

UNDERSTANDING
Maqāṣid al-Sharīʿah

•
A CONTEMPORARY PERSPECTIVE

Musfir bin Ali al-Qahtani

Abridged by Wanda Krause

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Understanding Maqāṣid al-Sharī'ah: A Contemporary Perspective calls for the development of a juridical sense that is finely tuned to the higher objectives and purposes of Muslim rulings, the aims of which are the formulation of a new methodology in understanding the revealed texts and the reform of Muslim thought and its application.

The author draws attention to the importance of understanding various levels of *maqāṣid*, including distinguishing between primary aims (*al-maqāṣid al-aṣliyyah*) and secondary aims (*al-maqāṣid al-tābi'ah*). Al-Qahtani asserts that a positive understanding of the objectives of the Shari'ah should produce affirmative human and cultural development in Muslim societies.

The real strength of this work, however, is in the author's application of higher objectives and aims to different areas of jurisprudence, such as in deriving and issuing religious rulings (*iftā'*), and to important social issues and problems present in Muslim societies, such as extremism, jihad, commanding right and forbidding wrong, social change, crisis of Muslim thought, countering religious excessiveness, the need for recreation and leisure, citizenship and nation-belonging, spreading aesthetics and harmony in Islam, and the role of Muslim women in society.

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INTRODUCTION

This work is an attempt to apply the science of *maqāṣid al-sharīʿah* to contemporary needs. Such an approach can be referred to as “goals awareness,” given the need to understand the goals of Islamic Law. In this way we can bring about guided change and lucid reform, being cognizant of and attentive to the realities before us.

The term *maqāṣid* is the plural of *maqṣad*, a word that conveys a number of meanings, including: 1) to aim at something, to come to it, to head towards it; 2) straightness of a path; and 3) justice, moderation and avoidance of excess. We can then say that *maqāṣid* are things that the Shariʿah aims at in its rulings, and toward which it strives on a path, which is balanced and moderate.

All rulings and legislation aim to actualize a benefit, prevent some harm, or free one from some evil or transgression. In short, the Shariʿah aims at actualization of the general goals of happiness, preservation of law and order, and bringing humankind to the highest order of perfection, goodness, and civilization. Everything in legislation is about ensuring benefits. In short, its purpose is the actualization of benefit, whether immediate or long-term, and all its prohibitions are for the purpose of preventing harm and evil.

A thorough, inductive study of the Law and the bases for its rulings makes clear that it affirms goals which promote human beings’ welfare, both in this world and the Hereafter. First, as God informs us in many places in the Qur’an, He is *Al-Hakīm* (All-Wise), and such attribute necessitates that His rulings be ordained purposefully. Second, God informs us in numerous places in the Qur’an that He is the Most Merciful, whereby He intends to show kindness to His servants by what He has created for them, commanded and legislated for them.

Third, there are numerous Qur'anic verses in which God informs us that He has done "such and such" for "such and such a reason." Fourth, a number of texts from the Qur'an and the Prophetic Sunnah explain certain general and specific purposes of the Shari'ah, including the purpose to spare people undue hardship. Fifth, there are general texts that encompass the actualization of all benefits.

There are also logical proofs. First, rulings devoid of wisdom and desirable goals can only be made by someone who is either ignorant of what he is doing – which, of course, is not applicable to the One Who possesses knowledge of all things – or unable to achieve such goals, which is impossible in the case of the One who has power over all things. Second, it is only reasonable to assert that God cares for the welfare of His servants. Third, God has bestowed honor on the human race whereby people have the capacity to achieve personal well-being. Fourth, it is generally recognized that unless a system aims to bring about benefit or prevent harm, it is a failed system that deserves to be neither implemented nor emulated.

There exist three approaches to categorizing *maqāṣid al-sharī'ah*. The first approach is based on the types of interests or benefits the law of Islam is intended to preserve. This approach further divides *maqāṣid al-sharī'ah* into three aspects: 1) essentials (*maqāṣid ḍarūriyyah*), 2) exigencies (*maqāṣid ḥājīyyah*) and 3) enhancements (*maqāṣid taḥsīniyyah*).

Essentials (*maqāṣid ḍarūriyyah*) are those things, which make an upright life, indeed life itself, possible. Scholars, such as Imam al-Ghazālī, Ibn 'Abd al-Shakūr, Ibn al-Subkī, and al-Fattūhī (Ibn al-Najjār), identified these aims as: religion (*al-dīn*), life (*al-nafs*), reason (*al-ʿaql*), progeny (*al-nasl*) and property (*al-māl*). Islamic Law is to preserve these essentials.

"Exigencies" (*maqāṣid ḥājīyyah*) are those things that are meant to relieve people of hardship, as Islamic Law is founded upon the facilitation of ease and the prevention of discomfort and hardship, whether in relation to worship, daily customs, social and monetary transactions, or criminal procedures. Hence, they are things whose absence would only cause some inconvenience, disrupt people's acts of worship, or cause some disturbance to their otherwise untroubled lives. Exigencies are of a lesser degree of importance than essentials (*maqāṣid ḍarūriyyah*).

Enhancements (*maqāṣid taḥṣīniyyah*) are things that, while they are not necessary for a person's survival, nevertheless serve to make life easier and more enjoyable. For example, individuals' and societies' adoption of refined manners and noble morals is an attempt to pursue the highest possible path in life, a path through which people seek to improve both their inward characters and their actions. However, no one will be harmed or endure hardship if enhancements are not pursued. The essentials of the law form the basis for its exigencies and enhancements.

