorities in brief and evaluates various priorities of Islamic thought, such as devotional matters, mundane matters, education, propagation, and the Islamic polity. Nonetheless, al-Qaradawi asserts in his primary work, “I cannot claim that this is a comprehensive study. Rather, it only opens the door and paves the way for more work.”¹³

The literature concerning the jurisprudence of priorities written in the English language remains rather scarce. According to a group of Malaysian scholars,¹⁴ al-Ghazali is credited with reviving the jurisprudence of priorities concerning devotional practices in his magnum opus, *The Revival of the Religious Sciences (Iḥyā' ‘Ulūm al-Dīn)*.¹⁵ Another group of Malaysian scholars have attempted to provide a definition:

Fiqh of Priorities means the most appropriate way of understanding the rulings that are in conformity with the objectives of the religion through achieving the most important and beneficial benefits [*sic*], warding off the evils or the lesser harm of them [*sic*], as well as observing the results that maybe caused by these rulings.¹⁶

Despite being far from comprehensive, the definition depicts the jurisprudence of priorities primarily in relation to the securing of the

objectives of Islamic law (Shariah). However, in comparison to literature in the English language, the treatment of the jurisprudence of priorities in the Arabic language is relatively advanced, yet also remains somewhat scant. Arab scholars appear to have extracted the general principle of priority (as a theoretical framework) and applied it to various aspects of Islamic law.

A sampling of current writing in Arabic on the jurisprudence of priorities shows a range of approaches to the subject, and different authors foreground different elements. Muhammad al-Wakili in *Fiqh al-Awlawiyyāt: Dirāsah fī al-Dawābiṭ*¹⁷ studies the jurisprudence of priorities in the perspective of legal parameters (*dawābiṭ*) within the genre of legal maxims (*qawā'id fihiyyah*), which delineates circumscriptions to legal variables of Islamic law. Al-Wakili notes that sources of Islamic law (*maṣādir al-sharī'ah*) and their legal evidence (*adillah shar'iyah*) concerning their evidentiary value (*ḥujjiyyah*) ought to be prioritised in the order of the Qur'an, Sunnah (the prophetic precedent), *ijmā'* (scholarly consensus) and *qiyās* (analogical deduction). Another scholar, 'Abd al-Salam 'Iyadah 'Ali al-Karbuli, in his *Fiqh al-Awlawiyyāt fī Zālāl Maqāṣid al-Sharī'ah al-Islāmiyyah*¹⁸ argues that higher objectives of Islamic law (*maqāṣid al-sharī'ah*) as an independent legal theory (or as a source of Islamic law in its own right) ought to have priority over other rational sources of Islamic law such as analogical deduction (*qiyās*). Here, al-Karbuli emphasises the prioritisation of various benefits (*maṣāliḥ*) and harms (*mafasid*), such as public benefit/harm having priority over individual benefit/harm and collective benefit/harm having priority over independent benefit/harm. By contrast, Hassani Muhammad Nur Muhammad in his *Fiqh al-Awlawiyyāt fī al-Sharī'ah al-Islāmiyyah: Dirāsah fī al-Qawā'id wa-al-Dawābiṭ wa-al-Taṭbīqāt al-Mu'āṣirah*¹⁹ focuses on the jurisprudence of priorities in relation to the ranking of acts (*marātib al-a'māl*), and argues for the prioritisation of acts according to the precedent of the pious-predecessors (*al-salaf al-ṣāliḥ*). He argues that benefits and harms also should be gauged and prioritised according to the precedent of the first three generations of Muslim scholars in the formative period of Islam. Another example is the work of Muhammad Hammam 'Abd al-Rahim Malham, who in his *Ta'ṣīl Fiqh al-Awlawiyyāt:*

*Dirāsah Maqāṣidiyyah*²⁰ broadly addresses the priorities of the higher objectives of Islamic law. In *Ta'ṣīl Fiqh al-Awlawiyyāt wa-Taṭbīqātuḥu fī Majāl Ḥifẓ al-Dīn fī al-Siyāsah al-Shar'īyyah*²¹ he argues that among the five universal objectives (*al-kulliyyāt al-khams*) of Islamic law, the preservation of religion (*ḥifẓ al-dīn*) has priority under the Islamic judiciary policy (*al-siyāsah al-shar'īyyah*). A cursory glance suggests that most contemporary literature, including those referenced above, if not all works on the jurisprudence of priorities are based on al-Qaradawi's theoretical framework found in his primary work *Jurisprudence of Priorities*.

An analysis of the existing literature on the jurisprudence of priorities further shows that, although there is a substantial application of the principle of priority in areas of Islamic thought, there is a lack of research into the fundamental principles underpinning the jurisprudence of priorities itself. This raises a number of questions including: What are the constituent legal principles of the jurisprudence of priorities in the first place? Is each constituent legal principle of the jurisprudence of priorities congruent with the sources of Islamic law? Are they substantiated by textual sources of Islamic law? In order to answer these questions, this article evaluates the validity and coherence of key principles of the jurisprudence of priorities as propounded by Yusuf al-Qaradawi in the light of the sources of Islamic law. The goal of this article, then, is to explore the legal-theoretical (*uṣūlī*) nuances of the jurisprudence of priorities to a further degree than previous research. At the same time, this analysis does not concern itself with the application of the jurisprudence of priorities to any particular legal issue (*mas'alah fiqhiyyah*) within the ancillaries of jurisprudence (*furū' al-fiqh*), but rather focuses on dissecting the fundamental principles of the jurisprudence of priorities (*uṣūl fiqh al-awlawiyyāt*).

Primarily from al-Qaradawi's writings, this article isolates six fundamental principles of the jurisprudence of priorities. *First*, the concept of priority (*al-awlawiyyah*) where a variable is prioritised over another according to the sources and principles of Islamic law. *Second*, the concept of rank (*al-marātib*) where a variable outranks another (according to criteria of merit accredited in the sources of Islamic law) while the outranking variable has priority over the outranked variable in value. *Third*,

the concept of sequence (*al-tartīb*) indicates a series of actions necessary to accomplish a particular objective where the preceding action has priority over the succeeding action in accomplishing the objective. *Fourth*, the concept of gradualism (*al-tadarruj*) indicates a succession of stages necessary to advance from the lesser to the greater in progress where the preceding stage takes priority over the succeeding stage in accomplishing the desired result. *Fifth*, the concept of centrism (*al-wasāṭiyyah*) proposes to assume the middle position between two opposing extremes where the middle position has priority over the two extreme positions in harmonising extremism. *Sixth*, the concept of balance (*al-muwāzanah*) indicates weighing out two variables and prioritising either the most beneficial or the least harmful out of the two. The culmination of these six principles consolidates the fundamental principles of the jurisprudence of priorities, which advocates argue mitigates excess and negligence in legal reasoning. The following is an evaluation of each of these principles in connection to the jurisprudence of priorities as conceived of by Yusuf al-Qaradawi.

The Principle of Priority (*awlāwiyyah*):

The precedence between two things

Al-Qaradawi claims that the purpose of the jurisprudence of priorities is to “reconcile or control the two opposing extremes of excessiveness and negligence.”²² Al-Qaradawi elaborates on the functions of the jurisprudence of priorities:

The unimportant is not preferred over the important, nor is priority given to the less important over the more important, the outweighed over the preponderant, or the less noble over the noble or best. Instead, that which deserves priority should be given its due primary status, and that which is secondary is to be relegated to a secondary position. The small should not be magnified; nor should the significant be belittled. Everything should be put in its position with a straight balance, without excess or negligence.²³

In simpler terms, according to al-Qaradawi the function of the jurisprudence of priorities is: “It tackles the issue of prioritising matters; what should be considered primary and what is relegated to a secondary position in the scale of the divine commandments and prophetic teachings.”²⁴ Therefore, the principle of priority, which is the underlying theorem of the jurisprudence of priorities concerns prioritising one variable over another in relation to importance, calibre, urgency, utility and suitability. The key Qur’anic text that requires analysis in this regard is:

Those of the believers who sit still, other than those who have a (disabling) hurt, are not on an equality with those who strive in the way of God with their wealth and lives. God hath conferred on those who strive with their wealth and lives a rank above the sedentary. Unto each God hath promised good, but He hath bestowed on those who strive a great reward above the sedentary. (Q 4:95 trans. Pickthall.²⁵)

In the above verse, the activist is ranked above the sedentary even though both are believers. However, while the activist is praised as being “a rank above,” the sedentary is not criticised for being a rank below. Rather, the sedentary is a rank lower in comparison to the activist. This is indicated clearly by the statement, “Unto each God hath promised good, but He hath bestowed on those who strive a great reward above the sedentary.” The verse does indicate that activism, which takes a maximalist approach is superior to quietism, which is a minimalist approach. However, it is noteworthy that religious minimalism is not blameworthy according to this verse. This assertion is supported by the agreed-upon (*muttafaq ‘alayhi*) report in which a man from Najd questions the Prophet Muhammad about the bare-minimum requirements of the religion, to which the Prophet’s response was to guard the five pillars of Islam. The man then replies, “By God! I will neither do less nor more than this. God’s Messenger said, “If what he said is true, then he will be successful” (Bukhari: 46).²⁶ Hence, the principle of priority relegates through legal reasoning two related or comparable legal variables²⁷ into primary and secondary positions. In other words, the principle of priority relegates through a process of legal

reasoning two legal variables in order and/or rank, one above the other while what was relegated to a secondary position is neither trivialised nor dismissed. Subsequently, what immediately comes to mind concerning the principle of priority is its similarity to the concept of outweighing (*tarjih*) of evidence in Islamic legal theory (*uṣūl al-fiqh*).

