

Maqasid al-Shari'ah Made Simple¹

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This article is presented in five sections beginning with a general characterisation of the *maqasid al-Shari'ah* and its origins in the Qur'an. The next section addresses the classification of the *maqasid* and a certain order of priority that is integrated into the structure of the *maqasid*. Section three is devoted to historical developments and the contributions of some of the leading '*ulama*', especially that of Abu Ishaq Ibrahim al-Shatibi, to the theory of the *maqasid*. Section four looks into the differential approaches the '*ulama*' have taken toward the identification of the *maqasid*. The last section highlights the relevance of the *maqasid* to *ijtihad* and the ways in which the *maqasid* can enhance the scope and caliber of *ijtihad*.

Textual Origins

Maqasid al-Shari'ah, or the goals and objectives of Islamic law, is an evidently important and yet somewhat neglected theme of the *Shari'ah*. Generally the *Shari'ah* is predicated on the benefits of the individual and that of the community, and its laws are designed so as to protect these benefits and facilitate improvement and perfection of the conditions of human life on earth. The Qur'an is expressive of this when it singles out the most important purpose of the Prophethood of Muhammad (peace be on him) in such terms as: "We have not sent you but a mercy to the world" (21: 107). This can also be seen perhaps in the Qur'an's characterisation of itself in that it is "a healing to the (spiritual) ailment of the hearts, guidance and mercy for the believers (and mankind)" (10: 57).

The two uppermost objectives of compassion (*rahmah*) and guidance (*huda*) in the foregoing verses are then substantiated by other provisions in the Qur'an and the Sunnah that seek to establish justice, eliminate prejudice, and alleviate hardship. The laws of the Qur'an and the Sunnah also seek to promote cooperation and mutual support within the family and the society at large. Justice itself is a manifestation of God's mercy as well as an objective of the *Shari'ah* in its own right. Compassion (*rahmah*) is manifested in the realisation of benefit (*maslahah*) which the '*ulama*' have generally considered to be the all-pervasive value and objective of the *Shari'ah* and is to all intents and purposes synonymous with *rahmah*.

Educating the individual (*tahdhib al-fard*) is another important objective of the *Shari'ah* so much so that it comes, in order of priority, even before justice and *maslahah*. For these are both socially-oriented values which acquire much of their

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meaning in the context of social relations, whereas *tahdhib al-fard* seeks to make every individual a trustworthy agent and carrier of the values of the *Shari'ah*, and it is through educating the individual that the *Shari'ah* seeks to realise most of its social objectives. The overall purpose of a great deal of the laws and values of the *Shari'ah*, especially in the spheres of *'ibadat* and moral teaching, is to train an individual who is mindful of the virtues of *taqwa* and becomes an agent of benefit to others²

The Qur'an is expressive, in numerous places and a variety of contexts, of the rationale, purpose and benefit of its laws so much so that its text becomes characteristically goal-oriented. This feature of the Qur'anic language is common to its laws on civil transactions (*mu'amalat*) as well as devotional matters (*'ibadat*). Thus when the text expounds the rituals of *wudu'* (ablution for prayer) it goes on to declare that "God does not intend to inflict hardship on you. He intends cleanliness for you and to accomplish his favour upon you." (5: 6) Then with regard to the prayer itself, it is declared that "truly *salah* obstructs promiscuity and evil" (29: 45). With reference to *jihad* the Qur'an similarly proclaims its purpose in such terms that "permission is granted to those who fight because they have been wronged" (22: 39). The purpose, in other words, of legalising *jihad* is to fight injustice (*zulm*) and the purpose of *salah* is to attain spiritual purity and excellence that is accomplished together with physical cleanliness through ablution before prayer. With reference to the law of just retaliation (*qisas*), the text similarly declares that "in *qisas* there is life for you, O people of understanding" (2: 179); and with regard to poor-due (*zakah*), the Qur'an validates it "so that wealth does not circulate only among the wealthy" (57: 7). According to another text, the believers are under duty to lower their gaze in their encounter with members of the opposite sex, "for this will help you to attain greater purity" (24: 30).

One can add many more examples of the laws which show how the Qur'an and the Sunnah are expressive of their goal justification, cause and benefit in the affirmative sense, just as one finds numerous references to evil conduct and crime which is reprimanded and made punishable, in the negative sense, in order to prevent injustice, corruption and prejudice. In the area of commerce and *mu'amalat*, the Qur'an forbids exploitation, usury, hoarding and gambling which are harmful and jeopardise the objective of fair dealing in the market-place. The underlying theme in virtually all of the broad spectrum of the *ahkam* is realisation of benefit (*maslahah*) which is regarded as the summa of the *maqasid*. For justice is also a *maslahah* and so is *tahdhib al-fard*. The *masalih* (pl. of *maslahah*) thus become another name for the *maqasid* and the '*ulama*' have used the two terms almost interchangeably.

CLASSIFICATION OF MAQASID

The '*ulama*' have classified the entire range of *masalih-cum-maqasid* into three categories in a descending order of importance, beginning with the essential *masalih*,

² Cf. Wahbah al-Zuhayli, *Nazariyyat al-Darurah al-Shar'iyyah*, 4th ed. (Beirut: Mu'assasat al-Risalah, 1405/1985), 50.

or *daruriyyat*, followed by the complementary benefits, or *hajiyyat*, and then the embellishments or *tahsiniyyat*. The essential interests are enumerated at five, namely faith, life, lineage, intellect and property. These are, by definition, essential to normal order in society as well as to the survival and spiritual well-being of individuals, so much so that their destruction and collapse will precipitate chaos and collapse of normal order in society. The *Shari'ah* seeks to protect and promote these values and validates measures for their preservation and advancement. *Jihad* has thus been validated in order to protect religion, and so is just retaliation (*qisas*) which is designed to protect life. The *Shari'ah* takes affirmative and also punitive measures to protect and promote these values. Theft, adultery and wine-drinking are punishable offences as they pose a threat to the protection of private property, the well-being of the family, and the integrity of human intellect respectively. In an affirmative sense again, but at a different level, the *Shari'ah* encourages work and trading activity in order to enable the individual to earn a living, and it takes elaborate measures to ensure the smooth flow of commercial transactions in the market-place. The family laws of the *Shari'ah* are likewise an embodiment largely of guidelines and measures that seek to make the family a safe refuge for all of its members. The *Shari'ah* also encourages pursuit of knowledge and education to ensure the intellectual well-being of the people and the advancement of arts and civilisation. The essential *masalih*, in other words, constitute an all-encompassing theme of the *Shari'ah* as all of its laws are in one way or another related to the protection of these benefits. These benefits are an embodiment, in the meantime, of the primary and overriding objectives of the *Shari'ah*.

