

How do we realise Maqasid Al-Shariah in the Shariah?

Jasser Auda

This booklet explores how *maqāṣid al-sharī'ah* (higher purposes and intents of the Islamic law) could contribute to the application of the *sharī'ah* itself in today's Muslim societies and to reaching appropriate juridical rules. The soundness of *sharī'ah*'s application and related rules is subject to the degree of universality and flexibility of the Islamic rulings with changing circumstances, discussed from various viewpoints in this booklet. After a survey of the system of values that *maqāṣid al-shariah* represent, three methods are explored: (1) differentiating between scripts that are means (*wasā'il*) to higher ends and scripts that are ends (*ahdāf*) in their own right, (2) preferring a multi-dimensional understanding for the conciliation of opposing juridical evidences, instead of reductionist methods such as abrogation (*naskh*) and elimination (*tarjīh*), and (3) achieving the *sharī'ah*'s universality across cultures via the consideration of customs (*al-urf*). A number of examples are provided throughout the booklet in order to explain the impact of the proposed methods on contemporary Islamic rulings and juridical policies related to them.

What is *Sharī'ah* is all about?

Contemporary applications of the *sharī'ah* in any given Muslim society or juridical policy requires a methodology that represents the *sharī'ah*'s universality and flexibility with changing circumstances. Without the components of the *sharī'ah* that is pertinent to accommodating various environments and cultures, or in other words the dimensions of history and geography of the people, any such application or policy would be counter-productive. This is because of the jeopardizing of the very well-known and absolute system of values and principles of the *sharī'ah* itself; the principles of justice, wisdom, mercy, and common good.

Shamsuddin Ibn al-Qayyim (d. 748 AH/1347 CE) (1973) summarised these principles with the following strong words (Vol. 1, p. 333):

Sharī'ah is all about wisdom and achieving people's welfare in this life and the afterlife. It is all about justice, mercy, wisdom, and good. Thus, any ruling that replaces justice with injustice, mercy with its opposite, common good with mischief, or wisdom with nonsense,

is a ruling that does not belong to the *sharī'ah*, even if it is claimed to be so according to some interpretation.

Maqāṣid al-sharī'ah (higher purposes and intents of the Islamic law) is a system of values that could contribute to a desired and sound application of the *sharī'ah*. After a section that introduces the system of values and the various theories of *maqāṣid*, this booklet suggests that it is necessary to determine the following:

1. Whether a proposed ruling of the *sharī'ah* is an absolute and fixed end in its own right, or otherwise, it is in itself means to an end, and thus, subject to changing with changing circumstances. This method is expressed in the following: Differentiating between Changing Means and Absolute Ends, which is dealt with in the second section of this booklet.
2. Whether the verse or hadith under consideration should be understood with another verse(s) or hadith(s), all in a unified context, or otherwise, there is no 'opposing evidence' that exists and requires such consideration. This method is expressed in the following: A Multi-Dimensional Understanding of 'Opposing Evidences', which is dealt with in the third section of this booklet.
3. Whether the ruling implied by the juridical evidence is subject to a specific tradition or custom or not. This includes the traditions and customs of the original forms of some rulings, i.e., the Arabian customs during the early Islamic era. This method is expressed in the following: The *Sharī'ah*'s Universality across Cultures, which is dealt with in the fourth section of this booklet.

***Maqāṣid al-Sharī'ah* as a System of Values**

Maqāṣid al-Shariah are the objectives/purposes/intents/ends/principles behind the Islamic rulings (Ibn Ashur, 1997, p. 183), which found expression in the Islamic philosophy/theory/

fundamentals of law in various ways, such as public interests (*al-maṣāliḥ al-āmmah*) (Al-Juwaini, 1400 AH, p. 183), ‘unrestricted interests’ (*al-maṣāliḥ al-mursalah*) (A. Al-Ghazaly, 1413 AH, Vol. 1, p. 172), the avoidance of mischief (*mafsadah*) (Al-Qarafi, 1994, Vol. 5, p. 478), the wisdom behind the scripts (*al-ḥikmah*) (Al-Amidi, 1404 AH, Vol. 5, p. 391), the appropriateness of the juridical analogy (*munāsabat al-qiyas*) (Ibn Qudama, 1399 AH, Vol. 3, p. 42), the basis behind juridical preference (*asl al-istiḥsān*) (Al-Sarakhsi, n.d., Vol. 9, p. 205), the basis behind the presumption of continuity principle (*asl al-istiṣḥāb*) (Ibn Abdul-Salam, n.d., Vol. 1, p. 23), and a large number of other tools for juridical *ijtihād*.