Muhammad Hashim Kamali (b. 1944) explains that “conflict (*taʿāruḍ*) occurs when each of two evidences of equal strength requires the opposite of the other. This means that if one of them affirms something, the other negates it at the same time and place.”²⁸ However, logically, a genuine conflict can only occur between two probable evidences (*adillah ḥāẓiriyah*), and only seeming conflict occurs between definitive evidences (*adillah qaṭʿiyyah*).²⁹ Consequently, outweighing (*tarjih*) of evidence occurs in legal reasoning when there is conflict and contradiction of two evidences between which there is a distinguishable feature of rank.³⁰ If there is no distinguishable feature of rank between two evidences, this situation is considered one of equivalence (*taʿādul*) and therefore devoid of the possibility of reconciliation, and this logically cannot occur between two definitive evidences or between two probable evidences.³¹ Equivalence cannot logically occur between two definitive evidences because objectively there cannot be duality in proof (*ḥujjah*) on a single matter (*masʿalah*). Similarly, equivalence cannot logically occur between two probable evidences because all probable evidences are indefinite and must have a distinguishing feature of rank. Outweighing, on the other hand, distinguishes evidence into one that outweighs (*marjūh*) the other evidence, that is, the outweighed (*rājih*). The evidence that outweighs is stronger than the outweighed in terms of evidentiary value determined through legal reasoning. Moreover, outweighing and the preference of a particular evidence over another in legal reasoning occurs after exhausting all means of reconciliation. However, what is evident here is that the concept of outweighing is not equivalent to the principle of priority. Outweighing is preferring one evidence over another due to a conflict between them which results ultimately in discarding the outweighed evidence. According to al-Qaradawi, “preference [outweighing] entails neglecting one of the two texts and giving priority to the other over it.”³² Unlike outweighing, the principle of priority ranks and prioritises

legal variables into primary and secondary positions while what is relegated to a secondary position is neither trivialised nor discarded. While outweighing is restricted to legal evidence, the principle of priority is unrestricted and versatile, and deals not only with legal evidences but with a variety of legal variables. Notwithstanding, prioritisation of legal variables can only be achieved according to a certain criterion of values.

The Principle of Ranks (*marātib*):

Designating variables according to their merit

Al-Qaradawi claims:

I have earlier...called it *fiqh marātib al-a'māl* [jurisprudence of ranking acts], by which I mean putting everything, whether rules, values, or acts, in its due status... based on the correct legal criteria derived from the light of divine revelation and sound intellect.³³

I once titled this study *fiqh marātib al-a'māl* [jurisprudence of ranking acts], and a few years ago I chose to title it as *fiqh al-awlawiyyāt* [jurisprudence of priorities], for the latter is a wider, more comprehensive, and expressive title.³⁴

From the above statements, we can deduce that the jurisprudence of priorities encompasses the principle of ranks, and the latter is a constituent principle of the former. The interrelationship between the principle of priority and the principle of rank is a straightforward one, and the objective is:

[D]istinguishing between what Islamic Law gives priority to and what it considers secondary or less important, between what it emphasizes and what it makes optional, and between what Islam assigns great value to and what it degrades.³⁵

Marātib, in the context of jurisprudence indicates 'ranks' in the sense that it is a hierarchy of things (*ashyā'*) according to their due status or

merit. What is meant by ‘due status or merit’ is a benchmark, that is, a grading deduced according to the Qur’an, the prophetic precedent and sound intellect. The Qur’an and Hadith speak of rankings (of something better in comparison to another) with regards to certain matters of which most cases are recommendations (*mandūbāt*). For example, Moses reasoned with the Jews of his time saying: “Would you exchange what is better for what is less?” (Q 2: 61 trans. Saheeh Intl.³⁶), and, in a supplication of optimism: “Perhaps our Lord will substitute for us [one] better than it” (Q 68:82 trans. Saheeh Intl.). The Qur’an contains many sentences and phrases of rankings inclusive of *asmā’ al-tafdīl* (comparative nouns) in the morphological pattern of *af’alu* which indicates a comparison of two while ranking one above the other. The English equivalent is the suffix ‘er’ in the sense of ‘better,’ ‘truer,’ or ‘righter’ compared to another thing.

In the following examples of Qur’anic texts, the comparative noun *khayr* (better) is used to distinguish and rank one thing above another. The Qur’an considers those who participate in battle and spend their wealth in circumstances of difficulty and necessity to be higher in rank than those who go into battle and spend their wealth in circumstances of ease and want: “Those who spent and fought before the victory are not upon a level (with the rest of you). Such are greater in rank than those who spent and fought afterwards” (Q 57:10 trans. Pickthall). In another verse, the activist (who struggles) is ranked above the quietist: “God hath conferred on those who strive with their wealth and lives a rank above the sedentary. Unto each God hath promised good, but He hath bestowed on those who strive a great reward above the sedentary” (Q 4:95 trans. Pickthall). Charity in secret is ranked above charity in public: “If you disclose your charitable expenditures, they are good; but if you conceal them and give them to the poor, it is better for you” (Q 2:271 trans. Saheeh Intl.). The Qur’an asserts that, in the choice of marriage, “a believing slave woman is better than a polytheist, even though she might please you.” (Q 2:221 trans. Saheeh Intl.).

The Prophet Muhammad also reportedly ranked the characteristics of an extrovert Muslim above that of an introverted Muslim: “Indeed when the Muslim mixes with the people and he is patient with their

harm, he is better than the Muslim who does not mix with the people and is not patient with their harm” (Tirmidhi: 2507; Ibn Majah: 4032). The popular (*mashūr*) report that is recorded in major Hadith collections indicates that there are ranks in faith: “Faith has some seventy odd branches, the most virtuous of which is saying *lā ilāha illā llāh* (no deity but God), and the least of which is removing bones from the road” (Abu Dawud: 4676). Reportedly, the Prophet Muhammad further ranked the easier option in matters. As Aishah bint Abi Bakr (d.58/678) the wife of the Prophet Muhammad reports: “The Messenger of God was never given the choice between two things but he would choose the easier of the two, so long as it was not a sin” (Muslim: 6045). With regards to the primary sources of Islam, the Prophet Muhammad reportedly said: “I have left two things with you. As long as you hold fast to them, you will not go astray. They are the book of God and the Sunnah of his Prophet” (al-Muwatta’: 2640). Scholars concur that the order in which the sources are mentioned is indicative of their respective ranks.

Islamic legal theoreticians (*uṣūliyyūn*) are unanimous in ranking the Qur’an above the Sunnah of the Prophet.³⁷ This ranking is not only in the authenticity of their transmission (*thubūt*) but as sources of Islamic jurisprudence. The ranking of transmitted-textual evidence (*adillah naqliyyah*) follows the hierarchy stipulated above, which is texts of the Qur’an followed by texts attributed to the prophetic precedent.³⁸ Next to the Qur’an and the prophetic precedent, the majority of Islamic legal theoreticians rank scholarly consensus followed by analogical deduction as secondary sources of Islamic law. Secondary sources of Islamic law – both scholarly consensus and analogical deduction are considered rational evidence (*adillah ‘aqliyyah*). Therefore, Islamic legal evidence is ranked in the order of primary sources followed by secondary sources and transmitted-textual evidence followed by rational evidence.

Al-Qaradawi argues that equivocal texts (*mutashābihāt*) should be understood in light of unequivocal texts (*muḥkamāt*), where the latter has priority over the former.³⁹ Al-Qaradawi’s emphasis is not on the theological connotations of *mutashābihāt* in contrast to *muḥkamāt*, but rather concerning the priority of clear texts (*wāḍihāt*) over unclear texts (*mubhamāt*) in the legal-theoretical perspective of clarity and ambiguity

of expressions (*al-wuḍūḥ wa-al-ibhām fī al-alfāz*). This implies that definitive texts (*qaṭʿiyyāt*) should be prioritised over probable texts (*ẓanniyyāt*) in legal interpretation. The Qurʾanic texts are ranked according to their clarity (*wuḍūḥ*) and ambiguity (*ibhām*). Clear texts are ranked variously according to their measure of clarity, while unclear texts are ranked variously depending on their measure of ambiguity.⁴⁰ The prophetic precedent as an independent source of Islamic law is ranked in the order of legislative Sunnah (*sunnah tashrīʿiyyah*) followed by non-legislative Sunnah (*sunnah ghayr tashrīʿiyyah*).⁴¹ The prophetic precedent in its transmission (*riwāyāt*) is further ranked in the order of recurrent (*mutawātir*), popular (*mashūr*) and solitary (*āḥād*) – reports (sing. *khbar* pl. *akhbār*) and normative conventions (*aʿmāl*). In terms of authenticity (*ṣiḥḥah*), reports are ranked in the order of *ṣaḥīḥ* (sound), *ḥasan* (good) and *ḍaʿīf* (weak). Especially with regards to the legal interpretation of Hadith, al-Qaradawi argues that consolidation and reconciliation (*al-jamʿ wa-al-tawfīq*) should assume priority over outweighing (*tarjīḥ*).⁴² This implies the priority of understanding the generality and specificity (*al-ʿumūm wa-al-khusūṣ*) of a report through other independent reports and related transmissions over the enactment of individual reports. The reports of the four rightly-guided caliphs (*al-khulafāʾ al-rāshidūn*) i.e. Abu Bakr ʿAbd Allah ibn ʿUthman (d. 13/634), ʿUmar ibn al-Khattab (d. 23/644), ʿUthman ibn ʿAffan (d. 35/656) and ʿAli ibn Abi Talib (d. 40/661) are ranked above the reports of other Companions (*ṣaḥābah*)⁴³ as the Prophet Muhammad reportedly said: “adhere to my precedent (Sunnah) and the precedent (*sunnah*) of the rightly-guided caliphs” (Tirmidhi: 2676; Abu Dawud: 4607; Ibn Majah: 42).

Sunni Muslims are unanimous that the address ‘rightly-guided caliphs’ include the four rightly-guided caliphs. However, Shiʿi Muslims consider only the cousin of the Prophet Muhammad, ʿAli, as the legitimate rightly-guided caliph among the four rightly-guided caliphs recognised by Sunnis. Nevertheless, Sunnis and Shiʿa both agree on the report in question (Tirmidhi: 2676; Abu Dawud: 4607; Ibn Majah: 42) despite the disagreement on the legitimacy of individual caliphs. Sunnis consider most Companions of the Prophet Muhammad to be rightly guided and their legal opinions to be a precedent authoritative in Islamic

law.⁴⁴ Moreover, the reports of prominent Companions, inclusive of ten select Companions,⁴⁵ are ranked above other Companions due to their stature and seniority. Earlier scholars, that is, the Predecessors (*al-salaf*) are ranked in the order of the Companions, Successors (*tābi'ūn*) and Followers (*tabi' tābi'ūn*) due to their moral superiority and proximity to the prophetic tenure, as the Prophet Muhammad reportedly said: "The best of people are my generation, then those who come after them, then those who come after them" (Muslim: 6472).⁴⁶ Therefore, the earlier scholars (*al-salaf*) are ranked above the later scholars (*al-khalaf*) in scholarly authority.