The second approach to categorizing *maqāṣid al-sharī'ah* is based on level of importance or urgency of an issue and results in the further categorization of two types. The first type consists of what is termed primary aims (*al-maqāṣid al-aṣliyyah*), that is, aims which embody the Lawgiver's most fundamental purposes. A more fundamental or primary aim will embody an interest more paramount than an aim, which is less fundamental. This first group of individual essentials (*ḍarūriyyāt 'ayniyyah*) consists of duties that are required of each individual Muslim. Each individual Muslim is commanded to preserve his religion on the level of doctrine and practice, and to protect and preserve his own soul, life, and mind.¹

This first type is termed collective essentials (*ḍarūriyyāt kifā'iyyah*), which include actions that seek to protect a Muslim society's public interests and preserve social order. Collective essentials are achieved through, for example, the work of those who hold positions of authority and who help to protect and preserve the religion and people's rights in both the private and public spheres.

The second type into which *maqāṣid al-sharī'ah* are divided into are secondary aims (*al-maqāṣid al-tābi'ah*), which help to actualize primary aims. Secondary aims are further divided into three types based on the degree to which they affirm and support primary aims. Type 1 includes those that reinforce primary aims by making them attractive. An example is marriage (a secondary aim), which was ordained for the sake of procreation (a primary aim).

Type 2 includes secondary aims, which cancel out primary aims, and which, for this reason, are invalid. An example would be marriages which are entered into in order to allow a woman to remarry her first husband (*nikāḥ al-tahlīl*), and temporary marriage (*nikāḥ al mut'ah*), each of which works against the primary aim of marriage, which is

procreation and a lasting conjugal bond. Type 3 includes secondary aims that neither reinforce a primary aim nor cancel it out as in the case of Type 2. This type of secondary aim would include the case of marrying someone with the express intention of harming her/him, usurping her/his wealth, or some other motive, which, although it might threaten the marriage's continuance, does not guarantee its discontinuance.

Finally, the third approach to categorizing *maqāṣid al-sharī'ah* is based on the extent to which items encompass the various rulings of Islamic Law. This categorization yields three divisions: 1) general aims (*al-maqāṣid al-āmmah*), 2) specific aims (*al-maqāṣid al-khāṣṣah*), and 3) partial aims (*al-maqāṣid al-juz'iyyah*). General aims are the goals and objectives, which are reflected in all or most areas of religious legislation. Preservation of the five essentials – religion (*al-dīn*), life (*al-nafs*), reason (*al-aql*), progeny (*al-nasl*) and property (*al-māl*), are included among the general objectives of the Shari'ah.

Specific aims are goals and objectives that are peculiar to a particular type of ruling or a set of closely related rulings, such as the objectives of acts of worship (*maqāṣid al-ibādāt*), the objectives of social or financial transactions (*maqāṣid al-mu'āmalāt*), or the objectives of criminal laws (*maqāṣid al-jināyāt*). Similarly, they may be the objectives of a certain area of religious law, such as ritual purity (*al-ṭahārah*), sales (*al-buyū'*), etc.

Partial aims are objectives that relate to a particular question or issue. The categories of general aims and specific aims apply either to the Shari'ah, in its entirety, or to all cases relating to a particular area (such as ritual impurity, penal law, etc.), whereas what we are terming partial aims (*al-maqāṣid al-juz'iyyah*) pertain exclusively to a particular question or issue, or to a particular proof from which the larger purpose of Islamic Law can be deduced.

Chapter One

Awareness of *Maqāṣid al-Sharī'ah* and Its Importance for Contemporary Methods of Deriving Legal Rulings (*Al-Iftā'*)

In view of the constantly changing circumstances facing the Muslim

community, there is an ongoing need for muftis, that is, individuals qualified to issue fatwas, or legal rulings. However, we see growing numbers of unqualified individuals issuing fatwas, and there is much ease with which such so-called muftis are accessed. Therefore, I offer here some clarifications with respect to *maqāṣid al-sharī'ah* as relates to the issuance of fatwas especially in connection with contemporary issues.

The purpose of Islamic Law is neither to impose hardship and undue restrictions on people, nor to leave them free to satisfy their every desire, subservient to their every whim. Hence, my purpose in what follows is to explain the ways in which this law promotes ease for Muslims and the principles that guide this noble aim with finally, an explanation given of how rulings should be derived. In this way, I hope to maximize the benefits the law offers to God's servants, both in this life and the next.

As such, the following discussion offers clarifications with respect to *maqāṣid* as they relate to the issuance of fatwas on newly emerging events and situations on the individual and communal levels. A balanced approach is called for, avoiding extremism and excessive laxity.

The process of issuing fatwas plays a significant role. Given the impact fatwas are bound to have on the lives of Muslims and the guidance they provide on both the material and spiritual levels, whoever wishes to issue fatwas on newly emerging situations must be properly qualified for the task. People seek out muftis and scholars to address unfamiliar or frightening events, unresolved disputes, or difficult problems, especially in this contemporary age of ours with its peculiar confusions, complications, and rapid changes. Given the critical nature of the functions performed by muftis, it is essential that the work they do be subject to strict regulation and that such work not be entrusted to people who would take it lightly and who fail to fulfill the conditions for carrying it out.

The Prophet would refrain from performing certain actions should they become burdens to the Muslim community. However, there has emerged an approach to contemporary issues in the school of *iftā'* (the process of issuing Islamic legal rulings), which places undue stress on lenience and facilitation. In view of this reality, many jurists call for the greatest lenience possible in legal rulings in the hope of making Islam more attractive. We have begun to witness certain excesses in the

emphasis on facilitation (*taysīr*) and the allowance of concessions (*al-akhḍh bi al-tarakḥkhuṣ*), which have led some jurists of this school to reject certain Islamic texts, or to interpret them in ways that are not linguistically and legally sound. Indeed, the Prophet (ṢAAS)* warned of the danger of allowing ignorant individuals to rule on new cases or to offer their own interpretations of the Qur'an, due to the grave harm this might inflict on both the religion and its adherents.

