I

Maqāṣid al-Sharīʿah
A Contemporary Perspective

Overview

Why is giving charity (zakah) one of Islam's principle 'pillars'? What are the physical and the spiritual benefits of fasting the month of Ramadan? Why is drinking any amount of alcohol a major sin in Islam? What is the link between today's notions of human rights and Islamic law? How can the Islamic law contribute to 'development' and 'civility'?

'*Maqāṣid al-sharīʿah*' are principles that provide answers to the above questions and similar questions about the Islamic law. *Maqāṣid* include the wisdoms behind rulings, such as 'enhancing social welfare,' which is one of the wisdoms behind charity, and 'developing consciousness of God,' which is one of the wisdoms behind fasting. *Maqāṣid* are also good ends that the laws aim to achieve by blocking, or opening, certain means. Thus, the *maqāṣid* of 'preserving people's minds and souls' explain the total and strict Islamic ban on alcohol and intoxicants. *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, facilitation, and social cooperation. Thus, they represent the link between the Islamic law and today's notions of human rights, development, and civility. This chapter explains what '*maqāṣid al-sharīʿah*' is and how it could play a fundamental role in the much-needed 'contemporarisation' of the Islamic

law. It will introduce traditional and current definitions and classifications of *maqāṣid*, and elaborate on three historical stages that the idea of *al-maqāṣid* went through, namely, the Companions' era, the schools of law foundational era, and the era between the fifth and eighth Islamic centuries. Finally, recent developments of *al-maqāṣid* terminology will be surveyed, and the relevance and significance of some of the terms will be explained. '*Maqāṣid al-sharīʿah*' is given a fundamental status in this book. Thus, theories and methods of the Islamic law presented throughout the book will be analysed and evaluated based on their agreement with the *maqāṣid* of the Islamic law.

1.1. *MAQĀṢID AL-SHARIʿAH*: EARLY HISTORY OF THE IDEA

What is Maqāṣid?

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 behind 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/ 1185 CE), one of the earliest contributors to *al-maqāṣid* theory as we know it today (and as will be explained shortly) used *al-maqāṣid* and public interests (*al-maṣāliḥ al-ʿāmmah*) 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*, as will be explained later).[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), who gave *al-maṣlaḥah* precedence even over the 'direction implication of the (specific) script' defined *maṣlaḥah* as, 'what fulfils 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] These are a few examples that show the close link between *maṣlaḥah* and *maqāṣid* in the *uṣūlī*

conception (especially between the fifth and eighth Islamic centuries, which is the period in which the *maqāṣid* theory was developed, as will be explained below).

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.
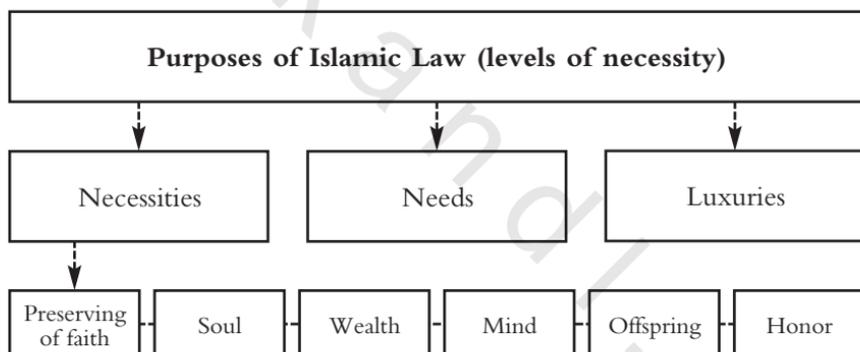4. Level of universality of the purposes.

Chart 1.1. Hierarchy of the purposes of the islamic law (dimension of levels of necessity)

Traditional classifications of *maqāṣid* divide them into three 'levels of necessity,' which are necessities (*ḍarūrāt*), needs (*ḥājiyāt*), and luxuries (*taḥsīniyyāt*). Necessities are further classified into what 'preserves one's faith, soul, wealth, mind, and offspring.'[9] Some *uṣūlīs* added 'the preservation of honor' to the above five widely popular necessities.[10] These necessities were considered essential matters for human life itself. There is also a general agreement that the preservation of these necessities is the 'objective behind any revealed law.'[11] Purposes at the

level of needs are less essential for human life, and purposes at the level of luxuries are 'beautifying purposes' (*taḥsīniyyāt*), in the traditional expression.[12] Chart 1.1. illustrates the hierarchy of levels of necessity. The levels in the hierarchy are interrelated, according to al-Shāṭibī. Each level serves and protects the level below. For example, the level of needs acts as a 'shield of protection' to the level of necessities.[13] That is why some scholars preferred to perceive necessities in terms of 'overlapping circles,' rather than a strict hierarchy.[14]

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, the 'hierarchy of needs.'[15] Human needs, according to Maslow, range from basic physiological requirements and safety, to love and esteem, and to 'self-actualisation.' In 1943, Maslow suggested five levels for these needs. Then, in 1970, he revised his ideas and suggested a seven level hierarchy.[16] The similarity between al-Shāṭibī's theory 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.