According to al-Qaradawi, the principle of rank must be according to the Qur'an, the prophetic precedent and 'sound intellect,' as already stipulated. The Qur'an and the prophetic precedent are transmitted sources (*riwāyah*) while 'sound intellect' refers to rational sources (*dirāyah*). Transmitted sources are transmitted texts (*naql*) while rational sources indicate the use of the intellect ('*aql*) through logical means. Reasoning inculcates scientific ('*ilmī*), philosophical (*falsafī*) and logical (*manṭiqī*) analysis, and inference (*istidlāl*) through deductive reasoning (*istinbāt*) and inductive reasoning (*istiqrā*).⁴⁷ Deductive reasoning includes analogical deduction and consolidation and reconciliation of Qur'anic texts and Hadith. Inductive reasoning includes extracting general principles (*qawā'id kulliyyah*) such as the objectives of Islamic law. Necessary objectives (*darūriyyāt*), exigent objectives (*ḥājīyyāt*) and enhancive objectives (*taḥsīniyyāt*) are ranked in descending order of importance where the preceding objective has priority over the succeeding one.⁴⁸ Hence, 'sound intellect' concerns legal reasoning through transmitted sources as well as rational sources. However, the ubiquitous contention posable against the principle of ranking (or any objective deduction for that matter) is the philosophical argument of subjectivity and relativity in the determination of what is better than another. The ubiquitous philosophical contention is – how can one objectively determine the rank of one matter over another?

From a legal-theoretical point of view, the need to rank matters (or legal variables) according to a certain benchmark is a necessity for legal reasoning. However, from a pragmatic point of view, postmodernist

philosophical contentions regarding subjectivism and/or relativism are difficult to counter through objective responses, given that subjectivism and relativism are based on the hypothesis that one objective truth does not exist.⁴⁹ However, al-Qaradawi's benchmark according to "legal criteria derived from the light of divine revelation and sound intellect,"⁵⁰ may nevertheless impose some objectivity in legal reasoning. Despite Muslims in general being united around some fundamental sources and principles of Islamic law, while differing in subsidiaries, what constitutes "sound intellect" is untenable in definitive terms. Notwithstanding, for the majority of Muslims the well-established benchmark of 'according to the Qur'an, the prophetic precedent and the scholarly consensus'⁵¹ in this order may establish a commonly agreeable formula to determine what is better than another (beyond that which may be indefensible legal-theoretically). If scholarly consensus is also objectively untenable, as argued by some scholars,⁵² then, 'according to the Qur'an and the prophetic precedent' may be the agreeable yardstick of objective truth and reality for Islamic legal reasoning. However, legal reasoning is not confined to ranking sources of knowledge in connection to epistemology, but it also inculcates procedure and sequence in analysing sources of knowledge in connection to methodology.

The Principle of Sequence (*tartīb*):

Series of actions to accomplish a particular objective

Legal reasoning does not only concern the ranking of legal variables, but includes the execution of actions ('*amal*) according to a sequence (*tartīb*) that is appropriate (*munāṣib*) to achieve a particular juristic objective. Islamic legal theoreticians considered 'appropriate' to mean "that which brings benefit (*maṣlaḥah*) according to the objectives of Islamic law."⁵³ However, it is noteworthy that 'appropriate' in connection to sequence is not equivalent to 'better' in connection to rank. Rather, sequence purports an appropriate succession in the execution of acts, whereas rank purports a hierarchy of things according to their value. Simply defined, sequence indicates the appropriate order in which actions are executed. Nonetheless, the precedent for Muslims

in both rank and sequence of acts ought to be according to the Qur'an and the prophetic precedent.

The very first chapter of the Qur'an teaches to supplicate: "It is You we worship and You we ask for help" (Q 1:5 trans. Saheeh Intl). In this, the appropriate sequence of action is to demonstrate devotion before imploring for aid. This demonstrates the appropriate sequence of action through which the objective of imploration is achieved. Moreover, the Qur'an consistently maintains the sequence of transcendental success – which is to consolidate faith before doing good works: "who believe and do good works" (Q 2:25; 103:3). This recurring sequence in the Qur'an does not appear in its reverse order. Despite the specific theological implication of this text, the general implication is that discernment (*ma'rifah*) precedes action (*'amal*) in an appropriate sequence. Diya' al-Din al-Juwayni (d. 478/1085) defines jurisprudence (*fiqh*) as "the discernment of legal rulings ascertained through the exercise of legal reasoning" (*ma'rifat al-aḥkām al-shar'īyyah alladhī tharīqu-hā al-ijtihād*).⁵⁴ Hence, the competence to exercise legal reasoning and the understanding of Islamic jurisprudence is a prerequisite to issuing legal opinions (*iftā'*). Arguably, if an inappropriate sequence of legal reasoning is exercised, it may lead to excess and negligence in legal opinions. One way in which excess and negligence in legal reasoning can occur is when an inappropriate sequence is applied to resolve conflict (*daf' al-ta'āruḍ*) between two probable evidences (*adillah ḡanniyyah*).

All four traditional legal schools agree on the implementation of four procedures to resolve conflict of evidence.⁵⁵ The majority of legal theoreticians inclusive of Malikis, Shafi'is and Hanbalis agree upon a particular sequence in the implementation of those agreed-upon procedures for the resolution of two conflicting evidences (*ta'āruḍān*).⁵⁶ The sequence according to the majority is as follows. The first procedure, the consolidation and reconciliation between two conflicting evidences (*al-jam' wa-l-tawfīq bayna al-ta'āruḍayn*) includes: specification of the general (*takhṣīṣ al-'āmm*), qualification of the absolute (*taqyīd al-muṭlaq*), clarification of the cryptic (*bayān al-mujmal*), elaboration of the concise (*tafṣīl al-mujmal*) and augmentation (*tazīd*) of related texts. The second procedure, the outweighing of one evidence over another (*al-tarjīḥ bayna*

al-dalīlayn) can occur either due to one evidence having a high probability (*ghalabat al-zann*) or due to the availability of supplementary evidence from another source in the form of supporting evidence of the primary evidence. The third procedure, the abrogation of one evidence to the retention of the other (*naskh aḥad al-dalīlayn*), where the latest operative ruling (of one evidence) abrogates the older obsolete ruling (of the other evidence). The fourth procedure is the suspension of both evidences (*tasāquṭ al-dalīlayn*), which is applicable when all objective methods of conflict resolution have failed and the abandonment of both conflicting evidences to seek other means of legal reasoning has become necessary. While Hanafis agree with the aforementioned four procedures of conflict resolution, they differ only in the sequence of their execution.

According to Wahbah Mustafa al-Zuhayli (d. 2015), the Hanafis only differ in the sequence of execution i.e., outweighing as the first procedure instead of reconciliation, followed by abrogation and suspension.⁵⁷ However, the Hanafi giving of precedence to outweighing over reconciliation seems to be an exception rather than the norm according to Hanafi inclined works of legal theory such as that of ‘Abd al-Wahhab al-Khallaf (d. 1956)⁵⁸ and Imran Ahsan Khan Nyazee (b.1945),⁵⁹ which fail to mention this exception. Upon closer examination, Hanafis give precedence to outweighing over reconciliation only when there is an exception to outweigh a solitary report (*khābar al-āḥād*) by another solitary report based on the consideration of general principles such as “repelling injury” (*daf‘ al-ḍarar*) and “securing benefits” (*jalb al-manāfi‘*).⁶⁰ According to al-Zuhayli, Hanafis would outweigh the report containing a prohibition (*muḥarram*) over the report containing a permissibility (*mubīḥ*) and the report containing an inhibition (*māni‘*) over the report containing a requisition (*muqtaḍi*).⁶¹ Nonetheless, it is safe to conclude that, in normal circumstances, the four schools seem to agree on both the procedures in conflict resolution of legal evidence and the sequence of their execution. However, al-Qaradawi reemphasises the well-established priority of reconciliation over outweighing specifically in the case of conflict between two sound (*ṣaḥīḥ*) reports owing to their superior evidentiary value. According to his epistemological position on the credibility of Hadith, two *ṣaḥīḥ* reports can only complement or supplement one another and

cannot conflict with each other because two facts, or factual reports, cannot contradict each other.⁶² Al-Qaradawi reasons:

When it is possible, without artifice and arbitrariness, to do that by combining and reconciling the two texts so that one can act according to both together, then it is better than recourse to preference [outweighing] between the two. It is better because preference [outweighing] entails neglecting one of the two texts and giving priority to the other over it.⁶³

It is noteworthy that the implementation of a systematic legal procedure in the conflict resolution of legal evidence according to an appropriate sequence can mitigate excess and negligence in legal reasoning while enhancing the utility thereof. However, apart from following proper procedure, legal reasoning also involves implementation in successive stages.

The Principle of Gradualism (*tadarruj*):

Successive advancement from the lesser to the greater

Al-Qaradawi explains: “what we mean by ‘jurisprudence of priorities’ is the relegation of each thing [or matter] to its due status; neither postponing what deserves preponement nor preponing what deserves postponement.”⁶⁴ The purpose of gradualism is to avoid detriments arising from both extremes of undue haste and undue delay in executing actions. It is well-established in the Islamic tradition that the Qur’an was revealed to the Prophet Muhammad gradually, in successive stages, and not all at once, so that the Shariah is received, disseminated, and implemented at the most appropriate juncture.

And those who disbelieve say, “Why was the Qur’an not revealed to him all at once?” Thus [it is] that We may strengthen thereby your heart. And We have spaced it distinctly”; “And [it is] a Qur’an which We have separated [by intervals] that you might recite it to the people over a prolonged period. And We have sent it down progressively.” (Q 25:32; 17:106 trans. Saheeh Intl.)

The interrelation between gradualism and the principle of priority is that the preceding stage has priority over the succeeding stage with respect to time. In other words, a steady advancement toward a desired outcome, progressing stage by stage without delay or haste is gradualism. Gradualism is connected to the principle of sequence specifically in relation to the appropriate and suitable time at which matters ought to be executed and implemented. The relationship between the principle of gradualism and the principle of ranks (and the principle of priority) is that what should be postponed or preponed based on what is ranked higher or lower according to the sources of Islamic law. In other words, what is ranked higher should be preponed (and prioritised) over what is ranked lower and what is ranked lower should be postponed over what is ranked higher. Furthermore, recommended matters should be postponed over obligatory matters, while permissible matters should be postponed over recommended matters. In the perspective of legal objectives classified according to their demand; necessary objectives (*darūriyyāt*) should be preponed (and prioritised) over exigent objectives (*hājiyyāt*) while exigent objectives should be preponed (and prioritised) over enhancive objectives (*taḥsīniyyāt*). Exigent objectives should be postponed over necessary objectives, while enhancive objectives should be postponed over exigent objectives.

