

# *Public Policy*

**Beyond Traditional Jurisprudence**  
*A Maqasid Approach*

**PUBLIC POLICY**

BEYOND TRADITIONAL JURISPRUDENCE  
*A Maqasid Approach*

Basma I. Abdelgafar

IIIT Books-In-Brief Series

PUBLIC POLICY  
BEYOND TRADITIONAL  
JURISPRUDENCE

*A Maqāṣid Approach*

Basma I. Abdelgafar

© International Institute of Islamic Thought, 2018

The International Institute of Islamic Thought (IIIT)  
P.O. Box 669  
Herndon, VA 20172, USA  
[www.iiit.org](http://www.iiit.org)

IIIT London Office  
P.O. Box 126  
Richmond, Surrey  
TW9 2UD, UK  
[www.iiituk.com](http://www.iiituk.com)

This book is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of the publishers.

The views and opinions expressed in this book are those of the author and not necessarily those of the publishers.

978-1-56564-383-3

*Typesetting by Shiraz Khan*

## IIIT Books-in-Brief Series

The IIIT Books-in-Brief Series is a valuable collection of the Institute's key publications written in condensed form designed to give readers a core understanding of the main contents of the original. Produced in a short, easy to read, time-saving format, these companion synopses offer a close, carefully written overview of the larger publication and it is hoped will stimulate readers into further exploration of the original.

A fundamental aspect of good governance, broadly identified as equitable management of affairs in favor of citizenry, is public policy and implementation of democracy in the decision-making process. What is the role of *maqāṣid al-sharī'ah* in this?

Government of any form can only operate on the basis of a set of assumptions. *Maqāṣid al-sharī'ah* plays an important role in that it acts as a guide and sets the framework within which assumptions, goals and actions can be defined, to improve government functioning, remove corruption, and deliver the most equitable service to citizens. The marriage of *maqāṣid al-sharī'ah* to public policy thus establishes boundaries, emphasizes responsibilities, sets priorities, and ultimately brings a Divine perspective into the conversation of how a government defines policies. *Shūrā* for instance being an important postulate of this, to give democratic voice to ordinary people whose very quality of life is impacted on a day-to-day basis by decisions they have no say in.

The chapters in this book examine the contribution of *māqāṣid* studies to public policy in Islam. Each chapter deals with a specific theme that together offer an introduction to this area of study. There is no doubt that the ideas presented are in need of further development. Policy and governance are very complex issues. A discipline cannot be born without the existence of a critical mass of dedicated researchers capable and willing to produce seminal works to form its foundations. The author's travels throughout the world have convinced her that there is a strong

and growing interest in the potential of *maqāṣid al-sharīʿah* to support this endeavor.

---

**Abridged Edition of Basma I. Abdelgafar's Original**

*PUBLIC POLICY BEYOND TRADITIONAL JURISPRUDENCE:  
A MAQASID APPROACH*

ISBN hbk: 978-1-56564-376-5

ISBN pbk: 978-1-56564-375-8

2018

## Introduction

This book is a collection of seven chapters that examine contributions of *maqāṣid* scholarship to critical topics in public policy in Islam. The latter is defined as a course of action or inaction undertaken by a public authority or authorities to address a public problem or challenge or to take advantage of an opportunity that (1) is checked by Qur'anic morality and ethics as embodied in *taqwa* and *tawhīd*; (2) justified by the higher objectives or *maqāṣid al-sharī'ah*; guided by (3) collective decision-making processes or *shūrā*; and that (4) results in reform and improvement or *iṣlāḥ*. In its traditional exposition, *maqāṣid al-sharī'ah* or the objectives of Divine law can be thought of as an ethical framework that encompasses the preservation of faith, life, mind, progeny, wealth and dignity. The work aims to demonstrate that the *maqāṣid*\* approach is indispensable to the theory and practice of public policy in Islam, and to insist that scholars and activists alike must distinguish between policy and politics when studying the primary sources of Islam, namely, the Qur'an and Sunnah. The latter can have wide reaching implications for the application of the substance and processes of governance found in the primary sources.

Similar to the study and practice of mainstream public policy, public policy in Islam is neither pure art nor pure science but rather includes elements of both. Its art lies in the ability to identify, develop and present alternatives in ways that persuade multiple stakeholders to choose a specific course of action. It is a science to the extent that it is based on a robust methodology that mines the primary sources for fresh and innovative ways of addressing contemporary policy challenges. As an art and science, public policy in Islam is grounded in the philosophical framework of *maqāṣid al-sharī'ah*, which encourages an integrated and

---

\* These are slight variations in meaning of the word *maqāṣid*, the usage of which depends on the context of the term in Arabic or the explicit definition articulated by different scholars. Generally, *maqāṣid* encompasses all these meanings.

purposeful reading of the Revealed and unrevealed word to understand, interpret and operationalize knowledge that is discovered by succeeding generations of scholars and practitioners.

The scholarship concerned with *maqāṣid al-sharī'ah* presents an indispensable contribution for this purpose. *Maqāṣid* scholarship has distinguished itself from other Islamic approaches, and in particular traditional jurisprudence, through an emphasis on purposefulness, value premises and priorities, as well as openness to multi-disciplinarity and multi-methods. The approach's revival by a number of renowned contemporary scholars represents a six-fold attempt to (1) distance the Shari'ah from positions that neglect its core principles of mercy, justice, equity, and welfare; (2) rebut contemporary and largely secular but also Muslim assertions that Islam is an archaic, unjust and violent system of belief; (3) search for explanations as to why, on a general level, the affairs of Muslim communities do not reflect the Divine injunction of human dignity; (4) provide an alternative to the narrow juristic lens that has dominated traditional discourse in order to revive Islam both in the Muslim world and universally; (5) present scholars in other disciplines with the key to incorporate Islamic studies in their respective domains; and (6) propose criteria for unifying a multi-civilizational and multi-cultural global Muslim community as well as bridging understandings with others.

The chapters in this book focus on macro rather than micro concerns. They offer a series of connected ideas about what the application of a *maqāṣid* approach to public policy and governance looks like so that we can not only make and critique public policy but more importantly so that we can assess the claims of others. In the world of public policy and its implementation in Islam (that is a course of action or inaction undertaken by a public authority or authorities to address a public problem) truth is the Muslim's sacred pledge with the Qur'an as the barometer.

## Chapter One

### **Public Policy in Islam: A *Maqāṣid* Approach**

This introductory chapter tells a story about the limits of the religious-legal approach that has dominated studies of Islamic governance, about the ways those limits have to be appreciated, how *maqāṣid* studies are stepping up to the challenge and the difficulties that lie ahead. Although

different narratives may be valid, they do not do justice to the lived experience of Muslims around the world and the consequences that they have suffered on account of the religious-legal approach and the unjustified deference that is broadly bestowed on our past. Supplementing the religious-legal approach with more comprehensive, purposeful, dynamic and complex modes for analyzing problems and proposing solutions is a critical step in addressing Islam's contemporary predicament in governance and public policy.