In the area of contemporary *iftā'* one finds two contrasting approaches – one of extremism in rigor and caution and the other of excessive laxity. Excessiveness in rigor and caution is characterized by 1) uncompromising bias in favor of a particular theological school of thought, or in favor of specific views or individual scholars, 2) sole adherence to the superficial, literal meanings of religious texts, and 3) excessive insistence on the principle of *sadd al-dharā'i'*, that is, prohibiting anything that has the potential of leading to a forbidden act.

A product of uncompromising behavior is religious fanaticism. Religious fanaticism grows out of the erroneous belief that one possesses the one and only incontrovertible truth in matters of religious interpretation. In turn, this belief engenders closed-mindedness, an unrealistically high opinion of oneself, and hostility towards anyone who holds opposing or competing views. A jurist or mufti who holds such a belief will adopt an extremist methodology and seek to impose his views on others while banning views or schools of thought other than his own, even if they have good evidence in their favor.

If jurists were more lenient in their rulings that were made permissible, this would be far better than burdening people with untenable blanket prohibitions. An example where this has been achieved can be seen in the case of the pilgrimage. There have been steadily increasing numbers of pilgrims to Makkah, resulting in overcrowding, discomfort and occasionally deadly stampedes. This situation has led some scholars to modify their views on numerous issues and, in fact, go against prevailing teachings in order to spare people hardship and inconvenience.

In the case of the pebble throwing ritual during the three days following the Feast of Sacrifice (ʿId al-Adha), which corresponds to the 11th, 12th and 13th of Dhu al-Hijjah, beginning at high noon and extending

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

until sunset, the majority of jurists hold that throwing the pebbles after sunset is not valid. Nevertheless, a number of perceptive jurists and fatwa authorities are of the view that it is permissible to throw them after nightfall, which spares pilgrims discomfort from the overcrowding that occurs during the daylight hours. In view of the hardship, strain and inconvenience caused in recent years by the requirement that the pebble throwing only be performed after high noon, there may also be good reason to consider the possibility of allowing this rite to be completed before noon, especially for pilgrims with time constraints who need to leave Mina on 12th of Dhu al-Hijjah. It should be borne in mind that the rituals of the pilgrimage, while based on emulation of the Prophet, are also intended to provide to the extent possible for pilgrims' ease and comfort. In fact, some leading scholars from among the Successors to the Prophets' Companions ruled in support of allowing pebble throwing before noon, and this is the ruling adopted by the Ḥanafī school of juristic thought. Contemporary jurists needed to issue fatwas with regard for changing circumstances for the benefit and well-being of people.

Similarly, when one clings to the superficial, literal meanings of religious texts without a deeper understanding of the message and underlying aims, the result will also be error and distortion. This method of handling religious legal texts has caused many lawful actions to be forbidden, several means of attaining knowledge to be blocked, and many individuals to be forced out of Islam on the pretext that they had violated clear-cut texts. The result is inconvenience and hardship. Such is analogous to the Kharijite movement, which made things difficult both for its followers and for others, and that of the *Zahīrīs*.

Insistence on the principle of *sadd al-dharā'ī* is often confused to be in accordance with *maqāṣid al-sharī'ah* since it is consistent with the general principle of "bringing about benefit and preventing harm" upon which the Shari'ah is founded. However, a similar problem arises when excessive use of the principle leads to an imaginary source of harm being considered at the expense of preponderant benefits. As a result, a jurist may close the door to a benefit and inadvertently violate the aims of the Shari'ah. Examples of this phenomenon would include prohibiting the cultivation of grapes for fear that they might be used to produce alcohol, or forbidding neighbors to live close to each other for fear of people entering into illicit sexual relationships. Further examples are forbidding women to work outside the home or declaring all banking unlawful for fear that it might involve usury.

At the other end of the spectrum, we witness excessive focus on facilitation and ease among rulings. Such approach is distinguished by the following features: 1) unwarranted reliance on the notion of human interest (*maṣlaḥah*), even when this means going against established Islamic legal texts; 2) overuse of concessions (*rukhaṣ*) and combining one juristic school of thought with another; and 3) juristic evasion of the injunctions of Islamic Law.

When there is a contradiction between *maṣlaḥah* and textual proofs and consensus, greater weight should be given to *maṣlaḥah*. However, some contemporary jurists and muftis tend towards excessive reliance on *maṣlaḥah* even if this results in fatwas that conflict with recognized textual evidence. One example is the fatwa issued by a former mufti of Egypt on the permissibility of receiving interest from a bank even though such interest is known to be usurious and even though such a fatwa flies in the face of clear textual proofs.

Furthermore, there is nothing wrong with availing oneself of the legal concessions provided for in the Qur'an and the Sunnah. Indeed, it was the Prophet who said, "It pleases God for us to avail ourselves of His concessions, just as it pleases Him for us to obey His commands."² However, some scholars pursue concessions based on particular interpretations or adopt an eclectic approach that involves borrowing from one or the other juristic school of thought or scholar, depending on which of them offers the most lenient ruling.

There are differing positions on the issue of adopting rulings. If a position taken by one *mujtahid* is shown to be better attested than that taken by others, then the layperson should adopt this position. It is not permissible for people to adopt other scholars' concessions without clear justification and regulation. Furthermore, while a layperson may be entitled to adopt concessions declared permissible by a mufti or *mujtahid* of his or her choice, the *mujtahid* or mufti himself must issue his own fatwa based on his own research and *ijtihad*.³

Some scholars have ruled that one may adopt the opinion of any scholar one chooses, but only when one is under duress, and only if one is not driven by selfish whims or desires. Some scholars forbid the pursuit of concessions even on the part of laypeople. In sum, however, a methodology of lenience based on seeking out concessions leads to a tendency to submit to one's desires, and violates the order, which the Shari'ah was intended to preserve.