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:[17]

1.   The scope of traditional *maqāṣid* is the entire Islamic law. However, they fall short to include specific purposes for single scripts/rulings or groups of scripts that cover certain topics or 'chapters' of fiqh.

2.   Traditional *maqāṣid* are concerned with individuals rather than families, societies, and humans, in general.

3.   The traditional *maqāṣid* classification did not include the most universal and basic values, such as justice and freedom.

4.   Traditional *maqāṣid* were deduced from studying '*fiqhī* literature,' rather than the original sources/scripts.

To remedy the above shortcomings, modern scholarship introduced new conceptions and classifications of *al-maqāṣid* by giving consideration to new dimensions. First, considering the scope of rulings they cover, contemporary classifications divide *maqāṣid* into three levels:[18]

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' 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 scripts 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/her fasting, and the intent of feeding the poor in banning Muslims from storing meat during Eid 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, 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*. These 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.

Finally, contemporary scholarship has introduced new universal *maqāṣid* that were directly induced from the scripts, 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 scripts' higher values and principles. Detailed rulings would, then, stem from these universal principles. The following are examples of these new universal *maqāṣid*:

1. Rashid Rida (d. 1354AH/1935 CE) surveyed the Qur'an 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.'[19]

2. Al-Tahir ibn Ashur (d. 1325 AH/ 1907 CE) proposed that the universal *maqṣid* of the Islamic law is to maintain 'orderliness, equality, freedom, facilitation, and the preservation of pure natural disposition (*fiṭrah*).'[20] It is to be noted that the purpose of 'freedom' (*ḥurrīiyyah*), which was proposed by Ibn Ashur and several other contemporary scholars, is different from the purpose of 'freedom' (*ʿitq*), which was mentioned by jurists.[21] *Al-ʿitq* is freedom from slavery, not 'freedom' in the contemporary sense. 'Will' (*Mashīʾah*), 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.'[22] 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,'[23] even though he elaborated on an Islamic perspective on freedom of thought, belief, expression, and action in the *mashīʾah* sense.[24]

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.[25]

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
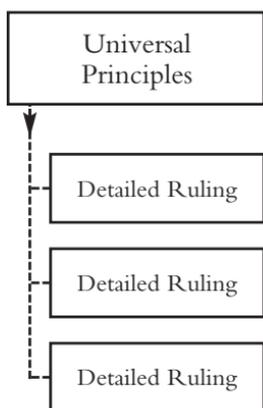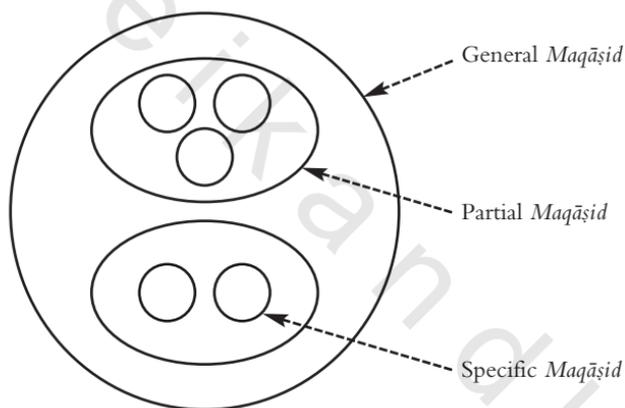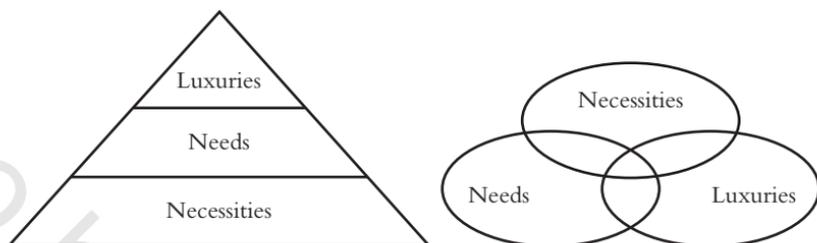
General *Maqāṣid*

Partial *Maqāṣid*

Specific *Maqāṣid*

Universal Principles

Detailed Ruling

Detailed Ruling

Detailed Ruling

Chart 1.2. Based on the 'cognitive nature' of the Islamic law, all of the above structures of the law's purposes are valid.