The most glaring of all limits to the religious-legal approach to public policy in Islam is the neglect or at best underestimation of the necessity of *shūrā*, a divinely ordained process of collective decision-making that has traditionally been understood as a form of consultation that may or may not be binding on rulers. The literal definition of *shūrā* is the *extraction of honey from its source* alluding to the recommendation that any decision-making process and its outcomes must be illuminating and beneficial, i.e., lead to improvements (*iṣlāḥ*). Despite contestation by some jurists, *shūrā* is obligatory having been stated in the Qur'an (42:38) immediately after the injunction to be responsive to God and to establish Salah (worship of God and prostration to Him through the five daily obligatory Prayers).

The concept of *shūrā* presents us with a perfect example of how the Revealed and unrevealed word must be read concurrently. As a matter of fact, reading one without the other leads to incomplete knowledge and discrepancy. Because of its reference to the world of honeybees, the concept of *shūrā* can be thought of as an allusion. Two Surahs in the Qur'an, the Revealed word, help to explain the significance of this allusion, namely, *al-Naḥl* and *al-Shūrā*. In the former we are reminded of the importance of the unity of design despite human perceptions of diversity. In the latter our attention is called to inevitable disagreements among people as a natural outcome of this diversity but also as a necessary contributor to successful collective decision-making and human resilience.

Contemporary scholarly literature, representing discoveries of the unrevealed word, confirms the lessons that humans can learn from the collective decision-making process of honeybees. In fact, honeybees appear to have the best collective decision-making process on the planet. Learning from this example, *shūrā* is most suitably defined as a system of collective decision-making where public leaders draw upon epistemic communities who must engage the public in an ongoing



process of communication that seeks to solicit further input and/or garner support for the policy alternatives under consideration. This process is therefore most closely akin to management of public affairs through a system of expert advice that encompasses certain features. It involves leadership, expertise, civic participation, decision criteria, evidence, persuasion, investigation, voting/elections, quorum and consensus. Leadership in this system is important but it is not hegemonic. Leadership is primarily responsible for catalyzing processes that (1) solicit advice on problem definitions; (2) define criteria for successful outcomes; (3) propose possible responses; (4) persuade the public as to best course; and (5) give rise to the best collective decisions.

The process of *shūrā* clearly ascertains the importance of persuasion in public policy in Islam, which underscores the emphasis Islam places on the power to reason. The Qur'an does not merely issue commands but rather employs a number of tools to persuade, encourage and oblige the use of reason. Its approach shows believers the importance of 'carrying' concerned publics through a multitude of pathways. Many of the Qur'anic narratives involve an exposition of the persuasive techniques utilized by God's messengers in their efforts to establish peace and justice. Persuading people as to a specific course of action or way of life is nowhere more evident than in the leadership of Prophet Muhammad (ṢAAS)\* who had to deliver Islam's message largely without the supernatural manifestations that supported the efforts of other messengers. The emphasis on persuasion is a clear injunction against superstition, supernatural expectations and authoritarianism.

In order to 'carry' the public in issues related to the achievement of benefits and the avoidance of harms, an understanding of *maqāṣid al-sharī'ah* is indispensable. How do we justify decisions? What should public policies aim to achieve? What constitutes public welfare? An understanding of *maqāṣid al-sharī'ah* has been evident since the earliest days of Islam. Its formal elaboration, however, did not occur until the tenth century when a select group of Muslim scholars appealed to the approach to exhort their contemporaries to heed the objectives of Divine law in making legal pronouncements and interpreting the texts.

In its traditional form, the *maqāṣid* approach focuses on the preservation of six essentials including faith, life, mind, progeny, wealth and

---

\* (ṢAAS) – *Ṣallā Allāhu ‘alayhi wa sallam*: May the peace and blessings of God be upon him. Said whenever the name of the Prophet Muhammed is mentioned.

dignity. Early scholars insisted that Divine law was laid for no other purpose than to achieve these benefits. Given its broad appeal and general character, *maqāṣid al-sharīʿah* offers a potentially universal approach for the engagement of diverse individuals and groups from different systems of belief. It also creates practical and theoretical space for its application to policy and governance among other fields, especially given its evolution over time.

The *maqāṣid* point to an important distinction when studying Islam for purposes of policy and governance, namely, that between ethics and religion. Qur'anic ethics cannot be considered religious without qualification. As tersely explained by the late Sheikh Muhammad Abdullah Draz, the Qur'an covers every facet of life, while the religious element, involving acts of worship, is limited and personal. Second, proposed ethics are verified in this life through human conscience, legal power and the prerogative that every human strives toward what is good and avoids what is evil. Third, the Qur'an does not exclusively rely on fear and hope but rather demands attention, comprehension and advancement of human reason. Ethics and religion do not define each other. Reason came before the positive law of religion. It is through the former that we shape and accept both religious and natural law. In fact, religious law can only offer a starting point from which a normal conscience then seeks to adjust and apply the best of its understandings. In light of this explanation, religion only becomes a factor when we consider intentionality. In policy and governance, this means that proposals emanating from Islamic sources must accept contestation in a market place of ideas whereby they are either proven to be preferable or rejected. Individual intentions do not play any role.

The *maqāṣid* approach to governance is explicitly normative, embracing without hesitation the moral imperative of mercy above all other value premises. Of all of God's designations, the Merciful receives by far the greatest emphasis. Governance from an Islamic reference is therefore first and foremost about holistic human welfare based on merciful physical and moral relations. Indeed, mercy is the defining feature of *maqāṣid*-based governance and those aspiring to this field must not only acknowledge this but also have the courage and capacity to incorporate its meaning in theory and practice. It is not surprising that the most admired and valued leaders, and nations, in history are those who demonstrated the greatest mercy.

While the malleability of the *maqāṣid* approach makes it suited to

broad contributions beyond jurisprudence, the demands of public policy necessitate the development of a robust methodological toolbox. Initially, it is important to debunk the claim that the Shari‘ah has little or nothing to say about the nature of the state as well as the foundations, both substantive and procedural, of policy. The Shari‘ah is rich with knowledge about politics and policy given a properly trained intellect, which understands the extent of available material in both the Revealed and unrevealed word that can be brought to bear on the task at hand. Public policy in Islam cannot therefore accept the superficial limits imposed on the Shari‘ah by traditional jurists nor can it submit to the relatively unregulated principle of ‘unrestricted interests’ that was devised by traditional scholars to denote rules and pronouncements recognized by Islamic law but not explicitly mentioned in the texts. The Qur’an presents a number of techniques including narratives, dialogue, example, information, exhortation, observation, allusion, metaphors, repetition, rulings, proofs, etc. which can lead us to new and useful discoveries about public affairs.