As mentioned above, juristic evasion of the injunctions of Islamic Law comprises yet another feature of the school of laxity and excessive facilitation. Many contemporary muftis have fallen into the error of approving actions that are prohibited under the Law. Such actions include modern forms of sale on credit (*bay' al-ḥinah*), banking transactions that involve usury, deceptive means of exempting people from the payment of zakah or justifying failure to repay debts, etc. All these are examples of legal artifices and are condemned by the Shari'ah.

There are, nonetheless, ways in which the Law promotes ease for morally accountable Muslims and the principles that guide this noble aim. These methods include making certain that the ruling is based on knowledge and fairness. This requires scholars consulting together on the matter at hand and looking into it with care. Scholars should undertake a precise, thorough investigation of the case before issuing a legal ruling in which the principle of *taysīr* is to be applied. In this vein, it is important to realize the challenges of the modern world and therefore the new situations that arise reflecting the nature of the times in which we live and which are marked by the free exchange of ideas and the development of scientific and technological solutions designed to address a variety of problems.

Scholars must cite all relevant textual evidence and applicable rules when ruling in favor of a weakly attested lenient view. Scholars must provide a permissible alternative when judging a given action to be forbidden. The mufti should also be prepared to explain the wise purpose behind whatever prohibitions he issues while showing the way toward appropriate lawful alternatives.

Juristic scholars must follow specified guidelines for ensuring that one realizes legitimate, Islamically recognized human interests when engaged in *ijtihād* and issuing legal rulings. These guidelines dictate that a mufti should:

- (a) include human interests among the aims of Islamic Law;
- (b) ensure that the interest in question does not conflict with any Islamic legal text;
- (c) verify that the interest in question is indisputable or, at the very least, that there is convincing evidence of its validity;
- (d) ascertain that the interest in question is universal in nature; and
- (e) ensure that consideration of the interest in question will not threaten some other interest of greater or equal importance.

Jurists are also obliged to observe the principle of relief from hardship/harm (*rafʿ al-ḥaraj*) “sparing morally accountable persons hardship in relation to the Islamic Law’s requirements of them”⁴ by not issuing any fatwa whose implementation would impose undue hardship on the person concerned. Jurists and muftis must consider the question of whether a given application of a text will realize the desired aim or not and thus give due consideration to the anticipated consequences of issuing a lenient ruling.

Scholars must also investigate the commonly accepted customs of relevance to the application of a more lenient ruling. The word “customs” here means “the understandings that have become ingrained in people’s minds, and what has been deemed acceptable by sound minds and dispositions.”⁵ Lastly, when a scholar says he does not know something, such utterance should not be seen to detract from his standing in any way.

Chapter Two

Understanding *Maqāṣid al-Sharīʿah* Through Cultural Development

The juristic study of human civilization and development (*fiqh al-ʿumrān*) has long been neglected. It is essential that scholars return to the goals of the Islamic legal system and reread the precepts of Islam in light of these goals in order to improve Muslims’ juristic understanding of culture and civilization and restore their confidence in their religion. To increase civilizational awareness, we should always keep in mind that as human beings we have been assigned the dual tasks of worshipping God alone, and populating and developing the earth.

However, we are in crisis in these areas and our crisis is rooted in our failure to understand our religion and what true religiosity means. We also fail to discern the rights and obligations entailed by membership in a society. Awareness (*waʿy*) is a clear realization, both logical and intuitive, of what something requires for realization on the practical level.

God condemns nations [i.e. the ʿĀd and the Thamūd civilizations mentioned in the Qur’an] that made great strides in construction, utilization of resources, and production of tools and equipment while

insolently rejecting His commands. The degradation of the inner aspect of these people even led to their demise. Societal institutions have a responsibility to improve civilization through developing the integral human being and promoting the process of moral and material progress and renewal through ideological, behavioral, and material reform. Individuals must develop greater awareness as to their place in this world.

A method of analyzing societies and studying the causes of individual and collective transformation is one of the most effective means to promoting needed change and reform and resolving our social crises. Basing my approach on Ibn Khaldūn's concept of sociology, I seek to draw attention to the cause-and-effect relationships Ibn Khaldūn observed, and ask how these relationships can be transformed into practical mechanisms for overcoming the present degeneration in society and for coping with the uncertainties of the future. The purpose of a "jurisprudence of social development" is to re-establish the relationship between jurisprudence, as the motivating force behind action, and a societal understanding, that points the way to correct and appropriate action.

There are five salient features to this branch of jurisprudence: 1) that God has created human beings to worship and serve their Maker and to evolve and make the Earth prosperous; 2) that one of the most foundational aims of Islamic Law is to populate and cultivate the earth in a manner that strengthens and benefits humankind; 3) that certain requirements of this law are addressed not to individual Muslims, but to the Muslim community as a whole, for the purpose of benefiting the whole community without overburdening any one of its members; 4) that the Muslim community has been assigned the task of witnessing to the truth before the rest of the world by demonstrating good deeds in both words and action and by pursuing a path of moderation in all things; and 5) that pursuing the religious path of moderation entails a balance between earthly, material well-being and spiritual enhancement.

Ibn Khaldūn had said, "Civilization is the bane of [true] development."⁶ This happens when material development brings a society to a level of such affluence and luxury that it descends into moral decadence, societal disintegration, and the squandering of the nation's wealth among a single privileged class, which in turn brings about the downfall of the state.⁷ The jurisprudence of human development is part of a new approach to jurisprudence which Muslim societies need as they

progress in areas such as banking, medicine, politics, and other areas of human endeavor.