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 scripts.[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 (*ʿimrān*).'[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 human-made for the sake of illustration for themselves and other humans.

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. More elaboration on the concept of 'multi-dimensionality' is provided in the next chapter on systems theory and philosophy.

The above twentieth-century views also show that *maqāṣid al-sharīʿah* 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 scripts. This fusion of the scripts and contemporary needs for reform gives *al-maqāṣid* special significance. I view *maqāṣid* as one of today's most important intellectual means and methodologies for Islamic reform. It is a methodology from 'within' the Islamic scholarship that addresses the Islamic mind

and Islamic concerns. This approach is radically different from projects for Islamic 'reform' and 'renewal' that come from 'without' the Islamic terminology and scholarship.

I shall now present a brief historical account of the ideas of *maqāṣid* from the companions of the Prophet's era to our current time.

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 Qurayẓah,' in which the Prophet sent a group of companions to Banū Qurayẓah,[30] and ordered them to pray their afternoon (*aṣr*) prayer there.[31] The span of time allowed for *aṣr* prayers had almost expired before the group reached Banū Qurayẓah. Thus, they found themselves divided into supporters of two different opinions, one opinion entailed praying at Banū Qurayẓah'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 Qurayẓah, 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 Qurayẓah, 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-Ẓāhirī (the literalist), who wrote that they should have prayed the 'afternoon prayer' after they reached Banū Qurayẓah, 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.'[34] Their argument relied on the clear and specific verses of the Qur'an that allowed fighters their 'spoils of war.' ʿUmar 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, ʿUmar (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. The significance of ʿUmar's ijtihad is that it could, traditionally, be considered as a 'collective ijtihad' carried out by (a large number of) the companions. This ijtihad has its significance in fiqh, regardless of the 'authority' of a companion's opinion, which is a matter of difference of opinion within traditional schools of the law (as will be explained later).

Another telling example is ʿUmar'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 scripts, 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 ʿUmar'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 ʿUmar'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. ʿUmar'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, ʿUmar 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' (*wiʿāʾ al-zakāh*), 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 sunnah, 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]

However, ʿUmar did not take this purpose-oriented approach to all rulings of the Islamic law. Bukhārī narrates that ʿUmar was asked: 'Why do we still jog around the kaʿbah 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 Madinah. The Prophet, therefore, ordered the companions to jog around the Kaʿbah with their shoulders uncovered in a show of strength. ʿUmar, 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] ʿUmar, thus, made a distinction between 'acts of worship' (*ʿibādāt*) and 'worldly transactions' (*muʿāmalāt*), a distinction that was later endorsed by all schools of *uṣūl al-fiqh*. Shāṭibī, for example, expressed this distinction when he wrote: 'Literal compliance is the default methodology in the area of acts of worship (*ʿibādāt*), while the consideration of purposes is the default methodology in the area of worldly dealings (*muʿāmalāt*).'[43]

The significance of ijtihad in the above incidents is that the companions did not always apply what *uṣulīs*, much later, called *dilālah al-lafẓ* (the implication of the term). Practical implications were sometimes based on the purpose, which could be termed '*dilālah al-maqṣid*.' This *dilālah* enables greater flexibility in understanding terms (*alfāẓ*) and placing them in their circumstantial contexts, as the above examples illustrate.

Nevertheless, the (neo-)traditionalist school[44] of Islamic law does not consider the above changes according to purposes to be against the direct linguistic implication (*dilālah*) of the scripts. A typical opinion claims that there were certain 'causes' (*ʿillal*) behind these rulings, and that the rulings simply no longer applied when these causes no longer existed or when they were 'specified' (that is, *mukhaṣṣaṣah*) by other scripts.[45] For example, the related *ʿillah* of the application of the punishment for theft is 'theft carried out by a person who is not in need.' Therefore, the punishment for theft just does not apply to the thieves that ʿUmar pardoned. If such interpretation of some of ʿUmar's ijtihad is not possible, current (neo-)traditionalism would discredit these incidents of ʿUmar's ijtihad as 'contrary to the scripts.'[46] However, I would say that such criteria included in the *ʿillah*, such as the 'in need' criterion, are not 'consistent' (*munḍabiṭ*), since they might 'change with the change of circumstances.' Therefore, the criterion is not an *ʿillah*, in the technical sense of the term, but indeed a *maqṣid*. Therefore, from a technical point of view, it is more 'appropriate' (*munāsib*) to relate the change that ʿUmar applied to the *maqṣid* of social assistance, rather than the above claimed *ʿillah*. Similarly, it is claimed that the *ʿillah* of the application of the individual spoils of war is the 'leader's consent according to public interest.'[47] However, again, this claimed *ʿillah* is not 'consistent' (*munḍabiṭah*) since it 'changes with the change of circumstances.' Thus, it is more appropriate to relate the change that ʿUmar made to the *maqṣid* of fairness amongst soldiers and the *maqṣid* of achieving public interest.