Hashim Kamali explains that, “Gradualism is pragmatic and is in line also with the Qur’anic principle of removal of hardship” (*rafʿ al-ḥaraj*), and the Qur’an affirms that “God intends for you ease and does not intend for you hardship” (Q 2:185 trans. Saheeh Intl.). Facilitating ease (*taysīr*) and alleviating hardship was the prophetic precedent according to numerous Hadith, such as “verily, the religion is of ease,” “you have been sent to make things easy and not to make them difficult,” “Make things easy for the people and do not make things difficult for them” (Bukhari: 39, 220 & 4314). Aishah reportedly said:

Verily, the first verses to be revealed were from the shorter chapters at the end of the Qur’an. In them is mentioned Paradise and Hellfire, until people were firmly established upon Islam and verses of lawful and unlawful were revealed. If the first verse

to be revealed was 'do not drink wine,' they would have said, 'we will never stop drinking wine.' And if the first verse to be revealed was 'do not commit adultery,' they would have said, 'we will never stop committing adultery'. (Bukhari: 4993)

According to Jasser Auda, the prophetic methodology (*minhāj al-nabī*) was to implement religious matters gradually in order to facilitate ease and not impose difficulty (*mashaqqah*) upon people.⁶⁵

As traditionally understood, the prohibition of intoxicants was supposed to have been imposed gradually according to a weak (*ḍaʿīf*) report with multiple chains (Tirmidhi: 3049, Nasa'i: 5542). Despite the weakness of this report, the logic of gradualism thereof is acceptable with some level of certainty. Accordingly, the first stage; is an acknowledgement that there is some benefit in the source of intoxicants: "And from the fruits of the palm trees and grapevines you take intoxicant and good provision" (Q 16:67 trans. Saheeh Intl). The second stage is an admonition that the harm caused by intoxicants exceeds that of its benefit: "They ask you about intoxicants and gambling. Say: In them is great harm, and a benefit for mankind; but their harm is greater than their benefit" (Q 2:219 trans. The Monotheist Group). The third stage is an admonition to refrain from praying in a state of drunkenness and mal consciousness. However, it is also an exhortation to pray while in a state of God-consciousness: "O you who have believed, do not approach prayer while you are intoxicated until you know what you are saying" (Q 4:43 trans. Saheeh Intl.). The fourth stage is an advancement of a rationale for the categorical prohibition of intoxicants:

O you who have believed, indeed, intoxicants, gambling, [sacrificing on] stone alters [to other than God], and divining arrows are but defilement from the work of Satan, so avoid it that you may be successful. Satan only wants to cause between you animosity and hatred through intoxicants and gambling and to avert you from the remembrance of God and from prayer. So will you not desist? (Q 5:90-91 trans. Saheeh Intl.).

According to Hashim Kamali, a primary objective (*maqṣad*) of the principle of gradualism is the alleviation of hardship through which turmoil (*fitnah*) is mitigated.⁶⁶ The word *fitnah*, which could mean trial, test, tribulation, turmoil, and hardship can have different connotations depending on its context. Nonetheless, *fitnah* can arise due to negligence caused by hastiness. The Qur'an claims that "Man was created of haste," "and man is ever hasty" (Q 21:37; 17:11 trans. Saheeh Intl.). Therefore, the Qur'an suggests that exercising patience ought to be the first response to *fitnah*: "And We have made some of you [people] as a trial (*fitnatan*) for others – will you have patience?" (Q 25:20 trans. Saheeh Intl.); "Rather, your souls have enticed you to something, so patience is most fitting" (Q 12:83 trans. Saheeh Intl.) and the Prophet Muhammad reportedly said: "Verily, patience is at the first stroke of a calamity" (Bukhari: 1283). Hence, Kamali posits that gradualism facilitates the means (*fatḥ al-dharā'i'*) to benefits and inhibits the means (*sadd al-dharā'i'*) to harms.⁶⁷ Kamali further explains:

[I]n the formative stages of Islam, the rules of prayer and almsgiving (*ṣalāh*, *zakāh*), fasting, and many of the penalties were revealed gradually. The Qur'anic revelations on wine drinking illustrate gradualism in their three separate stages: it was discouraged during the performance of prayer (*ṣalāh*) to begin with, and then through persuasive advice that drew attention to its harmful effects generally, and it was finally prohibited altogether. Most of the prescribed penalties, known as *ḥudūd*, were similarly revealed after due preparation to facilitate a congenial environment for their reception.⁶⁸

Abu Ishaq al-Shatibi (d. 790/1388) writes in connection to addressing the Lawgiver's intent (*ḥukm al-shāri'*) in evading *fitnah* by exercising gradualism in the implementation of penalties for infringements:

It is related from 'Umar ibn 'Abd al-Aziz that his son 'Abd al-Malik said to him, "Why is it that you do not implement the rules (of the Shariah)? By God, it will not bother me if in matters of truth the pots begin to boil between you and me." 'Umar said to

him, “My son, do not be in such haste. God condemned *khamr* (wine) twice in the Qur’an, and then prohibited it the third time. I am afraid of imposing the truth on the people all at once for they will reject it all at once, and this will lead to a trial (*fitnah*)⁶⁹

Another objective of the principle of gradualism is to successively pursue truth and perfection even if one will fall short of ascertaining it. Concerning the objective pursuit of truth, the Qur’an urges to “say: It may be that my Lord guideth me unto a nearer way of truth than this” (Q 18:24 trans. Pickthall). Since knowledge of absolute truth and reality is consigned to God, the Qur’anic philosophy of pursuing truth and reality seems to align with post-positivism and critical realism in modern Western philosophy, which advocates objectivism in the pursuit of truth and reality even though absolute truth and reality are unascertainable.⁷⁰ Therefore, the principle of gradualism inclines towards ‘probabilism’ rather than ‘relativism’. Regarding objective pursuit towards perfection, the Prophet Muhammad reportedly said: “...so, do not be extreme! and (yet) seek near-perfection!” (Bukhari: 39). The pursuit of ‘that which is better’ is addressed in multiple Qur’anic verses (Q 16:125, 41:34, 6:152, 17:34) with the phrase “*bi-llatī hiya aḥsanu* (with that which is better) and Q 17:9 which reads “*li-llatī hiya aqwamu* (for that which is righter).⁷¹ The comparative nouns (*aḥsanu* and *aqwamu*) indicate a comparison of two, where their English equivalent could be the suffix ‘er’ in the sense of ‘better’, ‘truer’ or ‘righter’. Hence the objective of the principle of gradualism, a key component of the jurisprudence of priorities as advanced and articulated by al-Qaradawi, is to advance from a former state to a better state consistently and persistently and is affirmed in the Islamic legal sources and tradition. However, perhaps the most well-known principle associated with al-Qaradawi is that of centrism, discussed next.

The Principle of Centrism (*wasatīyyah*):

Occupying the middle position between two opposing extremes

The concept of centrism is both generic and specific. The generic aspect is understood to be Islamic centrism (*al-wasatīyyah al-islāmiyyah*), which

implies moderation (*i'tidāl*) against all forms of excessiveness (*ghulūw*) or extremism (*taṭarruf*). By contrast, the specific aspect is understood as the centrist methodology (*minhāj al-wasaṭiyyah*), which endeavours to occupy a theoretical midpoint (*wasaṭ*) between opposing extremes in the methods of extracting legal rulings (*turuq istinbāṭ al-aḥkām al-shar'īyyah*) and argued to be the better course of legal reasoning.⁷² The generic concept of centrism, which indicates moderation in matters, is a general principle (*qā'idah kulliyah*) well-established through definitive evidence from textual and rational sources.⁷³ By contrast, what constitutes moderation in a technical or ideological sense, and how it is specifically applied in legal reasoning is a scholarly concern.⁷⁴ Here, the analysis is primarily concerned with the specific and the legal-theoretical aspect of centrism, that is, the concept of occupying the middlemost (*tawassuṭ*) position between two opposing extremes in legal reasoning where “the farthest point from the two extremes”⁷⁵ that is argued by al-Qaradawi to be the best position in jurisprudence.

The main Qur'anic verse (Q 2:143) advanced in support of centrism, in three well-known English translations is as follows: “Thus We have appointed you a middle nation” (Marmaduke Pickthall); “And thus we have made you a just community” (Sahih International); “And thus have We willed you to be a community of the middle way” (Muhammad Asad). The implication “a community of the middle way” is attributed to the Arabic phrase ‘*ummatan wasaṭan*’ which literally means ‘a middlemost nation’.

According to the exegetical prophetic report (Bukhari: 4487) concerning the verse Q 2:143, the idiomatic meaning of the word ‘*wasaṭan*’ in the phrase ‘*ummatan wasaṭan*’ received (*samā'ī*) by the convention (*wad'*) of the Arabs primarily signifies ‘*adl*’ (justice, equitability, fairness) and *khayr* (better, choicest).⁷⁶ By the convention of the Arabs, the phrase ‘*ummatan wasaṭan*’ can mean ‘a just nation’, ‘an equitable nation’ or ‘a choicest nation’ indicative of a praiseworthy community.⁷⁷ Therefore, the interpretation of ‘*ummatan wasaṭan*’ to allude to ‘a middle path’, ‘centrism’ or more specifically, to a situation between two extremes is speculative (*ẓanni*) and not definitive (*qaṭ'ī*). Kamali further explains that: “It is not necessary perhaps that there must be two extremes or two sides

to a mid-most position.”⁷⁸ However, it is a matter of fact that Q 2:143 lies exactly in the middle of its chapter (2) – *al-Baqarah* which consists of 286 verses. According to Kamali, although the verse of centrism being the ‘middle verse’ is coincidental to non-Muslims, for Muslims it may be an indication for inductive reasoning.⁷⁹

The Qur’anic verse “And those who, when they spend, are neither prodigal nor grudging; and there is ever a firm station between the two” (Q 25:67 trans. Pickthall) discourages opposing extremes of extravagance and niggardliness, while encouraging to choose the middle position, because “there is ever a firm station between the two” and “generosity comes in the middle of stinginess and extravagance.”⁸⁰ Among premodern scholars,⁸¹ the exegete Muhammad al-Qurtubi (d. 671/1273) comments on Q 2:143:

The middle avoids excess and falling short and is praiseworthy... In a Hadith we find, “The best of matters is the middlemost of them.” ‘Ali said, “You must take the middle way. The high descend to it and the low rise to it.” Someone who is from the middlemost of his people is one of the best of them.⁸²

Among modern scholars, Muhammad Husayn Tabataba’i (d. 1981) comments on the verse:

They were made a “medium nation” to “be witnesses for the people”. What does it mean? “Medium” is a thing in the centre, neither to this side nor to that”; “God has made this *ummah* a “medium”, by giving them a religion which leads them to the straight and upright path, in the middle – inclined neither to this side nor to that”; “This *ummah* then is the medium and well-balanced one; it is a criterion to judge and weigh both sides of extremes. It is, therefore, the witness for all the people who have deviated from the middle way going to this side or that.”⁸³

Moreover, al-Qaradawi argues that the Qur’an points to the middle path of moderation between extremes in all its teachings. For example,

moderation between: the empirical and the metaphysical (2:3-4), revelation and reason (4:82; 38:29), conjecture and gullibility (2:111), physicalism and pantheism (3:191-190), atheism and polytheism (25:3), determinism and fatalism (13:11), idealism and realism (91:7-10), individualism and communalism (3:104), materialism and spiritualism (28:77), stagnation and haste, the vociferate and the mute (31:19), prohibition and permission (16:116; 5:87), jurisprudence and asceticism (chap. 107), polygamy and celibacy (4:3), exaggeration and underestimation (4:171), indulgence and abstinence (7:31-32), extravagance and miserliness (25:67), cowardice and aggression (2:190), unwary and tyranny (42:39-40).⁸⁴ Notwithstanding, al-Qaradawi is considered to be the primary disseminator of the concept of centrism in the modern period.

