

Jasser Auda

MAQĀSĪD AL-SHARĪAH^c A BEGINNER'S GUIDE



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MAQĀSSID AL-SHARĪʿAH A BEGINNER'S GUIDE

JASSER AUDA



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FOREWORD

THE INTERNATIONAL INSTITUTE OF ISLAMIC THOUGHT (IIIT) has great pleasure in presenting this guide introducing the subject of *Maqāṣid al-Sharīʿah*, the higher objectives and intents of Islamic Law. The author, Dr. Jasser Auda, is a well-known multi-disciplinary scholar, who has developed a specialization in this field.

Since few works in the English language have been available on the subject of *Maqāṣid al-Sharīʿah*, the IIIT decided to fill the vacuum by initiating the translation and publication of a series of books on *al-Maqāṣid* to introduce this important and difficult area of thought to English readers. These include to date, *Ibn Ashur Treatise on Maqāṣid al-Sharīʿah*, *Imam al-Shātibī's Theory of the Higher Objectives and Intents of Islamic Law* by Ahmad al-Raysuni, *Towards Realization of the Higher Intents of Islamic Law: Maqāṣid al-Sharīʿah a Functional Approach* by Gamal Eldin Attia, and *Maqasid al-Shari'ah as Philosophy of Islamic Law: A Systems Approach* by Jasser Auda.

As the topic is complex and intellectually challenging, with most books appearing on the subject written mainly for specialists, scholars and intellectuals alone, the IIIT London Office is also producing other simple introductory guides to the subject as part of its Occasional Papers series with a view to providing easy accessible material for the general reader. These include *Maqāṣid al-Sharīʿah Made Simple* by Muhammad Hashim Kamali, and *The Islamic Vision of Development in the Light of Maqāṣid al-Sharīʿah* by Muhammad Umer Chapra.

ANAS S. AL SHAIKH-ALI
Academic Advisor, IIIT London Office

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WHAT IS MAQĀSSID?

Levels of Why

Children often come up with deep philosophical questions, and one cannot tell whether they mean these questions or not! However, the beauty of a child's question is that it is often not bound by pre-set 'facts' or 'this is the way things are' logic. I often start courses on *Maqāṣid al-Sharī'ah* with the story of a little girl who asked her father: 'Dad, why do you stop the car at the traffic light?' Her father replied, with an educative tone: 'Because the light is red, and red means stop.' The girl asked: 'But why?' The Dad replied also with a tone of education: 'So the policeman does not give us a ticket.' The girl went on: 'But why would the policeman give us a ticket?' The Dad answered: 'Well. Because crossing a red light is dangerous.' The girl continued: 'Why?' Now the Dad thought of saying: 'This is the way things are,' but then decided to be a bit philosophical with his little beloved daughter. Thus, he answered: 'Because we cannot hurt people. Would you like to be hurt yourself?' The girl said: 'No!' The dad said: 'And people also do not want to be hurt. The Prophet (peace be upon him) said: "Love for people what you love for yourself."' But instead of stopping there, the girl asked: 'Why do you love for people what you love for yourself?' After a bit of thinking, the father said: 'Because all people are equal, and if you would like to ask why, I would say that God is The Just, and out of His Justice, He made us all equal, with equal rights, and that is the way He made the world!'

The question of ‘why’ is equivalent to the question of ‘what is the *maqāṣid*?’ And the ‘levels of why,’ as philosophers have put it, are the ‘levels of *maqāṣid*,’ as Islamic jurists have put it. These levels of why and the exploration of *maqāṣid* will take us from the details of simple actions, and clear ‘signs’, such as stopping at a red traffic light, from the level of actions and signs to the level of laws and regulations, such as traffic laws, from the level of laws and regulations to the level of mutual benefits and ‘utility’, such as people’s consideration of others’ safety in exchange of their own safety, and finally, from the level of benefits and utility to the level of the overall principles and basic beliefs, such as justice, compassion, and the attributes of God.

Therefore, *maqāṣid al-sharīʿah* is the branch of Islamic knowledge that answers all the challenging questions of ‘why’ on various levels, such as the following questions:

- *Why is giving charity (zakah) one of Islam’s principle ‘pillars’?*
- *Why is it an Islamic obligation to be good to your neighbors?*
- *Why do Muslims greet people with salam (peace)?*
- *Why do Muslims have to pray several times every day?*
- *Why is fasting during the month of Ramadan one of Islam’s principle ‘pillars’?*
- *Why do Muslims mention the name of God all the time?*
- *Why is drinking any amount of alcohol a major sin in Islam?*
- *Why is smoking weed, for example, as prohibited as drinking alcohol in Islam?*
- *Why is the death penalty a (maximum) punishment in the Islamic law for rape or genocide?*

Maqāṣid al-sharīʿah explain the ‘wisdoms behind rulings,’ such as ‘enhancing social cohesion,’ which is one of the wisdoms behind charity, being good to one’s neighbors, and greeting people with peace.