The second class of the interests, known as *hajiyyat*, or complementary interests are defined as benefits which seek to remove severity and hardship that do not pose a threat to the very survival of normal order. A great deal of the concessions (*rukhas*) such as the shortening of *salah*, and opening of the fast for the sick and the traveller, which the *Shari'ah* has granted, are aimed at preventing hardship, but they are not essential since people can live without them if they had to. In almost all areas of obligatory *'ibadat* the *Shari'ah* has granted such concessions. In the sphere of *mu'amalat*, the *Shari'ah* validated certain contracts, such as the sale of *salam*, and also that of lease and hire (*ijarah*) because of the people's need for them notwithstanding a certain anomaly that is attendant in both. In the sphere of family law, once again the *Shari'ah* permits divorce in situations of necessity by way, that is, of a concession, which is aimed, in the final analysis, at ensuring the well-being of the family and defending it against intolerable conflict.

A *maslahah* of the second class is elevated to the rank of the essential *maslahah* when it concerns the public at large. To illustrate this, the validity of *ijarah* may be of secondary importance to an individual but it is an essential interest for the society at large. Similarly, certain concessions that are granted in the sphere of *'ibadat* may be secondary to the survival of an individual but become a matter of primary interest for the community as a whole. In the event of a conflict arising between the various classes of interest, the lesser of these may be sacrificed in order to protect a higher

interest. When there is a plurality of conflicting interests and none appears to be clearly preferable, then prevention of evil takes priority over the realisation of benefit.³ This is because the *Shari'ah* is more emphatic on the prevention of evil, as can be seen in the *hadith* where the Prophet (peace be on him) has reportedly said: "When I order you to do something, do it to the extent of your ability, but when I forbid you from something, then avoid it (altogether)".⁴

The third class of *masalih*, known as *tahsiniyyat*, are in the nature of desirables as they seek to attain refinement and perfection in the customs and conduct of people at all levels of achievement. The *Shari'ah* thus encourages cleanliness of body and attire for purposes of prayer and recommends, for instance, the wearing of perfume when attending the congregational Friday prayer; contrariwise, it discourages the consumption of raw garlic on that occasion. The *Shari'ah* also encourages charity to those in need beyond the level of obligatory taxes, and in *'ibadat*, it recommends supererogatory prayers, and so forth. In customary matters and relations among people, the *Shari'ah* encourages gentleness (*rifq*), pleasant speech and manner (*husn al-khulq*) and fair dealing (*ihsan*). The judge and the head of state are similarly counselled not to be too eager in the enforcement of penalties, such a course being considered a desirable one to take. The purpose of all this is the attainment of beauty and perfection in all areas of human conduct.

This last category of interests is perhaps of special importance as it is pervasive and relates to all other *masalih*. One can perform the obligatory *salah*, for example, in different ways, with or without proper concentration and giving each of its parts their due attention, or perform it in a hasty and thoughtless manner, and the difference between them is that the first is espoused with the attainment of both the essential and the desirable, and the second can at best be discharged as a duty. One can extend this analysis to almost every area of human conduct and the implementation of almost all of the *ahkam* of the *Shari'ah*. It should be obvious, then, that the classification of *masalih* need not be confined to the *ahkam* of the *Shari'ah* or to religious matters alone, as it is basically a rational construct that applies to customary, social, political, economic and cultural affairs and so forth. From this analysis, it also appears that classifying a certain interest and *maslahah* under one or the other of these categories is likely to be relative and involve value judgments that contemplate the attendant circumstances of each case.

Maqasid have been further classified into the general purposes (*al-maqasid al-ammah*) and particular goals (*al-maqasid al-khassah*). The general goals are those that characterise Islam and its *Shari'ah* and they are on the whole broad and comprehensive. Prevention of harm (*darar*) is a general goal of *Shari'ah* and applies to all areas and subjects. Particular goals are theme-specific and relate to specific

³ Cf. Yusuf al-Qaradawi, *al-Madkhal li Dirasat al-Shari'ah al-Islamiyyah* (Cairo: Maktabah Wahbah, 1411/1990), 70-71.

⁴ Al-Nasa'i, *Sunan*, Manasik, Wujub al-Hajj.

subjects. Examples of the particular goals are those that pertain to say family matters, financial transactions, labour relations, witnessing and adjudication and the like.

Another binary classification of the *maqasid* is their division into definitive goals (*al-maqasid al-qat'iyah*) and speculative purposes (*al-maqasid al-zanniyah*). The former goals are ones that are supported by clear evidence in the Qur'an and Sunnah, such as protection of property and honour of individuals, administration of justice, right to financial support among close relatives and the like. The speculative goals fall below that rank and may be the subject of disagreement. To say, for example, that even the smallest amount of wine drinking is just as forbidden and so intended by the Lawgiver as a larger amount is a doubtful position simply because it may not intoxicate, which is the effective cause of the prohibition at issue.

Al-Shatibi has also classified the *maqasid* into the aims and purposes of the Lawgiver (*maqasid al-shar'i*) and the human goals and purposes (*maqasid al-mukallaf*). To say that securing human welfare and benefit is God's illustrious purpose behind the laws of *Shari'ah* illustrates the former, whereas seeking employment, for example, in order to earn a living illustrates the latter class of *maqasid*.

Maqasid have also been classified into the primary objectives (*maqasid al-asliyyah*) and subsidiary goals (*al-maqasid al-tab'iyyah*). The former refers to the primary and normative goals that the Lawgiver, or a human agent, has originally intended and they constitute the basic purposes of the laws of *Shari'ah* in the evaluation of human acts and conduct. For example, the primary purpose of knowledge (*'ilm*) and education is to know God and the proper manner of worshipping Him and also to explore and understand His creation. Similarly the primary goal of marriage is procreation, and the primary purpose of attending lectures is to increase one's knowledge.