Recently, a large number of researchers from various backgrounds attempted to explore the theory and application of *Maqāṣid al-Shar'iah* in various fields that not only belong to the Islamic jurisprudence but to social sciences and humanities as well (Imam, 2010).

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 into what ‘preserves one’s faith, soul, wealth, mind, and offspring.’ Some jurists added ‘the preservation of honour’ to the above five widely popular necessities. 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,’ not just the Islamic law.

Purposes at the level of needs are less essential for human life. Examples are marriage, trade, and means of transportation. Islam encourages and regulates these needs. However, the lack of any of these needs is not a matter of life and death, especially on an individual basis.

Purposes at the level of luxuries are ‘beautifying purposes,’ such as using perfume, stylish clothing, and beautiful homes. These are things that Islam encourages, but also asserts how they should take a lower priority in one’s life.

The levels in the hierarchy are overlapping and interrelated, so noticed Imam al-Shatibi (who will be introduced shortly). In addition, each level should serve the level(s) below. Also, the general lack of one item from a certain level moves it to the level above. For example, the decline of trade on a global level, for example during the time of global economic crises, moves ‘trade’ from a ‘need’ into a ‘life necessity,’ and so on. That is why some jurists preferred to perceive necessities in terms of ‘overlapping circles,’ rather than a strict hierarchy. Refer to the next chart.

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 (Jughaim, 2002, pp. 26-35):

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.’

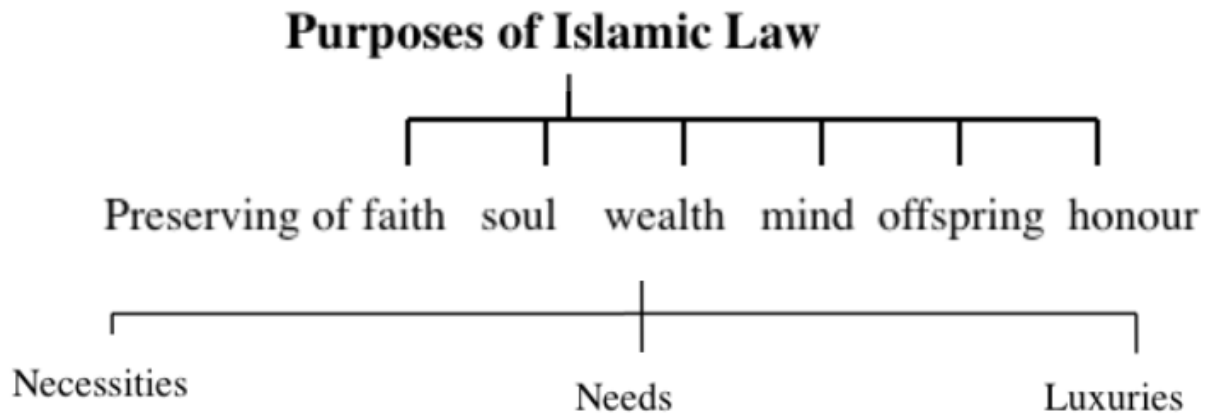


Chart 1. The Classification of *maqasid* based on the levels of necessity.

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/festival days.

Moreover, the notion of *maqāṣid* has been expanded to include a wider scope of people – the community, nation, or humanity, in general. Ibn Ashur (also introduced shortly), 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*. The above expansions of the scope of *maqāṣid* allows them

to respond to global issues and concerns, and to evolve from ‘wisdoms behind the rulings’ to systems of values and practical plans for reform and renewal.

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

1. Rashid Rida (d.1354AH/1935 CE) (n.d.) 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, economic reform, and women rights’ (p. 100).
2. Al-Tahir Ibn Ashur (d.1325 AH/ 1907 CE) (1997) proposed that the universal *maqṣid* of the Islamic law is to maintain orderliness, equality, freedom, facilitation, and the preservation of pure natural disposition (*fiṭrah*) (p. 183). 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 such as Al-Siwasi (n.d., Vol. 4, p. 513). *Al-itq* 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’ (Surat al-Kahf, 18:29). In terms of terminology, ‘freedom’ (*al-ḥurrīyah*) is a ‘newly-coined’ purpose in the literature of the Islamic law. Ibn Ashur (2001), 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' (pp. 256, 268), even though he elaborated on an Islamic perspective on freedom of thought, belief, expression, and action in the *mashī'ah* sense (pp. 270-281).