Wisdoms behind rulings also include ‘developing consciousness of God,’ which is one of the rationales behind regular prayers, fasting, and supplications.

Maqāṣid are also good ends that the laws aim to achieve by blocking, or opening, certain means. Thus, the *maqāṣid* of ‘preserving the minds and souls of people’ explain the total and strict Islamic ban on alcohol and intoxicants, and the *maqāṣid* of ‘protecting people’s property and honor’ explain the Qur’an’s mentioning of a ‘death penalty’ as a (possible) punishment for rape or genocide (interpretations of verses 2:178 and 5:33, according to a number of schools of Islamic law).

Maqāṣid are also the group of divine intents and moral concepts upon which the Islamic law is based, such as justice, human dignity, free will, magnanimity, chastity, facilitation, and social cooperation. Thus, they represent the link between the Islamic law and today’s notions of human rights, development, and civility, and could answer some other type of questions, such as:

- *What is the best methodology for re-reading and re-interpreting the Islamic scripture in light of today’s realities?*
- *What is the Islamic concept of ‘freedom’ and ‘justice’?*
- *What is the link between today’s notions of human rights and Islamic law?*
- *How can Islamic law contribute to ‘development,’ morality, and ‘civility’?*

Let us, next, study the terminology and theory of *maqāṣid* more formally.

‘*Maqāṣid*’ and ‘*Maṣāliḥ*’

The term ‘*maqṣid*’ (plural: *maqāṣid*) refers to a purpose, objective, principle, intent, goal, end,¹ telos (Greek), finalité (French), or Zweck (German).² *Maqāṣid* of the Islamic law are the objectives/purposes/intents/ends/principles behind the Islamic rulings.³ For a number of Islamic legal theorists, it is an alternative expression to ‘people’s interests’ (*maṣāliḥ*). For example, ‘Abd al-Malik al-Juwaynī (d. 478 AH/1085 CE), one of the earliest contributors to *al-maqāṣid* theory as we know it today (as will be explained shortly) used *al-maqāṣid* and public interests (*al-maṣāliḥ al-‘āmmah*) interchangeably.⁴ Abū Ḥāmid al-Ghazālī (d. 505 AH/1111 CE) elaborated on a

classification of *maqāṣid*, which he placed entirely under what he called ‘unrestricted interests’ (*al-maṣāliḥ al-mursalah*).⁵ Fakhr al-Dīn al-Rāzī (d. 606 AH/1209 CE) and al-Āmidī (d. 631 AH/1234 CE) followed al-Ghazālī in his terminology.⁶ Najm al-Dīn al-Ṭūfī (d. 716 AH/1316 CE), defined *maṣlaḥah* as, ‘what fulfills the purpose of the Legislator.’⁷ Al-Qarāfī (d. 1285 AH/1868 CE) linked *maṣlaḥah* and *maqāṣid* by a fundamental (*uṣūlī*) ‘rule’ that stated: ‘A purpose (*maqṣid*) is not valid unless it leads to the fulfilment of some good (*maṣlaḥah*) or the avoidance of some mischief (*mafsadah*).’⁸ Therefore, a *maqṣid*, purpose, objective, principle, intent, goal, end, or principle in the Islamic law is there for the ‘interest of humanity.’ This is the rational basis, if you wish, for the *maqāṣid* theory.

Dimensions of Maqāṣid

Purposes or *maqāṣid* of the Islamic law themselves are classified in various ways, according to a number of dimensions. The following are some of these dimensions:

1. Levels of necessity, which is the traditional classification.
2. Scope of the rulings aiming to achieve purposes.
3. Scope of people included in purposes.
4. Level of universality of the purposes.

Traditional classifications of *maqāṣid* divide them into three ‘levels of necessity,’ which are necessities (*ḍarūrāt*), needs (*ḥājīyyāt*), and luxuries (*taḥsīniyyāt*). Necessities are further classified into what ‘preserves one’s faith, soul, wealth, mind, and offspring.’⁹ Some jurists added ‘the preservation of honor’ to the above five widely popular necessities.¹⁰ These necessities were considered essential matters for human life itself. Thus, human life is in jeopardy if the minds of people are in jeopardy. That is why Islam is strict about banning alcohol and intoxicants. Human life is also in jeopardy if no measures are taken to protect people’s ‘souls’ by protecting their health and their environment. That is why the Prophet Muhammad (ṢAAS)* prohibited all shapes and forms of ‘harm’ to another human being, other animals, or even plants. Human life is also in danger