This chapter highlights critical areas in public policy in Islam. *Shūrā* is presented as a necessary and binding process for decision-making, persuasion is proposed as a primary tool for actors in this field, *maqāṣid* are suggested as general objectives, *iṣlāḥ* as desired outcomes, mercy as the highest value and ethics as an indispensable foundation. Accepting the *maqāṣid* approach to open up the study of public policy in Islam is an important development that will require critical exploration and global champions.

## Chapter Two

### **Muslims and the Dilemmas of Governance**

This chapter argues that Muslims appear to be ruled by three authoritative proxies. These include the state, irrespective of its system of governance, the traditional religious establishment of jurists, scholars and imams, and by a generally distorted conscience that is convinced of its inability to independently ascertain the content of its beliefs. These three proxies including the ways in which they interact, represent the challenge that Muslims must overcome if they are to fulfill the approach to policy and governance that is elaborated in the Shari‘ah.

The inclusion of a short historical perspective is only intended to highlight how the relationships that developed between rulers, scholars and

the public had far reaching implications for modern day challenges. Theories that posit a golden age of Islamic governance that privileged the Shari'ah do not offer satisfactory explanations of our current predicament, which expresses a general distaste and fear of the Shari'ah in the public sphere. Properly understanding the actual historical experience of Muslims with governing authorities and not some romanticized version of history that confuses economic, administrative, scientific and cultural leadership of the Muslim nations with good governance is critical in this regard.

Prior to the modern era of nation-states, Muslims were governed by dynasties that were largely based on tribal loyalties and hence not open to or welcoming of broad social participation. This meant that the characteristic diversity of the ummah was not reflected at the level of governance and leadership. This mode of governance resulted in a notable dissonance between subjects and rulers. The nature of the relationships that emerged between the people and the rulers of the various dynasties was moderated by a religious establishment that largely perceived and constructed Islamic jurisprudence within the confines of politics and thereby with an individualistic and private bias. Rulers were spared an elaboration and imposition of those aspects of the Shari'ah that defined good governance, while the common man was deprived of the knowledge and tools required to engage authority, demand rights and change leadership if need be.

The politically convenient demarcation that dynastic rule imposed between the rulers, jurists and public had a significant impact on the political maturity of the Muslim community. It nurtured an environment where religious scholars increasingly distinguished themselves and their enterprise from everyday believers and practitioners of disciplines not explicitly associated with jurisprudence. Gradually religious education would come to reflect this elitism by providing suitable instruction only for those adopting religion as a vocation. Increasingly, ordinary Muslims were compelled to rely on these individuals for all affairs where religious guidance was perceived as necessary while the holistic nature of the Shari'ah was relegated to a bygone, albeit short-lived, era.

One of the greatest myths contributing to these historical developments, is the 'silence' of the Shari'ah on matters of governance except for a limited number of concepts whose emphasis seems uncannily associated with reinforcing despotism. One such concept is the fiction

of ‘Divine sovereignty’ in matters of worldly governance. While God’s sovereignty is indisputable in governing creation, it does not express itself in the details of our daily lives where we act of our own volition. Hence, the belief and propagation that God is the *only* source of law is not only erroneous it is dangerous. Through the use of reason, humans continue the legislative process in between the foundation of morality and the objective of an act irrespective of explicit articulations. Any level of governance demands human ingenuity and sovereignty.

Genuine Islamic governance nurtures the relationship between governing authorities and their publics through a process of continual renewal. Muslims are not subject to human authority by virtue of any absolute or divine representation but rather through their own approval based on moral imperative and expressed through a collectively agreed political process. The historical neglect of this relationship or else its characterization as optional, contributed to a politically immature community that was ill prepared for the changes that colonialism (and modernity) would bring about. Yet, the stubborn adherence of contemporary political activists to historical understandings of concepts like the caliphate, ummah, *shūrā* and *bay‘a* has meant limited creativity, effectiveness and acceptance.

But the greatest culpability for the state of the Muslim world today lies with the traditional religious establishment. Although Islam has no power locus commensurate with the Vatican in Roman Catholicism, jurists and scholars have ensured that the establishment reproduces itself as a powerful, patriarchal, centralized, top-down and predetermined structure operating within strictly defined roles, responsibilities and intellectual boundaries. It thus reserves for itself the definition of the Shari‘ah, the criteria for the jurist and scholar, the accreditation of the places of higher learning, and everyday permissions and prohibitions for believers. Adequate voice is not given to scholars of other disciplines, women and youth.

The unqualified transgressions by jurists into fields of inquiry beyond their narrow legal training have had serious consequences for Muslims around the world. But more serious in nature, has been the implicit or explicit collusion of jurists and scholars with state officials whom they know to be committing grave human rights violations. Thus, while mercy, welfare and justice are at the heart of the Shari‘ah, it remains exceedingly challenging for jurists and scholars to advise rulers to heed these principles. Within this dynamic, however, the average believer also carries major responsibility.

Centuries of indoctrination, juridification and usurpation have impacted the Muslim mind's willingness and capacity to reason about matters of faith including the ability to construct, verify and reform the content of its beliefs. Knowledge of what Islamic policy and governance entail is not surprisingly very limited. Muslims continue to rely on local religious leaders or well-known foreign scholars via social media to solicit opinions on a range of issues from the most mundane to more serious matters. While this may not seem problematic it is indicative of a general inability to contribute to the advancement of human welfare in its complex modern forms by competently and correctly referencing Islam's primary sources.

That said, a growing constituency of marginalized groups including men, women, youth, and scholars from within the tradition as well as other disciplines are increasingly questioning passive obedience to narrow legal authority that has largely divorced itself from the realities and needs faced by Muslims and non-Muslims today. These individuals and communities have grown impatient with the religious establishment's restrictive legal edicts while neglecting or downplaying human rights, and especially those of women, and other important public concerns. They are actively looking for effective ways to deal with contemporary challenges and are open to acknowledging a Divine reference.

Nevertheless, creative Islamic thinkers often find themselves marginalized by mainstream coreligionists or discounted by secular counterparts. Indeed, the quest for genuine Islamic governance and public policy for and by Muslims as expounded throughout this book requires a three-pronged approach that aims to liberate people from the tyranny of political authorities, the hegemony of traditional legal scholars and jurists, and above all from their own reluctance, lack of self-confidence, or else self-inflicted ignorance of the spirit of the Shari'ah.

