MAQĀSID AL-SHARĪ‘AH: THE OBJECTIVES OF ISLAMIC LAW

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INTRODUCTION

This essay is presented in five sections beginning with a general characterisation of the maqāsid al-Shari‘ah and its origins in the Qur‘ān. The next section addresses the classification of the maqāsid and a certain order of priority that is integrated into the structure of the maqāsid. Section three is devoted to historical developments and the contributions of some of the leading ‘ulamā’, especially that of Abū Ishāq Ibrāhīm al-Shāṭibi, to the theory of the maqāsid. Section four looks into the differential approaches the ‘ulamā’ have taken toward the identification of the maqāsid. The last section highlights the relevance of the maqāsid to ijtiḥād and the ways in which the maqāsid can enhance the scope and calibre of ijtiḥād.

TEXTUAL ORIGINS

Maqāsid 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‘ān 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‘ān’s

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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'ân and the Sunnah that seek to establish justice, eliminate prejudice, and alleviate hardship. The laws of the Qur'ân 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 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 taqwâ and becomes an agent of benefit to others.¹

The Qur'ân 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'âmalât) as well as devotional matters ('ibadat). Thus when the text expounds the rituals of wudu' (ablution for prayer) it follows 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 jihâd the Qur'ân similarly proclaims its purpose in such term that "permission is granted to those who fight because they have been wronged" (22: 39). The purpose, in other words, of legalising jihâd 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 ablation before prayer. With reference to the law of just retaliation (qisâs), the
text similarly declares that "in qisâs there is life for you, o people of understanding" (2: 179); and with regard to poor-due (zakâh), the Qur’ânic 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 law which show how the Qur’ânic 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‘âmalât, the Qur’ân forbids exploitation, usury, boarding 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 āhkâm is realisation of benefit (maslahah) which is regarded as the summa of the maqâsid. For justice is also a maqâsid and so is tâhâb al-fard. The masâlih (pl. of maslahah), thus become another name for the maqâsid and the ‘ulamâ’ have used the two terms almost interchangeably.

CLASSIFICATION OF BENEFITS

The ‘ulamâ’ have classified the entire range of masâlih-cum-maqâsid into three categories in a descending order of importance, beginning with the essential masâlih, or darûriyyât, followed by the complementary benefits, or hâjiyyât, and then the embellishments tahsiniyyât. 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 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. Jihâd has thus been validated in order to protect religion, and so is just retaliation (qisâs) 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 masâlih, 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 hâjiyyât, or complementary interests, are not an independent category as they also seek to protect and promote the essential interests, albeit in a secondary capacity. These 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 salâh, 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 'ibâdât the Shari'ah has granted such concessions. Similarly, in the area of criminal law, the hadîth which proclaims that "prescribed penalties are suspended in all cases of doubt" protects a secondary interest in that it regulates the manner in which punishments are enforced. These punishments are in turn designed to protect the essential interests through judicial action. In the sphere of mu'amalât, the Shari'ah validated certain contracts, such as the sale of salam, and also that of lease and hire (ijârah) 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 ijârah 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 'ibâdât may be secondary to the survival of an individual but it becomes 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. 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)."

The third class of masālih, known as tahsinyyāt, are in the nature of desirabilities 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 'ibādāt, 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 (iḥsān). 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 masālih. One can perform the obligatory salāh, 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 aḥkām of the Shari'ah. It should be obvious, then, that the classification of masālih need not be confined to the aḥkām 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. To build the first hospital in a town is likely to be necessary and essential, but to build a second and third may be only complementary and desirable. And then to equip each one with the latest and most efficient health care facilities may fall under the category either of the second or the third classes of interests, depending, of course, on the general conditions of each locality. 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 judgment that contemplate the attendant circumstances of each case.

HISTORY IN BRIEF

As a theme of the Shari'ah in its own right, the maqāsid 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 madhāhib. Even to this day many a reputable textbook on Usūl al-Fiqh does not mention maqāsid 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 maqāsid as a distinctive theme of the Shari’ah are obviously relevant to ijtihād, they have not been treated as such in the conventional expositions of the theory of ijtihād.