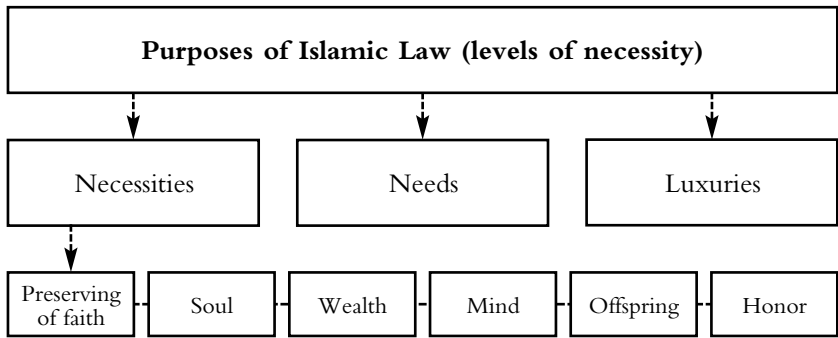
* (ṢAAS) – Ṣallā Allāhu ‘alayhi wa sallam. May the peace and blessings of God be upon him. Said whenever the name of Prophet Muhammad is mentioned.

when in the case of financial (i.e. economic) crisis. That is why Islam bans monopoly, usury, and all shapes and forms of corruption and fraud. The high status given to the preservation of 'offspring' here also explains the many Islamic rulings that regulate and promote an excellent education and kind care for children. Finally, the 'preservation of faith' is a necessity for human life, albeit in the afterlife sense! Islam looks at life as a journey, part of which is on this earth and the rest of it is indeed in the afterlife! There is also a general agreement that the preservation of these necessities is the 'objective behind any revealed law,'¹¹ not just the Islamic law.

Purposes at the level of needs are less essential for human life. Examples of this are marriage, trade, and means of transportation. Islam encourages and regulates these needs. However, the lack of any of these needs is not a matter of life and death, especially on an individual basis. Human life, as a whole, is not in danger if some individuals choose not to marry or travel. However, if the lack of any of these 'needs' becomes widespread, then they move from the level of needs to the level of necessities. The fundamental rule in the Islamic law states: 'A need that is widespread should be treated as a necessity.'

Purposes at the level of luxuries are 'beautifying purposes,' such as using perfume, stylish clothing, and beautiful homes. These are things that Islam encourages, and considers to be further signs and proofs for God's endless mercy and generosity with human beings, but also asserts how they should take a lower priority in one's life.

The levels in the hierarchy are overlapping and interrelated, as noticed Imam al-Shāṭibī (who will be introduced shortly). In addition, each level should serve the level(s) below.¹² For example, both marriage and trade (from the level of needs) serve, and are highly related with, the necessities of the preservation of offsprings and wealth. And so on. Therefore, the general lack of one item from a certain level moves it to the level above. For example, the decline of trade on a global level, i.e. during the time of global economic crises, moves 'trade' from a 'need' into a 'life necessity,' and so on. That is why some jurists preferred to perceive necessities in terms of 'overlapping circles,' rather than a strict hierarchy.¹³ See following chart.



Hierarchy of the purposes of the Islamic law (dimension of levels of necessity)

I find the levels of necessity reminiscent of the twentieth century's Abraham Maslow's hierarchy of human (rather than 'divine') objectives or 'basic goals,' which he called, 'hierarchy of needs.'¹⁴ Human needs, according to Maslow, range from basic physiological requirements and safety, to love and esteem, and, finally, 'self-actualisation.' In 1943, Maslow suggested five levels for these needs. Then, in 1970, he revised his ideas and suggested a seven level hierarchy.¹⁵ The similarity between al-Shāṭibī's and Maslow's theory in terms of the levels of goals is interesting. Moreover, the second version of Maslow's theory reveals another interesting similarity with Islamic 'goal' theories, which is the capacity to evolve with time.

Islamic theories of goals (*maqāṣid*) evolved over the centuries, especially in the twentieth century. Contemporary theorists criticised the above traditional classification of necessities for a number of reasons, including the following:¹⁶

1. The scope of traditional *maqāṣid* is the entire Islamic law. However, they fall short to include specific purposes for single scripture/rulings or groups of scripture that cover certain topics or 'chapters' of Islamic law. For example, the traditional theory outlined above does not answer many of the detailed questions of 'why' mentioned before.
2. Traditional *maqāṣid* are concerned with individuals rather than families, societies, and humans, in general, i.e., the subject of the

traditional Islamic criminal law is an individual's soul, honor, or money, rather than the society's life, the society's honor and dignity, or the society's wealth and economy, respectively.

3. The traditional *maqāṣid* classification did not include the most universal and basic values, such as justice and freedom, in its basic theory of levels of necessities.
4. Traditional *maqāṣid* were deduced from the Islamic legal heritage itself, rather than the original sources/scripture. In traditional accounts of *maqāṣid*, reference is always made to rulings of the Islamic law as decided by various Islamic schools of law, rather than referring to the original islamic scripts (verses of the Qur'an, for example) for bases for *maqāṣid*.