Al-Qaradawi claims that in the mid-20th century he “came to this concept after establishing unshakable evidence that it represents the essence of Islam.”⁸⁵ Al-Qaradawi explains *wasatiyyah* to “mean moderation of being in the middle of two parallel sides so that none of these two sides will have more impact and cause harm or injustice to the other.”⁸⁶ Al-Qaradawi argues for a broad spectrum of centrism (*wasatiyyah*) i.e., the middle path of moderation in all matters concerning Islam,⁸⁷ which he calls Islamic centrism (*al-wasatiyyah al-islamiyyah*). He believes that it is an obligation upon Muslims to apply centrism to all matters of Islamic sciences, be it theology, jurisprudence, or other disciplines. He calls his method of legal reasoning the centrist methodology (*minhāj al-wasatiyyah*).⁸⁸ Al-Qaradawi also advocates adopting the middle position between ‘the emulators of the old’ (*fi’ah tashabbahat al-qadīm*) and ‘the embracers of the new’ (*fi’ah tabannat al-jadīd*).⁸⁹ Al-Qaradawi further argues that, when issuing legal opinions, a legist (*mujtahid*) must assume the middle position between the inclination to extreme liberalism (*ittijāh al-ghulūw fī al-tawī*) of the deconstructionists (*al-mutaḥallilūn*) and the inclination for constriction and austerity (*ittijāh al-tadyīq wa-al-tash-dīd*) of the puritans (*al-mutazammitūn*).⁹⁰ He argues that Muslims must persist to become “a nation (*ummah*) occupying a position between the extremist deviations to the right and left,”⁹¹ by which he means to consciously avoid both puritanical and liberal extremisms. Therefore, the centrist methodology advocates consciously occupying the middle

course of moderation in Islamic thought which would mitigate excess and negligence (*al-ghulūw wa-al-taqṣīr*) in Islamic jurisprudence.

Al-Qaradawi calls his approach to jurisprudence the centrist jurisprudence (*al-fiqh al-wasatī*).⁹² Al-Qaradawi reasons that there are two prevalent schools of Islamic jurisprudence.⁹³ The first school excesses towards particular textual injunctions (*al-nuṣūṣ al-juz'iyah*) while neglecting their universal objectives (*kulliyyāt*) by which he means an ultra-textualist methodology. The second school, according to al-Qaradawi, excesses toward universal objectives seeking “the spirit of the religion” (*rūḥ al-dīn*) while neglecting particular textual injunctions which prescribe particular rulings (*aḥkām juz'iyah*).⁹⁴ For al-Qaradawi, both these methods are excessive and negligent of the cumulative objectives of Islamic law which counterbalance both universal and particular rulings. Therefore, according to him, a third school, the school which occupies the middle position “between universal objectives and particular textual injunctions (*bayna maqāṣid al-kulliyyah wa-al-nuṣūṣ al-juz'iyah*)” is “the school of moderation (*al-madrasah al-wasatīyyah*).”⁹⁵ To al-Qaradawi, the centrist methodology of jurisprudence”:

[N]ever overlooks the partial texts of the Qur'an or Sunnah on the supposition of maintaining the spirit of Islam and the objectives of the Shariah. On the other hand, it does not disregard the collective objectives of the Shariah by adopting the literal meanings of the texts.⁹⁶

Jasser Auda argues that centrism can be perceived as an antithesis of dualism.⁹⁷ As per the Merriam-Webster Dictionary, “dualism considers reality to consist of two irreducible elements or modes.” In our case, according to Auda:

It simply involves that any philosophical question maybe presented as a choice between two logical conclusions and there can be no third alternative. Debate ensues between two extreme opposites and each debater tries hard to prove their point and refute their opponent's argument.⁹⁸

From the formative period to the modern period, the Islamic legal tradition is laden with such dualism. This dualism in the legal tradition is characterised by the distinction between the methodology of the jurists (*ṭarīqat al-fuqahāʿ*), that is, the methodology of the Hanafi school (*ṭarīqat al-ḥanafīyyah*) and the methodology of the theologians (*ṭarīqat al-mutakallimīn*), that is, the methodology of the Shafiʿi school (*ṭarīqat al-shāfiʿīyyah*).⁹⁹ The jurists' method is distinguished by their extrapolation of practical rulings of law (*furūʿ al-fiqh*) from the Kufic legal tradition of Iraq. On the other hand, the theologians' method emphasised formulating the general theory of law (*uṣūl al-fiqh*) through a theoretical and philosophical study of law.¹⁰⁰ The Hanafi school derived their legal principles (*uṣūl*) from legal precedents (*furūʿ*) of Kufa where legal principles are subsequent and subservient to legal precedents. On the contrary, the Shafiʿi school formulated legal principles in order for legal rulings to be derived therefrom where legal rulings are subsequent and subservient to legal principles.¹⁰¹ Consequently, Hanafis would give preponderance to the induction (*istiqrāʿ*) of general principles from the Qurʾan and Sunnah which coincided with Kufic legal precedents while restrained from deducing legal rulings directly from the Qurʾan and Sunnah. In contrast, Shafiʿis would give preponderance to the deduction (*istinbāṭ*) of legal rulings directly from the Qurʾan and Sunnah according to formulated legal principles while refraining from adhering to any particular regional legal tradition and its legal precedents.¹⁰²

Hanafis are considered rationalists or proponents of opinion (*ahl al-raʾy*) owing to their giving preponderance to analogical deduction and inductive reasoning of textual injunctions, whereas Shafiʿis are considered textualists (*ahl al-naql*) or proponents of reports (*ahl al-ḥadīth*) owing to their giving preponderance to Hadith studies and deductive reasoning of textual injunctions. A specific example of dualism is the outright rejection of normative conventions (*ʿamal*) by the Shafiʿis and the outright rejection of the divergent implicature (*mafhūm al-mukhālafah*) in textual implications (*al-dalālāt*) by the Hanafis.¹⁰³ The fact of the matter is that dualism in legal reasoning can be based on subjectivity and partisanship. Therefore, it may be possible to objectively adopt a

middle path of moderation by integrating divergent approaches to legal reasoning which may increase the efficacy and utility of legal opinions.

Since what was perceived as the maturity and the saturation of Muslim legal schools (*madhāhib*) in the premodern period, breaking the shackles of partisanship, several legal theoreticians and their respective works attempted to combine the methodology of the jurists and the methodology of the theologians into one unifying legal methodology i.e., “the later scholars’ methodology of integrating the two [earlier] methodologies (*tarīqat al-muta’akhhirīn bi-al-jam‘ bayna al-ṭarīqatayn*).”¹⁰⁴ By unifying the two methodologies, the theoretical conception of law through its sources is integrated with legal precedents transmitted via legal traditions and, specific rulings (*aḥkām*) and legal causes (*‘ilal*) of textual injunctions derived from deductive reasoning are integrated with their applicable general principles derived through inductive reasoning. The point of note here is that adopting a middle path of moderation in legal reasoning may be achieved by integrating two legal methodologies (*al-jam‘ bayna al-ṭarīqatayn*) from which scholarly disagreement (*ikhṭilāf al-‘ulamā’*) may be reconciled.

As per al-Qaradawi, scholarly disagreement is a natural phenomenon,¹⁰⁵ and the most objective and accurate approach to legal reasoning is by adopting the middle path between extreme legal opinions. In a case of difference of opinion on a particular issue where both opposing opinions are permissible (*mubāḥ*), the centrist opinion between the two opposing opinions should fall under recommendation (*mandūb*). In other words, if the centrist opinion which takes a middle course between the two opposing opinions brings benefit or prevents harm then it is recommended in Islamic law. Hence, Armando Salvatore postulates that, according to al-Qaradawi, both the means (*wasīlah*) and the end (*maqṣad*) of centrism is the principle of welfare (*al-maṣlahah*) [which includes both securing benefit and preventing harm].¹⁰⁶ For al-Qaradawi, then, centrism appears to be a universal principle comparable to the principle of welfare. Legal-theoretically what follows is that the determination of a centrist legal opinion is subject to legal principles: “the alleviation of hardship and the facilitation of ease” (*raf‘ al-ḥaraj wa-al-taysīr*) and “the prevention of harms and the securement of benefits” (*dar‘ al-mafāsīd wa-jalb al-manāfi‘*)

according to the sources of Islamic law. Therefore, for al-Qaradawi the objectives (*maqāṣid*) of centrism include the alleviation of hardship, the facilitation of ease, the prevention of harm and the securing of benefit by avoiding extremisms in legal reasoning. Inversely, the aforementioned legal principles are the means or the instruments (*wasā'il*) in actualising centrist legal opinions. Since “prevention of harms” is a necessary objective (*darūriyyah*), “the alleviation of hardship” is an exigent objective (*hājīyyah*) and “facilitation of ease” is an enhancive objective (*taḥsīniyyah*),¹⁰⁷ centrism should serve to actualise the higher objectives of Islamic law. Theoretically, by its very purpose of mitigating extreme disagreements, centrism aspires to actualise unity instead of uniformity.