However, no matter how great a goal may be, it can never be successful if those assigned to carry it out lack a solid understanding of their task and commence their work without the proper know-how. Therefore, it is essential to revive the fundamental ideas of Islam among Muslims and then work to imbue these ideas more firmly in their minds. The Prophet filled this role when he sparked a great civilizing movement in Madinah which then spread throughout the world. This development has slowed in the Muslim world over the past few centuries. Hence, our purpose in laying the foundations of a jurisprudence of human development is to rekindle Muslims' awareness and, in so doing, give them the impetus they need to pursue social and cultural reform and change.

There are three major starting points for creating awareness of the jurisprudence of human development. First, deepen people's awareness of the aims of Islamic Law, linking legal rulings to these aims, and help Muslims to understand how to create an integrated picture of the religion as the path to happiness in this life and the next. In this vein, encourage heartfelt worship of God, clear thinking and sincere dedicated effort through reflection on the verses of the Qur'an. Focusing on the Divine in these verses should speak to people's hearts and draw them closer to their Maker.

Educate people on the objectives of Islamic Law when issuing legal rulings by mentioning the reasons for them and the wise purposes behind them. This includes applying the principle of facilitation (*al-taysīr*) in situations that involve hardship and urgent need. In addition, prohibitions should be introduced gradually, and people should be provided with permissible alternatives when a course of action has been forbidden, and especially considering ever-changing needs and circumstances. Furthermore, explain religious rulings in light of the five basic essentials, which Islam aims to preserve – religion, life, reason, progeny, and wealth.

Second, give more attention to the sciences, arts and humanities, and integrate them with the various fields of religious legal studies. Islam's contributions to science, art, and culture, are a timeless and precious heritage, which should not be forgotten and should be continued. As were our predecessors who lived during the time of religious awakening,

Muslims will be equipped with the tools required for constructive, Islamically sound human development.

Third, increase people's understanding of what it means to be a "witness" in the sense spoken of in God's declaration: "And thus have We willed you to be a community of the middle way, so that with your lives you might bear witness to the truth before all mankind, and that the Apostle might bear witness to it before you" (*Sūrah al-Baqarah*, 2:143). The witness must be well-acquainted with that to which he or she is bearing witness, and able to present others with persuasive evidence and arguments and should be able to convey his/her message clearly.

Chapter Three

Goals Awareness and the Crisis of Religious Extremism

Apart from faith, the greatest favors God can bestow on His servants are well-being and security. Preservation of security in a society is one of the most fundamental objectives of the Shari'ah. As such, it is one of the most important obligations of a Muslim ruler. Therefore, acts that destabilize society, violate its security, and terrorize Muslims and non-Muslims with whom Muslims have a non-aggression pact are crimes against humanity that clearly oppose the overall goal of the Shari'ah. Also of concern is that fanatics comb works on jurisprudence in search of statements by renowned scholars which they can use to justify their actions or legal rulings on specific situations which they claim as a pretext for their acts of hostility and aggression.

There are three types of juristic parochialism, which serve to destabilize countries and endanger people's security. These emerge through: 1) an atomistic view of religious legal texts that fail to take the Shari'ah's overall objectives into account and drawing faulty inferences from juristic textual evidence without factoring in the consequences and contingencies associated with such an inference and its practical application; 2) a failure to address important questions relating to the meaning and necessity of jihad; and 3) defective approaches to the issuance of legal rulings which lead, in turn, to defective application of such rulings.

The need to maintain security in society during times of tension or crisis may compel those in authority to take additional precautions, tighten their surveillance of what they see as sources of danger, and adopt strict measures of deterrence. Such steps might bear fruit if they were taken in response to a purely concrete, physical threat. However, on this battlefield of ideological convictions and influences, the only appropriate weapons are sound thinking, irrefutable proofs, and moderate, fair-minded religious concepts marked by neither extremism nor laxity.

The ideological crisis affecting some Muslim societies has given birth to extremist views on religious, political, and social issues alike. The causes of this extremism are numerous and complex, but the most salient causes are a lack of correct understanding of Muslim legal texts and ignorance of the objectives of the Shari‘ah with respect to jihad and the process of commanding what is right and forbidding what is wrong. In terms of the Shari‘ah’s position on “contemporary” jihad efforts, many of today’s jihad endeavors lack legitimacy and fail to yield benefits in way of liberation. In fact, they cause great suffering.

Jihad is the religious juristic term for resistance to aggression. The meaning of the term jihad and its juristic uses are based on the trilateral root *j-h-d*, which conveys the sense of exertion and effort in propagating the faith’s message and inviting people to embrace it. Thus, jihad was institutionalized as a means of preserving the religion, protecting those who convey its message, defending Muslim territories, and confronting aggressors.⁸

The concept and practice of peaceful jihad can become a vital means of building an ideal society where security and stability prevail. Understood and carried out as it was intended to be, jihad is an integral part of the reform project advocated by Islam in its battle against mindless caprice, oppression, and futile customs and ways of life. Hence, when Muslims lack this understanding, they will also lack the moral strength they need to fulfill their responsibility to bear witness to truths.

The principle of “enjoining righteousness and prohibiting evil” has a role to play in promoting security in society and righteousness, which is clearly of benefit on both the individual and communal levels. This practice should be treated as a communal obligation (*farḍ kifāyah*) although it may also become an individual obligation (*farḍ ‘ayn*). In being mindful of this principle, matters of interpretation are not subject

to criticism. Change should be limited to what the situation demands. One should abhor evil in one's heart under all circumstances. The extent of effecting change through words and actions depends on one's ability and circumstance. One may be unable to promote virtue and prevent vice due to a fear of persecution or some other harm. If there are two competing views on enjoining the good and prohibiting evil and it is known that one is of no use, then that one should be dropped from consideration.

Lastly, the higher objectives of the Shari'ah necessitate the prohibition of armed revolts, given that those who, over the course of Muslim history, have revolted against their leaders have rarely achieved the aims for the sake of which they revolted. This in no way indicates that one should be content with an unjust situation. Rather, it means that one should choose the lesser of the two evils. It is better to offer gentle admonition while exercising patience and perseverance.