## Chapter Three

### **The Historical Roots of *Maqāṣid* Studies**

This chapter is concerned with the historical roots of *maqāṣid* studies and as such their classical elaboration into the preservation of faith, life, mind, progeny, wealth and dignity. While it is clear that *maqāṣid* scholarship has made significant contributions to Islamic studies, those who aspire to extend this approach to policy and governance must be

willing to exercise appropriate critique. Unlike its earliest application in Islamic policy and governance, the study of *maqāṣid* grew out of the works of tenth century scholars who sought to remedy the gaps between Islamic jurisprudence and Muslim practice and what they defined as the higher purposes of the Shari‘ah. This effort reveals how select jurists perceived the shortcomings of the historical moment in which they lived and is evidence of their skepticism of the dominance of a Shari‘ah paradigm. The contributions of the approach’s most outstanding proponents throughout history demonstrate the longevity of Muslim concerns with public welfare and interests. This is no less evident in contemporary *maqāṣid* studies where a number of scholars have been evolving our understanding of the essentials.

The early practice of *maqāṣid* expressed a number of important features that are of contemporary relevance. The rules of the early caliphs reveal that the *maqāṣid* approach was explicitly problem and context oriented. The combination of knowledge, power and piety endued these leaders with the spiritual and material convictions to pursue the essence of Islam in governance even when this appeared to contradict the literal reading of the texts. In its original expression the *maqāṣid* were not bound by the strict fundamentals of jurisprudence and hence were open to far greater intellectual latitude. All fields of knowledge, local and foreign, were brought to bear on public policy concerns. A commitment to human dignity and relatedly *shūrā* were centrally positioned in public affairs in stark contrast to later concerns of ‘stability’ at all costs.

The rise of despotism throughout Islam’s long history of dynastic rule spelled an end to such commitments. Dynastic rule resulted in the separation of law and state at the expense of the spiritual, moral and material unity that had characterised earlier phases of governance. The growing role of jurists and scholars in running civic affairs served to mask their actual religious and intellectual confinement. If government was exceptionally intervening in the law, it was not due to reverence but rather to tacit agreement that the jurists would not make any pronouncements on governance and the alteration of political power. Moreover, they would ensure the acquiescence of the subjects of authority. The result was a partial, fragmented and micro approach to the Shari‘ah, a system of governance increasingly alienated from its subjects, and a public which was incapable of ascertaining their rights vis-à-vis their rulers.

Consequently, early *maqāṣid* scholars were concerned with the gap between Islamic jurisprudence and Muslim practice and what they perceived to be the higher goals of the Shari‘ah. Abū al-Ma‘ālī al-Juwaynī (d. 1085) suggested that Islamic law was intended to protect the faith, souls, minds, private parts, and the wealth of people. Abū Ḥāmid al-Ghazālī (d. 1111) prioritized the objectives in the following order: faith, soul, mind, offspring and wealth. Al-‘Izz ibn ‘Abd al-Salām (d. 1209) placed a spotlight on the link between juridical rulings and their purposes. Shihāb al-Dīn al-Qarāfī (d. 1285) reasoned that if the basis of the other objectives were the rulings associated with corporal punishments, then the preservation of honour needed to be added. Shams al-Dīn ibn al-Qayyim (d. 1347) provided a detailed critique of juridical tricks or *al-ḥiyal*. Ibn Taymiyyah (d. 1328) sought to introduce broader values including justice, virtue, constitutional rights, and scientific excellence among others. Abū Ishāq al-Shāṭibī (d. 1388), the most celebrated of all early *maqāṣid* scholars, ascertained how the *maqāṣid* of the Lawgiver could be determined. Everyone who came after al-Shāṭibī either summarized or rearranged his work.

Taken together, the contributions of early scholars drew attention to the importance of understanding and honoring what they deemed to be the higher purposes of Islamic law. Their productions expressed recognition that something in the enterprise had gone wrong and needed fixing if Islamic jurisprudence was to fulfill its intended purpose. Unless the *maqāṣid* were incorporated into the fundamentals of Islamic jurisprudence so that they remained foremost in the mind of the scholar as he formulated his opinions, it was likely that the law would increasingly betray its purpose. The *maqāṣid* approach was therefore intended to provide an ethical framework for the law.

The major characteristics of the *maqāṣid* approach make it amenable to application in a wide range of disciplines, and in particular, governance and policy, which are considered its original breeding grounds. Contemporary scholars have attempted to increase the relevance of the approach by evolving each objective to account for the needs of modern life. Thus, the preservation of religion has been evolved to freedom of religions. This objective draws attention to Islamic ethics, freedom of choice as related to one’s faith, and the importance of a secure public space for the expression of such freedoms. Public policy is expected to respect individual and communal choices so long as they do not violate the rights of others, make positive contributions to society, and respect collectively determined public norms.



The preservation of life has not been subject to much evolution in terminology except in the sense of how it is to be achieved. In general, this objective has been concerned with the needs of physical welfare and the prevention of bodily harms. For these purposes public policy may focus on national security, extension of protection to non-citizens, and the preservation of the environment. In future the concept may evolve further to reflect the fact that life is dependent on so much more than its physical manifestations. The Shari‘ah is amply clear about the interdependence of all living creatures which points to the necessity of nurturing social communities (of all species) and the intricate web of relations upon which they are based.

The preservation of progeny has evolved to encompass a broader conception of the family unit. This objective underscores the importance of recognizing the role that properly functioning families play in social and economic development. Public policy must therefore be concerned with promoting family welfare, including benefits for marriage and children. It is important to recognize that the basis of this objective for early scholars was the punishment for adultery (*zinā*). If we consider that basis then the more apt objective is preserving public morality and not knowledge of a child’s lineage, for which the positive corollary is the preservation of progeny. This much is clear from the very strict injunctions associated with accusations of adultery, including the presence of four witnesses. In addition to a clear violation of public morality, the conditions associated with such an accusation also underscore the objective of individual privacy and security against false accusations. The preservation of public morality and individual privacy are areas of universal concern. The objectives of the Shari‘ah therefore ensure wide latitude for human behavior while prescribing limits on communal and state intervention in the personal lives of citizens.

The preservation of wealth (*māl*) has evolved to encompass socio-economic exigencies including growth, development, monetary circulation, social well-being and economic egalitarianism. Public policy is tasked with the establishment of a legal order and socio-economic system that protects public and private property including all lawful means for their increase and creative transformation for the good of society. Of all the conventional *maqāṣid*, the preservation of wealth as an objective of the Shari‘ah is perhaps the least defensible. The positive corollary for the punishment for theft is not the preservation of wealth but rather the guarantee and sanctity of human security in all of its dimensions. The severity of the punishment for theft (note whose true

spirit in terms of strict requirement of social context is often betrayed because it cannot be applied at times of poverty, injustice, inequality etc.) reflects Islam's emphasis on freedom from transgression and violence including that of the state and other actors in positions of power. In stark contrast to the suggestion that wealth is an objective of the Shari'ah, the Qur'an exhorts to the most generous forms of giving and sharing. Wealth is and can only ever be a means, not an objective.