3. Mohammad al-Ghazaly (d.1416 AH/1996 CE) called for 'learning lessons from the previous fourteen centuries of Islamic history,' and therefore, included 'justice and freedom' in *maqāṣid* at the necessities level (Atiyah, 2001, p. 49). Al-Ghazali's prime contribution to the knowledge of *maqāṣid* was his critique on the literalist tendencies that many of today's scholars have (Izzi Dien, 2004, pp. 131-132). A careful look at the contributions of Mohammad al-Ghazaly shows that there were underlying '*maqāṣid*' upon which he based his opinions, such as equality and justice, upon which he had based all his famous new opinions in the area of women under the Islamic law and other areas.
4. Yusuf al-Qaradawi (1345 AH/ 1926 CE -) (1999) 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. However, al-Qaradawi explains that proposing a theory in universal *maqāṣid* should only happen after developing a level of experience with detailed scripts.
5. Taha al-Alwani (1354 AH/ 1935 CE -) (2001) also surveyed the Quran to identify its 'supreme and prevailing' *maqāṣid*, which are, according to him, 'the oneness of God (*tawhīd*), purification of the soul (*tazkīyah*), and developing civilisation on earth (*imrān*)' (p. 25).

All of the above *maqāṣid* were presented as they appeared in the minds and perceptions of the above jurists. Therefore, *al-maqāṣid* structure is best described as a 'multi-dimensional' structure, in which levels of necessity, scope of rulings, scope of people, and levels of universality are all valid dimensions that represent valid viewpoints and classifications. Refer to the chart below for an illustration. As explained above, the next three sections explore different ways of utilising

maqāsid towards a much needed contemporary policy-making for the application of the shariah in various circumstances.

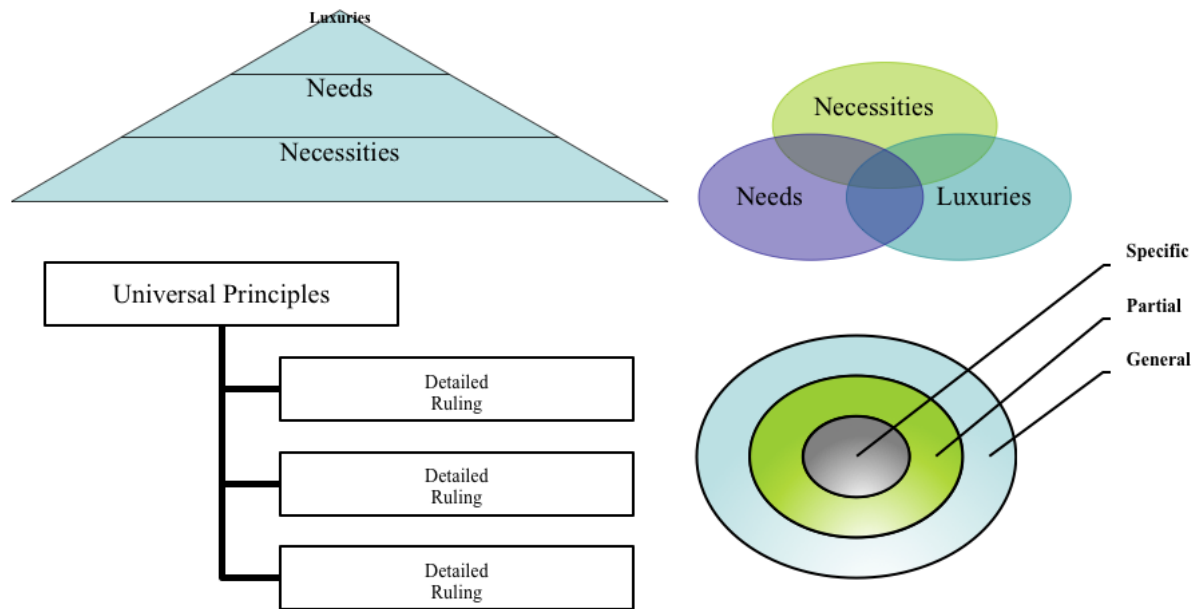


Chart 2. Various dimensions of the theories of *maqasid*.