To remedy the above shortcomings, modern scholarship introduced new conceptions and classifications of *al-maqāṣid* by giving consideration to new dimensions. Firstly, considering the scope of rulings they cover, contemporary classifications divide *maqāṣid* into three levels:¹⁷

1. General *maqāṣid*: These *maqāṣid* are observed throughout the entire body of the Islamic law, such as the necessities and needs mentioned above and newly proposed *maqāṣid*, such as 'justice', 'universality', and 'facilitation.'
2. Specific *maqāṣid*: These *maqāṣid* are observed throughout a certain 'chapter' of the Islamic law such as the welfare of children in family law, preventing criminals in criminal law, and preventing monopoly in financial transactions law.
3. Partial *maqāṣid*: These *maqāṣid* are the 'intents' behind specific scripture or rulings, such as the intent of discovering the truth in seeking a certain number of witnesses in certain court cases, the intent of alleviating difficulty in allowing an ill and fasting person to break his or her fasting, and the intent of feeding the poor in banning Muslims from storing meat during Eid/festival days.

In order to remedy the individuality drawback, the notion of *maqāṣid* has been expanded to include a wider scope of people – the

community, nation, or humanity, in general. Ibn Ashur (introduced shortly), for example, gave *maqāṣid* that are concerned with the ‘nation’ (ummah) priority over *maqāṣid* that are concerned with individuals. Rashid Rida, for a second example, included ‘reform’ and ‘women’s rights’ in his theory of *maqāṣid*. Yusuf al-Qaradawi, for a third example included ‘human dignity and rights’ in his theory of *maqāṣid*.

The above expansions of the scope of *maqāṣid* allows them to respond to global issues and concerns, and to evolve from ‘wisdoms behind the rulings’ to practical plans for reform and renewal. They also put *maqāṣid* and its system of values in the centre of the debates over citizenship, integration, and civil rights for Muslim minorities in non-Muslim-majority societies.

Finally, contemporary scholarship has introduced new universal *maqāṣid* that were directly induced from the scripture, rather than from the body of fiqh literature in the schools of Islamic law. This approach, significantly, allowed *maqāṣid* to overcome the historicity of fiqh edicts and represent the scripture’s higher values and principles. Detailed rulings would, then, stem from these universal principles. The following are examples of these new universal *maqāṣid* deduced directly from the Islamic scripts:

(1) *Rashid Rida (d. 1354 AH/1935 CE)* surveyed the Qur’an in order to identify its *maqāṣid*, which included, ‘reform of the pillars of faith, and spreading awareness that Islam is the religion of pure natural disposition, reason, knowledge, wisdom, proof, freedom, independence, social, political, and economic reform, and women’s rights.’¹⁸

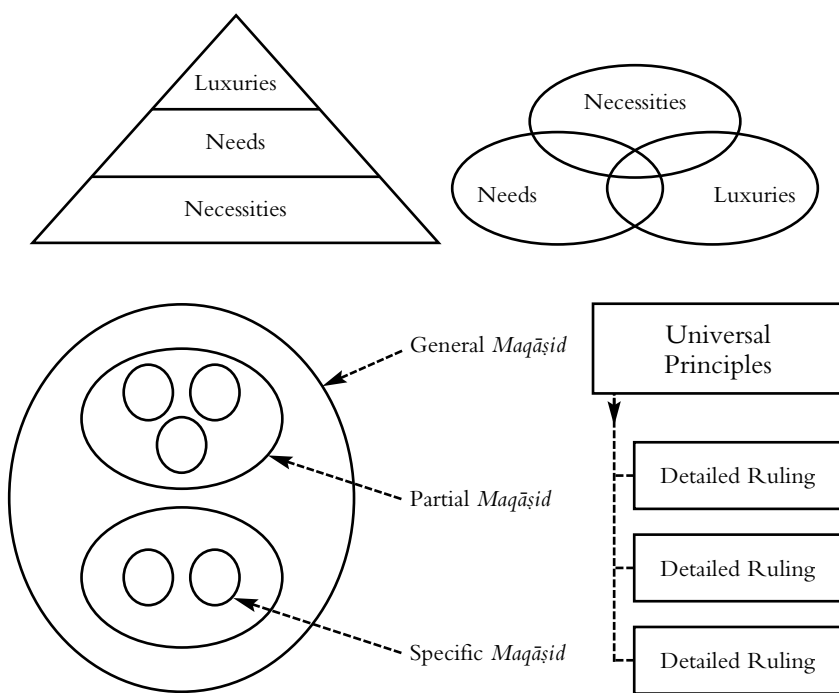
(2) *Al-Tahir ibn Ashur (d. 1325 AH/1907 CE)* proposed that the universal *maqāṣid* of the Islamic law is to maintain ‘orderliness, equality, freedom, facilitation, and the preservation of pure natural disposition (*fiṭrah*).’¹⁹ It is to be noted that the purpose of ‘freedom’ (*ḥurriyyah*), which was proposed by Ibn Ashur and several other contemporary scholars, is different from the purpose of ‘freedom’ (*‘itq*), which was mentioned by jurists.²⁰ *Al-‘itq* is freedom from slavery, not ‘freedom’ in the contemporary sense. ‘Will’ (*Mashī’ah*), however, is a