The secondary goals are those which complement and support the primary ones. The secondary purpose of marriage, for example, is friendship and sexual satisfaction. The secondary purposes of seeking knowledge can be obtaining academic qualification, personal accomplishment and refinement of one's speech and conduct.⁵

Maqasid that relate evidently to *daruriyyat* may be regarded as definitive (*qat'i*). Those which are identified by induction (*istiqra'*) from the clear injunctions (*nusus*) may also be added to this category. As for the *maqasid* that cannot be included in either of these two categories, they may still be seen as definitive if there be general consensus or clear legislation in their support. Additional *maqasid* that are identified outside this range may be classified as speculative (*zanni*) which may remain in that category unless they are elevated to the rank of definitive through consensus or legislation. In the event of a clash between these, the definitive *maqasid* will take

⁵ Al-Shatibi, *Muwafaqat*, IV, 179.

priority over the speculative. An order of priority is also suggested among the definitive *maqasid* in favour of those which preserve faith and life over the other three, and protection of the family comes next followed by intellect and property. A similar order of priority also applies between the essential *maqasid* which take priority over those which are deemed complementary and then those which fall under desirables.

Having said this, there still remains the residual question of how can arbitrariness be actually avoided in the identification of *maqasid*. For the *maqasid*, like the benefits (*masalih*) are open-ended and still in need of a more accurate methodology to ensure unwarranted indulgence through personal or partisan bias in their identification. This is a matter to a large extent of correct understanding and it would seem that collective *ijtihad* and consultation would be the best recourse to ensure accuracy in the identification of *maqasid*. It would certainly be reassuring to secure the advice and approval of a learned council as to the veracity of a *maqasid* that is identified for the purpose of policy making and legislation. This could be a standing parliamentary committee comprising expertise in *Shari'ah* and other disciplines and its task would be to verify, suggest and identify the more specific range of goals and purposes of *Shari'ah* and law in conjunction with legislation and government policy.

HISTORY OF MAQASID

As a theme of the *Shari'ah* in its own right, the *maqasid* did not receive much attention in the early stages of the development of Islamic legal thought and, as such, they represent rather a later addition to the juristic legacy of the *madhahib*. Even to this day many a reputable textbook on *Usul al-Fiqh* does not mention *maqasid al-Shari'ah* in their usual coverage of familiar topics. This is partly due perhaps to the nature of the subject, which is largely concerned with the philosophy of the law, its outlook and objective, rather than the specific formulations of its text. Although the *maqasid* as a distinctive theme of the *Shari'ah* are obviously relevant to *ijtihad*, they have not been treated as such in the conventional expositions of the theory of *ijtihad*.

Islamic legal thought is, broadly speaking, preoccupied with concerns over conformity to the letter of the divine text, and the legal theory of *Usul al-Fiqh* has advanced that purpose to a large extent. This literalist orientation of the juristic thought was generally more pronounced in the approach of the tendency of the traditionist —the Ahl al-Hadith — than that of the Rationalists — the Ahl al-Ra'y. The literalists thus tended to view the *Shari'ah* as a set of rules, commands and prohibitions that were addressed to the competent individual *mukallaf* and all that the latter was expected to do was to conform to its directives. The precedent of the leading Companions indicated, on the other hand, that they saw the *Shari'ah* both as a set of rules and a value system in which the specific rules were seen as tangible manifestations of the overriding values. The textualist tradition of the first three centuries did not take much interest in *maqasid al-Shari'ah* and it was not until the

time of al-Ghazali (d. 505/1111) and then al-Shatibi (d. 790/1388) that significant developments were made in the formulation of the theory of *maqasid*.

The basic outlook that was advocated by the theory of the *maqasid* was not denied by the leading schools, yet the *maqasid* remained on the fringes of the mainstream juristic thought that was manifested in the various themes and doctrines of *Usul al-Fiqh*. Except for the Zahiris who maintained that the *maqasid* are only known when they are identified and declared by the clear text, the majority of '*ulama*' did not confine the *maqasid* to the clear text alone. For they perceived and understood the *Shari'ah* to be rational, goal-oriented and its rules generally founded on identifiable causes. A mere conformity to rules that went against the purpose and outlook of the *Shari'ah* was, therefore, generally considered unacceptable. A totally different approach to the *maqasid* was taken by the *Batiniyyah* who held, contrary to the Zahiris, that the essence and objective of the *nusus* were always to be found, not in the explicit words of the text, but in its hidden meaning (i.e. *batin*), hence their name, the *Batiniyyah*.⁶ There were also differences of orientation among the leading *madhahib* toward the *maqasid*: some were more open to it than others, but elaboration into the goals and objectives of the *Shari'ah* was generally not encouraged. This rather unspoken attitude contrasted with the fact that the Qur'an itself exhibits considerable awareness of the underlying purposes and objectives of its laws and often expounds the causes and rationale on which they are founded. The general reticence of the '*ulama*' in respect of the identification of the *maqasid* might have partly been due to the elements of projection and prognostication that such an exercise was likely to involve. Who can tell, for sure, for example, that this or that is the purpose and overriding objective of the Lawgiver, without engaging in a degree of speculation, unless of course, the text itself declared it so. But then to confine the scope of the *maqasid* only to the clear declaration of the texts was also not enough, as I shall presently elaborate.