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. The role that *maqāṣid* could

play in various techniques for ijtihad and the relationship between the *ʿillah* and *maqṣid* are discussed in detail later in Chapter Six.

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 (Arabic: *ḥikam, ʿilal, munāsabāt,* or *maʿānī*) 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.[48] 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 Kaʿbah, 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).[49]

2. Abū Zayd al-Balkhī (d. 322 AH/933 CE). The first known book on the *maqāṣid* of dealings (*muʿāmalāt*) is Abū Zayd al-Balkhī's *al-Ibānah ʿan ʿilal al-Diyanah* (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.[50]

3. Al-Qaffāl al-Kabīr (d. 365 AH/975 CE). The oldest manuscript that I found in the Egyptian Dār al-Kutub on the topic of *al-maqāṣid* is al-Qaffāl's *Maḥāsin al-Sharā'i* (The Beauties of the Laws).[51] 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 ablution 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' 1, 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-maqāṣid* theory. The following is my translation of an excerpt from the introduction (from the first page shown in Chart 1.3.):

… 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 servents 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 …

Chart 1.3. The first page of Egyptian Dār al-Kutub's manuscript of al-Qaffāl al-Kabīr's 'Maḥāsin al-Sharā'i'' (The Beauties of the Laws).

4. Ibn Bābawayh al-Qummī (d. 381 AH/991 CE). Some researchers claim that research on *maqāṣid al-sharīʿah* was restricted to the Sunni schools of law until the twentieth century.[52] However, the first known monograph dedicated to *maqāṣid* was, in fact, written by Ibn Bābawayh al-Ṣadūq al-Qummī, one of the main Shia jurists of the fourth Islamic century, who wrote a book of 335 chapters on the subject.[53] The book, which was entitled *ʿIlal al-Sharāʾiʿ* (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.[54]

5. Al-ʿĀmirī al-Faylasūf (d. 381 AH/991 CE). The earliest known theoretical classification of purposes was introduced by al-ʿĀmirī al-Faylasūf in his *al-Iʿlām bi-Manāqib al-Islām* (Awareness of the Traits of Islam).[55] Al-ʿĀmirī's classification, however, was solely based on 'criminal punishments' in the Islamic law (*ḥudūd*).

Classifications of *maqāṣid* 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.

1.2. *AL-MAQĀṢID* AS A DEVELOPED THEORY: FIFTH TO EIGHTH CENTURIES AH

The Emergence of a Philosophy for Islamic Law

The fifth Islamic century witnessed the birth of what Abdallah Bin Bayyah called 'a philosophy of the Islamic law.'[56] Literal and nominal methods that were developed, until the fifth century, proved incapable of coping with the complexities of the evolving civilisation. This is why unrestricted interest (*al-maṣlaḥah al-mursalah*) was developed as a method that covers 'what was not mentioned in the scripts,' and thus, compensates for the limitations of *qiyās*. I had argued, however, that *qiyās* could not handle all 'new situations,' despite the *uṣūlī* attempts to develop it through the 'appropriateness' (*munāsabah*) consideration,

because it was restricted with the exactness/consistency (*inḍibāṭ*) condition.[57] *Al-maṣlaḥah al-mursalah* helped to fill this gap and also gave birth to the theory of *maqāṣid* in the Islamic law. A few jurists made the most significant contributions to the *maqāṣid* theory between the fifth and eighth Islamic centuries, namely, Abū al-Maʿālī al-Juwaynī, Abū Ḥāmid al-Ghazālī, al-ʿIzz ibn Abd al-Salām, Shihāb al-Dīn al-Qarāfī, Shams al-Dīn ibn al-Qayyim, and, most significantly, Abū Isḥāq al-Shāṭibī.

