

**Research in Maqasid Al-Shariah:
Survey, Analysis and Bibliography**

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A Report for IIIT

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Introduction

Maqāṣid al-Shariah are the objectives/purposes/intents/ends/principles behind the Islamic rulings,¹ which found expression in the Islamic philosophy, theory, and fundamentals of law in various ways, such as public interests (*al-maṣāliḥ al-āmmah*),² ‘unrestricted interests’ (*al-maṣāliḥ al-mursalah*),³ the avoidance of mischief (*mafsadah*),⁴ the wisdom behind the scripts (*al-ḥikmah*),⁵ the appropriateness of the juridical analogy (*munāsabat al-qiyas*),⁶ the basis behind juridical preference (*asl al-istiḥsān*)⁷, the basis behind the presumption of continuity principle (*asl al-istiṣḥāb*),⁸ and a number of other traditional juridical terminology.

Recently, a large number of researchers from various backgrounds attempted to explore both the theory and application of *Maqāṣid al-Shariah* in various fields of knowledge that not only traditionally belong to the Islamic jurisprudence but also fields that traditionally belong to modern social sciences and humanities as well.⁹

This report aims at analysing the various trends of the current research on maqasid al-shariah and outlining the contributions of the main figures, past and present, who have had the most impact,

¹ Ibn Ashur, 1997, p. 183

² Al-Juwaini, 1400 AH, p. 180

³ Al-Ghazaly, 1413 AH, Vol. 1, p. 172

⁴ Al-Qarafi, 1994, Vol. 5, p. 478

⁵ Al-Amidi, 1404 AH, Vol. 5, p. 391

⁶ Ibn Qudama, 1399 AH, Vol. 3, p. 42

⁷ Al-Sarakhsi, n.d., Vol. 9, p. 205

⁸ Ibn Abdul-Salam, n.d., Vol. 1, p. 23

⁹ Imam, 2010, p. 20-25

and the recent studies that analysed their impact. The report also highlights trends in applied research in new areas of applications of maqasid, envisions future trends, and offers a comprehensive bibliography (ordered alphabetically and referred to throughout the report) and a glossary of terms.

Research on maqasid in the Companions' *Ijtihād*

In the areas of fiqh, usul (fundamental juridical theory) and Islamic thought in general, almost every research article starts with a historical account of some ideas and terminologies of maqasid.¹⁰ The history of the maqasid ideas goes back to a few hadith narrations that directly discuss the idea of intent or purpose, as well as the practices of the companions of the Prophet (p), especially the executive decisions taken by Omar Ibn Al-Khattab, the second Caliph.

One popular example from the time of the Prophet (p) is the Hadith of Bani Quraizah, and ordered them to pray their afternoon (*aṣr*) prayer there.¹¹ The span of time allowed for *aṣr* prayers had almost expired before the group reached Bani Quraizah. Thus, they found themselves divided into supporters of two different opinions, one opinion entailed praying at Bani Quraizah's anyway and the other opinion entailed praying on the way.

The rationale behind the first opinion was that the Prophet's (p) instruction was clear in asking everybody to pray at Bani Quraizah, while the rationale of the second opinion was that the Prophet's (p) 'purpose/intent' of the order was to ask the group to hasten to Bani Quraizah, rather than 'meaning/intending to' postpone prayers until after its due time. According to the narrator,

¹⁰ Examples: Al-Alwani, 2001, Al-Ghazaly, M., 1996, Al-Qaradawi, 1999, Atiyah, 2001, Auda, 2008, Biltaji, 2002, El-Awa, 2006, Ibn Ashur, 1997, Imam, 2010, Jughaim, 2002, Raissouni, 1992, Masud, 1977, Shabana, 2006.

¹¹ Al-Bukhari, vol.1, p. 321, Muslim, vol. 3, p. 1391.

when the companions later narrated the story to the Prophet (p), he approved both opinions.¹²

The approval of the Prophet (p), as jurists and Imams said, entails the permissibility and correctness of both views. The only prime jurist who disagreed with the companions who prayed on the way was Ibn Hazm al-Zahiri (the literalist), who wrote that they should have prayed the ‘afternoon prayer’ after they reach Bani Quraizah, as the Prophet (p) had said, even after midnight!¹³

Another incident, which shows a more serious consequence of taking a ‘purpose-oriented’ approach to the Prophetic instructions occurred during the days of Omar, the second caliph. The status of Omar in Islam and his continuous and wide-ranging consultation of a large number of companions, make his opinions of special significance. In this incident, the companions asked Omar to distribute the newly-‘conquered’ lands of Egypt and Iraq amongst them as some sort of ‘spoils of war.’ Their argument relied on the clear and specific verses of the Quran that allowed fighters their ‘spoils of war.’¹⁴ Omar refused to divide whole cities and provinces over the companions by referring to other verses, with more general expressions, stating that God has a ‘purpose’ of ‘not making the rich dominate wealth.’¹⁵ Therefore, Omar (and the companions who supported his opinion) understood the specifics of the verses of ‘spoils of war’ within the context of a certain purpose (*maqṣid*) of the law. This purpose was, ‘diminishing the difference between economic levels,’ to use familiar contemporary terms.

The significance of Omar’s *ijtihād* is that it could, traditionally, be considered as a ‘collective

¹² Narrated by Abdullah Ibn Omar, according to al-Bukhari, vol. 1, p. 321, and Muslim. Vol. 3, p.1391.

¹³ Ali Ibn Hazm, vol.3, p. 291.

¹⁴ Abu Yusuf, *Al-Kharaj*, 1303 H, p. 14, 81, Yahya Ibn Adam, *Al-Kharaj*, 1974) p. 110.

¹⁵ Quran, Surat al-Hashr, 59:7. I preferred ‘domination of wealth’ to express ‘*dūlatan bayn al-aghniyā minkom*,’ rather than ‘a circuit between the wealthy’ (as in Yusuf Ali’s translation) or ‘commodity between the rich’ (as in Picktall’s translation).

ijtihād’ carried out by (a large number of) the companions. This *ijtihād* has its significance in *fiqh*, regardless of the ‘authority’ of a companion’s opinion, which is a matter of difference of opinion within traditional schools of the law.

Another telling example is Omar’s application of a moratorium on the (Islamic) punishment for theft during the famine of Medina.¹⁶ He thought that applying the punishment prescribed in the scripts, while people are in need of basic supplies for their survival, goes against the general principle of justice, which he considered more fundamental.

A third example from Omar’s *fiqh* (application of the law) is when he did not apply the ‘apparent meaning’ of the hadith that clearly gives a soldier the right to the spoils of war from opponents.¹⁷ He decided to give soldiers only one-fifth of these spoils, if they were ‘significantly valuable,’ with a purpose to achieve fairness amongst soldiers and enrich the public trust.

A fourth example is Omar’s decision to include horses in the types of wealth included in the obligatory charity of *zakāh*, despite the Prophet’s (p) clear instruction to exclude them. Omar’s rationale was that horses at his time were becoming significantly more valuable than camels, which the Prophet included in *zakāh* at his time.¹⁸ In other words, Omar understood the ‘purpose’ of the *zakāh* in terms of a form of social assistance that is paid by the wealthy for the sake of the poor, regardless of the exact types of wealth that were mentioned in the Prophetic tradition and understood via its literal implication.¹⁹

All known schools of law, except for the Hanafis, are against such expansion of ‘the pool of

¹⁶ Biltaji, 2002, p. 190.

¹⁷ Ibn Rushd, n.d., vol. 1, p. 291.

¹⁸ al-Siwasi, *Sharh Fath Al-Qadir*, vol. 2, p. 192, Ibn Abdul-Barr, *Al-Tamheed*, 1387 AH, vol.4, p. 216.

¹⁹ Al-Qaradawi, 1985, vol. 1, p. 229.

charity' (*wiḍāʿ al-zakāh*), which illustrates how literalism had a strong influence on traditional juridical methods. Ibn Hazm, again, asserted that, 'there is no *zakāh* on anything except eight types of wealth, which are mentioned in the *sunnah*, namely, gold, silver, wheat, barley, dates, camels, cows, sheep and goats. There is no *zakāh* on horses, commercial goods, or any other type of wealth.'²⁰ It is clear how such opinion hinders the institution of *zakāh* from achieving any meaningful sense of justice or social welfare.

Based on a 'methodology that considers the wisdoms behind the rulings,' Qaradawi rejected classic opinions on the above matter in his very detailed study on *zakāh*. He wrote: '*Zakāh* is due on every growing wealth ... The purpose of *zakāh* is to help the poor and to serve the public good. It is unlikely that The Legislator aimed to put this burden on owners of five or more camels (as Ibn Hazm had said), and release businessmen who earn in one day what a shepherd earns in years ...'²¹

However, Omar did not take this purpose-oriented approach to all rulings of the Islamic law. Bukhari narrates that Omar was asked: 'Why do we still jog around the *ka'bah* with our shoulders uncovered even after Islam had prevailed in Mecca?' The story behind the question is that after the 'conquest of Mecca,' the people of Mecca claimed the Prophet (p) and his companions lost their health during their prolonged stay in Medina. The Prophet (p), therefore, ordered the companions to jog around the *ka'bah* with their shoulders uncovered in a show of strength. Omar, however, did not take a purpose-oriented approach to this question. He answered: 'We do not cease doing anything we used to do at the Prophet's time.'²² Omar, thus,

²⁰ Opinion strongly expressed in: Ali Ibn Hazm, *Al-Muhalla*, ed. Lajnat Ihiya' al-Turath al-Arabi, 1st ed. (Beirut: Dar al-Afaq, without date) almuḥalla p. 209.

²¹ al-Qaradawi, 1985, vol.1, p. 146-148.

²² al-Bukhari, *Al-Sahih*, Kitab al-Hajj, Bab al-Raml.

made a distinction between ‘acts of worship’ (*ibādāt*) and ‘worldly transactions’ (*muʿāmalāt*), a distinction that was later endorsed by all schools of *uṣūl al-fiqh*. Shatibi, for example, expressed this distinction when he wrote: ‘Literal compliance is the default methodology in the area of acts of worship (*ibādāt*), while the consideration of purposes is the default methodology in the area of worldly dealings (*muʿāmalāt*).’²³

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

Nevertheless, the (neo-)traditionalist school of Islamic law does not consider the above changes according to purposes to be against the direct linguistic implication (*dilālah*) of the scripts. A typical opinion claims that there were certain ‘causes’ (*illal*) behind these rulings, and that the rulings simply no longer applied when these causes no longer existed or when they were ‘specified’ (*mukhaṣṣaṣah*) by other scripts.²⁴ For example, the related *illah* of the application of the punishment for theft is ‘theft carried out by a person who is not in need.’ Therefore, the punishment for theft just does not apply to the thieves that Omar pardoned. If such interpretation of some of Omar’s *ijtihād* is not possible, current (neo-)traditionalism would discredit these incidents of Omar’s *ijtihād* as ‘contrary to the scripts.’²⁵ However, I would say that such criteria included in the *illah*, such as the ‘in need’ criterion, are not ‘consistent’ (*munḍabiṭ*), since they

²³ al-Shatibi, *Al-Muwafaqat* vol.2, p. 6.

²⁴ al-Bouti, 2001, p.129-43.

²⁵ Ibid. p143.

might ‘change with the change of circumstances.’ Therefore, the criterion is not an *illah*, in the technical sense of the term, but indeed a *maqṣid*. Therefore, from a technical point of view, it is more ‘appropriate’ (*munāsib*) to relate the change that Omar applied to the *maqṣid* of social assistance, rather than the above claimed *illah*. Similarly, it is claimed that the *illah* of the application of the individual spoils of war is the ‘leader’s consent according to public interest.’²⁶

Research on the early Theorists of *Maqāṣid*

After the companions’ era, current research traces how the theory and classifications of *maqāṣid* started to evolve.²⁷ However, *maqāṣid* as we know them today were not clearly developed until the time of the later *uṣūlīs* of the fifth to eighth Islamic century. During the first three centuries, however, the idea of purposes/causes (Arabic: *ḥikam*, *ilal*, *munāsabāt*, or *maʿānī*) appeared in a number of reasoning methods utilised by the Imams of the classic schools of Islamic law, such as reasoning by analogy (*qiyās*), juridical preference (*istiḥsān*), and interest (*maṣlaḥah*). Purposes themselves, however, were not subjects of separate monographs or special attention until the end of the third Islamic century. Then, the development of the theory of ‘levels of necessity’ by al-Juwaini (d.478 AH/ 1085 CE) took place much later in the fifth Islamic century. The following are the main scholars in that period between the third and fifth Islamic centuries, who have had an impact on the theories of *maqasid al-shariah*.