It was not until the early fourth century that the term '*maqasid*' was used in the juristic writings of Abu 'Abd Allah al-Tirmidhi al-Hakim (d. 320/932) and recurrent references to it appeared in the works of Imam al-Haramayn al-Juwayni (d. 478/1085) who was probably the first to classify the *maqasid al-Shari'ah* into the three categories of essential, complementary and desirable (*daruriyyat*, *hajiyyat*, *tahsiniyyat*) which has gained general acceptance ever since. Juwayni's ideas were then developed further by his pupil, Abu Hamid al-Ghazali who wrote at length on public interest (*maslahah*) and ratiocination (*ta'lil*) in his works, *Shifa' al-Ghalil* and *al-Mustasfa*. Ghazali was generally critical of *maslahah* as a proof but validated it if it promoted the *maqasid* of the *Shari'ah*. As for the *maqasid* themselves, Ghazali wrote categorically that the *Shari'ah* pursued five objectives, namely those of faith, life,

⁶ Cf. Ahimad al-Raysuni, *Nazariyyat al-Maqasid 'ind al-Imam al-Shatibi* (Rabat, Morocco: Matba'at al-Najahi al-Jadidah, 1411/1991), 149.

intellect, lineage and property which were to be protected as a matter of absolute priority.⁷

A number of prominent writers continued to contribute to the *maqasid*, not all of them consistently perhaps, yet important to the development of ideas. Sayf al-Din al-Amidi (d. 631/1233) identified the *maqasid* as criteria of preference *al-tarjih* among conflicting analogies and elaborated on an internal order of priorities among the various classes of *maqasid*. Amidi also confined the essential *maqasid* to only five. The Maliki jurist, Shihab al-Din al-Qarafi (d. 684/1285) added a sixth to the existing list, namely the protection of honour (*al-'ird*) and this was endorsed by Taj al-Din 'Abd al-Wahhab ibn al-Subki (d. 771/1370) and later by Muhammad ibn 'Ali al-Shawkani (d. 1250/1834). The list of five essential values was evidently based on a reading of the relevant parts of the Qur'an and the Sunnah on the prescribed penalties (*hudud*). The value that each of these penalties sought to vindicate and defend was consequently identified as an essential value. The latest addition (i.e. *al-'ird*) was initially thought to have been covered under lineage (*al-nasl*, also *al-nasab*), but the proponents of this addition relied on the fact that the Shari'ah had enacted a separate hadd punishment for slanderous accusation (*al-qadhif*), which justified the addition.⁸ 'Izz al-Din 'Abd al-Salam al-Sulami's (d. 660/1262) renowned work, *Qawa'id al-Ahkam*, was in his own characterisation a work on '*maqasid al-ahkam*' and addressed the various aspects of the *maqasid* especially in relationship to '*illah* (effective cause) and *maslahah* (public interest) in greater detail. Thus he wrote at the outset of his work that "the greatest of all the objectives of the Qur'an is to facilitate benefits (*masalih*) and the means that secure them and that the realisation of benefit also included the prevention of evil".⁹ Sulami added that all the obligations of the *Shari'ah* (*al-takalif*) were predicated on securing benefits for the people in this world and the next. For God Most High is Himself in no need of benefit nor is He in need of the obedience of His servants. He is above all this and cannot be harmed by the disobedience of transgressors, nor benefit from the obedience of the righteous. The *Shari'ah* is, in other words, concerned, from the beginning to the end, with the benefits of God's creatures.

Taqi al-Din ibn Taymiyyah (d. 728/1328) was probably the first scholar to depart from the notion of confining the *maqasid* to a specific number and added, to the existing list of the *maqasid*, such things as fulfilment of contracts, preservation of the ties of kinship, honouring the rights of one's neighbour, in so far as the affairs of this world are concerned, and the love of God, sincerity, trustworthiness, and moral purity, in relationship to the hereafter.¹⁰ Ibn Taymiyyah thus revised the scope of the

⁷ Abu Hamid Muhiammad al-Ghazali, *al-Mustasfa min 'Ilm al-Usul* (Cairo: al-Maktabah al-Tijariyyah, 1356/1937), 1: 287.

⁸ Qaradawi, *Madkhal*, 73.

⁹ 'Izz al-Din 'Abd al-Salam al-Sulami, *Qawa'id al-Ahkam fi Masalihi al-Anam*, ed., Taha 'Abd al-Ra'uf Sa'd (Cairo: al-Matba'ah al-Husayniyyah, 1351 AH), 1: 8.

¹⁰ Taqi al-Din ibn Taymiyyah, *Majmu' Fatawa Shaykh al-Islam Ibn Taymiyyah*, comp., 'Abd al-Rahiman ibn Qasim (Beirut: Mu'assasat al-Risalah, 1398 AH), 32: 134.

maqasid from a designated and specified list into an open-ended list of values, and his approach is now generally accepted by contemporary commentators, including Ahmad al-Raysuni, Yusuf al-Qaradawi and others.¹¹ Qaradawi has further extended the list of the *maqasid* to include social welfare and support (*al-takaful*), freedom, human dignity and human fraternity, among the higher objectives and *maqasid* of the *Shari'ah*.¹² These are undoubtedly upheld by both the detailed and the general weight of evidence in the Qur'an and the Sunnah.

I propose to add economic development and strengthening of R & D in technology and science to the structure of *maqasid* as they are crucially important in determining the standing of the *ummah* in the world community. It would appear from this analysis that the *maqasid al-Shari'ah* remain open to further enhancement which will depend, to some extent, on the priorities of every age.

IDENTIFICATION OF MAQASID

As already indicated the '*ulama*' have differed in their approach to the identification of the *maqasid*. The first approach to be noted is the textualist approach, which confines the identification of the *maqasid* to the clear text, commands and prohibitions, which are the carriers of the *maqasid*. The *maqasid*, according to this view, have no separate existence outside this framework. Provided that a command is explicit and normative it conveys the objective *maqasid* of the Lawgiver in the affirmative sense. Prohibitions are indicative of the *maqasid* in the negative sense in that the purpose of a prohibitive injunction is to suppress and avert the evil that the text in question has contemplated. This is generally accepted, but there are certain tendencies within this general framework. While the Zahiris tend to confine the *maqasid* to the obvious text, the majority of jurists takes into consideration both the text and the underlying '*illah*' and rationale of the text.¹³ The chief exponent of the *maqasid*, Shatibi, has spoken affirmatively of the need to observe and respect the explicit injunctions, but then he added that adherence to the obvious text should not be so rigid as to alienate the rationale and purpose of the text from its words and sentences. Rigidity of this kind, Shatibi added, was itself contrary to the objective (*maqsud*) of the Lawgiver, just as would be the case with regard to neglecting the clear text itself. When the text, whether a command or a prohibition, is read in conjunction with its objective and rationale, this is a firm approach, one which bears greater harmony with the intention of the Lawgiver.¹⁴ Shatibi elaborated that the *maqasid* that are known from a comprehensive reading of the text are of two types, primary (*asliyyah*) and secondary (*tab'iyyah*). The former are the essential *maqasid* or *daruriyyat* which the *mukallaf* must observe and protect regardless of personal predilections, whereas the

¹¹ Raysuni, *Nazariyyat al-Maqasid*, 44.