According to al-Qaradawi, “*wasatīyyah* is the centre for unity.”¹⁰⁸ He elaborates:

The centre of the circle in its middle allows for all lines to meet at it. The idea that is *wasat* provides the meeting points which is the point of balance and moderation. Hence, whenever there is extremism, we are bound to find intellectual disagreement. The intensity of this disagreement depends on the intensity of extremism. On the other hand, *tawassuṭ* and *i'tidāl* (moderation) provides the centre for intellectual disagreement. Thus, extremist groups and ideas create disagreements and difference among members of the one *ummah*, whereas moderate ideas do not usually cause that.¹⁰⁹

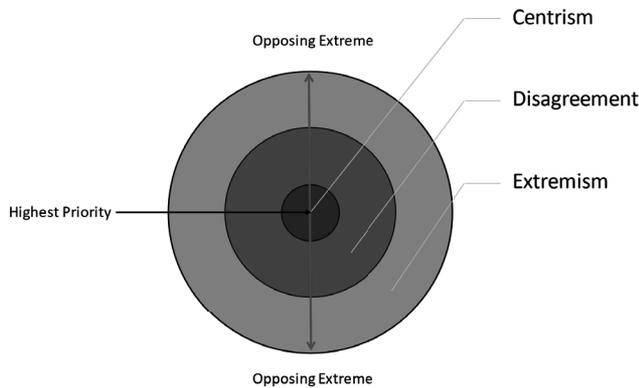


Figure 1 – Centre of Unity

As depicted in *figure 1*, centrism or the middle path of moderation is the median of opposing extremes. Hypothetically, at the midmost point – extremisms, dichotomies, and disagreements are minimal, reconciled, harmonised, or compromised. The farther from the centre, the farther from centrism, hence, the increase in disagreement. The outer extremity of the circle represents the farthest point away from the centre/centrism – the highest point in disagreement. Therefore, the middle position [of moderation] represents the optimum point of unity. Theoretically, legal opinions at this station will facilitate benefit and ease and inhibit harm and difficulty. In other words, centrism by evading all forms of extremism is purported to secure maximal benefits while incurring minimal harm in line with the objectives of Islamic law. A legal opinion at this juncture is facilitating and moderating against each opposing opinion. Theoretically, certain knowledge (*‘ilm al-yaqīn*) such as of scholarly consensus of legal opinions and definitive evidence will situate in this quadrant. Therein lie the strongest evidence which is most facilitating of ease and benefit. Further from this midmost point is predominantly the realm of probable knowledge (*‘ilm al-zann*) such as valid differences of scholarly opinion and probable evidence. Therein lie strong evidence of relatively less facilitating of ease and benefit. The furthest quadrant from the midmost point consists of doubt (*shakk*) and hypothetical knowledge (*‘ilm al-wahm*) such as that of minority (*aqalliyyah*) opinions and hypothetical evidence (*adillah wahmiyyah*). Therein lie weak evidence which is the least facilitating of ease and benefit. Therefore, the centrist opinion has the highest priority among legal opinions.

From a legal-theoretical point of view, there are three primary contentions against the principle of centrism. The first contention is that centrism in its technical sense is not supported by definitive textual evidence.¹¹⁰ The above analysis finds that the concept of centrism purported as the ideal position which lies between two opposing extremes is a definitive principle that is derived (*mushtaqq*) from, induced (*mus-taqraʿ*) from, and accredited (*muʿtabar*) in – the sources of Islamic law. Moreover, the principle of centrism in its legal-theoretical sense is arguably a universal principle applicable to the entire Muslim population rather than a particular principle (*qāʿidah juzʿiyyah*) applicable to a

segment of the Muslim population, even though the practical determination of the opposing extreme is a subjective deduction prone to disagreement and error. The second contention is that the enactment of textual injunctions of the Qur'an and the prophetic precedent by default facilitates centrism. Moreover, Islamic law is argued to function independently, through which the end result is purported to be centrism. This is also the primary argument advanced against the principle of welfare as an independent legal principle.¹¹¹ It is conceivable that Islamic law would function independently of the principle of centrism, and that centrism in its technical sense, may not be mandatory to be incorporated in legal reasoning. However, there is strong evidence to suggest that it is recommendable to achieve a better course of legal reasoning. The third contention is that centrism opens the door to compromising the enactment of textual injunctions in favour of a derived principle (i.e., centrism).¹¹² This analysis finds that compromising textual injunctions in favour of derived principles is by definition not centrism, rather, legal reasoning through textual injunctions and derived principles in a balanced way without excessively inclining towards one or the other is centrism because centrism facilitates opposing extremes of neither textualism nor rationalism, of neither deductive reasoning nor inductive reasoning. The principle of centrism, as advocated by al-Qaradawi in his schema for the jurisprudence of priorities, also relates closely to his understanding of balance.

The Principle of Balance (*muwāzanah*):

Weighing out the preponderant between two variables

Yusuf al-Qaradawi claims that the jurisprudence of balancing interests (*fiqh al-muwāzanāt*) is not only closely related to the jurisprudence of priorities, but the former is a constituent legal principle of the latter:

The *fiqh* of priorities is related to the *fiqh* of balances, and in certain domains, the two overlap or run parallel to each other, as a counterbalance that may lead to a certain priority, and thus fall under the *fiqh* of priorities.¹¹³

However, this segment of the analysis is focused on dissecting the principle of balance which is the underlying theorem of the jurisprudence of balancing interests. Al-Qaradawi claims that the principle of balance is supported by Qur'anic texts.¹¹⁴

The Qur'an indeed elucidates in multiple verses (Q 101:6-10; 23:101-103) that on the judgement day human works are weighed and measured according to a scale of comparison:

And the weighing [of deeds] that Day will be the truth. So those whose scales are heavy – it is they who will be the successful. And those whose scales are light – they are the ones who will lose themselves for what injustice they were doing toward Our verses. (Q 7:8-9 trans. Saheeh Intl.)

In the context of this verse, the word *mawāzīnu* (scales) akin to the subject terminology *muwāzanāt* (balances) of the same root (*w-z-n*) means a weighing scale that compares two things to determine the greater of the two. The two things compared in this context are good deeds and evil deeds.¹¹⁵ Tabataba'i elaborates:

What will be weighed on scales are the actions of the people based on the following verses: (1) *We shall set up the scales of justice on the Day of Resurrection, and no soul will be wronged in the least. Even if it be the weight of a mustard seed, We shall produce it and We suffice as reckoners* (21:47). Based on this verse, "scales" are part of God's "reckoning," and reckoning pertains to actions. (2) *So whoever does an atom's weight of good will see it, and whoever does an atom's weight of evil will see it* (99:7-8). These verses are even clearer evidence, because they talk about the weight of *'amal* (action, work, deed), both good and bad.

Tabataba'i further points out that weighing does not necessarily imply that individual good deeds and evil deeds are equivalent in weight as if one good deed is equal to one evil deed.¹¹⁶ So what this implies is 'relative weight' of which deeds are weighed both qualitatively according

to their magnitude and quantitatively according to divine determination. As the Qur'an states: "If you avoid the major sins which you are forbidden, We will remove from you your lesser sins" (Q 4:31 trans. Saheeh Intl.) and "God will replace their evil deeds with good [deeds]" (Q 25:70 trans. Saheeh Intl.). Moreover, the prophetic reports state that: "Verily, the good deeds remove the evil deeds" (Bukhari: 526) and "good deeds will be rewarded ten times to seven hundred times for each good deed and a bad deed will be recorded as it is" (Bukhari: 41 and 42; different wording in multiple reports in Muslim: 334-338).

The principle of balance and scaling can be found in human nature, which consists of both good and evil. Thus, human beings consist of a combination of good and evil residing in themselves on varying scales. However, the good person is not he who has all but good within himself, nor is the evil person who has within himself all but evil. Rather, the distinction between a good person and an evil person (according to the divine scale) depends on which deed (good or evil) outweighs the other in comparison (good vs. evil). The indication in this verse is that, on the day of judgement, the victors are those whose good deeds outweigh their evil deeds, while the losers are those whose evil deeds outweigh their good deeds on the scale of divine determination. In the above example, the discussion is about the good and bad that reside within animate objects, though the Qur'an also speaks of weighing out the good and bad that reside within inanimate objects.

To elaborate, the Qur'an puts the indulgence in gambling and intoxicants through a pros and cons analysis – in theory, a cost-benefit analysis. The Qur'an states: "They ask you about intoxicants and gambling. Say: In them is great harm, and a benefit for mankind; but their harm is greater than their benefit" (Q 2:219 trans. The Monotheist Group¹¹⁷). The rationale of this verse indicates that indulgence in gambling or intoxicants consists of both benefits and harms. However, according to the Qur'an, their harm outweighs their benefit. Firstly, it is imperative to vindicate this claim to deduce the reason why the Qur'an isolates these two indulgences, especially as a pair.

Scientific and statistical "studies confirm that gambling and alcohol consumption co-occur"¹¹⁸ and "concurrent gambling and drinking may

lead to greater negative consequences than either behavior alone.¹¹⁹ Indulgence in both intoxicants and gambling is addictive by definitive scientific evidence which shows that they lead to alcoholism and pathological gambling.¹²⁰ Indulgence in gambling and intoxicants are shown to increase patterns of violent behaviour.¹²¹ The probability and reality of losing money in gambling are significantly higher than the probability and reality of earning money from it. In other words, the losers in gambling are significantly higher than the successful thereby. Similarly, intoxicants are shown to cause more harm than benefit physiologically and psychologically. Studies leading to this conclusion are too numerous to reference. Thus, the harm caused by indulging in alcohol and gambling supersedes that of its benefits – is nearly a scientific and statistical consensus.

Consequently, if we examine the principle of balance in the aforementioned Qur'anic verse (2:219), within the variable (intoxicant or gambling) are two inherent opposing qualities of negative and positive. The negative qualities are harms and the positive qualities are benefits. The priority of the principle of balance, in this case, is to avoid the variable within which harms outweigh benefits. Therefore, the recommendation in legal reasoning is to adopt the variable within which benefits outweigh harms. However, the determination of benefit and harm and their prioritisation ought to be according to the benchmark of the Qur'an, the prophetic precedent and scholarly consensus.