Al-Tirmidhi al-Hakeem (d. 296 AH/908 CE).

²⁶ This is Malik’s opinion, but all other schools disagreed with Omar on this issue. Refer to: Ibn Rushd, *Bedāyat Al-Mujtahid*, p. 290-91.

²⁷ Examples: Al-Qaradawi, 1999, Atiyah, 2001, Auda, 2008, Biltaji, 2002, El-Awa, 2006, Ibn Ashur, 1997, Imam, 2010.

The first known volume dedicated to the topic of *maqāṣid*, in which the term ‘*maqāṣid*’ was used in the book’s title, is *al-Ṣalāh wa Maqāṣiduhā* (*Prayers and their Purposes*), which was written by al-Tirmidhi al-Hakeem.²⁸ The book is a survey of the wisdoms and spiritual ‘secrets’ behind each of the prayer acts, with an obvious Sufi inclination. Examples are ‘confirming humbleness’ as the *maqṣid* behind glorifying God with every move during prayers, ‘achieving consciousness’ as the *maqṣid* behind praising God, ‘focusing on one’s prayer’ as the *maqṣid* behind facing the direction of the Kabah, and so on. Al-Tirmidhi al-Hakeem also wrote a similar book on pilgrimage, which he entitled, *al-Hajj wa Asrāruh* (*Pilgrimage and its Secrets*).²⁹

Abu Zaid al-Balkhi (d.322 AH/933 CE).

The first known book on the *maqāṣid* of dealings (*mu‘āmalāt*) is Abu Zaid al-Balkhi’s *al-Ibānah ‘an Ṣalāt al-Diyanah* (*Revealing Purposes in Religious Practices*), in which he surveys purposes behind Islamic juridical rulings. Al-Balkhi also wrote a book dedicated to *maṣlaḥah*, which he entitled, *Maṣāliḥ al-Abdān wal-Anfus* (*Benefits for Bodies and Souls*), in which he explained how Islamic practices and rulings contribute to health, physically and mentally.³⁰

Al-Qaffal al-Kabeer (d. 365 AH/975 CE)

Al-Qaffal’s *Maḥāsin al-Sharā‘i*, (*The Beauties of the Laws*) was a historic landmark in the study

²⁸ According to: Raissouni, 1992.

²⁹ Also according to Raissouni, in: El-Awa, 2006, p.181.

³⁰ Mohammad Kamal Imam, *Al-Daleel Al-Irshadi Ila Maqasid al-Shari‘ah al-Islamiyyah* (London: al-Maqasid Research Centre, 2007), Introduction, p.iii.

of the wisdoms behind the rules.³¹ After a 20-page introduction, al-Qaffal proceeds to divide the book into the familiar chapters of traditional books of *fiqh* (i.e., starting with purification, and then ablution and prayers, etc). He mentions each ruling briefly and elaborates on the purposes and wisdoms behind it. The manuscript is fairly clear and contains around 400 pages. The last page mentions the date of the book's completion, which is the 11th of Rabiul-Awwal 358 H (7th of February, 969 CE). The coverage of the rulings of *fiqh* is extensive, albeit strictly addressing individual rulings without introducing any general theory for the purposes. Nevertheless, the book is an important step in the development of *al-maqāṣid* theory.

Ibn Babaweah al-Qummi (d. 381 AH/991 CE)

Some researchers claim that research on *maqāṣid al-sharī'ah* was restricted to the Sunni schools of law until the twentieth century.³² However, the first known monograph dedicated to *maqāṣid* was, in fact, written by Ibn Babaweah al-Sadouk al-Qummi, one of the main Shia jurists of the fourth Islamic century, who wrote a book of 335 chapters on the subject.³³ The book, which was entitled '*ḥilal al-Sharā'i*,' (*The Reasons behind the Rulings*), 'rationalises' believing in God, prophets, heaven, and other beliefs. It also gives moral rationales for prayers, fasting, pilgrimage,

³¹ I learnt about the the book from Professor Ahmad al-Raysuni of the Organization of Islamic Conference (OIC), Fiqh Council, in Jeddah (Oral Conversation, Jeddah, Saudi Arabia, April 2006). I obtained a microfilm of the manuscript with the help of Professor Ayman Fouad, who edits manuscripts for Al-Furqan Islamic Heritage Foundation, London, UK (Cairo, July 2006). Al-Qaffal al-Shashi, "Mahasin Al-Sharaei," in *Fiqh Shafie, Manuscript No. 263* (Cairo, Dar al-Kutub: 358 AH/ 969 CE).

³² Hassan Jaber, *Al-Maqasid Fi Al-Madrasah Al-Shi'yyah*, In: El-Awa, Mohamed Saleem, ed. *Maqasid Al-Shariah Al-Islamiya: Dirasat Fi Qadaya Al-Manhaj Wa Qadaya Al-Tatbeeq (Studies in the Philosophy of Islamic Law: Theory and Applications)*. 1st ed. Cairo: al-Furqan Islamic Heritage Foundation, al-Maqasid Research Centre, 2006, p.325. Also: Oral Discussion over the issue in Alexandria, Egypt, August, 2006.

³³ According to Prof. Mohammad Kamal Imam of Alexandria University's Faculty of Law (Oral Discussion, Cairo, Egypt, August, 2006).

charity, caring for parents, and other moral obligations.³⁴

Al-Amiri al-Failasuf (d. 381 AH/991 CE)

The earliest known theoretical classification of purposes was introduced by al-Amiri al-Failasuf in his '*al-I.lām bi-Manāqib al-Islām*' (*Awareness of the Traits of Islam*).³⁵ Al-Amiri's classification, however, was solely based on 'criminal punishments' in the Islamic law (*hudūd*). Classifications of *maqāṣid* according to 'levels of necessity' were not developed until the fifth Islamic century. Then, the whole theory reached its most mature stage (before the twentieth century CE) in the eighth Islamic century.

Research on the "Imams of maqasid"

The fifth Islamic century witnessed the birth of what Abdullah Bin Bayyah called 'a philosophy of the Islamic law.'³⁶ Literal and nominal methods that were developed, until the fifth century, proved incapable of coping with the complexities of the evolving civilisation. This is why unrestricted interest (*al-maṣlaḥah al-mursalah*) was developed as a method that covers 'what was not mentioned in the scripts,' and thus, compensates for the limitations of *qiyās*. I had argued, however, that *qiyās* could not handle all 'new situations,' despite the *uṣūlī* attempts to develop it through the 'appropriateness' (*munāsabah*) consideration, because it was restricted

³⁴ Ibn Babaweah al-Sadouk al-Qummi, *Ilal Al-Shara'i*, ed. Mohammad Sadik Bahrul-Ulum (Najjaf: Dar al-Balaghah, 1966).

³⁵ According to Prof. Ahmad el-Raisouni, oral discussion, Jeddah, November 2006. He referred me to: Abul-Hassan al-Failasuf al-Amiri, *Al-I.lam Bi-Manaqib Al-Islam*, ed. Ahmad Ghurab (Cairo: Dar al-Kitab al-Arabi, 1967).

³⁶ Oral discussion with Sheikh Bin Bayyah in Mecca, Saudi Arabia, April 2006.

with the exactness/consistency (*inḍibāt*) condition.³⁷ *Al-maṣlaḥah al-mursalah* helped to fill this gap and also gave birth to the theory of *maqāṣid* in the Islamic law. A few jurists made the most significant contributions to the *maqāṣid* theory between the fifth and eighth Islamic centuries, namely, Abu al-Maali al-Juwaini, Abu Hamid al-Ghazali, al-Izz Ibn Abdul-Salam, Shihabuddin al-Qarafī, and, most significantly, Abu Ishaq Al-Shatibi.

Abu al-Maali al-Juwaini (d.478 AH/1085 CE)

Al-Juwaini's '*al-Burhān fī Uṣul al-Fiqh*' (*The Proof in the Fundamentals of Law*) was the first *uṣūl* treatise to introduce a theory of 'levels of necessity,' in a way that is similar to today's familiar theory. He suggested five levels of *maqāṣid*, namely, necessities (*ḍarūrāt*), public needs (*al-ḥājah al-āmah*), moral behaviour (*al-makrūmāt*), recommendations (*al-mandūbāt*), and 'what cannot be attributed to a specific reason.'³⁸ He proposed that the purpose of the Islamic law is the protection (*al-ismah*) for people's 'faith, souls, minds, private parts, and money.'³⁹ Al-Juwaini's '*Ghiāth al-Umam*' (*The Salvage of the Nations*) was, in my view, another important contribution to *al-maqāṣid* theory, even though it primarily addresses political issues. In *al-Ghayyathi* (a popular short name for that book), al-Juwaini makes a 'hypothetical assumption' that jurists and schools of law eventually disappeared from Earth, and suggested that the only way to salvage Islam would be to 're-construct' it from the bottom up, using the 'fundamental

³⁷ Gasser Auda, "Dawaran Al-Ahkam Al-Shar'iyyah Ma'a Maqasidiha Wujudan Wa 'Adaman: Dirasah Usuliyah Naqdiyah Tatbiqiyah (Change of Statutes According to Their Purposes: A Methodological, Critical and Applied Study)" (M.Jur. diss., Islamic American University, 2004).

³⁸ al-Juwaini, *Al-Burhan* 4th ed, vol.2, p. 621, 22, 747.

³⁹ Ibid.

principles, upon which all rulings of law are based and to which all rulings of law converge.’⁴⁰

He wrote that these fundamentals of the law, which he explicitly called ‘*al-maqāṣid*,’ are ‘not subject to opposing tendencies and difference of opinion over interpretations.’⁴¹

Examples of these *maqāṣid*, on which al-Juwaini ‘re-constructed’ the Islamic law are ‘facilitation’ in the laws of purification, ‘elevating the burden of the poor’ in the laws of charity, and ‘mutual agreement’ in the laws of trade.⁴² I view al-Juwaini’s ‘*Ghiāth al-Umam*’ as a project for the ‘re-construction’ of the Islamic law based on *maqāṣid*, which he had to express in a way that would save him from academic and political persecution.⁴³ Certainly, this view requires more research and a more extensive analysis of the text itself.

Abu Hamid al-Ghazali (d.505 AH/1111 CE)

Al-Juwaini’s student, Abu Hamid al-Ghazali, developed his teacher’s theory further in his book, *al-Mustasfā (The Purified Source)*. He ordered the ‘necessities’ that al-Juwaini had suggested as follows: (1) faith, (2) soul, (3) mind, (4) offspring, and (5) wealth.⁴⁴ Al-Ghazali also coined the term ‘preservation’ (*al-hifẓ*) of these necessities.

Despite the detailed analysis that he offered, al-Ghazali, obviously under the influence of his Shafie school (which views analogical reasoning as the only valid method of *ijtihād*), refused to give independent legitimacy (*hujjīyah*) to any of his proposed *maqāṣid* or *maṣāliḥ*, and even

⁴⁰ al-Juwaini, *Al-Ghayyathi*, p. 434.

⁴¹ Ibid. p 490.

⁴² Ibid. p 446, 73, 94.

⁴³ Refer to the introduction of *Giath al-Umam*, written by Abdul-Azim al-Deeb, which outlines the historical and political context of the book.

⁴⁴ al-Ghazali, *Al-Mustasfa* p 258.

called them ‘the illusionary interests’ (*al-maṣāliḥ al-mawhūmah*).⁴⁵ Yet, al-Ghazali presented some interesting analogies (*qiyās*), in which he used the *maqṣid* as *ratio legis* (*illah*), despite the Shafies’ critique of *maqāṣid* as ‘non-exact’ (*ghair munḍabiḥah*). For example, he wrote, ‘all intoxicants, whether liquid or solid, are forbidden based on analogy with liquor, since liquor is forbidden for the purpose of the preservation of people’s minds.’⁴⁶

Al-Ghazali also suggested a fundamental rule, based on the order of necessities he suggested, which implies that the higher-order necessity should have priority over a lower-order necessity if they generate opposite implications in practical cases.⁴⁷ Thus, al-Ghazali’s *ijtihād* diverges from the strict Shafie adherence to formality, in the logical sense, in the procedure of analogical reasoning, which he himself supported in his *al-Mustaṣfā* and his other books on the theory of the law.