Chapter Four

Goals Awareness and Its Impact on the Muslim Mindset

It is vital to understand the Muslim mindset and explore reasons for its decline. There is also a dire need to explore a methodology employing tools suited to Muslim societies rather than trying to understand things through a postmodernist and secular humanist philosophy. Investigation should include an analysis of Muslim discourse and an assessment of how well it harmonizes with the changes taking place within contemporary society in order to serve as a vehicle of positive change. *Maqāṣid* should be referenced in regulating and guiding the formulation of Islamic legal rulings.

Scholars have attempted to identify and understand the dysfunction of the Muslim mindset that has negatively affected Muslim communities. Many have attributed the decline of the Muslim mindset to the negative interplay between divine revelation and human interpretation, between Islamic Law and human custom, and between rationality and subjective experience. Traditional tools for understanding the Qur'an and the Sunnah have been influenced by mystical interpretations and philosophical proofs. This, in addition to fruitless debates resulting from the claims of speculative theology, rigid biases in favor of specific juristic arguments and schools of thought, political tyranny, and vested

interests and power struggles, has undermined the Muslim community's ability to make real progress. Furthermore, the epistemological tools and research methodologies employed by some scholars derive from a secular intellectual environment where conclusions are not based on decisive texts from the Qur'an and the Sunnah or on juristic principles drawn from these two sources.

In light of these various causes for the decline of the Muslim mindset, I believe the best path forward is the utilization of an aims-based methodology. It is my hope that such a methodology will revitalize Muslim thought and reasoning. First, *maqāṣid al-sharī'ah*, as methodology, provides the link that unites all branches of Islamic legislation, that is, on the levels of ritual, custom, social life, judicial concerns, and all others. Second, viewing *maqāṣid al-sharī'ah* as a universal, all-embracing set of principles serves to regulate one's understanding of things and clarify the true purposes of human existence, including the way one should live and relate to other people, to one's circumstances in life, and to the laws of the universe. Third, people everywhere have an inborn tendency to search for a Higher Power in the universe, to surrender themselves to this Power, and to obey this Power's commands and prohibitions without seeking some material benefit for themselves. This is the sphere in which the law of divine-human and heavenly-earthly response operates.

Fourth, an examination of the works written on *maqāṣid al-sharī'ah* reveals that their authors served as religious and social reformers by reestablishing a connection with the universal principles of Islamic Law and by fulfilling their own role in juristic research and in issuing rulings on newly emerging situations. Fifth, the fragmentation, weakness, and ignorance that presently afflict the Muslim community, distracting individual Muslims from the essentials and robbing them of the ability to be creative and productive, necessitate that we move quickly to recover the universal, fundamental principles and aims of Islamic Law. Sixth, in order to correct the flaws in Muslims' ways of thinking, stress must be laid on *maqāṣid al-sharī'ah*, which can protect us from going to extremes in any direction by supplying us with rational principles that expose illusion, vacuous speculation, groundless views, and opinions with insufficient evidence in their favor.

In discussion on Islamic rationalism and its impact on contemporary philosophy, it is important to note that the intellectual ascent of materialism and naturalism has now reached its apex, from which point

it is bound to decline. According to some contemporary philosophers, descent is the inevitable fate of a rationalistic, secular humanist, materialistic ideology. The critique of rationalism has been fueled, and its demise hastened, by the spread of the philosophy of deconstructionism, which deals the deathblow to all constant meanings and facts. It is argued that Jacques Derrida, Michel Foucault, and other modern Western thinkers have contributed to deconstructionist theorization as a poststructuralist phase of human history that empties postmodernist philosophies of all meaning.

Religious and metaphysical considerations clearly have no place in postmodernist philosophy. Postmodernism assumes that the universe consists of nothing but matter in constant motion without origin or purpose, and that the mere use of words such as truth, certainty, essence, and idealistic motives involves a regression into an unfounded metaphysical view of the universe. There is no central, all-inclusive order, but only small, self-contained orders, each of which revolves around itself.

In postmodernist thought there is no such thing as an incontrovertible fact. Rather, there are facts formulated by humans themselves, who choose their own convictions regardless of how bizarre or aberrant they happen to be. Furthermore, the moral system in postmodernist philosophy is not subject to absolute value-based considerations or set standards that are respected and observed based on a culturally and religiously founded consensus. Rather, post-modernist ethics are based on agreements of limited, temporary legitimacy, in the areas of security, economics, the media, etc., and dictated by the interests of the individuals or institutions in control of society. ♦

The politics of postmodernism have contributed to a new world order ushered in by global capitalism. The aim has been to persuade countries to open up to multinational corporations and imports by transforming their political elites into investment partners and their populations into consumers. This undermines democratic development and religious, cultural and national identity.

These aspects of post-modernist philosophy have had a profound impact on Arab and Muslim culture and thought. In line with this philosophy and politics, attempts have been made to deconstruct and reinterpret the texts of the Qur'an in keeping with readers' whims and caprices. From this philosophy's point of view, the Sunnah must be

done away with on the pretext that it is based on the words and actions of a human being who is no different from us, and that the conditions that prevailed during the days of the Prophet and his Companions differed too greatly from our own time. It now remains for us to clarify the relevance of these developments for the process of shaping a sound Muslim mentality at a time when the fundamental role of reason has been called into question.

Chapter Five

The Goals Awareness Crisis and Its Impact on Social Action

The marginalization of the objectives of Islamic Law has led to excessive strictness in some situations and excessive lenience in others, and has also resulted in bringing about evils that far outweigh the benefits intended. The following discussion examines this issue and presents ways to awaken the consciousness and shows how a religious awakening can serve to counter religious excess, spread love and harmony, help us see the purposefulness of beauty and aesthetics, and help us appreciate the Muslim woman's role in society.