¹² Qaradawi, *Madkhal*, 75.

¹³ Abu Ishaq Ibrahim al-Shatibi, *al-Muwafaqat fi Usul al-Shari'ah*, ed., Shaykh 'Abd Allah Diraz (Cairo: al-Maktabah al-Tijariyyah al-Kubra, n.d.), 2: 393.

¹⁴ *Ibid.*, 3: 394.

supplementary *maqasid* — *hajjiyyat* — are those which leave the *mukallaf* with some flexibility and choice.

A comprehensive reading of the textual injunctions of the *Shari'ah* has given rise to such questions as to whether the means to a *wajib* or *haram* should also be seen as a part of the objective that is pursued by that injunction; whether the means to a command, in other words, is also an integral part of that command. Another question raised is whether avoiding the opposite of a command is integral to the goal and objective that is sought by that command. The general response given to these questions is that the supplementary aspects of commands and prohibitions are an integral part of their objectives, although disagreements have emerged over details. There is a general agreement that the opposite of a command amounts to a prohibition in the event where that opposite can be clearly identified. Most of the injunctions of the *Shari'ah* are easily understood, and their objectives as well as their opposites can be known and ascertained from the reading of the clear text. It is thus noted that whatever might be necessary for the carrying out of a command or a *wajib* is also a part of that *wajib*. Shatibi has similarly concluded that whatever is complementary to the *maqasid* and in the service thereof is also a part of the *maqasid*. The question then arises regarding the silence of the Lawgiver in respect of a certain conduct in situations especially where a general reading of the relevant evidence sheds light on the value of that conduct. The question may be put as follows: We know that the *maqasid* are known from clear injunctions, but can they also be known from a general reading of the *nusus* by way of induction? This is where Shatibi has given an original response, and this is what we take up next.

Induction (*istiqra'*) to Shatibi is one of the most important methods of identifying the *maqasid* of the *Shari'ah*. There may be various textual references to a subject, none of which may be in the nature of a decisive injunction. Yet their collective weight is such that it leaves little doubt as to the meaning that is obtained from them. A decisive conclusion may, in other words, be arrived at from a plurality of speculative expressions. Shatibi illustrates this by saying that nowhere in the Qur'an is there a specific declaration to the effect that the *Shari'ah* has been enacted for the benefit of the people. Yet this is a definitive conclusion, which is drawn from the collective reading of a variety of textual proclamations.¹⁵ Shatibi then adds that the benefits (*masalih*) are to be understood in their broadest sense, which is inclusive of all benefits pertaining to this world and the hereafter, those of the individual and the community, material, moral and spiritual, and those which pertain to the present as well as the interests of the future generations. This broad meaning of benefits also includes prevention and elimination of harm. These benefits cannot always be verified and ascertained by human reason alone without the aid and guidance of divine revelation.¹⁶

¹⁵ *Ibid.*, 2: 6; see also Ibn Qayyim al-Jawziyyah, *I'lam al-Muwaqqi'in 'an Rabb al-'Alamin*, ed., Muhammad Munir al-Dimashqi (Cairo: Idarat al-Tiba'ah al-Muniriyyah, n.d.), vol. 1, Qaradawi, *Madkhal*, 58.

¹⁶ Shatibi, *Muwafaqat*, 1: 243; Qaradawi, *Madkhal*, 64B65.

The typical classification of the *maqasid* into the three categories of essential, complementary and desirable, and the conclusion that the Lawgiver has intended to protect these are based, once again, on induction as there is no specific declaration on them in the textual sources. On a similar note, the ruling of the *Shari'ah* that the validity of an act of devotion (*ibadah*) cannot be established by means of *ijtihad* is an inductive conclusion, which is drawn from the detailed evidence on the subject, as there is no specific injunction in the sources to that effect. These conclusions are, in the meantime, of great overall importance; they are not open to doubt, nor is their credibility a matter of speculative reasoning.¹⁷ It is also the same inductive method which has led the '*ulama*' to the conclusion that the protection of the five values of faith, life, intellect, property and lineage is of primary importance to the *Shari'ah* — there being no textual ruling to specify any category or number of values in that order.

Shatibi's inductive method is not confined to the identification of objectives and values but also extends to commands and prohibitions, which may either be obtained from the clear text, or from a collective reading of a number of textual proclamations that may occur in a variety of contexts.¹⁸ Shatibi then goes a step further to say that the inductive conclusions and positions that are so established are the general premises and overriding objectives of the *Shari'ah* and thus have a higher order of importance than specific rules. It thus becomes evident that induction is the principal method of reasoning and proof to which Shatibi resorted in his theory of the *maqasid* and it is also in this regard that he has made an original contribution to this theme.

Shatibi's approach to induction is reminiscent of the knowledge that is acquired of the personality and character of an individual that is based on sustained association with that individual and observation of his conduct over a period of time. This kind of knowledge is broad and holistic, as it is enriched with insight, and likely to be more reliable when compared to the knowledge that might be based only on the observation of specific, isolated incidents in the daily activities of the individual concerned.

Methodological Issues

The relative strength or weakness of the various *maqasid* in relationship to one another is a subject on which the *maqasid* literature is still at its early stages of development. For the rulings of *Shariah* found in the Qur'an, Sunnah and juristic *ijtihad* are not always evaluated on the scale and order of the *maqasid*. The question, for instance, as to which are the original and normative purposes (*maqasid asliyyah*) as opposed to those that may be classified as subsidiary goals (*maqasid far'iyyah*) and even the distinction between the means and the ends as a *maqasid* can

¹⁷ Shatibi, *Muwafaqat*, 2: 49B51; *idem*, *al-l'tisam*, Makkah al-Mukarramah: al-Maktabah al-Tijariyyah, n.d.), 2: 131-35.