Al-Izz Ibn Abdul-Salam (d.660 AH/1209 CE)

Al-Izz wrote two small books about *al-maqāṣid*, in the ‘wisdoms-behind-rulings’ sense, namely, *Maqāṣid al-Ṣalāh* (*Purposes of Prayers*) and *Maqāṣid al-Ṣawm* (*Purposes of Fasting*).⁴⁸

However, his significant contribution to the development of the theory of *al-maqāṣid* was his book on interests (*maṣāliḥ*), which he called, *Qawā'id al-Ahkām fī Maṣāliḥ al-Anām* (*Basic Rules Concerning People’s Interests*). Beside his extensive investigation of the concepts of interest and mischief, al-Izz linked the validity of rulings to their purposes. For example, he

⁴⁵ Ibid. p 172.

⁴⁶ Ibid. p 174.

⁴⁷ Ibid. p 265.

⁴⁸ al-Izz Ibn Abdul-Salam, *Maqasid Al-Sawm*, ed. Iyad al-Tabba', 2nd ed. (Beirut: Dar al-Fikr, 1995),

wrote: ‘Every action that misses its purpose is void,’⁴⁹ and, ‘when you study how the purposes of the law brings good and prevents mischief, you realise that it is unlawful to overlook any common good or support any act of mischief in any situation, even if you have no specific evidence from the script, consensus, or analogy.’⁵⁰

Qutbuddin al-Qastalani (d.686 AH/1287 CE), following the example of al-Izz, wrote two books dedicated to the topics *maqāṣid* for prayers and fasting. Both books are written in the same ‘wisdoms-behind-the-rulings’ approach.⁵¹

Shihabuddin al-Qarafi (d.684 AH/1285 CE)

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

There is a difference between the Prophetic actions as a conveyer of the divine message, a judge, and a leader ... The implication in the law is that what he says or does as a conveyer goes as a general and permanent ruling ... [However,] decisions related to the military, public trust, ... appointing judges and governors, distributing spoils of war, and signing treaties ... are specific to leaders.’⁵²

Thus, al-Qarafi defined a new meaning for ‘*al-maqāṣid*’ as the purposes/intents of the Prophet (p) himself in his actions. Later, Ibn Ashur (d. 1976 CE) developed al-Qarafi’s above ‘difference’

⁴⁹ al-Izz Ibn Abdul-Salam, *Qawaid Al-Ahkam Fi Masalih Al-Anam* (Beirut: Dar al-Nashr, without date) vol.2, p. 221.

⁵⁰ Ibid. vol.2, p. 160.

⁵¹ Imam, *al-Daleel al-Irshadi*, p. 54-60.

⁵² Shihabuddin al-Qarafi, *Al-Furuq (Ma'a Hawamishih)*, ed. Khalil Mansour (Beirut: Darul Kutub al-Ilmiya, 1998) vol.1, p. 357.

and included it into his definition of *al-maqāṣid*.⁵³ Al-Qarafi also wrote about ‘opening the means to achieving good ends,’ which is another significant expansion of the theory of *maqāṣid*. Al-Qarafi proposed that while means that lead to prohibited ends should be blocked, means that lead to lawful ends should be opened.⁵⁴ Thus, he did not restrict themselves to the negative side of ‘blocking the means’ method.

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

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

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

Ibn al-Qayyim summarised his juridical methodology that is based on ‘wisdom and people’s welfare’ with the following strong words:

Sharī’ah is based on wisdom and achieving people’s welfare in this life and the afterlife.

Sharī’ah is all about justice, mercy, wisdom, and good. Thus, any ruling that replaces

⁵³ Ibn Ashur, *Maqasid Al-Shari’ah Al-Islamiyah* p 100.

⁵⁴ al-Qarafi, *Al-Dhakheerah* vol.1, p. 153. al-Qarafi, *Al-Furuq (Ma’a Hawamishih)* vol.2, p. 60.

justice with injustice, mercy with its opposite, common good with mischief, or wisdom with nonsense, is a ruling that does not belong to the *Sharī'ah*, even if it is claimed to be so according to some interpretation.⁵⁵

The Contribution of Abu Ishaq Al-Shatibi (d. 790 AH/1388 CE)

Imam Al-Shatibi of Andalusia is recognized by researchers from various backgrounds to have had the most impact on the theory of maqasid. A number of “shifts” that he made are outlined by a number of contemporary researchers and scholars.⁵⁶

Al-Shatibi moved Maqasid Al-Shariah from the interest, or the masalih, to the fundamentals. Before him, a maqasid was a maslahah. One resorts to the maslahah when one cannot find any direct reference in the Qur'an or Sunnah. Al-Shatibi made an important shift by defining the maslahah as the “basis” of the Qur'an and Sunnah; not only maslahah musalla in the Shafi'i language, but also as a fundamental of I'tiqad (article of faith). He advocated that it is part of the Islamic faith to believe that Islam is about justice, it is about part of the Islamic faith.

Al-Shatibi also moved Maqasid Al-Shariah from wisdoms to “basis”; before Imam Al-Shatibi the scholars talked sometimes about al-hikmah or wisdom. However, Al-Shatibi concludes that the basis doesn't only come *after* you apply the rule, but also *before* you apply the rule.

Al-Shatibi also replied very strongly to those scholars who say that Maqasid Al-Shariah are uncertain. He maintained that justice and the preservation of life and the preservation of dignity

⁵⁵ Shamsuddin Ibn al-Qayyim, *I'lam Al-Muwaqqi'een*, ed. Taha Abdul Rauf Saad (Beirut: Dar Al-Jeel, 1973) vol.1, p. 333.

⁵⁶ For example: Abdallah Draz and Mohammad Abdallah Draz in their commentaries on him, in al-Shatibi, *Al-Muwafaqat*, Auda, 2008, El-Awa, 2006, Al-Qaradawi, 1999, Abdelkader, 2011, Raissouni, 1992, Eickelman, 2000, El-Mesawi, 2012, Fadzil, 2008, Masud, 1977, Shabana, 2006.

in Islam are not doubtful and are not probable, they are certain and there is nothing uncertain about Islam being about the preservation of dignity or the preservation of morality.

Thus, Al-Shatibi's contribution could be summarized in the following three substantial ways:

- i. **From 'unrestricted interests' to 'fundamentals of law.'** Before al-Shatibi's '*Muwāfaqāt*,' *al-maqāṣid* were included in 'non-restricted interests' and were never considered as fundamentals (*uṣūl*) in their own right. Al-Shatibi started his volume on *al-maqāṣid* in *al-Muwāfaqāt* by quoting the Quran to prove that God has purposes in His creation, sending His messengers, and ordaining laws.⁵⁷ Hence, he considered *al-maqāṣid* to be the 'fundamentals of religion, basic rules of the law, and universals of belief' (*uṣūl al-dīn wa qawā'id al-sharī'ah wa kullīyat al-millāh*).⁵⁸
- ii. **From 'wisdoms behind the ruling' to 'bases for the ruling.'** Based on the fundamentality and universality of *al-maqāṣid*, al-Shatibi judged that, 'the universals (*al-kullīyat*) of necessities, needs, and luxuries cannot be overridden by partial rulings (*al-juz'īyāt*).'⁵⁹ This is quite a deviation from traditional fundamentals, even in al-Shatibi's Maliki school, which always gave precedence to 'specific' partial evidences over 'general' or universal evidences.⁶⁰ Al-Shatibi also made 'knowledge of *maqāṣid*' a condition for the correctness of juridical reasoning (*ijtihād*) on all levels.⁶¹
- iii. **From 'uncertainty' (*ẓannīyah*) to 'certainty' (*qaṭ'īyah*).** In order to support the new status that he gave to *al-maqāṣid* amongst the fundamentals, al-Shatibi started his volume on *maqāṣid* by arguing for the 'certainty' (*qaṭ'īyah*) of the inductive process that he used to conclude *al-maqāṣid*, based on the high number of evidences he considered,⁶² which is also a deviation from the popular 'Greek-philosophy-based' arguments against the validity and 'certainty' of inductive methods.

Al-Shatibi was also critiqued in a number of ways. First, there is a difference between referring

⁵⁷ al-Shatibi, *Al-Muwāfaqat* vol.2, p. 6.

⁵⁸ Ibid. vol.2, p. 25.

⁵⁹ Ibid. vol.2, p. 61.

⁶⁰ El-Raisouni, *Nazariyat Al-Maqasid* p169.

⁶¹ al-Shatibi, *Al-Muwāfaqat* vol.4, p. 229.

⁶² Ibid. vol.2, p. 6.

to the Qur'an and Sunnah to look for the principles of Islam and referring to the legal heritage that the fuqaha left, in different madhahib schools, in order to arrive at the essence of Islam. Fiqh is how Islam was practiced in different centuries and different times and by and large does not deal with the present, especilly in the areas of mu'amalat. The way that they dealt with gold and silver in the past, for example, and the way they dealt with food, for another example. But food today is different because it consists of multiple ingredients, which bring so many ethical questions that were not comprehensible in the past. Al-Shatibi was also very individualistic when it comes to his maqasid. He also, in his third volume of al-muwaffaqat, put "virtues" under "luxuries". But virtues are not "luxuries," as several researchers pointed out.⁶³

Contemporary research on the theory of *Maqāṣid*

New theories

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

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

Traditional classifications of *maqāṣid* divide them into three 'levels of necessity,' which are necessities (*ḍarūrāt*), needs (*ḥājīyāt*), and luxuries (*taḥsīnīyāt*). Necessities are further classified

⁶³ Refer to: Auda, 2008, Abdelkader, 2011, Eickelman, 2000, El-Mesawi, 2012, Fadzil, 2008, Masud, 1977, Shabana, 2006.

into what ‘preserves one’s faith, soul, wealth, mind, and offspring.’⁶⁴ Some *uṣūlīs* added ‘the preservation of honour’ to the above five widely popular necessities.⁶⁵ These necessities were considered essential matters for human life itself. There is also a general agreement that the preservation of these necessities is the ‘objective behind any revealed law.’⁶⁶ Purposes at the level of needs are less essential for human life, and purposes at the level of luxuries are ‘beautifying purposes’ (*taḥsīnīyāt*), in the traditional expression.⁶⁷ The levels in the hierarchy are interrelated, according to Al-Shatibi. Each level serves and protects the level below. For example, the level of needs acts as a ‘shield of protection’ to the level of necessities.⁶⁸ That is why some scholars preferred to perceive necessities in terms of ‘overlapping circles,’ rather than a strict hierarchy.⁶⁹

Islamic theories of goals (*maqāṣid*) evolved over the centuries, especially in the twentieth century. Contemporary theorists criticised the above traditional classification of necessities for a number of reasons, including the following:⁷⁰

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

⁶⁴ al-Ghazali, *Al-Mustasfa* vol. 1, p. 172, Ibn al-Arabi, *Al-Mahsoul Fi Usul Al-Fiqh* vol. 5, p. 222, al-Amidi, *Al-Ihkam* vol. 4, p. 287.

⁶⁵ al-Ghazali, *Al-Mustasfa* vol.1, p. 172, al-Shatibi, *Al-Muwafaqat*, vol. 3, p. 47.

⁶⁶ al-Shatibi, *Al-Muwafaqat* vol.3, p. 5.

⁶⁷ Ibid. vol. 3, p. 17.

⁶⁸ Ibid. vol.1 p. 151.

⁶⁹ Jamal Atiyah, *Nahwa Taf'il Maqasid Al-Shari'ah* (Amman: al-Ma'had al-'Ali lil-Fikr al-Islami, 2001) p. 45.

⁷⁰ According to a discussion with Sheikh Hassan al-Turabi (Oral Discussion, Khartoum, Sudan, August 2006).

2. Traditional *maqāṣid* are concerned with individuals rather than families, societies, and humans, in general.
3. The traditional *maqāṣid* classification did not include the most universal and basic values, such as justice and freedom.
4. Traditional *maqāṣid* were deduced from studying ‘*fiqhi* literature,’ rather than the original sources/scripts.

To remedy the above shortcomings, modern scholarship introduced new conceptions and classifications of *al-maqāṣid* by giving consideration to new dimensions. First, considering the scope of rulings they cover, contemporary classifications divide *maqāṣid* into three levels:⁷¹

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

⁷¹ Numan Jughaïm, 2002) p. 26-35.