well-known Islamic term that bears a number of similarities with current conceptions of ‘freedom’ and ‘free will.’ For example, ‘freedom of belief’ is expressed in the Qur’an as the ‘will to believe or disbelieve.’²¹ In terms of terminology, ‘freedom’ (*al-ḥurriyyah*) is a ‘newly-coined’ purpose in the literature of the Islamic law. Ibn Ashur interestingly, accredited his usage of the term *ḥurriyyah* to ‘literature of the French revolution, which were translated from French to Arabic in the nineteenth century CE,’²² even though he elaborated on an Islamic perspective on freedom of thought, belief, expression, and action in the *mashī’ah* sense.²³

(3) *Mohammad al-Ghazaly* (d. 1416 AH/1996 CE) called for ‘learning lessons from the previous fourteen centuries of Islamic history,’ and therefore, included ‘justice and freedom’ in *maqāṣid* at the necessities level.²⁴ Al-Ghazaly’s prime contribution to the knowledge of *maqāṣid* was his critique on the literalist tendencies that many of today’s scholars have.²⁵ A careful look at the contributions of Mohammad al-Ghazaly shows that there were underlying ‘*maqāṣid*’ upon which he based his opinions, such as equality and justice, upon which he had based all his famous new opinions in the area of women under the Islamic law and other areas.

(4) *Yusuf al-Qaradawi* (1345 AH/1926 CE-) also surveyed the Qur’an and concluded the following universal *maqāṣid*: ‘Preserving true faith, maintaining human dignity and rights, calling people to worship God, purifying the soul, restoring moral values, building good families, treating women fairly, building a strong Islamic nation, and calling for a cooperative world.’²⁶ However, al-Qaradawi explains that proposing a theory in universal *maqāṣid* should only happen after developing a level of experience with detailed scripture.²⁷

(5) *Taha al-Alwani* (1354 AH/1935 CE-) also surveyed the Qur’an to identify its ‘supreme and prevailing’ *maqāṣid*, which are, according to him, ‘the oneness of God (*tawḥīd*), purification of the soul (*tazkiyah*), and developing civilisation on earth (*‘imrān*).’²⁸ He is currently writing a separate monograph to elaborate on each of these three *maqāṣid*.²⁹



All of the above *maqāṣid* were presented as they appeared in the minds and perceptions of the above jurists. None of the above classic or contemporary classifications and structures could claim to be ‘according to the original divine will.’ If we refer to nature that God created, we will never find natural structures that could be represented in terms of circles, pyramids, or boxes, as the above diagram shows. All such structures in science and humanities too, and the categories they include, are man-made for the sake of illustration for themselves and other people.

Therefore, *al-maqāṣid* structure is best described as a ‘multi-dimensional’ structure, in which levels of necessity, scope of rulings, scope of people, and levels of universality are all valid dimensions that represent valid viewpoints and classifications.

The above twentieth-century views also show that *maqāṣid al-sharī‘ah* are, actually, representations of each scholar’s own viewpoint for reform and development of the Islamic law, despite the fact

that all these *maqāṣid* were 'induced' from the scripture. This fusion of the scripture and contemporary needs for reform gives *al-maqāṣid* special significance.

Al-Maqāṣid in the Companions' Ijtihad

The history of the idea of speculating a certain underlying purpose, aim, or intent of Qur'anic or prophetic instructions goes back to the Companions of the Prophet, as narrated in a number of incidents. One clear and popular example is the multi-chained hadith of 'afternoon prayers at Banū Qurayzah,' in which the Prophet sent a group of Companions to Banū Qurayzah,³⁰ and ordered them to pray their afternoon (ʿaṣr) prayer there.³¹ The span of time allowed for ʿaṣr prayers had almost expired before the group reached Banū Qurayzah. Thus, they found themselves divided into supporters of two different opinions, one opinion entailed praying at Banū Qurayzah's anyway and the other opinion entailed praying on the way (before the prayer time was over).