¹⁸ Shatibi, *Muwafaqat*, 3: 148.

sometimes become a means (*dhari'ah*) to another *maqсад*, prompted Ibn 'Ashur to saying that except for some occasional references made to them by 'Izz al-Din 'Abd al-Salam al-Sulami in his *Qawa'id al-Ahkam* and Shihab al-Din al-Qarafi in his *Kitab al-Furuq*, the subject has largely remained wanting of development.¹⁹ Early contributions to this subject are basically confined to one classification of themes into the renowned five or six headings of the essential goals (*daruriyyat*) whereas the other two categories of complementary (*hajiyyat*) and embellishments (*tahsiniyat*) are not thematically identified. This triple classification refers to the intrinsic merit and relative value of the *maqasid* involved. Questions may also arise as to where, for example, can personal freedom or equality be placed in this classification, or may be one could say that this triple classification is not a fitting placement for these subjects altogether, and that one may consider the binary classification of normative and subsidiary (*asliyya and far'iyyah*) to be a more suitable place for them. It is also possible, indeed likely, that equality and freedom could be placed under both necessary and normative *maqasid* (*daruri, asli*) and would as such stretch across categories. Supposing we have found suitable answers to these questions, then a range of other questions may arise as to the placement under one class or other of the sub-varieties of freedom such as freedom of religion, freedom of movement and freedom of expression. Protection of lineage and its purity is an essential goal (*daruri*) which would possibly suggest that permissibility of marriage, which is a means toward that goal, also partakes in the same, but could this evaluation be also extended to the rule that requires the presence of witnesses in a marriage contract, or indeed to the permissibility of divorce. Could we consider all of these under the complementary *maqasid* (*hajiyyat*) in the face, for example, of the renowned legal maxim that "a means to a *wajib* also partakes in that *wajib*!" or should one think of these under the class of subsidiary (*far'i*) purposes and place them in the *asliyya-far'iyyah* (original-subsidiary) category of *maqasid*. Are there any guidelines?

The intrinsic merit indicator has obviously been used in the renowned classification of *daruri-hajji-tahsini*, but there are other indicators that can also be used to help with identifying the correct order and placement of the various rules and goals of *Shari'ah* in the areas of commands and prohibitions, rights and duties and even some of the unregulated aspects of conduct under one or the other of the *maqasid* categories. These indicators may be summarised as follows:

- 1) The presence or absence of a text in the Qur'an and Hadith, the precedent of Companions and their general consensus (*ijma'*) provide important indicators on both the identification and relative appraisal of the *maqasid*. In the presence of a text, the clarity or otherwise of that text, whether definitive or speculative (*qat'i, zanni*), whether clear and self-explained (*muhkm, mufassar*) or ambiguous and obscure (*mujmal, mutashabih*)²⁰ and so forth would help determining the grade and class of the ruling in question and its possible

¹⁹ Ibn 'Ashur, *Maqasid al-Shariah*, 331.

²⁰ See for details on these. M H Kamali, *Principles*, Ch. 3 on Rules on Interpretation.

placement under a relevant class of *maqasid*.

- 2) Another indicator to help with the appraisal of *maqasid* is by reference to the benefit (*maslahah*) they realise or the mischief (*mafsida*) they are likely to prevent. They would involve a rational evaluation of the possible benefits and harms in the light of prevailing social conditions. One may need to ascertain whether the benefit in question is comprehensive and general (*kulli*) that concerns the largest number of people and relates to a vital aspect of life or whether it is a partial benefit (*juz'i*) that lacks those attributes. To promote justice is a general and a vital benefit, and so is consultation (*shura*) in governance, but certain varieties of transactions such as lump sum sale (*bay' al-juzat*) or even interest free loan (*qard hasan*) may not include the largest number nor the most vital interests of the people. Yet to ascertain the goal and purpose of *Shari'ah* in the validation of a *hukm*, the benefit it serves, or the mischief it prevents is not always known from the knowledge of the *hukm* itself but need to be verified through reflection, inquiry and *ijtihad*.²¹
- 3) In a similar vein, the existing *fiqh* literature and fatwa collections on the renowned scale of five values (*al-ahkam al-khamsa* – seven according to the Hanafi school) namely the obligatory, recommended, reprehensible, permissible and forbidden (the Hanafis add *Makruh Tahrimi* and *fard*) could help in the identification and relative appraisal of the *maqasid*. Additional information of interest can be found under the binary *fiqh* classification of transgressions into the major and minor sins (*al-kaba'ir wa'l-sagha'ir*) and indeed in the literature relating to the pillars and essentials of Islam, the *arkan al-khamsa*, that are grounded in the clear text. It will be noted that many of the foregoing categories consist essentially of ethical categories such as the recommended, the reprehensible, the minor sins and the like.
- 4) Another way of evaluating the *maqasid*, as already noted, is by reference to punishments the *Shari'ah* may have provided for a certain conduct that may vindicate a certain value and purpose. The prescribed penalties of *hudud* have naturally been used by the early writers on *maqasid* and what is just said is in line with that approach. But even among the *hudud* offences, there are some, such as slanderous accusation (*qadhaf*) and wine drinking (*shurb*) that carry lesser punishments. This would suggest that the values protected by them belong to the second order of *maqasid* (i.e. *hajiyyat*). With regard to *shurb*, one may add further that it is actually a *ta'zir* offence that calls for a discretionary punishment but has somehow been included in the *hudud* even though the Qur'an does not specify a punishment for it.²²
- 5) The *Shari'ah* rulings (*ahkam*) can also be evaluated and the *maqasid* they

²¹ cf. al-Najjar, "Taf'il al-maqasid."

²² cf. M. H. Kamali, *Punishment in Islamic Law*, 41-42.

pursue verified by reference to the strength or weakness of a promise of reward or a warning (*al-wa'd wa'l-wa'id*) that the text may contain. For a promise of reward may have an educational value, or if made in an emphatic language may well be suggestive of an essential *maqasid*, or one that may command a lower order of priority depending on the text which carries it and one's overall reading of the Qur'an and Hadith. For example, the Qur'an promises a great reward for being good to one's parents and there is an equally emphatic warning for those who annoy them. The Prophet has also severely warned against those who attribute deliberate lies to him. The immediate purpose in both of these is self evident and may accordingly be evaluated as essential goals under family and religion respectively. Compare these with the promise of reward for one who supports his wife and family above the basic essentials of life or one who provide food for animals and birds. The *maqasid* in the former is to promote family affection and loyalty, a complementary *maqasid* perhaps, and compassion to animals in the latter, which may fall under the category of *tahsiniyyat*.