Abū al-Maʿālī al-Juwaynī (d. 478 AH/1085 CE)

Al-Juwaynī's *al-Burhān fi Uṣul al-Fiqh* (The Proof in the Fundamentals of Law) was the first *uṣūl* treatise to introduce a theory of 'levels of necessity,' in a way that is similar to today's familiar theory. He suggested five levels of *maqāṣid*, namely, necessities (*ḍarūrāt*), public needs (*al-ḥājah al-ʿāmah*), moral behavior (*al-makrumāt*), recommendations (*al-mandūbāt*), and 'what cannot be attributed to a specific reason.'[58] He proposed that the purpose of the Islamic law is the protection (*al-ʿiṣmah*) for people's 'faith, souls, minds, private parts, and money.'[59]

Al-Juwaynī's *Ghiyāth al-Umam* (The Salvage of the Nations) was, in my view, another important contribution to *al-maqāṣid* theory, even though it primarily addresses political issues. In *al-Ghayyāthī* (a popular short name for that book), al-Juwaynī makes a 'hypothetical assumption' that jurists and schools of law eventually disappeared from Earth, and suggested that the only way to salvage Islam would be to 're-construct' it from the bottom up, using the 'fundamental principles, upon which all rulings of law are based and to which all rulings of law converge.'[60] He wrote that these fundamentals of the law, which he explicitly called '*al-maqāṣid*,' are 'not subject to opposing tendencies and difference of opinion over interpretations.'[61]

Examples of these *maqāṣid*, on which al-Juwaynī 're-constructed' the Islamic law are 'facilitation' in the laws of purification, 'elevating the burden of the poor' in the laws of charity, and 'mutual agreement' in the laws of trade.[62] I view al-Juwaynī's *Ghiyāth al-Umam* as a project for the 're-construction' of the Islamic law based on *maqāṣid*,

which he had to express in such a way that it would save him from aca-
demic and political persecution.[63] Certainly, this view requires more
research and a more extensive analysis of the text itself.

Abū Ḥāmid al-Ghazālī (d. 505 AH/1111 CE)

Al-Juwaynī's student, Abū Ḥāmid al-Ghazālī, developed his teacher's
theory further in his book, *al-Mustaṣfā* (The Purified Source). He
ordered the 'necessities' that al-Juwaynī had suggested as follows: (1)
faith, (2) soul, (3) mind, (4) offspring, and (5) wealth.[64] Al-Ghazālī
also coined the term 'preservation' (*al-ḥifẓ*) of these necessities.

Despite the detailed analysis that he offered, al-Ghazālī, obviously
under the influence of his Shāfiʿī school (which views analogical rea-
soning as the only valid method of ijtihad), refused to give independent
legitimacy (*ḥujjiyyah*) to any of his proposed *maqāṣid* or *maṣāliḥ*, and
even referred to them as 'the illusionary interests' (*al-maṣāliḥ al-
mawhūmah*).[65] Yet, al-Ghazālī presented some interesting analogies
(*qiyās*), in which he used the *maqṣid* as ratio legis (*ʿillah*), despite the
Shāfiʿīs' critique of *maqāṣid* as 'non-exact' (*ghair munḍabiṭah*). For
example, he wrote, 'all intoxicants, whether liquid or solid, are forbid-
den based on analogy with liquor, since liquor is forbidden for the
purpose of the preservation of people's minds.'[66]

Al-Ghazālī also suggested a fundamental rule, based on the order of
necessities he suggested, which implies that the higher-order necessity
should have priority over a lower-order necessity if they generate
opposite implications in practical cases.[67] Thus, al-Ghazālī's ijtihad
diverges from the strict Shāfiʿī adherence to formality, in the logical
sense, in the procedure of analogical reasoning, which he himself sup-
ported in his *al-Mustaṣfā* and his other books on the theory of the law.

Al-ʿIzz Ibn Abd al-Salām (d. 660 AH/1209 CE)

Al-ʿIzz wrote two small books about *al-maqāṣid*, in the 'wisdoms-
behind-rulings' sense, namely, *Maqāṣid al-Ṣalāh* (Purposes of Prayers)
and *Maqāṣid al-Ṣawm* (Purposes of Fasting).[68] However, his signifi-
cant contribution to the development of the theory of *al-maqāṣid* was
his book on interests (*maṣāliḥ*), which he called, *Qawāʿid al-Ahkām fī*

Maṣāliḥ al-Anām (Basic Rules Concerning People's Interests). Beside his extensive investigation of the concepts of interest and mischief, al-ʿIzz linked the validity of rulings to their purposes. For example, he wrote: 'Every action that misses its purpose is void,'[69] and, 'when you study how the purposes of the law brings good and prevents mischief, you realise that it is unlawful to overlook any common good or support any act of mischief in any situation, even if you have no specific evidence from the script, consensus, or analogy.'[70]