The rationale behind the first opinion was that the Prophet's instruction was clear in asking everybody to pray at Banū Qurayzah, while the rationale of the second opinion was that the Prophet's 'purpose/intent' of the order was to ask the group to hasten to Banū Qurayzah, rather than 'meaning/intending to' postpone prayers until after its due time. According to the narrator, when the Companions later narrated the story to the Prophet, he approved both opinions.³² The approval of the Prophet, as jurists and Imams said, entails the permissibility and correctness of both views. The only prime jurist who disagreed with the Companions who prayed on the way was Ibn Ḥazm al-Zāhirī (the literalist), who wrote that they should have prayed the 'afternoon prayer' after they reach Banū Qurayzah, as the Prophet had said, even after midnight!³³

Another incident, which shows a more serious consequence of taking a 'purpose-oriented' approach to the prophetic instructions occurred during the days of ʿUmar, the second caliph. The status of ʿUmar in Islam and his continuous and wide-ranging consultation of a large number of Companions, make his opinions of special significance. In this incident, the Companions asked ʿUmar, to distribute

the newly-‘conquered’ lands of Egypt and Iraq amongst them as some sort of ‘spoils of war.’ Their argument relied on the clear and specific verses of the Qur’an that allowed fighters their ‘spoils of war.’³⁴ ‘Umar refused to divide whole cities and provinces over the Companions by referring to other verses, with more general expressions, stating that God has a ‘purpose’ of ‘not making the rich dominate wealth.’³⁵ Therefore, ‘Umar (and the Companions who supported his opinion) understood the specifics of the verses of ‘spoils of war’ within the context of a certain purpose (*maqṣid*) of the law. This purpose was, ‘diminishing the difference between economic levels,’ to use familiar contemporary terms.

Another telling example is ‘Umar’s application of a moratorium on the (Islamic) punishment for theft during the famine of Madinah.³⁶ He thought that applying the punishment prescribed in the scripture, while people are in need of basic supplies for their survival, goes against the general principle of justice, which he considered more fundamental.

A third example from ‘Umar’s *fiqh* (application of the law) is when he did not apply the ‘apparent meaning’ of the hadith that clearly gives a soldier the right to the spoils of war from opponents.³⁷ He decided to give soldiers only one-fifth of these spoils, if they were ‘significantly valuable,’ with a purpose to achieve fairness amongst soldiers and enrich the public trust.

A fourth example is ‘Umar’s decision to include horses in the types of wealth included in the obligatory charity of *zakah*, despite the Prophet’s clear instruction to exclude them. ‘Umar’s rationale was that horses at his time were becoming significantly more valuable than camels, which the Prophet included in *zakah* at his time.³⁸ In other words, ‘Umar understood the ‘purpose’ of the *zakah* in terms of a form of social assistance that is paid by the wealthy for the sake of the poor, regardless of the exact types of wealth that were mentioned in the prophetic tradition and understood via its literal implication.³⁹

All known schools of law, except for the Ḥanafīs, are against such expansion of ‘the pool of charity,’ which illustrates how literalism had a strong influence on traditional juridical methods. Ibn Ḥazm,

again, asserted that, ‘there is no zakah on anything except eight types of wealth, which are mentioned in the tradition of the Prophet, namely, gold, silver, wheat, barley, dates, camels, cows, sheep and goats. There is no zakah on horses, commercial goods, or any other type of wealth.’⁴⁰ It is clear how such opinion hinders the institution of zakah from achieving any meaningful sense of justice or social welfare.

Based on a ‘methodology that considers the wisdoms behind the rulings,’ Qaradawi rejected classic opinions on the above matter in his very detailed study on zakah. He wrote: ‘Zakah is due on every growing wealth ... The purpose of zakah is to help the poor and to serve the public good. It is unlikely that The Legislator aimed to put this burden on owners of five or more camels (as Ibn Ḥazm had said), and release businessmen who earn in one day what a shepherd earns in years ...’⁴¹

The above examples are meant to illustrate early conceptions of *maqāṣid* in the application of the Islamic law and the implications of giving them fundamental importance. However this purpose-oriented approach does not simply apply to all rulings of the Islamic law.

Bukhārī narrates that ‘Umar was asked: ‘Why do we still jog around the Ka‘bah with our shoulders uncovered even after Islam had prevailed in Makkah?’ The story behind the question is that after the ‘conquest of Makkah,’ the people of Makkah claimed the Prophet and his Companions lost their health during their prolonged stay in Madi-nah. The Prophet therefore ordered the Companions to jog around the Ka‘bah with their shoulders uncovered in a show of strength. ‘Umar, however, did not take a purpose-oriented approach to this question. He answered: ‘We do not cease doing anything we used to do at the Prophet’s time.’⁴² ‘Umar, thus, made a distinction between ‘acts of worship’ (*‘ibādāt*) and ‘worldly transactions’ (*mu‘āmalāt*).