In order to remedy the individuality drawback, the notion of *maqāṣid* has been expanded to include a wider scope of people – the community, nation, or humanity, in general. Ibn Ashur, for example, gave *maqāṣid* that are concerned with the ‘nation’ (*ummah*) priority over *maqāṣid* that are concerned with individuals. Rashid Rida, for a second example, included ‘reform’ and ‘women’s rights’ in his theory of *maqāṣid*. Yusuf al-Qaradawi, for a third example, included ‘human dignity and rights’ in his theory of *maqāṣid*. These expansions of the scope of *maqāṣid* allows them to respond to global issues and concerns, and to evolve from ‘wisdoms behind the rulings’ to practical plans for reform and renewal.

New applications

Following the new theories that were proposed by contemporary researchers and scholars, new applications of *maqasid* started to appear in almost every contemporary field of knowledge. We will discuss applied research in *maqasid* in a later section.

Research on contemporary *maqasid* scholars

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

Muhammad Abdu (d.1324AH/1905 CE)

Although a large number of research projects have dealt with Sheikh Muhammad Abdu's renewal project, very few dealt with his maqasid project.⁷² But it was Muhammad Abdu who brought Al-Shatibi back to mainstream Islamic scholarship by teaching his seminal work, al-Muwafaqat, in Al-Azhar.⁷³ And the early twentieth century pioneers of the maqasidi school that emerged afterwards were all his students and students of his students, such as, Ibn Ashur, Rashid Rida, Abdallah Draz, al-Qaradawi, al-Alwani, and others.

Research is required to analyse the new views that Abdu introduced in his tafseer al-manar, from a maqasidi perspective.

Rashid Rida (d.1354AH/1935 CE)

Rida surveyed the Quran to identify its *maqāṣid*, which included, 'reform of the pillars of faith, and spreading awareness that Islam is the religion of pure natural disposition, reason, knowledge, wisdom, proof, freedom, independence, social, political, and economic reform, and women rights.'⁷⁴

Mohammad al-Ghazaly (d.1416 AH/ 1996 CE)

Sheikh Al-Ghazaly called for 'learning lessons from the previous fourteen centuries of Islamic

⁷² For example, Imam, 2010, El-Awa, 2006, Islam, 2011.

⁷³ Imam, 2010.

⁷⁴ Mohammad Rasheed Rida, *Al-Wahi Al-Mohammadi: Thubut Al-Nubuwwah Bil-Qur'an* (Cairo: Mu'asasat Izziddin, without date) p.100.

history,’ and therefore, included ‘justice and freedom’ in *maqāṣid* at the necessities level.⁷⁵

Yusuf al-Qaradawi (1345 AH/1926 CE -)

Sheikh Al-Qaradawi also surveyed the Quran and concluded the following universal *maqāṣid*: ‘Preserving true faith, maintaining human dignity and rights, calling people to worship God, purifying the soul, restoring moral values, building good families, treating women fairly, building a strong Islamic nation, and calling for a cooperative world.’⁷⁶ However, al-Qaradawi explains that proposing a theory in universal *maqāṣid* should only happen after developing a level of experience with detailed scripts.⁷⁷

Taha al-Alwani (1935 CE - 2017)

Sheikh Al-Alwani also surveyed the Quran to identify its ‘supreme and prevailing’ *maqāṣid*, which are, according to him, ‘the oneness of God (*tawḥīd*), purification of the soul (*tazkīyah*), and developing civilisation on earth (*imrān*).’⁷⁸ He is currently writing a separate monograph to elaborate on each of these three *maqāṣid*.⁷⁹

The Contribution of Al-Tahir Ibn Ashur (d.1325 AH/ 1907 CE)

⁷⁵ Jamal Atiyah, *Nahwa Tafḥīl Maqasid Al-Shari‘ah*, p. 49.

⁷⁶ Yusuf al-Qaradawi, *Kayf Nata‘amal Ma‘a Al-Quran Al-‘Azeem?* 1st ed. (Cairo: Dar al-Shorouk, 1999).

⁷⁷ Oral Discussions, London, UK, March, 2005, and Sarajevo, Bosnia, May, 2007.

⁷⁸ Taha Jabir al-Alwani, *Maqasid Al-Shari‘ah*, 1 ed. (Beirut: IIIT and Dar al-Hadi, 2001), p.25.

⁷⁹ Oral Discussion, Cairo, Egypt, April, 2007.

Ibn Ashur proposed that the universal *maqṣid* of the Islamic law is to maintain ‘orderliness, equality, freedom, facilitation, and the preservation of pure natural disposition (*fiṭrah*).’⁸⁰ It is to be noted that the purpose of ‘freedom’ (*ḥurrīyah*), which was proposed by Ibn Ashur and several other contemporary scholars, is different from the purpose of ‘freedom’ (*itq*), which was mentioned by jurists.⁸¹ *Al-ṭiq* is freedom from slavery, not ‘freedom’ in the contemporary sense. ‘Will’ (*Mashī.ah*), however, is a well-known Islamic term that bears a number of similarities with current conceptions of ‘freedom’ and ‘free will.’ For example, ‘freedom of belief’ is expressed in the Quran as the ‘will to believe or disbelieve.’⁸² In terms of terminology, ‘freedom’ (*al-ḥurrīyah*) is a ‘newly-coined’ purpose in the literature of the Islamic law. Ibn Ashur, interestingly, accredited his usage of the term *ḥurrīyah* to ‘literature of the French revolution, which were translated from French to Arabic in the nineteenth century CE,’⁸³ even though he elaborated on an Islamic perspective on freedom of thought, belief, expression, and action in the *mashī.ah* sense.⁸⁴

Al-Tahir Ibn Ashur (d.1325 AH/ 1907 CE) (1997) proposed a novel view of the fundamental of ‘custom’ (*al-urf*) based on the purposes of Islamic law. He wrote a chapter in his important book, ‘*Maqāṣid al-Sharī.ah*’ on *al-urf*, which was entitled with a *maqṣid* that he called, ‘The Universality of the Islamic Law’ (p. 234). In that chapter, Ibn Ashur did not consider the effect of custom on the application of narrations, as is the traditional view. Instead, he considered the

⁸⁰ Ibn Ashur, *Maqasid Al-Shari.ah Al-Islamiyah* p183.

⁸¹ As in, for example, Kamaluddin al-Siwasi, *Sharh Fath Al-Qadir*, 2nd ed. (Beirut: Dar al-Fikr, without date) vol.4, p.513.

⁸² For example, Surat al-Kahf, 18:29.

⁸³ Mohammad al-Tahir Ibn Ashur, *Usul Al-Nizam Al-Ijtima'i Fil Islam*, ed. Mohamed El-Tahir Mesawi (Amman: Dar al-Nafais, 2001) p.256, 268.

⁸⁴ Ibid, p.270-281.

effect of (Arabic) customs on narrations themselves. The following is a summary of Ibn Ashur's argument.

First, Ibn Ashur explained that it is necessary for the Islamic law to be a universal law, since it claims to be 'applicable to all humankind everywhere on earth at all times', as per a number of Quranic verses and hadith that he cited. Then, Ibn Ashur elaborated on the wisdoms behind choosing the Prophet (peace be upon him) from amongst Arabs, such as the Arabs' isolation from civilization, which prepared them, 'to mix and associate openly with other nations with whom they had no hostilities, in contrast to Persians, Byzantines, and Copts'. Yet, for the Islamic law to be universal, 'its rules and commands should apply equally to all human beings as much as possible', as Ibn Ashur confirmed. That is why, he wrote, 'God had based the Islamic law on wisdoms and reasons that can be perceived by the mind and which do not change according to nations and custom'. Thus, Ibn Ashur provided explanation as to why the Prophet (peace be upon him) forbade his companions to write down what he says, 'lest particular cases be taken as universal rules'. Ibn Ashur then applied his ideas to a number of narrations, in an attempt to filter out Arabic customs from popular traditional rulings. He wrote (p. 236):

Therefore, Islamic law does not concern itself with determining what kind of dress, house, or mount people should use ... Accordingly, we can establish that the customs and mores of a particular people have no right, as such, to be imposed on other people as legislation, not even the people who originated them ... This method of interpretation has removed much confusion that faced scholars in understanding the reasons why the law prohibited certain practices ... such as the prohibition for women to add hair extensions, to cleave their teeth, or to tattoo themselves ... The correct meaning of this, in my view ...

is that these practices mentioned in hadith were, according to Arabs, signs of a woman's lack of chastity. Therefore, prohibiting these practices was actually aimed at certain evil motives ... Similarly, we read: ... 'believing women should draw over themselves some of their outer garments' (*Surat al-Aḥzāb*) ... This is a legislation that took into consideration an Arab tradition, and therefore does not necessarily apply to women who do not wear this style of dress ...

Therefore, based on the purpose of 'universality' of the Islamic law, Ibn Ashur suggested a method of interpreting narrations through understanding their underlying Arabic cultural context, rather than treating them as absolute and unqualified rules. Thus, he read the above narrations in terms of their higher moral purposes, rather than norms in their own right.

Research on Maqasid and Usul al-Fiqh

Current research on maqasid and Islamic legal theory is, in my view, renewing the fundamental theories of usul. Here are some examples:

The dilalat 'Implication'

Perhaps under the influence of 'the principle of causation' in Greek philosophy, traditional 'implications' of terms and expressions from the scripts did not include a purpose, or *maqṣid*, implication. A 'clear expression' (the Hanafī '*ibārah*' or the Shafīe '*ṣarīḥ*'), which was given

priority over all other expressions, is a direct reading of the script. This reading applies the literal meaning in the name of being *muḥkam*, *naṣṣ*, or *ẓāhir*. The ‘purpose’ of the expression would probably fall under one of the ‘non-clear’ categories: ‘in need of explanation’ (*mufassar*), ‘indirect implication’ (*ishārah*); ‘omitted expression’ (*iqṭidaʿ*); or ‘alluding (to the appropriateness factor)’ (*īmāʿ*). These types of terms, as explained before, lack juridical authority (*hujjīyah*) because of their ‘uncertainty’ (*ẓannīyah*).

Moreover, contrary implications, applied by all schools except for the Hanafis, were restricted to the categories of title (*al-laqaḅ*), attribute (*al-waṣf*), condition (*al-sharṭ*), limit (*al-ghāyah*), and number (*al-ʿadad*). This means that if one of these expressions is used in a script, the ‘contrary’ expression is excluded, regardless of the ‘purpose’ consideration. Thus, any

‘title,’ ‘attribute,’ ‘condition,’ ‘limit,’ or ‘number,’ that is different from what is mentioned in the script, is unacceptable, even if it happens to achieve the ‘purpose’ of the same script in a similar or better way. The purpose is, again, too ‘uncertain’ to ‘oppose’ the ‘logical’ contrary evidence.

This added to the general literal character of linguistic evidences, which were also given priority over all other rational evidences. Thus, as Ibn Ashur writes, ‘jurists gave themselves unnecessary trouble by seeking to clarify the ambiguous and qualify the unrestricted ... even though ... scripts covering the particulars of individual cases are equally open to generalisation and particularisation.’⁸⁵

In Islamic jurisprudence, ‘*dilālat al-maqṣid*’ (The implication of the purpose) is a new expression that has recently appeared in Islamic modernist expressions of *uṣūl al-fiqh*.⁸⁶ So far, however, this implication is generally not considered ‘certain’ (*qaṭʿīyah*) enough to be given specific

⁸⁵ Ibn Ashur, *Maqasid Al-Shari'ah Al-Islamiyah* p. 234.

⁸⁶ For example, Abdullah bin Bayah, *Ammali Al-Dilalat Wa Majali Al-Ikhtilafat*, 1st ed. (Jeddah: Dar al-Minhaj, 2007) p.361, and al-Turabi, *Qadaya Al-Tajdeed* p157.

juridical authority (*hujjīah*). Many ‘modernists’ criticise contemporary ‘literalism’ in Islamic law, and even define themselves as a centre between the ‘extremes of literalism and secularism.’

Nonetheless, literalism remains a general feature in modernist trends, including its reformist stream, as long as it gives ultimate theoretical authority (*hujjīah*) to the category of ‘clear’ linguistic evidence over ‘unclear and uncertain’ expressions of *maqāṣid* and higher values.

Moreover, Islamic modernism did not take a clear position on the issue of ‘uncertainty’ of *maqāṣid* and *maṣāliḥ*. Al-Shatibi’s position was more supportive of *al-maqāṣid* when he described them as the ‘fundamentals of religion, basic rules of the revealed law, and universals of belief’ (*uṣūl al-dīn wa qawā'id al-sharī'ah wa kullīyat al-millāh*).⁸⁷ Ibn Ashur, the leading modernist ‘*maqāṣidī*,’ described *al-maqāṣid* as ‘certain or uncertain close to certain’ (*qaṭ'ī aw ḡannī qarīb min al-qaṭ'ī*).⁸⁸ Yet, so far, ‘purposefulness’ is proscribed, theoretically speaking, from playing a primary role in the derivation of rulings from related scripts.