Quṭb al-Dīn al-Qasṭalānī (d. 686 AH/1287 CE), following the example of al-ʿIzz, wrote two books dedicated to the topics *maqāṣid* for prayers and fasting. Both books are written in the same 'wisdoms-behind-the-rulings' approach.[71]

Shihāb al-Dīn al-Qarāfī (d. 684 AH/1285 CE)

Al-Qarāfī's contribution to the theory of *maqāṣid* is his differentiation between different actions taken by the Prophet based on his 'intents.' He writes in his *al-Furūq* (The Differences):

> There is a difference between the Prophet's actions in the capacity of a conveyer of the divine message, a judge, and a leader ... The implication in the law is that what he says or does as a conveyer goes as a general and permanent ruling ... [However,] decisions related to the military, public trust, … appointing judges and governors, distributing spoils of war, and signing treaties … are specific to leaders.[72]

Thus, al-Qarāfī defined a new meaning for '*al-maqāṣid*' as the purposes/intents of the Prophet himself in his actions. Later, Ibn Ashur (d. 1976 CE) developed al-Qarāfi's above 'difference' and included it into his definition of *al-maqaṣid*.[73] Al-Qarafi also wrote about 'opening the means to achieving good ends,' which is another significant expansion of the theory of *maqāṣid*. Al-Qarāfī proposed that while means that lead to prohibited ends should be blocked, means that lead to lawful ends should be opened.[74] Thus, he did not restrict himself to the negative side of 'blocking the means' method. Chapter Six explains.

Shams al-Dīn Ibn al-Qayyim (d. 748 AH/1347 CE)

Ibn al-Qayyim's contribution to the theory of *maqāṣid* was through a very detailed critique of what is called juridical tricks (*al-ḥiyal al-fiqhiyyah*), based on the fact that they contradict with *maqāṣid*. He wrote:

> *Fiqhī* tricks are forbidden acts of mischief because, first, they go against the wisdom of the legislation, and, secondly, because they have forbidden *maqāṣid*. The person whose intention is usury is committing a sin, even if the outlook of the fake transaction, which he used in the trick, is lawful. That person did not have a sincere intention to carry out the lawful transaction, but rather, the forbidden one. Equally sinful is the person who aims at altering the shares of his inheritors by carrying out a fake sale [to one of them] ... Shariᶜah laws are the cure of our sicknesses because of their realities, not their apparent names and outlooks.

Ibn al-Qayyim summarised his juridical methodology that is based on 'wisdom and people's welfare' with the following strong words, which I had mentioned earlier in the introduction:

> Shariᶜah is based on wisdom and achieving people's welfare in this life and the afterlife. Shariᶜah is all about justice, mercy, wisdom, and good. Thus, any ruling that replaces justice with injustice, mercy with its opposite, common good with mischief, or wisdom with nonsense, is a ruling that does not belong to the Shariᶜah, even if it is claimed to be so according to some interpretation.75

Abū Isḥāq al-Shāṭibī (d. 790 AH/1388 CE)

Al-Shāṭibī used, more or less, the same terminology that al-Juwaynī and al-Ghazālī developed. However, I argue that in his *al-Muwāfaqāt fī Uṣūl al-Sharīᶜah* (Congruences in the Fundamentals of the Revealed Law), al-Shāṭibī developed the theory of *al-maqāṣid* in the following three substantial ways:

(i) From 'unrestricted interests' to 'fundamentals of law.' Before al-Shāṭibī's *Muwāfaqāt*, *al-maqāṣid* were included in 'non-restricted

interests' and were never considered as fundamentals (*uṣul*) in their own right. Al-Shāṭibī started his volume on *al-maqāṣid* in *al-Muwāfaqāt* by quoting the Qur'an to prove that God has purposes in His creation, sending His messengers, and ordaining laws.[76] Hence, he considered *al-maqāṣid* to be the 'fundamentals of religion, basic rules of the law, and universals of belief' (*uṣūl al-dīn wa qawāʿid al-sharīʿah wa kullīyah al-millah*).[77]