The preservation of honour has been expanded to include human dignity as well as human rights. In light of this, public policies must include many if not all of the rights established in the Universal Declaration of Human Rights. Although women's rights may certainly be subsumed under all the *maqāsid*, special mention is mandated under this objective since no other group has been more seriously harmed on account of cultural practices that view the preservation of honour as the sole province of male entitlement. "Honor" killings continue to take place in some parts of the world unjustly violating the lives and rights of innocent girls and women. Although strong condemnation has been issued from a broad spectrum of jurists and scholars in regards to these killings, an unambiguous stand on the protection of girls and women from ALL forms of violence and exploitation has yet to be unanimously and unequivocally endorsed. Women's rights in the Shari'ah need to be more vociferously argued, demanded and enforced – rights that one may argue present an objective in and of itself.

The *maqāsid* approach originated from an understanding of the values that jurists believed to be at the heart of the Shari'ah's strictest penalties. The six objectives outlined above form the most enduring contribution of the approach. The classification of the preservation of faith, life, mind, progeny, wealth and dignity has enjoyed a parsimonious existence that no other *maqāsid* exposition has surpassed. Evolving the terminology and substance of each *maqāsid* has been an easier feat than presenting new typologies all together. Given this intellectual inertia, contemporary scholarship has attempted to honor a broader and deeper meaning of the Shari'ah while respecting the approach's well established roots.

## Chapter Four

### The Challenges of Founding a New Discipline

The parsimonious nature of the traditional *maqāsid* approach as

embodied in the preservation of the six objectives – religion, life, mind, progeny, wealth and dignity – appears to resonate widely with students of public policy and governance. The shift from law to governance, however, must be scrutinized with the aspiration of achieving greater academic as well as practical rigour. This chapter focuses on some of the more salient challenges of advancing a genuine project in public policy and governance in Islam. Thus, it examines how Shari‘ah and fiqh are customarily understood versus their actual meanings; discusses methodological concepts that can be adapted from the fundamentals of fiqh or *uṣūl al-fiqh*; explores the contributions and relevance of the works of two contemporary scholars, Tariq Ramadan and Jasser Auda; and finally highlights the requirements of governance and policy studies.

The Shari‘ah proper can only be understood through a thorough investigation of Revealed and unrevealed knowledge or the written and unwritten word. The only reference to the Shari‘ah in the Qur’an is associated with Prophet Muhammad: “Then We put you upon an exemplary or higher law or ordinance (Shari‘ah) from the Command, so follow it and do not follow the whims of those who do not know” (*al-Jāthiyah*: 18). Thus, the Shari‘ah is comprised of the revelation that was sent to Prophet Muhammad and the ways in which he translated it throughout his life. The methodological consequences for policy and governance of an explicit expansion of our understanding of the Shari‘ah as such have yet to be expounded. The results of this process can only ever constitute fiqh and not the Shari‘ah itself whose laws are unchanging and to which the potential application of intellectual effort is infinite.

Within religious circles, fiqh has taken on an exclusive meaning of expertise in the revealed rulings which have been extracted from the detailed evidences. Fiqh often refers to the voluminous collection of juridical opinions produced by the various schools of jurisprudence with regard to the application of the Shari‘ah to their specific historical moment. As a Qur’anic concept, fiqh simply means understanding or comprehension. The *maqāṣid* approach for governance and policy makes significant contributions to fiqh. Because the approach distinguishes between means that can expire over time or with a change in context and the ends that remain timeless, radical re-interpretations and the historicizing of fiqh as it concerns human dealings while maintaining the integrity of the Shari‘ah becomes possible and necessary. We cannot proceed to examine modern issues of governance and policy

without this affirmation. Our knowledge of today's realities must augment, enhance and correct understandings of the past.

Policy and governance studies also demand a reconsideration of popular juridical theories of Islamic law. While a number of the approaches used by the various schools can be of relevance to governance and policy, scholars still have the task of defining these techniques in ways that reflect the needs of the discipline. Content and processes related to consensus, the determination of benefits, blocking the means, preference and analogy will have to find their roots in the needs of public policy, which has different concerns and constraints.

Moreover, normative judgments related to customs, continuity and the Prophet's Companions' opinions also have to be mitigated by knowledge of the policy sciences. In other words, these methods will necessarily have to be defined and applied in ways that contribute to policy and governance.

A number of *fiqhī* principles, however, must be rejected as unsuitable for the study of public policy in Islam. Marshalling support for specific rulings or objectives from fragmented and isolated evidences no matter how numerous, and whether originating in the primary sources or *fiqh*, cannot result in certitude of outcomes without an adequate understanding of context and environmental interdependencies within which such rulings are to be implemented or objectives achieved. This calls into question the certitude associated with the inductive method that forms the basis of the classical *maqāṣid* approach.

Similarly, public policy in Islam may not admit the principle of abrogation. To abrogate a verse or several means to cancel them out with the justification that their literal meaning contradicts with that of a later verse. However, disagreements over interpretation may be due to contextual specificities as well as the intellectual limits of the scholar or jurists. The study of the primary sources for the purposes of public policy demands a full consideration of all verses and the broader universe to which many verses refer both directly and indirectly.

The *maqāṣid* approach to public policy further rejects the notion of the *silence* of the Lawgiver (with respect to a matter). Silence is easily asserted in *fiqh* when much of the Shari'ah, which is not classified as *āyāt al-aḥkām* is neglected, and by association the expanse of unrevealed knowledge that the primary sources in their entirety allude to.

As we expand the source material to include all of the Qur'anic text and authentic hadith with verified content, while applying more complex methodologies, perceptions of silence are necessarily augmented. As with abrogation, the assertion of silence is related to time and place as well as the expertise of the scholar. The growing complexity of the state of knowledge draws attention to another characteristic of traditional fiqh that the *maqāsid* approach to public policy will have to reconsider, namely reliance on individual jurists as opposed to collective and transdisciplinary expertise. The criticality of engaging epistemic communities, as well as knowledgeable and interested stakeholders, is intended to greatly diminish uncertainty in policy. Greater certitude becomes possible only when we share our understandings of how the Revealed and unrevealed word combine to produce new and useful knowledge that can be brought to bear on the challenges of our times.

Several contemporary scholars have tried to tackle or overcome these methodological challenges. Tariq Ramadan and Jasser Auda present different emphases. Ramadan argues that scriptural sources must be augmented by our knowledge of the universe. The sources of *uṣūl al-fiqh* must integrate all human knowledge, of the natural and social sciences, which must be brought to bear on the ethical determinations of Islam. In order for this to happen, Islamic scholars and jurists must necessarily open themselves to engagement with experts from other fields. And the latter are to be positioned as equals or even superiors in the search for an Islamic ethics. Despite some merit, this suggestion is problematic. The key is not to elevate and equate individuals, however contestable their expertise, but to shift the levels of authority associated with ideas and sources of evidence as they express, reinforce and reproduce the objectives of the Shari'ah. It is not to view the Revelation and Universe as two books as Ramadan and others suggest but to view them as one Book that demands two readings as the Qur'an demands.