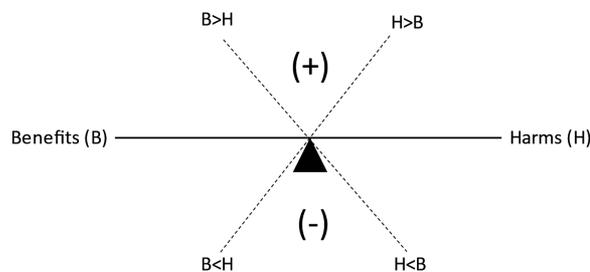


Figure 2 – Scale of Balance

In reference to *figure 2*, the solid horizontal line sitting perpendicular to the triangular fulcrum represents the neutral position of a variable

within which benefits and harms are equivalent (1:1 ratio). Benefits and harms equalling is a hypothetical, logically impossible scenario. The favourable decision is of which the benefits are greater than its harms ($B > H$ & $H < B$), and the unfavourable decision with regards to a variable is of which the harms are greater than its benefits ($H > B$ & $B < H$). Moreover, the harms and benefits of a variable are determined both quantitatively and qualitatively. In other words, a variable can be determined to be benefit-dominant due to its quantity or a variable can be determined to be harm-dominant due to its quality. For example, with regards to the final judgement (Q 7:8-9), the judgement can be said (for illustration purposes) to be predominantly a quantitative one weighing good deeds against evil deeds quantitatively. Whereas, with regards to alcohol and gambling (Q 2:219), the judgement can be said (for illustration purposes) to be predominantly a qualitative one weighing against benefits and harms qualitatively. Nonetheless, theoretically, the principle of balance is both textually and rationally substantiable.

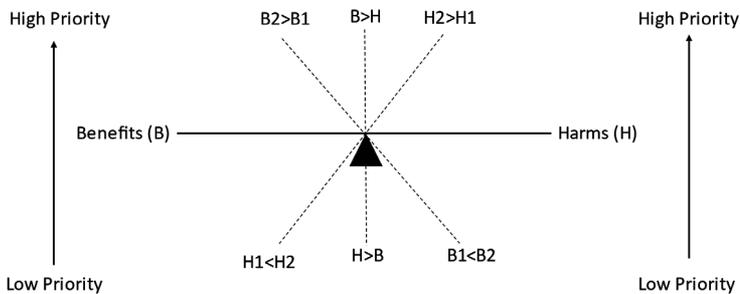


Figure 3 – Priority in Maintaining Balance

In reference to *figure 3*, the Benefits (B) and the Harms (H) of a legal variable are hypothetically higher and lower depending on its inherent or acquired qualities. In the unlikely event where benefits and harms are equivalent, “harm may not be eliminated by its equivalent (*al-dararu lā yuzālu bi-mithlihi*)”¹²² because “preventing harms has priority over securing benefits (*dar’ al-mafāsīd awlā min jalb al-manāfi*)”.¹²³ Here there are three possible scenarios to consider. First, the balance between the benefits and harms of a given legal variable. Second, the balance between

harms against harms of a given legal variable. Third, the balance between benefits against benefits of a given legal variable. With reference to the first scenario represented by axis (B, H), the legal variable in which benefits are greater than harms (B>H) has priority over the variable in which harms are greater than benefits (H>B). In the second scenario represented by axis (H1, H2), the legal variable in which harms are greater has priority (H2>H1) because “harm must be eliminated (*al-ḍararu yuzāl*)”¹²⁴ and “a greater harm is eliminated by [tolerating] a lesser one” (*al-ḍarar al-ashadd yuzālu bi-al-ḍarar al-akhaff*).¹²⁵ In the third scenario represented by axis (B2, B1), the variable in which benefits are greater has priority due to the necessity of securing benefit. In al-Qaradawi’s jurisprudence of priorities, the principle of balance is articulated more fully as a jurisprudence of balancing interests (*fiqh al-muwāzanāt*).

The Jurisprudence of Balancing Interests (*fiqh al-muwāzanāt*)

The jurisprudence of balancing interests is the juristic methodology of prioritising benefits and harms according to the objectives of Islamic law.¹²⁶ The jurisprudence of balancing interests includes inhibiting the means of harm and facilitating the means to benefit. The jurisprudence of balancing interests has three fundamental prioritisations. *First*, the prioritisations between harms, where that which has greater harm has priority over that which has lesser harm. *Second*, the prioritisations between benefits, where that which has greater benefit has priority over that which has lesser benefit. *Third*, the prioritisations between benefits and harms, where that which forfeits greater harm has priority.¹²⁷

The legal maxim “harm must be eliminated” is unanimously accepted as a primary objective of Islamic law. The Qur’an advocates thus, “repel evil with that which is better” (Q 23:96 trans. Pickthall). Even though eliminating harm is a primary objective of Islamic law, eliminating harm should not cause equal or greater harm as a result. When ‘Umar ibn al-Khattab suspended the application of a prescribed Qur’anic penalty¹²⁸ for theft due to famine,¹²⁹ he enacted the legal maxim “a greater harm is eliminated by [tolerating] a lesser one.”¹³⁰ The harm that is inflicted or forfeited to eliminate another harm must be proportionately less in

magnitude. On this basis, a series of legal maxims have been established, such as “harm may not be eliminated by its equivalent,” “harm and retaliation by harm is not allowed (*lā ḍarar wa-lā ḍirār*)”¹³¹ and “harm is to be eliminated within reasonable bounds” (*al-ḍarar yudfa‘u bi-qadr al-imkān*). Moreover, if we are confronted with two harms, as the legal maxims state “the lesser of two harms is chosen (*yukhtār ahwan al-sharrayn aw akhaff al-ḍararayn*),”¹³² and “to repel a public harm a private harm is preferred (*hutaḥammalu al-ḍarar al-khāṣṣ al-daf‘ ḍararin al-‘āmm*).”¹³³ In this sense, a series of priorities within harms can be inferred. Imminent harm is given priority over eventual harm. Public harm is given priority over private harm. Collective harms have priority over individual harms. Sizable harm is given priority over minuscule harm. Lasting harm has priority over temporary harm. Regular harm has priority over irregular harm.

As far as the ranking of benefits is concerned, Muhammad al-Tahir ibn ‘Ashur (d. 1973) categorises benefits (*masāliḥ*) into public benefit (*maṣlaḥah ‘āmmah*) and private benefit (*maṣlaḥah khāṣṣah*) where the former has priority over the latter, and evident benefit (*ḥaẓẓ ḡāhir*) and obscure benefit (*ḥaẓẓ bāṭin*) where the former has priority over the latter.¹³⁴ Similarly, religious benefit has priority over worldly benefit, an imminent benefit is given priority over an eventual benefit, collective benefit has priority over individual benefit, a sizable benefit is given priority over a minuscule benefit, long-term benefit has priority over short-term benefit and regular benefit has priority over irregular benefit.

Al-Shatibi further observes that “induction through the *sharī‘ah* implies that there is no *maṣlaḥah* in which there is no *mafsadah*, and vice versa.”¹³⁵ What this implies is that, in most cases of the real world, variables consist of a combination of both benefits and harms as in the Qur’anic example of gambling and alcohol already analysed. Nonetheless, the norm (*‘āzimah*) is that “preventing harm has priority over securing benefit.” However, al-Shatibi argues that “when the interest turns out to be predominant under normal circumstances if compared to the *mafsadah* (injury), then it is desirable in the eyes of the law (*shar‘*).”¹³⁶ In other words, if the benefit of a variable far exceeds that of its harm or if the harm is insignificant compared to its benefit, it “is desirable in the eyes

of the law.” Therefore, the exception (*rukḥṣah*) to the norm is by way of another legal maxim that states “small and incidental harm is tolerated for the sake of a great and lasting benefit, and a certainly guaranteed benefit must not be wasted for fear of an illusory harm.”¹³⁷ Thus, according to al-Qaradawi, “if the benefit is predominant and greater than the harm, the matter will then be permissible and legalised, regardless of the small harm it causes.”¹³⁸

Conclusion

Dissecting the jurisprudence of priorities, as advocated by al-Qaradawi, into its constituent underlying principles enables the understanding of its legal-theoretical nuances. The principles of the jurisprudence of priorities are substantiated by definitive textual evidence of the Qur’an and the prophetic precedent. Legal-theoretically, principles of the jurisprudence of priorities are definitive, accredited and universal principles. The principles of the jurisprudence of priorities can not only fall under the genre of legal maxims but can also fall under the genre of legal-theoretical maxims (*qawā'id uṣūliyyah*) due to their pertinence to legal theory in addition to their applicability to jurisprudence. The objectivity of the jurisprudence of priorities may be achieved through prioritising legal variables according to the Qur’an, the prophetic precedent and scholarly consensus. Each principle of the jurisprudence of priorities has an evident relationship to each other in securing the objectives of Islamic law. Legal principles of the jurisprudence of priorities cumulatively seem to facilitate ease, secure benefit and repel harm – aligned with the objectives of Islamic law. Thus, from a legal-theoretical perspective, this analysis finds the jurisprudence of priorities with its constituent legal principles to be a recommendable procedure to mitigate excess and negligence in legal reasoning.

Endnotes

- 1 Yusuf al-Qaradawi, *The Priorities of the Islamic Movement in the Coming Phase*, trans. S. M. Hassan Al-Banna (Swansea, UK: Awakening, 2002), 2–4.
- 2 Yusuf al-Qaradawi, *Fiqh of Priorities*, trans. Khaled Wady (Cairo, Egypt: New Vision, 2012), 270–311; Al-Qaradawi, *The Priorities of the Islamic Movement in the Coming Phase*, 30–32.
- 3 Al-Qaradawi, *Fiqh of priorities*, 9–11.
- 4 al-Qaradawi, vii.
- 5 Al-Qaradawi, vii.
- 6 Al-Qaradawi, 270–311.
- 7 Al-Qaradawi, vii.
- 8 Yusuf al-Qaradawi, *Fī Fiqh al-Awlawiyyāt: Dirāsah Jadīdah fī Daw' al-Qur'ān wa-al-Sunnah*, 2nd ed. (Cairo, Egypt: Maktabah Wahbah, 1996).
- 9 Al-Qaradawi, *Fiqh of Priorities*.
- 10 Al-Qaradawi, *Fiqh of Priorities*, vii.
- 11 Yusuf al-Qaradawi, *Awlawiyyāt Li-l-Ḥarakah al-Islāmiyyah*, PDF (Doha, Qatar: www.al-qaradawi.net, 1990), <https://www.al-qaradawi.net/sites/default/files/pdf/ae3a5-awliyat-elhrakaalislamia.pdf>.
- 12 Al-Qaradawi, *The Priorities of the Islamic Movement in the Coming Phase*.
- 13 Al-Qaradawi, viii.
- 14 Basri Ibrahim et al., “Imam Al-Ghazali’s Thoughts on the Jurisprudence of Priorities in Ihya’ Ulum Al-Din,” *The Social Sciences (Pakistan)* 11, no. 20 (2016): 4833–39.
- 15 Abu Hamid al-Ghazali, *Mukhtaṣar Iḥyā’ ‘Ulūm al-Dīn*, trans. Marwan Khalaf, 2nd ed. (Nikosia, Cyprus: Spohr, 2014), 29.
- 16 Abdel Wadoud Moustafa Moursi El-Seoudi et al., “Fiqh of Priorities in the Light of the Purposes of Sharee’ah,” *The Social Sciences (Pakistan)* 7, no. 6 (2012): 821, <https://doi.org/10.3923/sscience.2012.821.826>.
- 17 Muhammad Wakili, *Fiqh al-Awlawiyyāt: Dirāsah fī al-Ḍawābiḥ* (Herndon, USA: IIIT, 1997).
- 18 ‘Abd al-Salam ‘Iyadah ‘Al Al-Karbuli, *Fiqh al-Awlawiyyāt fī Zālāl Maqāsid al-Sharī‘ah al-Islāmiyyah*, 2nd ed. (Damascus, Syria: Dar Taybah, 2014).
- 19 Hassani Muhammad Nur Muhammad, *Fiqh al-Awlawiyyāt fī al-Sharī‘ah al-Islāmiyyah: Dirāsah fī al-Qawā‘id wa-al-Ḍawābiḥ wa-al-Taṭbīqāt al-Mu‘āṣarah* (Cairo, Egypt: Dar al-Yusr, 2014).
- 20 Muhammad Hammam ‘Abd al-Rahim Malham, *Ta’ṣīl Fiqh al-Awlawiyyāt: Dirāsah Maqāsidiyyah Taḥlīliyyah* (Amman, Jordan: Dar al-‘Ulum, 2008).