Later Imam al-Shāfi‘ī for another example, expressed this distinction when he wrote: ‘Literal compliance is the default methodology in the area of acts of worship (*‘ibādāt*), while the consideration of purposes is the default methodology in the area of worldly dealings (*mu‘āmalāt*).’⁴³ Therefore, generally speaking, the area of ‘acts of worship’ that is *‘ibādāt*, should remain a fixed area in which the

believer refers to the literal example of the Prophet. However, it is the very example of the Prophet and his Companions not to imitate them, literally, in the various areas of ‘transactions’ (*mu‘āmalāt*) and rather, to go by the principles and ‘*maqāṣid*.’

Early Theories of Maqāṣid

After the Companions’ era, the theory and classifications of *maqāṣid* started to evolve. However, *maqāṣid* as we know them today were not clearly developed until the time of the later *uṣūlīs* of the fifth to eighth Islamic century, as I will elaborate in the next subsection. During the first three centuries, however, the idea of purposes/causes (*ḥikam*, *‘ilal*, *munāsabāt*, or *ma‘ānī*) appeared in a number of reasoning methods utilised by the Imams of the classic schools of Islamic law, such as reasoning by analogy (*qiyās*), juridical preference (*istiḥsān*), and interest (*maṣlaḥah*). Purposes themselves, however, were not subjects of separate monographs or special attention until the end of the third Islamic century. Then, the development of the theory of ‘levels of necessity’ by Imam al-Juwaynī (d. 478 AH/ 1085 CE) took place much later in the fifth Islamic century. The following is an attempt to trace early conceptions of *al-maqāṣid* between the third and fifth Islamic centuries.

(1) *Al-Tirmidhī al-Ḥakīm* (d. 296 AH/908 CE). The first known volume dedicated to the topic of *maqāṣid*, in which the term ‘*maqāṣid*’ was used in the book’s title, is *al-Ṣalāh wa Maqāṣiduhā* (Prayers and their Purposes) which was written by al-Tirmidhī al-Ḥakīm.⁴⁴ The book is a survey of the wisdoms and spiritual ‘secrets’ behind each of the prayer acts, with an obvious Sufi inclination. Examples are ‘confirming humbleness’ as the *maqṣid* behind glorifying God with every move during prayers, ‘achieving consciousness’ as the *maqṣid* behind praising God, ‘focusing on one’s prayer’ as the *maqṣid* behind facing the direction of the Ka‘bah, and so on. Al-Tirmidhī al-Ḥakīm also wrote a similar book on pilgrimage, which he entitled, *al-Hajj wa Asrāruh* (Pilgrimage and its Secrets).⁴⁵

(2) *Abū Zayd al-Balkhī* (d. 322 AH/933 CE). The first known book on the *maqāṣid* of dealings (that is *mu‘āmalāt*) is Abū Zayd al-Balkhī’s

al-Ibānah ‘an ‘ilal al-Diyānah (Revealing Purposes in Religious Practices), in which he surveys purposes behind Islamic juridical rulings. Al-Balkhī also wrote a book dedicated to *maṣlaḥah* which he entitled, *Maṣāliḥ al-Abdān wa al-Anfus* (Benefits for Bodies and Souls), in which he explained how Islamic practices and rulings contribute to health, physically and mentally.⁴⁶



The first page of the Egyptian Dār al-Kutub’s manuscript of *al-Qaffāl al-Kabīr’s Maḥāsīn al-Sharā’i’* (The Beauties of the Laws).

(3) *Al-Qaffāl al-Kabīr Shāshī* (d. 365 AH /975 CE). The oldest manuscript that I found in the Egyptian Dār al-Kutub on the topic of *al-maqāshid* is al-Qaffāl’s *Maḥāsīn al-Sharā’i’* (The Beauties of the Laws).⁴⁷ After a 20-page introduction, al-Qaffāl proceeds to divide the book into the familiar chapters of traditional books of fiqh (i.e., starting with purification, and then ablation and prayers, etc.). He mentions each ruling

briefly and elaborates on the purposes and wisdoms behind it. The manuscript is fairly clear and contains around 400 pages. The last page mentions the date of the book’s completion, which is the 11th of Rabi‘ I, 358 AH (7th of February, 969 CE). The coverage of the rulings of fiqh is extensive, albeit strictly addressing individual rulings without introducing any general theory for the purposes. Nevertheless, the book is an important step in the development of *al-maqāshid* theory. The following is my translation of an excerpt from the introduction (from the first page of the Arabic above):

... I decided to write this book to illustrate the beauties of the revealed Law, its magnanimous and moral content, and its compatibility with

sound reason. I will include in it answers for those who are asking questions about the true reasons and wisdoms behind its rulings. These questions could only come from one of two persons. The first person attributes the creation of the world to its Creator and believes in the truth of prophethood, since the wisdom behind the Law is attributed to the Wise Almighty King, Who prescribes to His servants what is best for them ... The second person is trying to argue against prophethood and the concept of the creation of the world, or maybe is in agreement over the creation of the world while in rejection of prophethood. The logical line that this person is trying to follow is to use the invalidity of the Law as proof for the invalidity of the concept of a Law-Giver...