Using a systems approach, Auda proposes the *maqāsid* as a *philosophy of Islamic law*. Taking five selective features of systems including cognition, holism, openness, multi-dimensionality and purposefulness, he both critiques and offers suggestions for reforming Islamic law. His aim is to develop a theory that builds on the analysis of sources, implications, and evidences in classic theories, the literature of the schools of Islamic law, new modernist re-interpretations, and the criticism presented by the post-modernists. The sources include the rich heritage of traditional jurisprudence, interests (*maṣāliḥ*), rational arguments and

modern declarations of rights as well as the outputs of modern tendencies in various contemporary theories of Islamic law. Auda insists on the incorporation of the natural and social sciences without which he argues that Islamic law will remain outdated. Yet, his main concern is not with the incorporation of knowledge of the universe but rather to critique and reform the theory of *uṣūl* itself.

Scholars of governance and policy must seek to go beyond *fiqh* and *siyāsah shar‘īyah* as they are traditionally understood to develop and apply a suitable *maqāṣid* approach. Such an approach can potentially draw upon all Revealed and unrevealed knowledge to understand the relevant guidance in any policy area, including both substantive and procedural issues as proposed in the works of Ramadan and Auda. The aim is to develop an objective and purposeful approach that can make reasoned contributions to public policy. By expanding *fiqh* to encompass all Revealed and unrevealed knowledge, a *maqāṣid* approach to policy can augment a decision-maker’s limits while giving greater assurance that what is derived from the primary sources will actually lead to intended objectives. The multidisciplinary nature of this ambition demands a rejection of the superficial boundaries that have thus far prevented *fiqh* from incorporating critical, and nonetheless credible, insights from a more holistic definition of the Shari‘ah.

The almost complete absence of a major, coherent and modern work on the exploration of governance and public policy from scriptural sources has opened a governance vacuum in Islamic scholarship. In the absence of a well-developed alternative, *maqāṣid* scholars presenting traditional views will increasingly be called upon to fit the approach to a whole host of public concerns without the necessary level of introspection or knowledge required. Although this is eminently preferable to the uncritical importation of archaic legal rulings, the approach (as it currently stands) is far from robust as an approach to public policy and indeed does not fully capture the essence of Islam.

A renewed exploration of the Shari‘ah is required: one that will seek a better understanding of power relations and other human tendencies, decision-making structures, the role of the state and values including accountability, integrity and transparency, in addition to the nature of rights and freedoms. This will necessarily build on what so many eminent scholars, from the past and present, have already achieved but more importantly will draw upon the wealth of knowledge in the primary sources.

## Chapter Five

### **Human Rights as the Binding Fabric of the *Maqāṣid* for Governance**

Much of what has been written and consequently taught about the Shari‘ah does not deal adequately with the issue of human rights. This chapter considers major reasons why the traditional establishment has been reluctant to make clear pronouncements on this subject or to develop an indigenous approach; a reality that has manifested itself in superficial imitation of global human rights instruments. In contrast, the *maqāṣid* approach to public policy in Islam centralizes human rights. The work of *maqāṣid* scholars can be classified in four ways including (1) evolutionary; (2) foundational; (3) interest-based; and (4) complementary. This effort, however, does not obviate the need to develop an indigenous theory and to recognize human rights as a fundamental and separate category in the Shari‘ah.

Muslim scholars have largely been sidetracked from a genuinely original intellectual project related to human rights on account of their perceptions of the outcomes of western secular systems or fear of reprisals under despotic regimes. The chapter offers four main reasons for the palpable hesitation regarding the unequivocal promotion of human rights including: juxtaposition of the Divine versus the secular approach to human rights and who is legitimately subject to either; reluctance to use modern and ‘foreign’ terminology; rejection of western liberal concepts of rights and associated freedoms because of perceived social outcomes; fear of promoting a social order that clearly defies the authoritarian dictatorships within which many Islamic scholars and jurists live.

Political pressure, and perhaps a desire to establish common ground with the universal system of human rights, has led to various efforts to create or endorse Islamic versions of the Universal Declaration of Human Rights (1948). The two most important international documents, albeit non-binding, in this regard are the Universal Islamic Declaration of Human Rights (UIDHR) promulgated in 1981 and the Cairo Declaration on Human Rights in Islam (CDHRI) promulgated in 1990. Similar to their secular counterparts, the Islamic versions include the rights to life, freedom, equality, justice, fair trial, protection against torture, asylum, as well as freedom of belief, speech, association, mobility, etc. Scholars involved in these projects affirmed that the

Shari‘ah was the sole source of these instruments and served as the reference for certain reservations. Reference to the Shari‘ah in such general terms, however, appears largely to reserve leeway to restrict rights rather than to promote them.

Indeed, Islamic contributions do not appear to have achieved the reputation of their secular counterparts or to have respected the nature, flexibility and dynamism of the Shari‘ah. Any instrument resulting from human efforts at a specific point in history responds to specific needs, fears and aspirations of the communities that created it. Imitating the UDHR or any other international human rights law by infusing it with fragmented Islamic concepts has not only been ineffective it has distracted stakeholders from developing genuine Islamic alternatives. In the cases of the UIDHR and the CDHRI, political pressures and religious bias in the production processes led to the inaccurate confinement of human rights in ways that do not reflect the richness of the Shari‘ah and its responsiveness to human needs. This is ultimately reflected in their subsequent lack of credible authority.

The *maqāṣid* literature has dealt with rights and freedoms in four major ways. The first is very partial in that it takes the form of evolving the objectives of the preservation of religion and honor to either mean specific human rights or to include them. A second stream argues that human rights form the foundation of significant Islamic principles that cannot be upheld if fundamental rights and freedoms are violated. This understanding insists that rights and freedoms, though not directly articulated in the texts, are nevertheless clearly implied in the principles and injunctions of the Shari‘ah. A third stream, takes an interest-based approach to human rights by transforming all the *maqāṣid* into inalienable rights thereby incorporating all modern concepts into the traditional *maqāṣid* classification. Finally, a fourth stream argues that additional dimensions must be added to the essentials of *maqāṣid* including rights and freedoms.

The beginning of an indigenous theory demands the recognition that human rights in Islam emanate from the Divine authority of the Qur’an. The knowledge available to elaborate an Islamic approach can partly be found in analyses that have already been performed, especially regarding morality in the Qur’an, and partly in the source texts which must be mined. But even before the initiation of this effort, policy analysts must reclaim a very important Qur’anic concept, namely, the *ḥudūd*. Notwithstanding the misappropriation of this



concept in traditional fiqh, the *ḥudūd* actually represent the Shari‘ah’s clear articulation of a separate category for fundamental rights. A *ḥad* (singular of *ḥudūd*) is a limit beyond which an individual or group violates Divine law and as such the balance of life. The *ḥudūd* are mentioned fourteen times in nine Qur’anic verses. In every mention, it is evident that the concept is meant to promote human and especially women’s rights.