On the other hand, Islamic postmodernism ‘deconstructed’ *al-maqāṣid* of the scripts, much as it deconstructed the scripts themselves. ‘Islamic postmodernists’ call a modernist interpretation based on *maṣlaḥah* or *maqāṣid* ‘twisting and bending,’⁸⁹ ‘a secular movement disguised by religious discourse,’⁹⁰ and a ‘justification for oppressive rulers.’⁹¹ Postmodernists accuse modernists of encouraging ‘fundamentalism’ via such interpretations.⁹²

Nevertheless, the sub-system of linguistic evidences in the fundamentals of Islamic law could

⁸⁷ al-Shatibi, *Al-Muwafaqat* vol.2, p.25.

⁸⁸ Ibn Ashur, *Maqasid Al-Shari'ah Al-Islamiyah* p225.

⁸⁹ Moghissi, *Feminism and Islamic Fundamentalism: The Limits of Postmodern Analysis* p140.

⁹⁰ Arkoun, “Rethinking Islam Today,” p221.

⁹¹ al-Marzuqi, “Islah Al-’Aql Fi Al-Falsafah Al-’Arabiah” p 12.

⁹² Moosa, “Poetics.”

achieve more ‘purposefulness’ through the following specific suggestions:

1. The ‘implication of the purpose’ (*dilālat al-maqṣid*) should be added to the types of linguistic implications of the scripts. However, its ‘priority,’ relative to the other implications, should not be pre-set. It should be subject to the situation at hand and the importance of the *maqṣid* itself.
2. The possibility of specification (*takhṣīṣ*), interpretation (*taʾwīl*), and abrogation (*naskh*) were the three criteria that differentiated types of ‘clear expressions,’ namely, ‘firmly constructed’ (*muḥkam*), ‘text’ (*naṣṣ*), ‘apparent’ (*ẓāhir*), and ‘explained’ (*mufassar*). In addition to the above levels of clarity being ‘arbitrary,’ *al-maqāṣid* themselves could be bases for specification and interpretation. An expression could be specified, or interpreted, via its purpose or purposes of other ‘opposing’ expressions. On the other hand, ‘abrogation’ is a form of gradual application of the rulings that should be understood in line with the purpose of ‘magnanimity’ of the Islamic law.
3. The purpose of the expression should also decide the validity of its ‘contrary implication,’ as opposed to the way this validity is decided via a ‘logical’ debate over whether or not ‘one *ratio legis* could imply two opposite rulings simultaneously.’⁹³ Thus, if ‘contrary’ expressions are implied by other scripts, then all ‘opposing’ implications should be considered within a higher purpose or *maqṣid*.
4. A scriptural expression of a higher purpose of the law, which is usually a ‘general’ and ‘unqualified’ expression, should not be, as a general rule, ‘specified’ or ‘qualified’ by individual scripts. Nor should individual scripts be ignored for the sake of ‘general’ and ‘unqualified’ scripts. All expressions should be considered within a general framework of

⁹³ Abu Zahra, *Usul Al-Fiqh* p.139.

their purposes.

5. The relationship between ‘qualified’ and ‘non-qualified’ terms addressing the same ruling in different cases, which is a matter of difference of opinion, should be defined based on the achievement of *maqāṣid*, rather than on a general linguistic or logical rule.

Purposeful Interpretations of Primary Sources

The ‘thematic exegesis school’ took steps towards a more ‘purposeful/*maqāṣidī*’ Quranic exegesis. The method of reading the Quranic text in terms of themes, principles, and higher values, is based on a perception of the Quran as a ‘unified whole.’⁹⁴ Based on this holistic approach, the small number of verses related to rulings, which are traditionally called the ‘verses of the rulings’ (*āyāt al-aḥkām*), will extend from a few hundred verses to the entire text of the Quran. Chapters and verses addressing faith, prophets’ stories, the hereafter, and nature, will then all comprise parts of a holistic picture and, thus, play a role in shaping juridical rulings. This approach will also allow principles and moral values, which are the main themes behind the Quranic stories and sections on the hereafter, to become *ratio legis* (*ḥilāl*) for the rulings, in addition to the literal ‘causes’ that are ‘extracted’ via traditional methods of extraction of the grounds (*takhrīj al-manāṭ*). This would aid in eliminating the alternatives (*tanqīḥ al-manāṭ*), and asserting the realisation of the *ratio legis* (*taḥqīq al-manāṭ*), as explained earlier.

A purpose-oriented approach to the narrations of hadith proceeds from a similar holistic perception of the Prophet’s (p) life and sayings. This method also attempts to draw a holistic picture of the prophetic tradition (Sunnah). The authenticity of individual narrations that are incoherent with obvious Islamic values would be put into question. This type of ‘systematic

⁹⁴ al-Turabi, *Al-Tafseer Al-Tawheedi* p20, Jabir, *Al-Maqasid Alkuliyyah* p35.

incoherence' is different from the 'content incoherence' (*shudhūd al-matn*) criterion in the traditional 'invalidating the content' (*taḍlīf al-matn*) process. 'Content incoherence' means that a narration is in 'opposition' (*ta'ārūḍ*) with some other narration (by the same or a different narrator). If jurists are not able to reconcile the (linguistic) implication of the two narrations (or the implication of their 'causes' *ilal*), then the 'less certain' narration is considered incoherent. However, 'systematic incoherence' is inconsistency with the general principles of 'Islam,' as concluded via a holistic understanding of its scripts. Hence, 'systematic coherence' could be a name given to the method suggested by many modern reformists, which would then authenticate prophetic narrations, 'based on how much they agree with the principles of the Quran.'⁹⁵ Thus, 'systematic coherence' should be added to the conditions of authenticating the *matn* of prophetic narrations.

Finally, a *maqāṣid* approach could fill a crucial gap in the narration of hadith, in general, which is the gap of missing contexts. The vast majority of prophetic narrations, in all schools, are composed of one or two sentences or the answer of one or two questions, without elaborating on the historical, political, social, economical, or environmental context of the narration. In some cases, the companion or narrator ends his/her narration by saying: 'I am not sure whether or not the Prophet said ... because (we were in the context) of' Usually, however, the context and its impact on how the narration is understood and applied are left to the speculation of the narrator or jurist. The 'holistic picture' that was mentioned above helps in overcoming this lack of information through understanding the general purposes of the law.

⁹⁵ For example: Al-Alwani, "Madkhal Ila Fiqh Al-Aqaliyyat (an Introduction to Minorities Jurisprudence)", p.36, Al-Ghazaly, *Al-Sunnah Al-Nabawiyah* pp.19,125,61, Al-Ghazaly, *Nazaraat Fi Al-Qur'an* p.36, al-Nimr, *Al-Ijtihad* p.147, al-Turabi, *Qadaya Al-Tajdeed* p.157, Yassin Dutton, *The Origins of Islamic Law: The Qur'an, the Muwatta' and Madinan 'Amal* (Surrey: Curzon, 1999) p.1, John Makdisi, "A Reality Check on Istihsan as a Method of Islamic Legal Reasoning," *UCLA Journal of Islamic and Near Eastern Law*, no. 99 (fall/winter) (2003), A. Omotosho, "The Problem of Al-Amr in Usul Al-Fiqh" (Ph.D. diss, University of Edinburgh, 1984), Safi, *I-maal Al-Aql* p.130, Shamsuddin, *Al-Ijtihad Wal-Tajdid Fi Al-Fiqh Al-Islami* p.21.

Prophetic Purposes and Intents

Moreover, *al-maqāṣid*, in the sense of the intents of the Prophet (p), could also be utilised in contextualising narrations. Al-Qaraḥī differentiated between the Prophet's (p) actions 'as a conveyer of the divine message, a judge, and a leader,' and suggested that each of these intents has a different 'implication in the law.' Ibn Ashur added other types of 'prophetic intents,' which is a significant expansion of the scope of *dilālāt* via *maqāṣid*. Ibn Ashur demonstrated the prophetic intents that he proposed via a number of hadith narrations.⁹⁶ The following are some examples, according to Ibn Ashur.⁹⁷

1. The intent of legislation. One example is the Prophet's (p) sermon at the farewell pilgrimage, during which he, reportedly, said: 'Learn your rituals from me [by seeing me performing them], for I do not know whether I will be performing pilgrimage after this pilgrimage of mine.' He also said after concluding the same sermon: 'Let those present inform those who are absent.'
2. The intent of issuing edicts/*fatwā*. One example is the Prophet's (p) edicts during his 'farewell pilgrimage,' when a man came to him and said: 'I sacrificed before throwing the pebbles.' The Prophet (p) advised: 'Throw, and don't worry.' Then another man came and said: 'I shaved before sacrificing,' and the Prophet (p) answered: 'Sacrifice, and don't worry.' The narrator said that he was not asked about anything that one would do after or before without his saying, 'Do it, and don't worry.'
3. The intent of judgeship. Examples are: (1) the Prophet's (p) settlement of the dispute

⁹⁶ Ibn Ashur, *Maqasid Al-Shari'ah Al-Islamiyah* Chapter 6.

⁹⁷ I referred here to Mohamed al-Tahir Mesawi's translation of Ibn Ashur's book on *maqāṣid*: Mohammad al-Tahir Ibn Ashur, *Ibn Ashur-Treatise on Maqasid Al-Shariah*, trans. Mohamed El-Tahir El-Mesawi (London-Washington: International Institute of Islamic Thought (IIIT), 2006).

between a man from Hadramawt and a man from Kindah regarding a piece of land; (2) the Prophet's settlement between the Bedouin and his adversary, when the Bedouin said: 'O Messenger of God, judge between us;' and (3) the Prophet's (p) settlement between Habibah and Thabit. Habibah bint Sahl, Thabit's wife, complained to the Prophet (p) that she did not love her husband and that she wanted to divorce him. The Prophet (p) said: 'Will you give him back his walled garden?' She said: 'I have all that he has given to me.' Then, the Prophet (p) said to Thabit: 'Take it from her.' And so he took his walled garden and divorced her.

4. The intent of leadership. Examples are the prohibition of eating donkey meat in the battle of Khaybar, the permission to cultivate barren lands, and the Prophet's (p) statement at the battle of Hunayn: 'Whoever has killed an enemy and has evidence of his actions can claim the enemy's property.'
5. The intent of guidance (which is more general than that of legislation). An example is found in Ibn Suwayd's narration, in which he said: I met Abu Dharr, who was wearing a cloak, and his slave, too, was wearing a similar one. I asked the reason for it. He replied, 'I scolded a slave by calling his mother bad names.' The Prophet (p) said to me, 'O Abu Dharr! Did you abuse him by calling his mother bad names? You still have some characteristics of the age of pagan ignorance. Your slaves are your brethren.'
6. The intent of conciliation. One example is when the Prophet (p) requested Barirah to return to her husband after she divorced him. Barirah said: 'O God's apostle! Do you order me to do so?' He said, 'No, I only intercede for him.' She said, 'I do not need him.' Also, Bukhari reported that when Jabir's father died, Jabir asked the Prophet (p) to speak with his father's creditors so that they might waive some of his debt. The Prophet (p) then

accepted their refusal to do so. Another example of conciliation is when Kaab Ibn Malik demanded repayment of a debt from Abdullah Ibn Abi Hadrad, the Prophet (p) asked Kaab to deduct half of the debt, and Kaab agreed.