The last objective, namely compassion to animals, tends to acquire a higher profile in some Hadith texts, one of which warns of a severe punishment for a woman who had reportedly starved her cat by tying her to a pole until she died, or a promise of great reward (of entry to paradise) for a man who had saved the life of a dog that was dying from thirst in the desert. There are numerous Hadith texts which promise a great reward for apparently small acts of merit pertaining to *ibadat*, such as recital of a certain verse at a certain time, or for so many times. The goal and purpose that such promises pursue are often detectable in the context. The weight attached to such acts is often symbolic; it is not the acts in question that should be focused on necessarily. Rather, it should be the principles they visualise, which may be mercy or compassion, or the merit attached to the remembrance of God. The expressions, which are in some cases figurative, are intended to make an impact or provide education and guidance. It has even been said that they may not necessarily invoke the reward and punishment in question.²³

It is understood from the foregoing examples that a goal and purpose of a lower order can take an unusually higher profile in stressful and life threatening situations, in which case, one would need to ascertain the immediacy of the *maqasid* in question within its surrounding circumstances, and say, for instance, in the matter of saving the life of a dying animal that the *tahsini* is elevated to the rank of *daruri*. This does not change our basic position, however, that clemency to animals generally fall under the category of *tahsiniyyat*.

²³ cf. al-Najjar. "Taf'il Maqasid," 26-27.

- 6) The value of a *hukm* and the goal pursued by it can also be ascertained by reference to repetition in the Qur'an and Hadith. References to justice, for example, compassion (*rahma*) and patience (*sabr*) are abundant in the text. The same can be said perhaps of charity beyond the obligatory *zakat*, which occurs frequently in the Qur'an and Hadith. One may add here the proviso, however, that repetition in the sphere of obligatory duties (*wajib* and *haram*) is relatively less important but it tends to play a greater role with regard to ethical values in reference to *mandub* and *makruh* (recommended and reprehensible). For when a *wajib* or a *haram* is conveyed in a clear and categorical text, further repetition may not necessarily add anything to it, although the Hanafis do take notice of this factor, namely of repletion, side by side with textual clarity, even with reference to *wajib* and *haram*. Thus they raise the *wajib* into an emphatic duty (*fard*) and *makruh* (reprehensible) to the level of *makruh hahrimi* (reprehensible closer to *haram*) as opposed to *makruh tanzih* (*makruh* for purity) which is closer to permissible or *mubah*.²⁴ Repetition then tends to play a relatively more important role in the context of ethics than it does with regard to clear legal injunctions.

MAQASID AND IJTIHAD

Having expounded his theory of the *maqasid*, Shatibi accentuated the knowledge of the *maqasid* as a prerequisite of attainment to the rank of a *mujtahid*. Those who neglect acquiring mastery of the *maqasid* do so to their own peril as it would make them liable to error in *ijtihad*. Included among these were the proponents of pernicious innovation (*ahl al-bid'ah*) who only looked at the apparent text of the Qur'an without pondering over its objective and meaning. These innovators (an allusion to the *Kharijites*) held on to the intricate segments of the Qur'an (*al-mutashabihat*) and premised their conclusions on them. They took a fragmented and atomistic approach to the reading of the Qur'an, which failed to tie up the relevant parts of the texts together. The leading '*ulama*' have, on the other hand, viewed the Shari'ah as a unity in which the detailed rules should be read in the light of their broader premises and objectives.²⁵ Tahir ibn 'Ashur, the author of another landmark work on the *maqasid*, *Maqasid al-Shari'ah al-Islamiyyah*, has also confirmed that knowledge of the *maqasid* is indispensable to *ijtihad* in all of its manifestations.²⁶ Some '*ulama*' who confined the scope of their *ijtihad* only to literal interpretations have found it possible, Ibn 'Ashur added, to project a personal opinion into the words of the text and fell into error as they were out of line with the general spirit and purpose of the surrounding evidence.²⁷ This may be illustrated by reference to the different views of the '*ulama*' on whether the *zakah* on commodities such as wheat

²⁴ See for details, Kamali, *Principles*, chapter on *hukm* Shari (law and value of *Shari'ah*).

²⁵ *Ibid.*, 4: 179.

²⁶ Muhiammad Tahir ibn 'Ashur, *Maqasid al-Shari'ah al-Islamiyyah* (Tunis: Matba'at al-Istiqamah, 1966), 15B16.

²⁷ *Ibid.*, 27.

and dates must be given in kind or whether it could also be given in their monetary equivalent. The Hanafis have validated giving of *zakah* in monetary equivalent but al-Shafi'i (d. 204/820) has held otherwise. The Hanafi view is founded on the analysis that the purpose of *zakah* is to satisfy the need of the poor and this can also be achieved by paying the monetary equivalent of a commodity. Ibn Qayyim al-Jawziyyah has likewise observed regarding (*sadaqat al-fitr*) that there are *ahadith* on the subject which refer sometimes to dates and at other times to raisins or food grains as these were the staple food of Madinah and its environs at the time. The common purpose in all of these was to satisfy the need of the poor rather than to confine its payment in a particular commodity.²⁸ To give another example, Malik (d. 179/795) was asked about a person who paid his *zakah* ahead of time, that is, prior to the expiry of one year, whether he was liable to pay it again at the end of the year. Malik replied that he was and drew an analogy with the ritual prayer (*salah*). If someone performs his prayer before its due time, he must perform it again in its proper time. Subsequent Maliki jurists, including Ibn al-'Arabi (d. 543/1148) and Ibn Rushd (d. 520/1126), have reversed this position and stated that early payment of *zakah* was permissible. There was, they added, a difference between *salah* and *zakah* in that the former was time-bound to specific times, but no such time had been stipulated for the payment of *zakah*. Hence *zakah* may be paid earlier especially if it is prepaid by only a few weeks or even longer.²⁹

Abu Hanifah (d. 150/767) has often been criticised by the *Ahl al-Hadith* for having departed on occasions from the wording of *ahadith* to an alternative ruling. But on closer examination it becomes clear that Abu Hanifah has done so only when he reached a different conclusion by reading a particular *hadith* in conjunction with other relevant evidence in the Qur'an and the Sunnah.