- 21 Muhammad Hammam ‘Abd al-Rahim Malham, *Ta’šīl Fiqh al-Awlawiyyāt wa-Taṭbīqātuḥu fī Majāl Ḥifẓ al-Dīn fī al-Siyāsah al-Shar‘iyyah* (UK: Al-Bayan Center for Research and Studies, 2015).
- 22 Al-Qaradawi, *Fiqh of Priorities*, viii.
- 23 Al-Qaradawi, 3.
- 24 Al-Qaradawi, vii.
- 25 Marmaduke Pickthall, *The Meaning of the Glorious Koran: An Explanatory Translation* (London, UK: George Allen & Unwin, 1930).
- 26 This article will consistently follow the direct hadith numbering of the six major collections of Hadith by Darussalam publications.
- 27 Legal variables are anything that which pertains to Islamic law, such as in al-Qaradawi’s words “everything, whether rules, values or acts” Al-Qaradawi, *Fiqh of Priorities*, 3.
- 28 Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, 3rd ed. (Cambridge, UK: ITS, 2003), 455.
- 29 Kamali, 456.
- 30 Muhammad Hussein Abdullah, *Al-Waadih Fee Usool Ul-Fiqh: The Clear Principles of Islamic Jurisprudence*, 2nd ed. (CA, USA: CreateSpace, 2016), 582, 593; Kamali, *Principles of Islamic Jurisprudence*, 458–59.
- 31 Abdullah, *Al-Waadih Fee Usool Ul-Fiqh: The Clear Principles of Islamic Jurisprudence*, 582–88.
- 32 Yusuf al-Qaradawi, *Approaching the Sunnah: Comprehension & Controversy*, trans. Jamil Qureshi (Herndon, USA: IIIT, 2006), 113.
- 33 Al-Qaradawi, *Fiqh of Priorities*, 3. The original translator had translated the Arabic word ‘*marātib*’ into English as ‘order’. However, the appropriate translation of *marātib* in this context would be ‘ranking’ in the sense of ‘hierarchy’. From the same root *r-t-b* the Arabic word *tartīb* is the conventional word for ‘order’ in the sense of ‘sequence’. An example is the title *Asrār Tartīb al-Qur’ān* (Secrets of the Order of the Qur’an) by Jalal al-Din al-Suyuti (d. 977/1505) – a book elucidating the miraculous nature of the sequence within the texts of the Qur’an.
- 34 Al-Qaradawi, vii.
- 35 Al-Qaradawi, vii-viii.
- 36 Saheeh International, *The Qur’ān: Arabic Text with Corresponding English Meanings* (Jeddah, KSA: Al-Muntada Al-Islami, 2007).
- 37 Kamali, *Principles of Islamic Jurisprudence*, 78–81; Wahbat al-Zuhayli, *al-Wajīz fī Uṣūl al-Fiqh* (Damascus, Syria: Dar al-Fikr, 1999), 40.
- 38 Kamali, *Principles of Islamic Jurisprudence*, 78–81.

- 39 Al-Qaradawi, *Fiqh of Priorities*, 36.
- 40 Sukrija Husejn Ramic, *Language and the Interpretation of Islamic Law* (Cambridge, UK: ITS, 2003), 65–138.
- 41 Kamali, *Principles of Islamic Jurisprudence*, 67–69.
- 42 Al-Qaradawi, *Approaching the Sunnah: Comprehension & Controversy*, 113–15.
- 43 A Companion (*ṣaḥābī*) of the Prophet Muhammad for Muslims is the Christian equivalent of an Apostle of Jesus. There is record of around 3000 names of Companions in Muhammad al-Qurtubi's *Istī'āb fī ma'rifat al-Aṣḥāb*. However, every Companion was neither a *ḥadīth* transmitter (*rāwī*) nor a jurist (*faqīh*), and prominent Companions who are authoritative transmitters (*ruwāh*) and jurists (*fuqahā'*) are less than 100 in number.
- 44 Kamali, *Principles of Islamic Jurisprudence*, 313–22.
- 45 Prominent Companions include the ten select Companions i.e., The Ten Granted Paradise (*al-ʿashrah al-mubashshirūn bi-al-jannah*) whose authority is reported have been attested by the Prophet Muhammad himself. They include the four rightly-guided caliphs, Talhah ibn ʿUbayd Allah (d. 36/657), al-Zubayr ibn al-ʿAwwam (d. 36/656), ʿAbd al-Rahman ibn ʿAwf (d. 34/654), Saʿad ibn Abi Waqqas (d. 55/674), Saʿid ibn Zayd (d. 52/671), Abu ʿUbaydah ibn al-Jarrah (d. 18/639). This attestation is transmitted in two reports: (Abu Dawud: 4649; Tirmidhi: 3747).
- 46 Another report supposes the Prophet Muhammad to have said: “The Fire shall not touch the Muslim who saw me, or saw one who saw me” (al-Tirmidhi: 3858). However, this report is *ḥasan gharīb* – good syet an odd report according to the conditions of al-Tirimidhi, where even though the chain is intact (*muttaṣil*), it is only narrated by a single Companion Musa ibn Ibrahim al-Ansari. Therefore, this report is used as supplementary evidence only.
- 47 Tariq Ramadan, “Radical Reform: Islamic Ethics and Liberation” (NY, USA: Oxford University Press, 2009), 41–80.
- 48 Al-Qaradawi, *The Priorities of the Islamic Movement in the Coming Phase*, 28.
- 49 Stephen R. C. Hicks, *Exploring Postmodernism: Skepticism and Socialism from Rousseau to Foucault*, Expanded (US: Ockham's Razor, 2014), 33-34,40,44,78,189.
- 50 Al-Qaradawi, *Fiqh of Priorities*, 3.
- 51 Kamali, *Principles of Islamic Jurisprudence*, 11–14.
- 52 Kamali, 255–58.
- 53 Musfir ibn Ali Ibn Muhammad al-Qahtani, *Understanding Maqāṣid Al-Sharʿīah: A Contemporary Perspective* (Herndon, USA: IIIT, 2015), 10.
- 54 Abu al-Maʿali al-Juwayni and Jalal al-Din al-Mahalli, *Sharḥ al-Waraqāt*, trans. Musa W. Furber (n.p: Islamosaic, 2014), 2.
- 55 Al-Zuhayli, *al-Wajiz fī Uṣūl al-Fiqh*, 244.

- 56 Kamali, *Principles of Islamic Jurisprudence*, 458–59.
- 57 Al-Zuhayli, *al-Wajiz fī Uṣūl al-Fiqh*, 245.
- 58 Abdelwahab Khallaf, *The Science of the Principles of Islamic Jurisprudence: The Methodology of Islamic Law*, trans. Mouhsine El Hammoui (Beirut, Lebanon: Dar Al-Kotob Al-Ilmiyah, 2017), 377–81.
- 59 Imran Ahsan Khan Nyazee, *Islamic Jurisprudence* (KL, Malaysia: TOP, 2003), 322–24.
- 60 Al-Zuhayli, *al-Wajiz fī Uṣūl al-Fiqh*, 246.
- 61 Al-Zuhayli, 246.
- 62 Al-Qaradawi, *Approaching the Sunnah: Comprehension & Controversy*, 113.
- 63 Al-Qaradawi, 113.
- 64 Al-Qaradawi, *Awlawiyyāt Li-al-Ḥarakah Al-Islāmiyyah*, 39.
- 65 Jasser Auda, *A Critique of the Theory of Abrogation*, trans. Adil Salahi (Leicestershire, UK: The Islamic Foundation, 2019), 90–96.
- 66 Mohammad Hashim Kamali, *The Middle Path of Moderation in Islam: The Qur'ānic Principle of Wasāṭiyyah* (NY, USA: Oxford University Press, 2015), 52.
- 67 Kamali, 52.
- 68 Kamali, 52.
- 69 Abu Ishaq al-Shatibi, *The Reconciliation of the Fundamentals of Islamic Law*, trans. Imran Ahsan Khan Nyazee, vol. II (Reading, UK: Garnet, 2014), 71.
- 70 Laura Killam, *Research Methodology Simplified: Paradigms, Axiology, Ontology, Epistemology and Methodology* (Sudbury, Canada: Author, 2013), 11, 35–37.
- 71 Yusuf al-Qaradawi, *Islamic Moderation and Renewal*, ed. Mohamed Ajmal Bin Abdul Razak Al-Aidrus, trans. Hassan Ahmed Ibrahim, Hassan Abdel Razig El-Nagar, and Idris Salim El-Hassan (KL, Malaysia: ISTAC, 2013), 205–7.
- 72 Al-Qaradawi, *Islamic Moderation and Renewal*, 24.
- 73 Mohammad Hashim Kamali, *The Middle Path of Moderation in Islam: The Qur'ānic Principle of Wasāṭiyyah* (NY, USA: Oxford University Press, 2015), 10; Al-Qaradawi, *Islamic Moderation and Renewal*, 43–50.
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