7. The intent of giving advice. One example is when Omar Ibn al-Khattab gave someone a horse as charity and the man neglected it. Omar wished to buy the horse from the man, thinking that he would sell it cheaply. When he asked the Prophet (p) about it, he told him: 'Do not buy it, even if he gives it to you for one dirham, for someone who takes back his charity is like a dog swallowing its own vomit.' Also, Zayd narrated that the Prophet (p) said: 'Do not sell the fruits before their benefit is evident,' but Zayd commented that this was, 'only by way of advice, for some people had quarreled too much over that matter.'
8. The intent of counseling. For example, Bashir informed the Prophet (p) that he had given one of his sons a special gift. The Prophet (p) asked him: 'Have you done the same with all your sons?' He said: 'No.' The Prophet (p) said: 'Do not call me as a witness to injustice.'
9. The intent of teaching high ideals. For example, the Prophet (p) asked Abu Dharr: 'Do you see (the mountain of) Uhud?' Abu Dharr replied: 'I do!' The Prophet (p) said: 'I do not wish that I have the like of Uhud in gold to spend [in the way of Allah] all except for three pieces of gold that I keep for myself.' Similarly, Al-Bara Ibn Azib said: 'God's Messenger commanded us to practice seven things and prohibited us from practicing seven. He commanded us to visit the sick, to walk behind funeral processions, to pray for someone upon sneezing, to approve of someone's oath, to help the oppressed person, to spread the greeting of peace, and to accept the invitation of the invitee. On the other

hand, he prohibited us from wearing gold rings, using silver utensils, using red saddlecloth made of cotton, wearing Egyptian clothes with silky extensions, clothes made of thick silk, thin silk, or normal silk.’ Similarly, Ali Ibn Abi Talib narrates: ‘God’s Apostle forbade me to use gold rings, to wear silk clothes and clothes dyed with saffron, and to recite the Quran while bowing and prostrating in prayer. I am not saying he forbade you these things.’ Likewise, with the same educational intent, the Prophet (p) told Rafie Ibn Khadij: ‘Do not rent your farm, but cultivate the land yourself.’

10. The intent of disciplining his companions. For example, the hadith: ‘By God! He does not believe! By God! He does not believe!’ It was said, ‘Who is that, O Messenger of God?’ He said: ‘The person whose neighbour does not feel safe from his evil.’
11. Intent of non-instruction. This includes the hadith that described the way the Prophet (p) ate, wore his clothes, laid down, walked, mounted his animal, and placed his hands when prostrating in prayer. Another example is the report that the Prophet (p) stopped on the farewell pilgrimage at a hill overlooking a watercourse in Bani Kinanah, on which Aishah commented: ‘Camping at al-Abtah is not one of the ceremonies of hajj, but was simply a place where the Prophet (p) used to camp so that it might be easier for him to leave for Madinah.’

Ibn Ashur’s extension of the *dilālāt* of the hadith, as shown in the above examples, raises the level of ‘purposefulness’ in traditional methods and allows much flexibility in interpreting and applying the narrations.

Analogy/Qiyas via Purposes

The majority of schools and jurists allow analogy based on the *illah* (cause) of the ruling and not the ‘wisdom’ (*hikmah*) behind the ruling. Their rationale is to preserve ‘*inḍibāt*’ (exactness) of the *ratio legis*, which is its ‘constancy with the change of time and place.’ In other words, in order to preserve formality on a procedural level, jurists decide that the *ratio legis* behind a ruling should never change with circumstances. Even those who allow *al-hikmah* to become a *ratio legis* for rulings, made a condition that it should be ‘exact.’⁹⁸

However, a careful analysis of the ‘exactness’ of the *illah* reveals that it is usually changeable and cannot be precisely defined, as Ibn Qudamah, a key Hanbali jurist, argued.⁹⁹ Ibn Qudamah referred to the classic example of allowing an ill person to break his/her fasting based on the ‘exactness’ of the *illah* of ‘sickness,’ and commented: ‘But sickness is not “exact,” because diseases vary. Some diseases harm a fasting person and some others are unrelated to fasting, such as toothaches, small wounds, blisters, minor ulcers, etc. Thus, ‘sickness’ cannot be a valid criterion in its own right, and the wisdom, which is avoiding possible harm, should be endorsed as the criterion.’¹⁰⁰ Ibn Qudamah’s argument actually applies to all kinds of *ilal*. In addition, the ‘wisdom’ that he referred to in the above example is what jurists called *al-munāsabah*, or ‘appropriateness,’ of the *illah*, or the ‘fulfilment of the interest’ (*taḥqīq al-maṣlaḥah*). Jurists began defining *maṣaliḥ* in terms of *maqāṣid* from the fifth Islamic century, and hence, identified ‘appropriateness’ with ‘purposefulness.’

However, once more, the ‘uncertainty’ of purposes prevented them from their approval as *ilal*, in their own right. Perhaps under the effect of Greek logic, especially Aristotle (through Ibn

⁹⁸ Al-Amidi, *al-Ihkam* vol.5, p.391.

⁹⁹ Ibn Qudamah, *Al-Mughni* vol.3, p. 42.

¹⁰⁰ Ibid.

Sina), most jurists agreed to prefer deduction (*al-istinbāt*) over induction (*al-istiqrāʾ*) as their means for ‘logic certainty’ (*al-yaqīn al-manṭiqī*). Aristotle had argued that induction could be either complete (covering every related incident) or incomplete (not covering every related incident). Thus, he argued that given the ‘uselessness of complete induction’ and the ‘uncertainty of incomplete induction,’ induction is not a feasible tool for logical certainty.¹⁰¹ This is the same argument, word for word, which jurists in various schools have used, from al-Razi and al-Ghazali to al-Suyuti and al-Amidi.¹⁰² Thus, formal partial analogy, which is based on one evidence, has been given precedence over holistic purpose-based concepts, which are based on (incomplete) inductive surveys.

The purpose of Interest/maslahah

Many jurists were concerned that giving independent legitimacy to ‘interests’ might contradict with the scripts.¹⁰³ The same concern is expressed in philosophy of law regarding the relationship between claimed ‘intents’ and statutes. As such, the United States Supreme Court, and several British jurists, made a condition to the claiming of any intent. They maintain that, ‘the only admissible source of evidence as to the legislator’s specific intent is the text of the statute.’¹⁰⁴ I argue that this condition could also resolve the controversy over the independent legitimacy of ‘*maṣāliḥ*’ in Islamic law. Since *maqāṣid* is ‘induced’ from the scripts, *maṣlahah* would have

¹⁰¹ Aristotle, *The Works of Aristotle*.

¹⁰² For example: al-Ghazali, *Al-Mustasfa*. al-Razi, *Al-Tafsir Al-Kabir (the Large Exegesis)* vol.3, p.133. al-Suyuti, Jalaludin. *Tadreeb Al-Rawi Fi Sharh Taqreeb Al-Nawawi*. Edited by Abdul Wahab Abdul Latif. Riyadh: Maktabat al-Riyadh al-Haditha, without date, vol.1, p.277, al-Haj, *Al-Taqrir* vol.1, p.86. al-Shafie, *Al-Amidi* p149.

¹⁰³ Hassaan, *Nazariyat Al-Maslahah Fil Fiqh Al-Islami*.

¹⁰⁴ Gray, ed, *The Philosophy of Law Encyclopedia* p428.

juridical legitimacy if it were identified with *maqāṣid*, as many jurists have suggested.¹⁰⁵ Hence, supported (*muṭabarrah*) and unrestricted (*mursalah*) interests will merge into one category of interests that are mentioned either explicitly or implicitly in the scripts, as long as they achieve ‘purposefulness’ in the system of law.

Istihsan/Preference Based on Purposes

Schools of Islamic law that endorsed juridical preference (*istiḥsān*) claimed that they were trying to mend a gap in formal (syllogistic) analogy/*qiyās*.¹⁰⁶ In my view, the gap is not in the process of formal analogy, but rather in the literal definition of the cause/*illah*, which frequently misses the ‘point’ or the ‘purpose’ behind the ruling. Hence, *istiḥsān* simply meant to overlook the formalities of ‘implications’ and apply the purpose directly. The following are illustrative cases from Ibn al-Hassan al-Shaibani’s ‘*Al-Mabsūt*.’ Note the ‘historicity’ of many of these cases, which are recalled here only for illustrative purposes.

1. Abu Hanifa applied *istiḥsān* in pardoning criminals, such as looters, after a long period of time, in which a looter, ‘moved away, proved to have changed, and repented.’ He decided not to apply a punishment in this case, despite the existence of its *illah* (cause), because, ‘the purpose of punishment is to deter people from crime, which no longer applies to such cases.’¹⁰⁷
2. Trade transactions with payments postponed until certain events take place (at an undefined time) are ‘void,’ according to Hanafis. However, for people’s best interest, Ibn

¹⁰⁵ al-Juwaini, *Al-Ghayyathi* p253, al-Ghazali, *Al-Mustasfa* vol.1, p.172, al-Razi, *Al-Mahsool Fi Ilm Al-Usul* vol.5, p.222, al-Amidi, *Al-Ihkam* vol.4, p.286, al-Tufi, *Al-Ta’in* p239.

¹⁰⁶ Ibn Qudamah, *Al-Mughni* vol.5, p. 148.

¹⁰⁷ al-Sarkhasi, *Usul Al-Sarkhasi* vol.9, p. 205.

al-Hassan al-Shaibani applied *istihsān* to legalise this transaction on condition that the buyer pays the due amount immediately.¹⁰⁸

3. Abu Hanifa allowed ‘ambiguities’ in contracts that ‘do not lead to disputes according to local customs,’ such as, ‘the ambiguity in the width or height of a building.’ A literal application of the narrations that ‘did not allow ambiguities in contracts’ goes against Abu Hanifa’s opinion. However, Abu Hanifa applied *istihsān* by considering the ‘purpose’ of the narrations, which is to ‘prevent disputes.’¹⁰⁹
4. Similarly, Abu Hanifa allowed rental contracts that were timed with ‘inexact’ timings, such as, ‘the time when the pilgrimage caravan leaves from Kufa to Mecca.’ Unknown elements in a contract makes it void, according to direct analogies with related hadith, but *istihsān* allows ambiguity in timing for the purpose of facilitation.¹¹⁰
5. Abu Hanifa applied *istihsān* in allowing Arabic words of ‘engagement’ (*khiṭbah*) to be used as marriage vows, ‘if these are the words that people use in a particular dialect with an ‘intent’ (*murād*) to get married.’¹¹¹ Again, consideration is given to the ‘purpose’ or ‘intent’ here.
6. If the buyer of an animal rides it after buying it, then he/she is declaring it ‘acceptable,’ as Hanafis judge. However, if he/she rides this animal with an ‘intent’ of leading it where it is supposed to eat or drink, then this is not a ‘declaration of acceptance,’ based on an

¹⁰⁸ Ibid. vol.5, p. 117.

¹⁰⁹ Ibid.

¹¹⁰ Ibid. vol.16, p. 25.

¹¹¹ Ibid. vol.5, p. 62.

istiḥsān which considered the intent of the action.¹¹²

7. If a cat drinks from a cup, then its saliva makes that cup ‘unclean’ (*najis*), according to Hanafis, ‘based on an analogy between its saliva and its meat, which is forbidden.’ However, because of the ‘difficulty of applying this ruling to domestic cats,’ Abu Hanifa decided to judge this cup as ‘clean but detested.’ Thus, the purpose of ‘facilitation’ was the criterion for deciding on this matter.¹¹³
8. Abu Hanifa applied *istiḥsān* in allowing the payment of *zakāh* on camels in terms of sheep, as the hadith states, or in terms of camels, contrary to the literal wordings of the hadith, ‘because this is going to be more beneficial for the owner of the herd.’ Thus, the purpose of benefit was the criterion for deciding on this matter.¹¹⁴

Therefore, as the above examples clearly show, *istiḥsān* is basically a form of adding ‘purposefulness’ to juridical reasoning. Nevertheless, schools of law that did not endorse *istiḥsān* had attempted to realise ‘purposefulness’ via other methods.

Fath al-dhara’i’/Opening the Means to Achieve Maqasid

Some Malikis proposed ‘opening the means’ (*fath al-dharā’i*.) in addition to ‘blocking’ them (*sadd al-dharā’i*.)¹¹⁵ Al-Qarafi divided rulings into means (*wasā’il*) and ends/purposes (*maqāṣid*). He suggested that means that lead to prohibited ends should be blocked, and means

¹¹² Ibid. vol.5, p. 181.

¹¹³ Ibid. vol.1, p. 50.

¹¹⁴ Ibid. vol.3, p. 53.

¹¹⁵ al-Qarafi, *Al-Dhakheerah* vol.1, p. 153. al-Qarafi, *Al-Furuq (Ma’a Hawamishih)* vol.2, p. 60, Burhaneddin Ibn Farhoun, *Tabsirat Al-Hukkam Fi Usul Al-Aqdiyah Wa Manahij Al-Ahkam*, ed. Jamal Mar’ashli (Beirut: Dar al-Kutub al-ilmiyah, 1995) vol.2, p. 270.

that lead to lawful ends should be opened.¹¹⁶ Thus, al-Qarafi linked the ranking of means to the ranking of their ends, and suggested three levels for ends, namely, ‘most repugnant’ (*aqbah*), best (*afḍal*), and ‘in between’ (*mutawassitah*). Ibn Farhun (d. 769 AH), also from the Maliki school, applied al-Qarafi’s ‘opening the means’ to a number of rulings.¹¹⁷

Thus, Malikis do not restrict themselves to the negative side of ‘consequentialist’ thinking, to borrow a term from moral philosophy. They expand this method of thinking to the positive side of it, which entails opening means to achieving good ends, even if these ends were not mentioned in specific scripts. Al-Tahir Ibn Ashur proposed a novel view of the fundamental of ‘custom’ (*al-urf*) based on the purposes of Islamic law, as explained above.