Islamic legal thought is, broadly speaking, preoccupied with concerns over conformity to the letter of the divine text, and the legal theory of Usūl 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 — the traditionist — the Ahl al-Hadīth — 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 mukallāf and all that the latter was expected 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 maqāsid al-Shari’ah and it was not until the time of al-Ghazālī (d. 505/1111) and then al-Shātibī (d. 790/1388) that significant developments were made in the formulation of the theory of maqāsid.

The basic outlook that was advocated by the theory of the maqāsid was not denied by the leading schools, yet the maqāsid remained on the fringes of the mainstream juristic thought that was manifested in the various themes and doctrines of Usūl al-Fiqh. Except for the Zāhirīs who maintained that the maqāsid are only known when they are identified and declared by the clear text, the majority of ‘ulama‘ did not confine the maqāsid 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 *maqāsid* was taken by the Bāṭiniyyah who held, contrary to the Zāhirīs, that the essence and objective of the *nusūs* were always to be found, not in the explicit words of the text, but in its hidden meaning (i.e. *bātin*), hence their name, the Bāṭiniyyah. There were also differences of orientation among the leading *madhāhib* toward the *maqāsid*: 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‘ān 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 *maqāsid* 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 *maqāsid* 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 ‘*maqāsid*’ was used in the juristic writings of Abū ‘Abd Allāh al-Tirmidhī al-Hakīm (d. 320/932) and recurrent references to it appeared in the works of Imām al-Haramayn al-Juwaynī (d. 478/1085) who was probably the first to classify the *maqāsid* al-*Shari‘ah* into the three categories of essential, complementary and desirable (darūriyyat, hājiyyat, tahsiniyyat) which has gained general acceptance ever since. Juwaynī’s ideas were then developed further by his pupil, Abū Hamīd al-Ghazālī who wrote at length on public interest (maslahah) and ratiocination (ta‘lil) in his works, *Shifā‘ al-Ghashīl* and *al-Mustasfā*. Ghazālī was generally critical of maslahah as a proof but validated it if it promoted the *maqāsid* of the *Shari‘ah*. As for the *maqāsid* themselves, Ghazālī wrote categorically that the *Shari‘ah* pursued five objectives, namely those of faith, life, intellect, lineage and property which were to be protected as a matter of absolute priority.

A number of prominent writers continued to contribute to the *maqāsid*, not all of them consistently perhaps, yet important to the development of ideas. Sayf al-Dīn al-Āmidī (d. 631/1233) identified the *maqāsid* as criteria of preference al-*tarjiḥ* among conflicting analogies and elaborated on an internal order of priorities among the various classes of *maqāsid*. Āmidī also confined the essential *maqāsid* to only five. The Mālikī jurist, Shihāb al-Dīn al-Qarāfī (d. 684/1285) added a
sixth to the existing list, namely the protection of honour (al-‘ird) and this was endorsed by Tāj al-Dīn ʿAbd al-Wahhab ibn al-Subki (d. 771/1370) and later by Muhammad ibn ʿAli al-Shawkānī (d. 1250/1834). The list of five essential values was evidently based on a reading of the relevant parts of the Qur’ān and the Sunnah on the prescribed penalties (huḍūd). 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-nast, 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-qadhf), which justified the addition.7 ʿĪz al-Dīn ʿAbd al-Salām al-Sulamī’s (d. 660/1262) renowned work, Qawā'id al-Ahkām, was in his own characterisation a work on ‘maqāsid al-aḥkām’ and addressed the various aspects of the maqāsid especially in relationship to ‘illah (effective cause) and maṣlahah (public interest) in greater detail. Thus he wrote at the outset of his work that “the greatest of all the objectives of the Qur’ān is to facilitate benefits (masālīḥ) and the means that secure them and that the realisation of benefit also included the prevention of evil”.8 Sulamī added that all the obligations of the Shari‘ah (al-takāḥl) 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.