Differentiating between Changing Means and Absolute Ends

Some scripts (verses or hadith) are ‘scripts of means’ (*nuṣuṣ wasā'il*) and are not meant as ends in their own right; hence are not meant to be applied to the letter. A *maqāsidī* understanding of these scripts helps in identifying their true meaning and intent.

For example, Al-Anfal 8:60 states: ‘Hence, make ready against them whatever force and horse mounts you are able to muster, so that you might deter thereby the enemies of God, who are your enemies as well’. ‘Horse mounts’ are means and not ‘ends’ in their own right that should be literally sought. In fact, the whole concept of ‘getting ready with force’ is means to the ends of justice and peace, rather than ends in its own right as well.

The late Sheikh Mohammad al-Ghazaly extended this concept by differentiating between means (*al-wasā'il*) and ends (*al-ahdāf*), whereas he argued for the possibility of what he called 'expiry' (*intihā'*) of the former and not the latter. Mohammad Al-Ghazaly mentioned the whole system of the distribution of the booty of war as one example, despite the fact that it is mentioned explicitly in the Quran (M. Al-Ghazaly, 1996, p. 161). Al-Anfal 8:41 states: 'And know that whatever booty you acquire [in war], one-fifth thereof belongs to God and the Apostle, and the near of kin, and the orphans, and the needy, and the wayfarer. This you must observe if you believe in God and in what We bestowed from on high upon Our servant'.

The above understanding validates today's policies, in which army personnel are compensated according to a scheme of salaries, ranks, and benefits, which are categorically separate from any economic gains they achieve via warfare.

Recently, Sheikhs Yusuf al-Qaradawi and Faisal Mawlawi, elaborated on the importance of the 'differentiation between means and ends' during the deliberations of the European Council for Fatwa and Research. They, both, applied the same concept to the visual citation of the *hilāl* (Ramadan's new moon) being mere means for knowing the start of the month rather than an end in its own right. Hence, they concluded that pure calculations shall be today's means of defining the start of the month. Thus, Ministries of Islamic Affairs, Ministries of Awqaf, and Houses of Fatwa in various countries could, correctly base their calendar decisions on official astronomical reports and findings, instead of a costly contingency plan every month, especially during the seasons of fasting and pilgrimage. Sheikh al-Qaradawi had also applied the same concept to Muslim women's garment (*jilbāb*), amongst other things, which he viewed as mere means for achieving the objective of modesty (El-Awa, 2006, p. 85).

In my view, 'differentiating between means (*wasā'il*) and ends (*maqāsid*)' opens a whole lot of possibilities for new opinions in the Islamic law. For example, Sheikh Taha al-Alwani proposed a 'project for reform' in his '*Issues in Contemporary Islamic Thought*', in which he elaborated on

his version of the method of ‘differentiation between means and ends’. The following illustrates how al-Alwani (2005) applied this approach to the issue of gender equality:

The Qur’an transported the people of those times to the realm of faith in absolute gender equality. This single article of faith, perhaps more than any other, represented a revolution no less significant than Islam’s condemnation of idolatry...In the case of early Muslim society, given the long established customs, attitudes and mores of pre-Islamic Arabia, it was necessary to implement such changes in stages and to make allowances for society’s capacity to adjust itself accordingly ... By establishing a role for a woman in the witnessing of transactions, even though at the time of revelation they had little to do with such matters, the Qur’an seeks to give concrete form to the idea of woman as participant ... The objective is to end the traditional perception of women by including them, ‘among such as are acceptable to you as witness’ ... the matter of witnessing served merely as a means to an end or as a practical way of establishing the concept of gender equality. In their interpretations of ‘mistake’ and ‘remind’, Qur’anic commentators have approached the issue from a perspective based on the assumption that the division of testimony for women into halves is somehow connected with women’s inherent inequality to men. This idea has been shared by classical and modern commentators alike, so that generations of Muslims, guided only by *taqlid* (imitation), have continued to perpetuate this faulty understanding. Certainly, the attitudes engendered by such a misunderstanding have spread far beyond the legal sphere ... (pp. 164-166).

This application of the suggested method of ‘differentiating between changing means and fixed ends’ also ‘spreads beyond the legal sphere’, in the sense of making policies that aim at changing societies and cultures towards normalizing the value of equality between men and women, especially in their legal capacities before the judicial system.