Ideological extremism constitutes a major threat to society. To counter religious excess, priority should be given to spreading a jurisprudence of revival and a civilizational evolution. Thus, in seeking to address extremism and the crisis it has generated in modern times, our educated elites should concern themselves with promoting a jurisprudence of revival while exploring a variety of developmental options rather than entrenching themselves in ivory towers from which they can theorize and market temporary solutions.

As example, an excessively cautious point of view dominates Muslim thought regarding leisure and sport. However, one of the goals of making sound laws that are relevant to people's lives is to provide permissible, inviting substitutes for prohibited actions. We need to urgently reexamine some actions which have been declared forbidden in the past for fear that they might lead to other actions that are explicitly prohibited by Islamic Law. Examples include sports activities in their various forms for men and women, as well as purposeful art, recreational hobbies, educational games, travel, tourism, and other things. The Sunnah of the Prophet actually encourages forms of

recreation and leisure. The Prophet permitted certain Abyssinians to practice their sport in his mosque; he allowed two young girls to sing for ʿĀ'ishah; he allowed play with dolls; and he allowed leisure, joking, racing and other kinds of recreation, all of which shows that just as our religion enjoins seriousness, exertion and struggle, it also permits various forms of recreation, enjoyment and relaxation.

To counter extremism, it is also vital that we revive and ingrain a sense of patriotism in citizens' minds. We need to implant in people's minds and hearts the greatest purpose of their existence, which is to worship God, so that this awareness can influence the way they live their lives, and we need to strengthen and deepen people's sense of belonging to their spiritual centre, which God honored by choosing it as the place where He would reveal His final message to humankind, and the place toward which all Muslims are to turn daily in prayer.

It is, furthermore, essential to formulate policies and laws that govern the lives of individual citizens and regulate society's affairs. Such policies and laws are a prerequisite for a society's progress and development, since they embody the society's principles in relation to citizens' rights and obligations. One of the basic requirements of a patriotic mindset is that educational and media institutions carry out their responsibility to raise consciousness on both the individual and collective levels. Our educational institutions have the obligation to formulate a purposeful, integrated plan to form each individual's character and instill the needed civilizational consciousness in him/her.

The spheres for feelings of love and affection have narrowed greatly. There are certain people who limit their shows of affection to themselves and those closest to them, while appearing unconcerned about other members of society. A classic example is that of tribalism. However, one finds that even people's love for those closest to them, including spouses, children, and siblings, is often left unexpressed in either words or actions. In fact, the most critical cause of some broken homes is a lack of love for wives and young girls or a failure to express adequate affection for them.

I marvel at the intense emotion that was evinced by the Prophet when, as he preached in the mosque, his two grandsons al-Hasan and al-Husayn entered, prompting him to come down from the pulpit, put his arms around them and plant kisses on their cheeks. More marvelous still is the way he showed affection to animals and even to inanimate

objects! When he ascended Mount Uhud he said, “Here is a mountain that loves us and that we love in return!”⁹

“Indeed, God is beautiful and loves beauty.”¹⁰ This Prophetic dictum urges Muslims to perceive the beauty with which God has imbued the cosmos, to nurture it within themselves, and, when its manifestations seem to be absent, to contemplate it in their mind’s eye. The greater the impact such perceptions of beauty have on the person who experiences them, the more clearly they will be reflected in his/her thoughts and behavior, and the more able he/she will be to live in harmony with reality and the laws of the cosmos.

The role of beauty in change and transformation has been neglected in reform efforts, and Muslims in particular, as evidenced by the move away from the arts and personal experience, and an absence of efforts to foster aesthetic awareness. Given that beauty and perfection are among the divine attributes, and that God loves to see the effects of His grace and beauty in His creation, then both Islamic Law and common sense dictate that God’s splendid design should be manifest in all our affairs.

The Shari‘ah also concerns itself with the importance of doing our work well and maintaining good hygiene and a neat appearance, all of which demonstrates the fact that outward beauty is one of the goals of the law. How could it be otherwise, when Muslims are commanded to observe and contemplate the beauty of God’s creation as manifested in the sky and the stars, mountains and streams, flora and fauna? Beauty contributes to mildness of manner and refinement of character while mitigating harshness of temper and intransigence. At the same time, it sparks a desire to look for the good in circumstances and the virtue in other individuals rather than being on the lookout for their failings and mistakes. The lover of beauty doesn’t allow himself/herself to live in a state of languor and ignominy, servility and cynicism. Indeed, we need to reclaim the Muslim aesthetic values that can revive feelings of love and kindness both in ourselves and in others, while healing the scars left by hatred and violence that have marred life’s beauty and disturbed relations among all living things.

It is important to address the issue that a jurisprudence has emerged that is focused around legal issues relating to women that focus on such matters as whether they should be required to wear a loose, flowing outer garment, whether they should be permitted to drive, or travel

without a *mahram* (a male relative with a degree of consanguinity that would preclude marriage to the woman in question), and other similar questions. Despite the importance of these issues, they should not be allowed to gain priority over more crucial matters to which insufficient attention is being devoted, such as women's various rights, their role in development, and their participation in the institutions of society. This phenomenon has curtailed women's role and undermined their potentials. We need to shift from a defensive position where women are marginalized to an offensive one, engaging ourselves in progressive developmental projects that open new vistas in areas of vital importance to the world.

Furthermore, limited opportunity to engage in critical thought and objective thinking on the part of many educated Muslim women may serve to hamper numerous developmental initiatives. Indeed, we hope to see an awakening that springs out of the pristine Shari'ah and its general objectives, and which yields practical ideas that can be applied to projects that advance women's roles in society. It is time for theorists to descend from their ivory towers and take part in the work of real construction in way of developing concepts of freedom, justice, equality, revival, and civilization.