(ii) From 'wisdoms behind the ruling' to 'bases for the ruling.' Based on the fundamentality and universality of *al-maqāṣid*, al-Shāṭibī judged that, 'the universals (*al-kulliyyah*) of necessities, needs, and luxuries cannot be overridden by partial rulings (*al-juzʾiyyāt*).'[78] This is quite a deviation from traditional fundamentals, even in al-Shāṭibī's Mālikī school, which always gave precendence to 'specific' partial evidences over 'general' or universal evidences.[79] Al-Shāṭibī also made 'knowledge of *maqāṣid*' a condition for the correctness of juridical reasoning (ijtihad) on all levels.[80]

(iii) From 'uncertainty' (*ẓanniyyah*) to 'certainty' (*qaṭʿiyyah*). In order to support the new status that he gave to *al-maqāṣid* amongst the fundamentals, al-Shāṭibī started his volume on *maqāṣid* by arguing for the 'certainty' (*qaṭʿiyyah*) of the inductive process that he used to conclude *al-maqāṣid*, based on the high number of evidences he considered,[81] which is also a deviation from the popular 'Greek-philosophy-based' arguments against the validity and 'certainty' of inductive methods.

Al-Shāṭibī's book became the standard textbook on *maqāṣid al-sharīʿah* in Islamic scholarship until the twentieth century, but his proposal to present *maqāṣid* as 'fundamentals of the shariʿah,' as the title of his book suggests, was not as widely accepted.

1.3. CONTEMPORARY CONCEPTIONS OF *MAQĀṢID*

From 'Protection' and 'Preservation' to 'Development' and 'Rights'

Contemporary jurists/scholars developed traditional *maqāṣid* termi-nology[82] in today's language, despite some jurists' rejection of the idea

of 'contemporarisation' of *maqāṣid* terminology. The following are some examples taken from the area of *ḍarūrāt*. Traditionally, the 'preservation of offspring' is one of the necessities that Islamic law aimed to achieve. Al-ʿĀmirī had expressed it, in his early attempt to outline a theory of necessary purposes, in terms of 'punishments for breaching decency.'[83] Al-Juwaynī developed al-ʿĀmirī's 'theory of punishments' (*mazājir*) into a 'theory of protection' (*ʿiṣmah*) which was expressed by al-Juwaynī as, 'protection for private parts.'[84] It was Abū Ḥāmid al-Ghazālī who coined the term 'preservation of offspring' as a purpose of the Islamic law at the level of necessity.[85] Al-Shāṭibī followed al-Ghazālī's terminology, as explained above.

In the twentieth century, writers on *maqāṣid*, significantly, developed 'preservation of offspring' into a family-orientated theory. Ibn Ashur, for example, made 'care for the family' to be a *maqṣid* of the Islamic law, in its own right. In his monograph 'The Social System in Islam,' Ibn Ashur elaborated on family-related purposes and moral values in the Islamic law.[86] Whether we consider Ibn Ashur's contribution to be a sort of re-interpretation of the theory of 'preservation of offspring,' or a replacement of the same theory with a new one, it is clear that Ibn Ashur's contribution had opened the door for contemporary scholars to develop the theory of *maqāṣid* in new ways. The orientation of the new views is neither al-ʿAmiri's theory of 'punishment' nor is it al-Ghazālī's concept of 'preservation,' but rather the concepts of 'value' and 'system,' to use the terminology of Ibn Ashur. Nevertheless, some contemporary scholars are against the idea of incorporating new concepts, such as justice and freedom, in *maqāṣid*. They prefer to say that these concepts are implicitly included in the classic theory.[87]

Similarly the 'preservation of mind' which until recently was restricted to the purpose of the prohibition of intoxicants in Islam, is currently evolving to include 'propagation of scientific thinking,' 'travelling to seek knowledge,' 'suppressing the herd mentality,' and 'avoiding brain drain.'[88]

Likewise, the 'preservation of honor' and the 'preservation of the soul' were at the level of 'necessities' in al-Ghazālī's and al-Shāṭibī's terms. However, these expressions were also preceded by al-ʿĀmirī's

'punishment' for 'breaching honor' and al-Juwaynī's 'protection of honor.' Honor (*al-ʿird*) has been a central concept in the Arabic culture since the pre-Islamic period. Pre-Islamic poetry narrates how ʿAntarah, the famous pre-Islamic poet, fought the Sons of Damdam for 'defaming his honor.' In the hadith, the Prophet described the 'blood, money, and honor of every Muslim' as 'sanctuary' (*ḥarām*) that is not to be breached.[89] Recently, however, the expression of 'preservation of honor' is gradually being replaced in the Islamic law literature with 'preservation of human dignity' and even the 'protection of human rights' as a purpose of the Islamic law in its own right.[90]