Istishab al-asl/Presumption of Continuity

The principle of ‘presumption of continuity’ (*istiṣhāb*) is a ‘logical evidence’ (*dalīl aqlī*), as jurists say. However, the application of this principle could be viewed as an implementation of the higher purposes of Islamic law. For example, the ‘presumption of innocence until proven guilty’ is aimed to maintain the purpose of justice,¹¹⁸ the presumption of permissibility until proven forbidden is aimed to maintain the purposes of magnanimity and freedom of choice,¹¹⁹ and the presumption of continuity of certain attributes, such as, limited financial ability,¹²⁰ and intention for worship (*nīat al-ibādah*),¹²¹ are aimed to maintain the purpose of facilitation.

¹¹⁶ al-Qarafi, *Al-Dhakheerah* vol.1, p. 153. al-Qarafi, *Al-Furuq (Ma'a Hawamishih)* vol.2, p. 60.

¹¹⁷ Ibn Farhoun, *Tabsirat Al-Hukkam* vol.2, p. 270-.

¹¹⁸ al-Qarafi, *Al-Furuq (Ma'a Hawamishih)* vol.4, p. 49. Abu Zahra, *Usul Al-Fiqh* p 278.

¹¹⁹ al-Qarafi, *Al-Dhakheerah* vol.1, p. 151, Ibn Abdul-Salam, *Qawaid Al-Ahkam Fi Masalih Al-Anam* vol.1 p. 23.

¹²⁰ Ibn Taymiyah, *Kutub Wa Rasa'il Wa Fatwa* vol.2, p. 214.

¹²¹ Ibid. vol.1, p. 56.

In addition, al-Turabi suggested an expansion of the traditional presumption of continuity to a ‘wide presumption of continuity,’ where ‘all values, such as justice, family, and even rituals, as they were known and practiced by people according to their sincere disposition,’ are to be ‘presumed as default.’ The only exception from this rule of ‘presumption of continuity,’ is what the revealed law had corrected and amended.¹²² Thus, the principle of ‘presumption of continuity,’ in its classic and modernist forms, is a form of realisation of the purposes of Islamic law.

Maqasid as Common Grounds for Schools of Law

Today, in the beginning of the twenty-first century, sharp ‘scholastic’ divisions take the shape of a Sunni-Shia division, which many like to perceive as a ‘sectarian’ division, for various motives. The juridical and ‘narrational’ differences between various Sunni and Shia schools boil down to their ‘politics’ rather than their ‘faith.’ However, today, deep divisions between Sunni and Shia are constructed through courts, mosques, and social dealings in most countries, causing these divisions to develop into violent conflict in a number of countries. These divisions have added to a wide-spreading culture of civil intolerance and inability of coexistence with the ‘Other.’

I carried out a survey on the latest studies on *al-maqāṣid*, which were written by key Sunni and Shia scholars. The survey revealed to me an interesting identicalness between both approaches to *maqāṣid*.¹²³ Both approaches address the same topics (*ijtihād*, *qiyās*, *ḥuqūq*, *qāim*, *akhlāq*, and so on), refer to the same jurists and books (al-Juwaini’s *Burhān*, Ibn Babawayh’s *ʿIlal al-Sharāʿi*,

¹²² al-Turabi, *Qadaya Al-Tajdeed* p167.

¹²³ For example, refer to Mohammad Mehdi Shamsuddin, “Maqasid Al-Shariah,” in *Maqasid Al-Shariah*, ed. Abduljabar al-Rufaʿi (Damascus: Dar al-Fikr, 2001), Mohammad Hussain Fadlullah, “Maqasid Al-Shariah,” in *Maqasid Al-Shariah*, ed. Abduljabar al-Rufaʿi (Damascus: Dar al-Fikr, 2001), Abdulhadi al-Fadli, “Maqasid Al-Shariah,” in *Maqasid Al-Shariah*, ed. Abduljabar al-Rufaʿi (Damascus: dar al-Fikr, 2001), al-Alwani, “Maqasid Al-Shariah,” Qaradawi, *Madkhal*.

al-Ghazali's *Mustaṣfā*, al-Shatibi's *Muwāfaqāt*, and Ibn Ashur's *Maqāṣid*), and use the same theoretical classifications (*maṣāliḥ*, *ḍarūrāt*, *ḥājīyāt*, *taḥsīnīyat*, *maqāṣid ʿāmmah*, *maqāṣid khāṣṣah*, and so on). Most of the juridical differences between Sunni and Shia *fiqh* schools are due to differences over *āḥād* narrations and detailed rulings. A *maqāṣidī* approach to *fiqh* is a holistic approach that does not restrict itself to one narration or partial ruling, but rather refers to general principles and common ground. Implementing the 'higher' purposes of unity and reconciliation of Muslims has a higher priority over implementing *fiqh* details. Accordingly, Ayatullah Mahdi Shamsuddin prohibited aggression along Shia-Sunni lines based on 'the higher and fundamental purposes of reconciliation, unity, and justice.'¹²⁴ A *maqāṣidī* approach takes the issues to a higher philosophical ground and, hence, overcomes differences over the political history of Muslims and encourages a much-needed culture of conciliation and peaceful co-existence.

The Geography of the Maqasid Research

The bibliography below shows how research on maqasid al-shariah is now in every continent and every reputable academic or research institute. A quick search on the internet will show how many languages maqasid literature are being translated to.¹²⁵ However, in general, research is required in two topics related to this expansion, namely, the impact of the local and international politics on research in the field, and the lack of depth in most of the research that is done in languages other than the Arabic language.

¹²⁴ Shamsuddin, "Maqasid Al-Shariah," p. 26.

¹²⁵ For example, refer to www.jasserauda.net, where there are references to works on maqasid al-shariah in 32 languages.

In terms of the geographical map of maqasid research, the past decade and witnessed a sharp rise in Maqasid related research all around the world. Different regions focus on different themes, depending on their local and regional needs and their vision for Islam to address those needs. The following is a survey of different regions and maqasid research.

In the Arab world, many research projects focused on the Islamic political theory (*al-siyasah al-shar'iyah*), and how Maqasid al-Shariah could be a methodology for new *ijtihad* in this area.

This interest in Maqasid became much clearer since the "Arab Spring" due to a number of considerations. First, Islamic political movements lacked an agenda that is both authentically "Islamic" yet appealing to the masses. The traditional opinions and the heritage of ideas in this area were not up to the aspirations of the revolutionary movements, especially the youth in the Islamic movements, and Maqasid promised a way forward. When constitutional debates were at their highest over issues of the application of the Shariah and national identities, Maqasid was quite commonly used argument, especially as a common ground that the revolutionary forces could agree on. As the years go by and the anti revolutionary forces win this round over the traditional Islamic voices, Maqasid still offers a hope for a more balanced and relevant Islamic ideology for the next wave of change in the Arab world.

On the other hand, the Arab world witnessed the recent failures of the Salafi extremist ideology to produce fatwa and thought that touch people's lives and is faithful to their concerns. The Shia extremist ideology also proved to have failed to be relevant to the average Muslim's life and his/her concerns. Maqasid is one of the foremost methodologies that could face both of these extreme ideologies and the terrorist movements that they both produce in the Middle East.

In the west, the Islamic studies in academic circles witnessed a growing interest in maqasid studies. A growing number of courses are including works on maqasid, especially in the English

language, in the curricula on Islamic law, Islamic thought, Muslim women and Islamic political movements.

In South East Asia, there are two growing trends in maqasid research, Islamic finance and Islamic governance. In Muslim majority ASEAN countries, the tension between the Islamic national identity and a growing sense of multi-culturalism has encouraged more researchers to look for common ground for governance in the ideas of maqasid. The commonalities between the maqasid principles and national common values, such as the Indonesian Pancasila (the five principles of divine unity, civil humanity, national unity, wisdom, and justice) resulted in more interest in maqasid studies in national universities and research centers. Similarly, politicians and Islamic activists have been calling for the principles of maqasid as grounds for national unity in Malaysia, Thailand, Singapore, and Philippines.

In India, although Shah Waliullah Dahlawi has applied maqasid thinking to his work on Islamic law, and despite the “maqasidi” thought of Allama Iqbal, maqasid has not been activated in the legal thinking in the Indian sub-continent, which remains largely and traditionally Hanafi.

However, there has been a growing movement of translating works on maqasid from the Arabic language to the Indian languages, especially Urdu, Malayalam and Tamil. These initiatives are taken by the new generation of Muslims scholars, who are keen to bring the Islamic thought in the region to contemporary times, especially given the isolation of the Muslim community in India and its negative impact on their social and economic status.

Applied Maqasid Studies

The following are the main areas of research and fields of knowledge, upon which the maqasid methodology has been applied.

Islamic Finance

Islamic finance is the prime area, quantitatively speaking, in which applied research on maqasid al-shariah takes place. The attached bibliography shows hundreds of research articles and projects related to Islamic finance. There is an obvious gap between the moral principles of Islamic economy and the reality of financial systems, including Islamic financial systems. Maqasid could play a role in bridging this gap.¹²⁶ Maqasid also plays a role in developing a contemporary fiqh of waqf, or endowment, as an authentic and, in the same time, contemporary form of Islamic philanthropy.¹²⁷ The application of maqasid to the fiqh of zakah is also on the rise.¹²⁸ Maqasid has been used, increasingly, as part of the criteria for the “Shariah compliance” in Islamic financial dealings, such as insurance,¹²⁹ sukuk/bonds,¹³⁰ hedge funds,¹³¹ Takaful,¹³² murabaha,¹³³ wa’ d/promise,¹³⁴ and almost every other current dealing. Finally, maqasid criteria has been increasingly added to the “Halal” rules, which promises more ethical approaches rather

¹²⁶ Aassouli, 2016, Manan et al, 2015,

¹²⁷ Hasan et al, 2015, Manan, 2012, Manan et al, 2014, Ibrahim et al, n.d., Khan, 2015, Hassan, 2016, Khan, 2015, Ahmad et al, 2014a

¹²⁸ Kasri, n.d., Khairuldin et al, 2013, Khan, 2015,

¹²⁹ Rahman et al, 2012, Rahman et al, 2016, Abdulaziz, 2010

¹³⁰ Saad, 2014, Ahmed, n.d., Aziz et al, 2013, Aziz, 2009a, Ibrahim 2015, Kamali, 2011b, Mohamad et al, 2011, Saad et al, 2014, Ahmed, n.d.

¹³¹ Aziz, 2009b, Dusuki, 2009b, Razif et al, 2012, Ahmad et al, 2014b

¹³² Darus, 2014, Frenz, 2010, Ismail, 2010, Salleh, 2013, Yussof, 2012

¹³³ Gundogdu, 2014

¹³⁴ Ahmad et al, 2014c

than the superficial rules that dominate this field so far.¹³⁵

Fatwa and Islamic law

Research in this area focuses on reviewing fatwa and juridical reasoning (ijtihad),¹³⁶ especially in areas of social/communal concern, to ensure their alignment with the maqasid of justice, mercy, welfare, dignity, life, knowledge and peace. A special attention is given to the Muslim family law,¹³⁷ women in the Islamic law,¹³⁸ medical ethics,¹³⁹ fiqh of minorities,¹⁴⁰ and other areas.