Generally, the Qur’anic conception of human rights can be understood as a *supply of ethical goods* based on an intricate system of social obligations. Whether in regard to individuals or larger social units the objective or *maqṣid* of the Qur’anic approach is to guarantee maximum provision with the *ḥudūd* establishing a minimum threshold. Unlike the secular human rights model which posits freedom as the most important value, the message of Islam emphasizes the importance of human dignity, which accepts freedom as a necessary but insufficient contributor to human rights. Human rights generate a justification for action on the part of every believer to safeguard the dignity of others with whom they either have an immediate affinity or toward whom they have a duty to support by virtue of their knowledge, capacity and resources. An Islamic approach is based on the moral imperatives of belief including the surety of accountability before God, both in this life and the next. The establishment of a law that can be applied individually to every conscience is only possible within a religious system that accepts the omnipotence of God, and His uninhibited ability to judge every person in proportion to the bounties with which He has granted him/her during his/her lifetime. Such an analysis is expanded to include the provision of rights at the communal and state levels.

An Islamic human rights doctrine is based on a religious ethics and should be no more contestable on those grounds than one based on secularism. Accepting Islam may be necessary on the supply side of this human rights approach, but it is certainly not required on the receiving end. There is absolutely no verse in the Qur’an or credible narration in the Sunnah that limits the provision of what is good and ethical to Muslims only. Indeed, freedom to believe is a fundamental tenet of Islam and is not a condition for the provision of rights. Islam obligates believers to provide full rights to others without discrimination. From the perspective of the Shari‘ah, universality is found in the unquestioning provision of ethical goods to all creation irrespective of demand.

## Chapter Six

### Ethics of Governance and Public Policy in Islam

Public policy in Islam is governed by a comprehensive and complex ethics. The Shari'ah compels us to recognize that the determination of benefits and harms cannot be subject to narrow self-interest or criteria that betrays fulfillment of its higher objectives, albeit to the greatest extent possible. The concept of *tawhīd* (the unity of God and a worldview, of truth, space-time, history, and destiny) is at the core of the Islamic ethical system as it encompasses the intricate relationship among all creation and among creation and the Creator. Although *maqāṣid* scholars have attempted to deal with issues of benefits and harms, their contributions have been constrained by the boundaries of the discipline as opposed to the breadth and depth of the Shari'ah. As a result, the ethical parameters of such contributions are usually confined to Muslims, and even then to Muslims within a specific geographic location. In this regard rethinking the concept of ummah (community), which constitutes the most common reference for many Islamic scholars when discussing benefits and harms is critical. Contrary to popular understanding, the concept of ummah has broad application and is not limited to humans within the Shari'ah. Indeed, Islamic ethics for public policy and governance must necessarily go beyond the anthropocentrism that has characterized the better part of Islamic jurisprudence to date.

The beginning of wisdom in this discussion of ethics is the philosophical principle of *tawhīd* or unification. *Tawhīd* is the core principle in the Shari'ah's philosophy. The Qur'anic injunction not to sever what must be joined (*al-Baqarah*: 27; *al-Ra'd*: 25) is expressive of the complexity, depth and breadth of *tawhīd*. It is this moral principle that presents governance and policy with a dilemma that can only be resolved through the practical ethics presented in the primary sources, which must be mined and articulated by the faithful scholars of every era who necessarily have a solid grounding in the Revealed and unrevealed word. Nevertheless, this is a very challenging task as compassing the extent, complexity and interdependence of all creation let alone the linkages among them is impossible. What we lack in knowledge must yield to faith and the principles that were established by divine providence to enable human beings to minimize harm.

The question then naturally arises as to what the principle and practice

of *tawhīd* means for policy and governance in Islam. At the outset let us establish what it does not mean. It does not mean a global caliphate. There is absolutely no mention, explicit or implied, in the Qur'an, Sunnah, or early Islamic rule, to support this phenomenal claim. One of the essential objectives of *tawhīd* is actually a recognition and respect for the diversity that makes up this unified and purposeful whole. This is no less true of the governance systems that color and shape the lives of distinct political units around the world. An appropriate determination of benefits and harms must acknowledge this principle of self-determination.

Within the traditional *maqāṣid* literature, the question of benefits and harms occupies an important position. Traditional scholars have generally presented the application of *maqāṣid* as an achievement of benefits and/or a prevention of harms. Thus, in order to achieve benefits, decisions must be made in such a way that account for and promote the preservation of religion, life, mind, progeny, wealth and dignity. In essence, these six objectives are synonymous with the public interest and their pursuit through various approaches and instruments is called *siyāṣah sharʿīyah* or Shariʿah-oriented politics. In actual practice it is rare to find purely beneficial solutions (*naḥʾ khāliṣ*) to a public problem just as it is rare to implement purely harmful alternatives (*durr khāliṣ*). Most policy alternatives lie somewhere in between and clear distinctions may not be possible. Jurists have therefore developed ways of determining the balance between benefits and harms. Generally, however, they do not tell us how to establish appropriate boundaries for governance and policy decisions. For that we must examine the concept of ummah.

Even before the determination of benefits and harms, it is necessary to determine whose benefits and harms count. The philosophy of *tawhīd* ensures that all life is viewed as sacred which makes the determination of whose interests count and whose do not especially challenging. Moreover, do governance and public policy in Islam only consider human beings? Which ones? Or is there a basis for broader concerns? Does the Shariʿah only address current generations or are there ethical dimensions related to future ones as well? The determination of who is in and who is out is related to our understanding of the key concept of ummah. Very generally an ummah is a community. It is often used to refer exclusively to the global Muslim community of the past, present and future. Most jurists and scholars, however, limit their pronouncements to Muslims within a specific geographic area. This may

be appropriate for the application of religious law but it is not satisfactory for governance where not only diversity rules but where the main concern is with the public interest. The Shari‘ah addresses this concern by pointing to three other significant understandings. The first is related to the community of believers, all believers. The second is concerned with communities that are bound politically and geographically and who share common values and needs, irrespective of belief. And the third, is related to the use of the concept in relation to other living creatures.

The ethical system elaborated in the Qur’an is comprehensive and as such coverage is provided for all of God’s creation. It exhorts people to envision the spiritual dimension of all creation, worthy – if not of dignity – then of protection and awe. The Qur’an is adamant about this and while dignifying the children of Adam nevertheless positions them among a magnificent web of life. Our inability to grasp this reality not only as Muslims, but also as human beings has led to a myopic and dangerous vision for our collective future.