It will also be noted that on occasions *mujtahids* and judges have issued decisions in disputed matters, which were found upon further scrutiny to be in disharmony with the goals and objectives of the *Shari'ah*. Instances of this nature are also encountered with reference to contracts since a contract may duly have been signed and made binding on the parties and only then it was found to be unfair to one of the parties due to some unexpected change of circumstance. In that eventuality the judge and *mujtahid* can hardly ignore the subsequent changes and insist on the obligatoriness of the said contract on purely formal grounds. For a contract is no longer the governing law of contracting parties (*shari'at al-'aqidayn*) if it proves to be an instrument of injustice. Such a contract must be set aside and justice, which is the goal and *maqsud* of the Lawgiver, must be given priority over considerations of conformity to an untenable contract.³⁰ Without going into details, instances of conflict between the overriding objectives of the *Shari'ah* and a particular ruling thereof can

²⁸ Ibn Qayyim, *I'lam*, 3: 12; Raysuni, *Nazariyyat al-Maqasid*, 336.

²⁹ Cf. Raysuni, *Nazariyyah*, 338-39.

³⁰ Cf. Wahbah al-Zuhayli, *al-Fiqh al-Islami wa Adillatuh*, 3rd ed. (Damascus: Dar al-Fikr, 1409/1989), 4: 32. See for detailed illustrations of this type of *Istihsan*, Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge: The Islamic Texts Society, 1991), 225 ff.

also arise with reference to the rulings of analogy (*qiyas*). A rigid adherence to *qiyas* in certain cases may lead to unsatisfactory results, hence a recourse may be had to *istihsan* in order to obtain an alternative ruling that is in harmony with the objectives of the *Shari'ah*.³¹

Another feature of the *maqasid* which is important to *ijtihad* is the attention a *mujtahid* must pay to the end result and consequence of his ruling. For a *fatwa* or *ijtihad* would be deficient if it fails to contemplate its own consequences (*ma'alat*). We note in the Sunnah of the Prophet (peace be on him) instances where the Prophet paid attention to the consequence of his ruling often in preference to other considerations. There were cases, for instance, where the Prophet (peace be on him) knew about the subversive activities of the hypocrites but he did not pursue them for reasons, as he stated himself, that "I fear people might say that Muhammad kills his own Companions".³² The Prophet (peace be on him) also avoided changing the location of the Ka'bah to its original foundations where the patriarch Prophet, Ibrahim, had laid them. The pre-Islamic Arabs of Makkah had evidently changed that location, and when 'A'ishah suggested to the Prophet (peace be on him) that he could perhaps restore the Ka'bah to its original position, he responded: "I would have done so if I didn't fear that this may induce our people into disbelief".³³ In both of these cases, the Prophet (peace be on him) did not take what would be thought to be the normal course, that is, to kill the hypocrites, and to restore the Ka'bah to its original foundations because of the adverse consequences that were feared as a result of so doing.

The normal course in the context of crimes and penalties is, of course, to apply the punishment whenever the cause and occasion for it are present. There may be cases, however, where pardoning the offender appears a preferable course to take, and it is for the judge and *mujtahid* to pay attention to them, and then reflect them in his judgment. Shatibi has in this connection drawn a subtle distinction between the normal '*illah*' that invokes a particular ruling in a given case and what he terms as verification of the particular '*illah*' (*tahqiq al-manat al-khass*) in the issuance of judgment and *ijtihad*. The scholar (*mujtahid*) may be investigating the normal '*illah*' and identify it in the case, for example, of a poor person who qualifies to be a recipient of *zakah*, and also with references to the uprightness of a witness, but such an enquiry may take a different course when it is related to a particular individual as to what might seem appropriate or inappropriate to be applied in that particular case. The *mujtahid* needs, therefore, to be learned not only of the law and specific evidence but must also have acumen and insight to render judgment that is enlightened by both the overall consequences and special circumstances of each case.³⁴

³¹ See for details the chapter on *Istihsan*, *Ibid*.

³² Al-Bukhari, *Sahih*, *Kitab al-Manaqib*, *Bab Ma Yunha min Da'wa 'l-Jahiliyyah*.

³³ Malik ibn Anas, *al-Muwatta'*, *Kitab al-Hajj*, *Bab Ma Ja' fi Bina' al-Ka'bah*; Raysuni, *Nazariyyah*, 354.

³⁴ Shatibi, *Muwafaqat*, 4: 97.

CONCLUSION

The *Maqasid* are undoubtedly rooted in the textual injunctions of the Qur'an and the Sunnah, but they look mainly at the general philosophy and objectives of these injunctions often beyond the specialities of the text. The focus is not so much on the words and sentences of the text as on the goal and purpose that is advocated and upheld. By comparison to the legal theory of the sources, the *Usul al-Fiqh*, the *maqasid al-Shari'ah* are not burdened with methodological technicality and literalist reading of the text. As such the *maqasid* integrates a degree of versatility and comprehension into the reading of the *Shari'ah* that is, in many ways, unique and rises above the vicissitudes of time and circumstance. At a time when some of the important doctrines of *Usul al-Fiqh* such as general consensus (*ijma'*), analogical reasoning (*qiyas*) and even *ijtihad* seem to be burdened with difficult conditions, conditions that might stand in a measure of disharmony with the prevailing socio-political climate of the present-day Muslim countries, the *maqasid* have become the focus of attention as it tends to provide a ready and convenient access to the *Shari'ah*. It is naturally meaningful to understand the broad outlines of the objectives of the *Shari'ah* in the first place before one tries to move on to the specifics. An adequate knowledge of the *maqasid* thus equips the student of the *Shari'ah* with insight and provides him with a theoretical framework in which the attempt to acquire detailed knowledge of its various doctrines can become more interesting and meaningful.