Economics and development

Research in this area emphasises the importance of holistic development models that acknowledge the fundamental nature (fitrah) and needs of humanity. Both growth and development will be framed within purposeful systems that do not promote either for their own sake but rather as means to better the human condition.¹⁴¹

Politics and leadership

¹³⁵ Rahman et al, 2014, Kayadibi, 2012b, Mahamod et al, 2015, Omar et al, 2012, Rahim et al, 2013, Rahman, S., Ruzulan et al, 2014, Al et al, 2011, Batchelor, 2015, Kayadibi, 2012b

¹³⁶ Al-Alwani, 1991, Nasih, 2011, Ramadan, 2006, Yasin, 1985, Goolam, 2006, Hazri, 2015, Kamali, 2011a, Khan & Ramadan, Eds, 2011

¹³⁷ Goolam, 2001, Hanif, n.d., Hofmann, 2008, Husni et al, 2015a, Mir-Hosseini et al, Eds, 2013, Nielsen, 2016, Sadiqi, 2008, Warner, 2013c, al-Disuqi, 2012, Behrouz, 2003

¹³⁸ Husni et al, 2015b

¹³⁹ Kasule, 2003, Kasule, 2004, Kasule, 2005, Kasule, 2011, Kasule, 2013, Kasule, 2014, Khorfan, 2010, Misha, n.d., Nordin, 2006, Rady, 2014, Ridzuan, 2013, Ryan, 1988

¹⁴⁰ Abdelkader, 2011b, El-Mesawi, 2010b, Khan, 2002, March, 2009, Najimdeen, 2014

¹⁴¹ Chapra, 2008a, Chapra, 2008b, Chapra et al, 2008, Çizakça, 2007, bin Wan Yusoff, n.d., Crow, 2013, Dar, 2004

Research in this area critiques and re-thinks Islamic traditional political and policy methodologies, theories, frameworks and in turn public services from an Islamic lens. Special attention is given to the current maqasid debates related to the political issues of both government and civil society in the Muslim World in general and the Arab World in particular.¹⁴²

Arts and entertainment

A maqasid approach views arts as an integral aspect of faith and social well being. Its primary contribution lies in providing the criteria by which arts and entertainment can flourish to uplift the human spirit while avoiding the base tendencies we have witnessed as parts of modernity.

Theses in this area will encourages a diverse artistic expressions within a framework of Islamic values.¹⁴³

Education

Research in this area addresses the shortcomings of both traditional Islamic approaches that have generally focused on narrow theological or legal understandings of Islamic education while denying the ‘worldly’ element of human activities, as well as on modern secular approaches that focus on the material world while denying the spiritual nature of humanity.¹⁴⁴

New areas of application

¹⁴² Dangor, 2009, Emon, 2011, Finn, 2012a, Finn, Ed, 2012b, Hanafi, 2002a, Hefner, Ed, 2011, Hudson, 2008, Johnson, 1978, Kennedy, 1991, Kersten, 2012, Khan, 2015, Krämer, 2005, Luz, 2008a, Madelung, 1997b, March 2010a, March 2010b, March 2011a, March 2011c, Muhammad, 2008

¹⁴³ Faruqi, L., 1985, Malkeyeva, 1997, Wright, 1988, Wright, 1990, Azadehfar, 2011

¹⁴⁴ Daher, 2012, Rahim, 2011, Srimulyani, 2012, Tauhidi, 2007, Terc, 2006, Abi-Mershed, 2011, Ali, 2012, Alwan, 2011, Anderson, 2011

Finally, one of the contributions of the maqasid approach is to open the doors for an Islamic approach to research in other areas that are actually new to Islamic scholarship. Examples are tourism,¹⁴⁵ animated infographics,¹⁴⁶ technology,¹⁴⁷ innovation,¹⁴⁸ historiography,¹⁴⁹ marketing,¹⁵⁰ psychology,¹⁵¹ and architecture.¹⁵²

¹⁴⁵ Mahamod et al, 2015

¹⁴⁶ Rahim et al, 2015

¹⁴⁷ Bakar, 2016, Amin, 2011, Bouzenita, 2009

¹⁴⁸ Yusuf, 2011, Baqutayan, 2012, Çizakça, 2014

¹⁴⁹ Saleh, 2010

¹⁵⁰ Echchabi, 2012, El-Bassiouny, 2016, Othman, n.d., Rammal, 2010, Al-Banna, 2015

¹⁵¹ Kasule, 2004, Kasule, 2014, Othman, 2011

¹⁵² Rosni, 2014, Crane, 2012

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Glossary of Terms

Transliterated Term	Meaning(s)
ʿ <i>adl</i>	justice/fairness
ʿ <i>amal</i>	tradition (usually, of the People of Medina)
ʿ <i>amd</i>	intentionally
ʿ <i>aql</i>	reason
ʿ <i>araḍ</i>	accident
ʿ <i>ibādāt</i>	acts/rituals of worship
ʿ <i>ibārah</i>	clear expression
ʿ <i>iddah</i>	waiting period (for women, after divorce)
ʿ <i>illah</i>	cause/reason/ <i>ratio legis</i>
ʿ <i>ilm</i>	knowledge
ʿ <i>ilm ḥadīth</i>	science of narration
ʿ <i>ilm kalām</i>	Islamic philosophy of religion
ʿ <i>ird</i>	honour
ʿ <i>itrah</i>	Prophet’s next of kin
ʿ <i>umūm</i>	general expressions/generalality
ʿ <i>urf</i>	custom/tradition
<i>āḥād</i>	single-chained narration
<i>ahl al-athar</i>	supporters of narrations
<i>ahl al-raʿī</i>	supporters of opinions
<i>ahlīyah</i>	legal capacity
<i>ahlīyat adāʿ</i>	active legal capacity
<i>ahlīyat wujūb</i>	receptive legal capacity
<i>akhlāq makrumāt</i>	virtues
<i>Amr</i>	order

<i>Aṣl</i>	primary situation
<i>bidʿah</i>	innovation
<i>bulūgh</i>	puberty
<i>ḍaʿīf</i>	weak (narration)
<i>dalīl</i>	evidences
<i>dalīl ʿaqlī</i>	rational evidence
<i>dalīl ikhtirāʿ</i>	evidence of creation
<i>dalīl kullī</i>	holistic evidence
<i>dalīl riʾāyah</i>	evidence of sustainance
<i>dalīl wujūd</i>	evidence of existence
<i>darūrah</i>	necessity
<i>ḍarūrāt</i>	necessities
<i>dhāt</i>	essence
<i>dhātī</i>	intrinsic
<i>dilālah</i>	implication
<i>dilālat ʿadad</i>	implication of numbers
<i>dilālat lafẓ</i>	the implication of a term/expression
<i>dilālat siyaq</i>	implication of the context
<i>fahm</i>	understanding
<i>farʿ</i>	secondary situation
<i>fāsid</i>	void/incorrect
<i>fath al-dharāʿiʿ</i>	opening the means
<i>fatāwā</i>	legal opinions/edicts
<i>fiʾl khalqī</i>	creation-related actions
<i>fiʾl tashrīʾī</i>	law-related actions
<i>fiqh wāqīʿ</i>	understanding of the status quo
<i>fiṭrah</i>	natural disposition
<i>ghair wāḍiḥ</i>	unclear term
<i>ḥadd</i>	definition
<i>ḥadd riddah</i>	punishment for apostacy

<i>ḥājīyāt</i>	needs
<i>ḥarām</i>	sin/forbidden/prohibited/unlawful/sanctuary
<i>ḥarfīyyah</i>	literalism
<i>ḥassan</i>	embellished/beautiful
<i>ḥikmah</i>	wisdom (behind a ruling)
<i>ḥujjīyah</i>	juridical authority
<i>ḥukm</i>	ruling/rule
<i>ḥukm taklīfī</i>	accountability ruling
<i>ḥukm waḍʿī</i>	declaratory ruling
<i>ḥurrīyah</i>	freedom
<i>ḥtibār</i>	validity
<i>idrāk</i>	cognition
<i>ijmāʿ</i>	consensus
<i>ijtihād</i>	new/diligent reasoning/reflection/judgement/ independant judgement
<i>iltzām</i>	association/correlation
<i>īmāʿ</i>	implicit implication
<i>inqibāt</i>	consistency/exactness
<i>iqtiḍaʿ</i>	implication of an omitted word
<i>iqtiḍaʿ</i>	implying ommitance
<i>ishārah</i>	indirect implication
<i>iṣlāḥ</i>	reform
<i>ʿiṣmah</i>	infallibility
<i>istiʿnās</i>	supporting evidence
<i>istiḥsān</i>	juridical preference
<i>istiṣḥāb</i>	presumption of continuity
<i>istiṣnāʾ</i>	purchase with order
<i>jamʿ bayn al-adillah</i>	conciliation between evidences
<i>juzʿīyāt</i>	partials

<i>kalāmīūn</i>	theologians/philosophers of religion
<i>khafī</i>	implicit/hidden
<i>kullīyat</i>	universals
<i>madhāhib</i>	traditional schools of Islamic law
<i>mafhūm</i>	understood by implication
<i>mafhūm ghāyah</i>	limit implication
<i>mafhūm laqab</i>	title implication
<i>mafhūm mukhālafah</i>	contrary implication
<i>mafhūm muwāfaqah</i>	coherence implication
<i>mafhūm shart</i>	condition implication
<i>mafhūm wasf</i>	attribute implication
<i>mafsadah</i>	mischief
<i>majāz</i>	allegorical
<i>makrūh</i>	detested/discouraged
<i>mandūb</i>	recommended/encouraged
<i>māniʿ</i>	hindrance
<i>manṭiq</i>	logic
<i>maqāsid</i>	purpose/objective/principle/intent/goal/end
<i>marjīʿ taqlīd</i>	imitation (Shia) Reference
<i>marjūh</i>	outweighed
<i>masʿalah</i>	juridical case/issue
<i>maṣāliḥ mursalah</i>	unrestricted interests
<i>mashhūr</i>	famous (narration)
<i>maṣlaḥah</i>	interest/benefit/welfare
<i>matn</i>	content/body
<i>muʿāmalāt</i>	worldly transactions
<i>muʿawwal</i>	(re-)interpreted
<i>mubāḥ</i>	lawful
<i>mufassar</i>	explained

<i>muḥkam</i>	firmly constructed (expression)
<i>mujmal</i>	general
<i>mukallaḥ</i>	subject
<i>mulāʿim</i>	reconciled attribute
<i>munāsabat qiyās</i>	appropriate attribute for analogy
<i>munāsib</i>	appropriate attribute
<i>mursal</i>	disconnected-end of chain of narrators
<i>muṣawwibah</i>	validators
<i>mushkal</i>	ambiguous
<i>muṭabaqah</i>	complete accord
<i>mutashābih</i>	resembling
<i>mutawātir</i>	most famous
<i>muttaṣil</i>	connected chain of narrators
<i>nahī</i>	negative order
<i>naskh</i>	abrogation
<i>naṣṣ</i>	script/text
<i>qaṭʿī</i>	certain
<i>qawāʿid</i>	basic rules
<i>qiyās</i>	analogical reasoning
<i>qiyās awlā</i>	obvious analogy
<i>qiyās jalī</i>	obvious analogy
<i>qirāʾāt ʿashr</i>	popular ten readings of the Quran
<i>ribā nastʿah</i>	deferred usury
<i>rukhaṣ</i>	provisions
<i>sabab</i>	reason
<i>sababīyah</i>	principle of causation
<i>sadd al-dharāʿiʿ</i>	blocking the means
<i>sanad</i>	chain of narrators
<i>ṣarīḥ</i>	clearly started
<i>shadāʿid</i>	strictnesses

<i>sharʿu man qablanā</i>	previous jurisprudence
<i>sharʿah</i>	revealed law/way of life
<i>shart</i>	condition
<i>shumūl</i>	scope
<i>shūra</i>	consultation
<i>ṣiḥḥah</i>	correctness/authenticity
<i>taʾāruḍ</i>	opposition
<i>taʿwīl</i>	interpretation
<i>taʾaddī</i>	extension
<i>taʾāruḍ al-adillah</i>	disagreement/opposition between evidences
<i>taḍammun</i>	partial accord
<i>tafsīr</i>	exegesis
<i>tafsīr mawḍūʿī</i>	contextual exegesis
<i>taghrīb</i>	westernization
<i>taḥqīq manāṭ</i>	asserting the realization of <i>ratio legis</i>
<i>taḥsīn wa taqbiḥ</i>	embellishment and repugnance
<i>taḥsīnīyāt</i>	luxuries
<i>tajdīd</i>	renewal
<i>takhrīj manāṭ</i>	extraction of the grounds
<i>takhṣīṣ</i>	Specification
<i>tamīz</i>	age of differentiation
<i>tanqīḥ manāṭ</i>	eliminating the alternatives / <i>ratio decidendi</i>
<i>tawḥīd wʿadl</i>	oneness of God and justice
<i>ummah</i>	nation
<i>uṣūl dīn</i>	fundamentals of religion
<i>uṣūl fiqh</i>	fundamentals of Islamic law
<i>wadʿ ḥadīth</i>	forging of narrations
<i>wājib</i>	obligation/required
<i>waṣaṭīyah</i>	centrism/moderation
<i>wuḍūḥ</i>	clarity

ẓāhirīyah

literalists