Taqī al-Dīn ibn Taymiyyah (d. 728/1328) was probably the first scholar to depart from the notion of confining the maqāsid to a specific number and added, to the existing list of the maqāsid, 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.9 Ibn Taymiyyah thus revised the scope of the maqāsid 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-Raysūnī, Yūsuf al-Qarādāwī and others.10 Qarādāwī has further extended the list of the maqāsid to include social welfare and support (al-takāfūl), freedom, human dignity and human fraternity, among the higher objectives and maqāsid of the Shari‘ah.11 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 maqāsid as they are crucially important in determining the standing of the ummah in the world community. It would appear from this analysis that the maqāsid al-Shari‘ah remain open to further enhancement which will depend, to some extent, on the priorities of every age.

IDENTIFICATION OF MAQĀSID

As already indicated the ‘ulamā’ have differed in their approach to the identification of the maqāsid. The first approach to be noted is the textualist approach, which confines the identification of the maqāsid to the clear text, commands and prohibitions, which are the carriers of the maqāsid. The maqāsid, according to this view, have no separate existence outside this framework. Provided that a command is explicit and normative it conveys the objective maqsūd of the Lawgiver in the affirmative sense. Prohibitions are indicative of the maqāsid 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 Zāhirīs tend to confine the maqāsid to the obvious text, the majority of jurists takes into consideration both the text and the underlying ‘illah and rationale of the text. The chief exponent of the maqāsid, Shāṭibī, 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, Shāṭibī added, was itself contrary to the objective (maqṣūd) 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.

Shāṭibī elaborated that the maqṣūd that are known from a comprehensive reading of the text are of two types, primary (asliyyah) and secondary (tabiyyah). The former are the essential maqṣūd or daruriyyat which the mukallaf must observe and protect regardless of personal predilections, whereas the supplementary maqṣūd — hājiyyat — 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 wājib or
harām 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 wājib is also a part of that wājib. Shātibī has similarly concluded that whatever is complementary to the maqāsid and in the service thereof is also a part of the maqāsid. 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 maqāsid are known from clear injunctions, but can they also be known from a general reading of the nusūs by way of induction? This is where Shātibī has given an original response, and this is what we take up next.

Induction (istiqrāʾ) to Shātibī is one of the most important methods of identifying the maqāsid 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. Shātibī illustrates this by saying that nowhere in the Qur'ān 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.14 Shātibī then adds that the benefits (masāliḥ) 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.15
The typical classification of the *maqāsid* 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 (‘ibādah) cannot be established by means of *ijtihād* 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. It is also the same inductive method which has led the ‘ulamā’ 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.

Shāṭibi’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. Shāṭibi 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 Shāṭibi resorted in his theory of the *maqāsid* and it is also in this regard that he has made an original contribution to this theme.

Shāṭibi’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.