CONCLUSION

At this point, certain questions present themselves: Why are Muslims so fearful of the proposal of new ideas, or objective treatments of our current crises based on social and philosophical analyses that enable us to verify new ideas' acceptability or unacceptability against the established values of our religion? Why do we always see a thinker as a rebel against the religion and a conspirator against Muslims, particularly at a time when some atheist thinkers are coming back to Islam and renouncing modern rationalism? Have negative historical images of certain thinkers made us averse to benefiting from theories of change or reform projects applied in other parts of the world based on shared human values that merit attention and application?

In order to help the general public better understand and apply *maqāsid al-sharī'ah* and to help jurists rule on newly emerging situations in light of this understanding, there is a need for further research and writing on this topic. *Maqāsid al-sharī'ah* encompass all branches of the Muslim faith, and they undergird all Muslim rulings. The Muslim who

understands these objectives and how they relate to the overall framework of Islamic Law will safeguard against deviations and will develop an awareness of actions that should be avoided. He/she will know which actions are to be given priority in a particular situation and which can reasonably be delayed. Equally, he/she will clearly understand the benefits of the Shari'ah for men, women and children, and the happiness and fulfillment that can come from conscious practice of the religion based on an understanding of *maqāsid al-sharī'ah*.

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Notes

- ¹ Abū Ishāq Ibrāhīm ibn Mūsā ibn Muḥammad al-Lakhmī al-Shāṭibī, *Al-Muwāfaqāt*, Introduction by Bakr ibn Abd Allah Abu Zayd, text arrangement, introduction, commentary and sourcing of hadiths by Abu Ubaydah Mashhr ibn Hasan Al Salman (Khobar: Dār Ibn ‘Affān, 1417 AH/1997 CE), vol. 2, p.300.
- ² See Nur al-Din Ali al-Haythami, *Majma‘ al-Zawā‘id wa Manba‘ al-Fawā‘id* (Beirut: Dār al-Kutub al-‘Ilmiyyah, 1408 AH/1987 CE), vol. 3, p.162. “Al-Ṭabarānī recorded it in *al-Kabīr*...and narrators in his chain of transmission are reliable.” See also Jalāl al-Dīn ‘Abd al-Raḥmān ibn Abū Bakr al-Suyūṭī, *Ṣaḥīḥ al-Jāmi‘ al-Ṣaḡhīr wa Ziyādatuh (al-Fath al-Kabīr)*, Muhammad Nasir al-Din al-Albani, (ed.), vol. 1, p.383, hadith no. 1885.
- ³ See al-Shāṭibī, *Al-Muwāfaqāt*, vol. 5, footnote; and Muhammad al-Dasuqi, *Al-Ijtihād wa al-Taqlīd fī al-Sharī‘ah al-Islāmiyyah* (Doha: Dār al-Thaqāfah, 1987), p.233.
- ⁴ See Adnan Muhammad Jumah, *Raf‘ al-Ḥaraj fī al-Sharī‘ah al-Islāmiyyah* (Damascus: Dār al-Imām al-Jārī, 1979), p.25.
- ⁵ Muhammad Bazmul, *Taghayyur al-Fatwā* (Al-Thuqbah: Dār al-Hijrah, 1415 AH/1994CE), p.56.
- ⁶ Abū Zayd ‘Abd al-Raḥmān ibn Muḥammad ibn Khaldūn, *Al-Muqaddimah*, vol. 3, p.877.
- ⁷ See Muhammad Abid al-Jabiri, *Fikr ibn Khaldūn: Al-‘Aṣabiyyah wa al-Dawlah: Ma‘ālim Naḍariyyah Khaldūniyyah fī al-Tārīkh al-Islāmī*, 7th edn., (Beirut: Markaz Dirāsāt al-Waḥdah al-‘Arabiyyah, 2001), pp.233ff.
- ⁸ See Abū al-‘Abbās Aḥmad ibn ‘Abd al-Ḥalīm ibn Taymiyyah al-Ḥarrānī, *Majmū‘ Fatāwā Shaykh al-Islām Aḥmad ibn Taymiyyah*, compiled and arranged by ‘Abd al-Raḥmān ibn Muḥammad ibn Qāsim al-‘Āsimī al-Najdī al-Ḥanbalī, assisted by his son, Muḥammad, (Riyadh: Maṭābi‘ al-Riyāḍ, 1381-1383 AH/1961-1963 CE), vol. 6, p.396.
- ⁹ *Ṣaḥīḥ al-Bukhārī*, hadith no. 4083, and *Ṣaḥīḥ Muslim*, hadith no. 1392.
- ¹⁰ *Ṣaḥīḥ Muslim*, hadith no. 91.

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Understanding Maqāṣid al-Sharī'ah calls for the development of a juridical sense that is finely tuned to the higher objectives and purposes of Islamic rulings, the aims of which are the formulation of a new methodology in understanding the revealed texts and the reform of Muslim thought and its application. Al-Qahtani draws attention to the importance of understanding various levels of *maqāṣid*, including distinguishing between primary aims (*al-maqāṣid al-aṣliyyah*) and secondary aims (*al-maqāṣid al-tābi'ah*). He asserts that a positive understanding of the objectives of the Shari'ah should produce affirmative human as well as cultural development in Muslim societies.

One particular strength of this work lies in the author's application of the higher objectives and aims of the Shari'ah to different areas of jurisprudence, such as in deriving and issuing religious rulings (*iftā'*), and to important social issues and challenges facing Muslim societies today. These include the role and status of women, problems of extremism and laxity, the misapplication and abuse of the Shari'ah, the crisis of Muslim thought, and the need to counter religious excessiveness. In addition issues often overlooked but important for mental well-being and societal welfare are assessed, including the need for recreation and leisure, and the active cultivation and promotion of aesthetics and harmony.



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