One part of a different manuscript of al-Qaffāl's *Maḥāsīn al-Sharā'ī*^c was edited and analysed, earlier, by Abd al-Nasir al-Lughani in his Ph.D. thesis written at the University of Wales, Lampeter, in 2004.⁴⁸ Mawil Izzi Dien, who supervised this thesis, addressed the significance of the manuscript and al-Shāshī's contribution to the theory of Islamic law. He writes:

According to Shāshī, the importance of other injunctions is based on their meanings, which are often highlighted by the Legislator. The prohibition of alcohol is an example of this, whereby drink is perceived as a tool with which the devil may create animosity between people, thus preventing them from remembrance of God and prayer ... Shāshī's discussions leaves little doubt that he was providing a further step to his Shāfi'ī school by establishing a plethora of abstract legal theories to set up reasons for the legal injunctions.⁴⁹

Thus, these 'meanings' and 'reasons,' which al-Qaffāl Shāshī is basing the legal rulings on, represent an early conception of *al-maqāṣid* theory, which was a development in the Shāfi'ī school. I would add that Shāshī's developments of the concepts of necessities (*ḍarūrāt*), polity (*siyāsah*), or moral actions (*al-makrumāt*) set up the stage for al-Juwaynī and al-Ghazālī's contribution to both the Shāfi'ī theory and *al-maqāṣid* theory, via further developments of these terms, as explained shortly.

(4) *Ibn Bābawayh al-Qummī* (d. 381 AH/991 CE). Some researchers claim that research on *maqāšid al-sharī‘ah* was restricted to the Sunni schools of law until the twentieth century.⁵⁰ However, the first known monograph dedicated to *maqāšid* was, in fact, written by Ibn Bābawayh al-Šadūq al-Qummī, one of the main Shia jurists of the fourth Islamic century, who wrote a book of 335 chapters on the subject.⁵¹ The book, which was entitled ‘*Ilal al-Sharā’i*’ (The Reasons behind the Rulings), ‘rationalises’ believing in God, prophets, heaven, and other beliefs. It also gives moral rationales for prayers, fasting, pilgrimage, charity, caring for parents, and other moral obligations.⁵²

(5) *Al-‘Āmirī al-Faylasūf* (d. 381 AH/991 CE). The earliest known theoretical classification of purposes was introduced by al-‘Āmirī al-Faylasūf in his *al-I‘lām bi-Manāqib al-Islām* (Awareness of the Traits of Islam).⁵³ Al-‘Āmirī’s classification, however, was solely based on ‘criminal punishments’ in the Islamic law (*ḥudūd*).

Classifications of *maqāšid* according to ‘levels of necessity’ were not developed until the fifth Islamic century. Then, the whole theory reached its most mature stage (before the twentieth century CE) in the eighth Islamic century.

(II)

THE ‘IMAMS OF MAQĀŠID’ (FIFTH TO EIGHTH ISLAMIC CENTURIES)

The fifth Islamic century witnessed the birth of what Abdallah Bin Bayyah called ‘a philosophy of the Islamic law.’⁵⁴ Literal and nominal methods that were developed until the fifth century, proved incapable of coping with the complexities of the evolving civilisation. The theory of ‘unrestricted interest’ (*al-maṣlaḥah al-mursalah*) was developed as a method that covers ‘what was not mentioned in the scripture.’ This theory filled a gap in the literal methodologies and, later, gave birth to the theory of *maqāšid* in Islamic law. The jurists who made the most

Current applications (or rather, misapplications) of Islamic law are reductionist rather than holistic, literal rather than moral, one-dimensional rather than multidimensional, binary rather than multi-valued, deconstructionist rather than reconstructionist, and causal rather than teleological. There is lack of consideration and functionality of the overall purposes and underlying principles of the Islamic law as a whole. Further, exaggerated claims of 'rational certainty' (or else, 'irrationality') and 'consensus of the infallible' (or else, 'historicity of the scripts') add to lack of spirituality, intolerance, violent ideologies, suppressed freedoms, and authoritarianism. Thus, a *maqasidi* approach takes juridical issues to a higher philosophical ground, and hence, overcomes (historical) differences over politics between Islamic schools of law, and encourages a much-needed culture of conciliation and peaceful coexistence. Moreover, the realisation of purposes should be the core objective of all fundamental linguistic and rational methodologies of *ijtihad*, regardless of their various names and approaches. Thus, the validity of any *ijtihad* should be determined based on its level of achieving 'purposefulness,' or realising *maqasid al-shariah*.



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