Humanity is dependent on much more than humans. The superficiality of a significant portion of fiqh in this regard – not necessarily due to the superficial minds of jurists and scholars, but rather the pre-programmed approach they take to religious scholarship has rendered ethical concerns marginal to broader, more complex public affairs. It has also undermined the search for alternative approaches and narratives presented in the Qur’an that are available for the enhancement of our collective existence. The *maqāṣid* literature is attempting to remedy this unfortunate predicament, but it remains peripheral to mainstream fiqh. Even as it takes a bolder stand, it is itself reluctant to introspect, to explore the full extent of a comprehensive ethics and confidently assert its conclusions to the world.

## Chapter Seven

### **Public Policy in Islam as a Process of Reform and Renewal**

This chapter argues that from its inception the Shari‘ah is about the achievement of social justice, which is understood as the equitable distribution of opportunities, wealth and privileges within a society in accordance with the fundamental principle of human dignity. It starts

with a discussion of the relationship between power and piety in the Qur'an to demonstrate how the distinction between the two suggests that the introduction and application of Qur'anic ethics is a collective responsibility and does not presuppose Islamic political leadership or statehood. The history of the introduction of Islam to Arabia offers a rich and detailed account of the stages and nature of a comprehensive process of social reform. The preponderance of Muslim authority as a result of this process is not to be understood as an end in itself and hence as an unqualified drive for statehood, but rather a consequence of the appeal of Islam to local subjects and its utility in addressing the social challenges of the time. The early recipients of this message understood that the greater part of *dīn*, the Islamic religion, is a time bound articulation and expression of the Shari'ah for the purpose of achieving equity given prevailing conditions.

One of the most striking conclusions that one reaches after a reading of the Qur'an is the clear separation between political power and piety or more generally ethical behavior. God grants power to whomever He pleases be they male or female, rich or poor, good or bad, believing or rebellious and local or foreign. This has important implications for governance, public policy and civic engagement in Islam. Fundamentally, it demonstrates that the actors championing the guidance provided in the Shari'ah can be located within the system of governance itself or within civil society. The locus of actors necessarily defines possible approaches and the nature and extent of responsibility. This separation of power and piety also highlights the importance of establishing institutions that serve to mitigate unethical behavior irrespective of the alleged religious affiliation of a government or its leadership.

The preservation of *dīn* (as the religion of Islam) is the most salient of the six essential *maqāṣid*. All other objectives of the Shari'ah, as classically defined, at any historical moment are necessarily compassed by this supreme objective. In other words, the articulation of the preservation of life, progeny, mind, dignity and wealth are all expounded and regulated by the prevailing conception of *dīn*. This means that social reform and redressing injustice are directly related to our understanding and practice of *dīn*.

Generally, Islam is comprised of *ʿibādāt* or acts of rituals and devotion and *muʿāmalāt* or worldly dealings. The preservation of *dīn* thus involves two fundamental acts. The first is to guard the principle acts of worship and what they are dependent upon against corruption and

innovations. Testifying that there is no deity except God, praying, fasting, giving zakah and the pilgrimage will more or less remain unchanged for all time. The second is to actualize the duties articulated in the Qur'an by internalizing and synthesizing relevant rules with prevailing conditions so that our actions are defined by the basic values of Islam including mercy, equity, justice, wisdom and welfare at the levels of the individual, community and nation.

The guidance required to support this struggle is found in the command of *tajdīd* or renewal of *dīn* alluded to by Prophet Muhammad in his warning that on the Day of Judgment people will have to explain in what occupation they spent their lives, for what motives they acted, from what source they made their fortunes, how they employed their resources and how they used their own bodies (al-Tirmidhi, *Sunan*, 'Kitāb Ṣiḡāt al-Qiyāma', Bāb1). For every major historical epoch there is a renewed need to translate the intensive and extensive dimensions of Islam into relevant and tangible social action. In our contemporary world, this requires a new fiqh, namely, *fiqh wāqī'ī* or practical fiqh. Knowledge of the Revealed word and its historical significance can at most be considered a theoretical understanding or *fiqh natharī*, which constitutes much of what is conveyed by jurists and scholars today. Likewise to be knowledgeable of the sensory and experiential world can at best be considered an understanding of reality or *fiqh al-wāqī'ī*. Reform and renewal, however, requires an integration of both which gives rise to a practical or realistic understanding or *fiqh wāqī'ī* allowing suitable applications in different contexts.

The early history of Islam is a poignant example of how the nascent Muslim community accomplished this feat and, as a result, was able to change a political system that had disenfranchised and oppressed certain individuals and groups in addition to several other injustices. Among the lessons that can be gleaned from this early history are the following: (1) the importance of a message that is truthful, clear, logical and useful; (2) a leadership that is meritorious, strong, and committed but not authoritarian; (3) caution against discounting the potential contributions of the general public, the elite and the disabled; (4) close attention to impact of economic matters and pressures; (5) prioritizing peace and respecting pluralism; (6) accepting armed defense only as a last and highly restricted resort.

Public policy in Islam is primarily an attempt at reform and renewal. The separation of political power and piety in the Divine scheme is

intended to encourage the emergence of individuals and groups who are willing to propose and defend what is beneficial while dissuading from what is harmful. It also raises awareness about the necessity of creating institutions that mitigate this reality. Islam is a religion of faith and action. The passing of every century requires outstanding individuals and groups who have suitable knowledge and capacity to step up to the challenge of interpreting the Revealed word in relation to contemporaneous conditions. The guidance proffered by this renewal of *dīn* is intended to help people successfully navigate the challenges of their time and space. The early history of Islam is very instructive in this regard. The adoption of a new message with its comprehensive social, economic and political reforms led to unprecedented events.

## **The Author**

BASMA I. ABDELGAFAR is Vice President of the Maqasid Institute and Associate Professor of Public Policy. She is an international consultant on policy, governance and Muslim affairs, was Founding Head of the Public Policy in Islam Masters Program in Qatar Foundation, has held various policy positions in the Canadian Federal Government, and lectured on Islamic governance in academic institutes in Canada, the United States, Singapore, Malaysia, Turkey, Egypt and South Africa.



**IIIT Books-In-Brief Series** is a valuable collection of the Institute's key publications written in condensed form to give readers a core understanding of the main contents of the original.

This work charts new territory in Islamic scholarship by attempting to address the field of public policy from a *maqāṣid* (higher objectives of the Shari'ah) perspective. Public Policy is an independent discipline from both law and politics. Thus, Public Policy in Islam is introduced here as a qualitatively different enterprise from both fiqh (Islamic jurisprudence) and *siyāsah shar'īyah* (Shari'ah-oriented politics).

The book deals with a number of critical topics that include methodology, governance, human rights, ethics, political power, and reform and renewal. It highlights how the *maqāṣid* approach is indispensable to the theory and practice of public policy in Islam, how it could resolve some of the most persistent governance dilemmas throughout Muslim history, but more significantly, how it forces a re-conceptualisation of the wealth of knowledge available in Islam's primary sources to introduce Public Policy in Islam to mainstream policy studies.