The compatibility of human rights and Islam is a topic of a heated debate, both in Islamic and international circles.[91] A Universal Islamic Declaration of Human Rights was announced in 1981 by a large number of scholars who represented various Islamic entities at the United Nations Educational, Scientific and Cultural Organisation (UNESCO). Supported by a number of Islamic scripts mentioned in its references section, the Islamic Declaration essentially includes the entire list of basic rights that were mentioned in the Universal Declaration of Human Rights (UDHR), such as rights to life, freedom, equality, justice, fair trial, protection against torture, asylum, freedom of belief and speech, free association, education, and freedom of mobility.[92]

However, some members of the United Nations High Commission for Human Rights (UNHCHR) expressed concerns over the Islamic Declaration of human rights because they think that it 'gravely threatens the inter-cultural consensus on which the international human rights instruments were based.'[93] Other members believe that the declaration 'adds new positive dimensions to human rights, since, unlike international instruments, it attributes them to a divine source thereby adding a new moral motivation for complying with them.'[94] A *maqāṣid*-based approach to the issue of human rights supports the latter opinion, while addressing the concerns of the former, especially if *al-maqāṣid* terminology is to be 'contemporarized' and made to play a more 'fundamental' (*uṣūlī*) role in juridical reasoning, as this book is suggesting in Chapter Six. The topic of human rights and *maqāṣid* requires further research in order to resolve the 'inconsistencies' that some researchers have suggested in terms of the application level.[95]

In the same way, the 'preservation of religion,' in al-Ghazālī's and al-Shāṭibī's terminology, had its roots in al-ʿĀmirī's 'punishment for giving up true faith.'[96] Recently, however, the same theory for that purpose of the Islamic Law has been re-interpreted to mean a dramatically different concept, which is 'freedom of faiths,' to use Ibn Ashur's words,[97] or 'freedom of belief,' in other contemporary expressions.[98] Presenters of these views often quote the Qur'anic verse, 'No compulsion in matters of religion,'[99] as the fundamental principle, rather than what is popularly, and inaccurately, called 'punishment for apostasy' (ḥadd al-riddah) that used to be mentioned in traditional references in the context of the 'preservation of religion.'

Finally al-Ghazālī's 'preservation of wealth,' along with al-ʿĀmirī's 'punishments for theft' and al-Juwaynī's 'protection of money' had recently witnessed an evolution into familiar socio-economic terminology, such as 'social assistance,' 'economic development,' 'flow of money,' 'wellbeing of society,' and 'diminishing the difference between economic levels.'[100] This development enables utilising maqāṣid al-Sharīʿah to encourage economic growth, which is much-needed in most countries with a majority of Muslims.

'Human Development' as a Maqṣid in its Own Right

'Human development,' the development concept that the UN Development Reports adopt, is much more comprehensive than economic growth. According to the latest United Nations Development Program (UNDP) reports, most countries with a Muslim majority rank lower than the 'developed' range of the comprehensive Human Development Index (HDI). This index is calculated using more than 200 indexes, including measures for political participation, literacy, enrolment in education, life expectancy, access to clean water, employment, standard of living, and gender equality. Nevertheless, some countries with majority of Muslims, especially oil-rich Arab states, show 'the worst disparities,' the UN Report says, between their levels of national income and measures for gender equality, which includes women's political participation, economic participation, and power over resources.[101]

In addition to Muslim minorities who live in developed countries, a few countries with Muslim majorities were ranked under 'high human development,' such as Brunei, Qatar, and the United Arab Emirates. However, the above groups collectively represent less than one percent of Muslims. The bottom of the HDI list includes Yemen, Nigeria, Mauritania, Djibouti, Gambia, Senegal, Guinea, Ivory Cost, Mali, and Niger (which collectively represent around 10 percent of Muslims).

I suggest 'human development' to be a prime expression of *maṣlaḥah* (public interest) in our time, which *maqāṣid al-sharīʿah* should aim to realise through the Islamic law. Thus, the realisation of this *maqṣad* could be empirically measured via the UN 'human development targets,' according to current scientific standards. Similar to the area of human rights, the area of human development requires more research from a *maqāṣid* perspective. Nevertheless, the evolution of 'human development' into 'purposes of Islamic law' gives 'human development targets' a firm base in the Islamic world, instead of presenting them, according to a number of (neo-)literlists, as merely 'tools for western domination.'[102]

In this book, all of the above traditional and contemporary conceptions of *maqāṣid* will be used as guiding fundamentals and criteria for the systems based analysis and evaluation of the Islamic law. In other words, *maqāṣid* will be presented as a philosophy of Islamic law.