**MAQĀSID AND IJTIHĀD**

Having expounded his theory of the *maqāsid*, Shāṭibi accentuated the knowledge of the *maqāsid* as a prerequisite of attainment to the rank of a mujtahid. Those who neglect acquiring mastery of the *maqāsid* do so to their own peril as it would make them liable to error in *ijtihād*. Included among these were the proponents of pernicious innovation (ahl
al-bid'ah) who only looked at the apparent text of the Qurʾān without pondering over its objective and meaning. These innovators (an allusion to the Khaṭṭāt) held on to the intricate segments of the Qurʾān (al-mutashabihat) and premised their conclusions on them. They took a fragmented and atomistic approach to the reading of the Qurʾān which failed to tie up the relevant parts of the texts together. The leading ‘ulamā’ have, on the other hand, viewed the Shariʿah as a unity in which the detailed rules should be read in the light of their broader premises and objectives. Tāhir ibn ʿAshūr, the author of another landmark work on the maqāsid, Maqāsid al-Shariʿah al-Islāmiyyah, has also confirmed that knowledge of the maqāsid is indispensable to ijtihād in all of its manifestations. Some ‘ulamā’ who confined the scope of their ijtihād only to literal interpretations have found it possible, Ibn ʿAshūr 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. This may be illustrated by reference to the different views of the ‘ulamā’ on whether the zakāh on commodities such as wheat and dates must be given in kind or could it also be given in their monetary equivalent. The Hanafīs have validated giving of zakāh in monetary equivalent but al-Shāfiʿi (d. 204/820) has held otherwise. The Hanafi view is founded on the analysis that the purpose of zakāh 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 ahādith on the subject which refer sometimes to dates and at other times to raisins or foodgrains as these were the staple food of Madīnah 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. To give another example, Mālik (d. 179/795) was asked about a person who paid his zakāh 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. Mālik replied that he was and drew an analogy with the ritual prayer (salāh). If someone performs his prayer before its due time, he must perform it again in its proper time. Subsequent Mālikī jurists, including Ibn al-ʿArabī (d. 543/1148) and Ibn Rushd (d. 520/1126), have reversed this position and stated that early payment of zakāh was permissible. There was, they added, a difference between salāh and zakāh in that the former was time-bound to specific times, but no such time had been stipulated for the payment of zakāh. Hence zakāh may be paid earlier especially if it is prepaid by only a few weeks or even longer.
Abū Ḥanīfah (d. 150/767) has often been criticised by the Ahl al-Hadith for having departed on occasions from the wording of ahâdîth to an alternative ruling. But on closer examination it becomes clear that Abū Hanîfah has done so only when he reached a different conclusion by reading a particular hadîth in conjunction with other relevant evidence in the Qur’ân 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-‘aqidazyn) if it proves to be an instrument of injustice. Such a contract must be set aside and justice, which is the goal and maqûsûd of the Lawgiver, must be given priority over considerations of conformity to an untenable contract. Without going into details, instances of conflict between the overriding objectives of the Shari‘ah and a particular ruling thereof can also arise with reference to the rulings of analogy (qiyyâs). A rigid adherence to qiyyâs in certain cases may lead to unsatisfactory results, hence a recourse may be had to istihsân in order to obtain an alternative ruling that is in harmony with the objectives of the Shari‘ah.

Another feature of the maqûsûd which is important to ijîthâd is the attention a mujtahid must pay to the end result and consequence of his ruling. For a fauzâ or ijîthâd would be deficient if it fails to contemplate its own consequences (ma‘alât). 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 Muḥammad kills his own Companions". The Prophet (peace be on him) also avoided to change the location of the Ka‘bah to its original foundations where the patriarch Prophet, Ibrâhîm, 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”.

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 is 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. Shāfi‘i 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 (taḥqīq al-manda‘ al-khāṣṣ) in the issuance of judgment and ijtihād. 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 zakāh, 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.

CONCLUSION

The Maqāṣid are undoubtedly rooted in the textual injunctions of the Qur‘ān 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 Usūl al-Fiqh, the maqāṣid al-Shari‘ah are not burdened with methodological technicality and literalist reading of the text. As such the maqāṣid 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 Usūl al-Fiqh such as general consensus (ijmā‘), analogical reasoning (qiyyās) and even ijtihād 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 maqāṣid have become the focus of attention as it tends to provide a ready and convenient access to the
Sharī'ah. It is naturally meaningful to understand the broad outlines of the objectives of the Sharī'ah in the first place before one tries to move on to the specifics. An adequate knowledge of the maqāsid thus equips the student of the Sharī'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.

4Al-Naṣīrī, Sunan, Marāsik, Wuḥūd al-Hajj.
7Qaradāwī, Maddākhal, 73.
10Rayṣūnī, Nazariyyat al-Maqāsid, 44.
11Qaradāwī, Maddākhal, 75.
13Ibid., 3: 394.
15Shāhīdī, Muwafaqāt, 1: 243; Qaradāwī, Maddākhal, 64–65.
17Shāhīdī, Muwafaqāt, 3: 148.
18Ibid., 4: 179.
20Ibid., 27.
21Ibn Qayyim, Ilām, 3: 12; Rayṣūnī, Nazariyyat al-Maqāsid, 336.
See for details the chapter on Īṣṭihān, Ibid.
Al-Bukhārī, Sahīh, Kitāb al-Manāqib, Bāb Mā Yūnhā min Da‘wa ‘l-Jāhiliyyah.
Shāfi‘ī, Muwafaqāt, 4: 97.

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