A similar expression is Ayatollah Mahdi Shamsuddin’s recommendation for today’s jurists to take a ‘dynamic’ approach to the scripts, and ‘not to look at every script as absolute and universal legislation, open their minds to the possibility of “relative” legislation for specific circumstances, and not to judge narrations with missing contexts as absolute in the dimensions of time, space, situations, and people’ (Shamsuddin, 1999, p. 128). He further clarifies that he is ‘inclined to this

understanding but would not base (any rulings) on it for the time being'. Nevertheless, he stresses the need for this approach for rulings related to women, financial matters, and *jihād* (p. 129). Fathi Osman, for another example, 'considered the practical considerations' that rendered a woman's testimony to be less than a man's, as mentioned in Al-Baqarah 2:282. Thus, Osman 're-interpreted' the verse to be a function to these practical considerations, in a way similar to al-Alwani's way mentioned above (El-Affendi, 2001, p. 45). Sheikh Hassan al-Turabi (2000) holds the same view regarding many rulings related, again, to women and their daily-life practices and attires (p. 29).

Rouget Garoudi's expression of this approach was to 'divide the scripts into a section that could be historicised', such as, yet again, 'rulings related to women', and another section that 'represents the eternal value in the revealed message' (Garaudy, 1999, pp. 70, 119). Similarly, Abdul-Karim Soroush (1998) suggested that the scripts should be 'divided into two parts, essentials and accidentals, accidentals being functions of the cultural, social, and historical environment of the delivery of the main message' (p.250).

Some Malikis proposed 'opening the means' (*fath al-dharā'i*) in addition to 'blocking' them (*sadd al-dharā'i*) (Al-Qarafi, 1994, Vol. 1, p.153). Imam Al-Qarafi (1998) divided rulings into means (*wasā'il*) and ends/purposes (*maqāṣid*). He suggested that means that lead to prohibited ends should be blocked, and means that lead to lawful ends should be opened (Vol. 2, p. 60). 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) (1995), also from the Maliki school, applied al-Qarafi's 'opening the means' to a number of rulings (Vol. 2, p. 270).

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.

It is important to note here that some researchers and writers extend the above consideration of historical conditions into what is called the ‘historicisation’ of Islamic scripts, which is the abrogation or cancellation of their ‘authority’ *in toto*. This ‘historicist’ approach suggests that our ideas about texts, cultures and events are totally a function of their position in their original historical context as well as their later historical developments (Meinecke, 1972; Taylor & Winkler, 2001). Applying this idea, borrowed from literature studies, to the Quran entails that the Quranic script is a ‘cultural product’ of the culture that produced it, as claimed by some writers (Abu Zaid, 1998, p. 199; Arkoun, 1998, p. 211).

Therefore, it is claimed, the Quran would become a ‘historic document’ that is only helpful in learning about a specific historic community that existed in the prophetic era. Haida Moghissi (1999), further, claims that ‘the *sharī‘ah* is not compatible with the principle of equality of human beings’ (p. 141). For her, ‘no amount of twisting and bending can reconcile the Quranic injunctions and instructions about women’s rights and obligations with the idea of gender equality’ (p. 140). Similarly, Ibn Warraq (2006) claims that the Islamic human rights scheme shows ‘inadequate support for the principle of freedom’ (p. 53). Thus, for Moosa, Islamic jurisprudence could not be evidence for an ‘ethical vision’, in the contemporary sense (p. 42).

However, I think that rendering the Quran ‘unfair’ and ‘immoral’ goes against the very belief in its divine source. Having said that, I also believe that historical events and specific juridical rulings detailed in the Quran, should be understood within their cultural, geographical, and historical context of the message of Islam. The key for this understanding is, again, to differentiate between changeable means and fixed principles and ends. Means could ‘expire’, as Sheikh Mohammad al-Ghazaly had put it, while ends and principles are non-changeable. Based on such understanding, Quranic specifics could very well apply universally in every place and

time and could very well present an ‘ethical vision’ and ‘value system’ for today legislation and policy.

A Multi-Dimensional Understanding of ‘Opposing Evidences’

In Islamic juridical theory, there is a differentiation between opposition or disagreement (*ta.āruḍ* or *ikhtilāf*) and contradiction (*tanāquḍ* or *ta.anud*) of scripts (verses or narrations). Contradiction is defined as ‘a clear and logical conclusion of truth and falsehood in the same aspect’ (*taqāsum al-ṣidqi wal-kadhib*) (A. Al-Ghazaly, 1961, p. 62). On the other hand, conflict or disagreement between evidences is defined as an ‘apparent contradiction between evidences in the mind of the scholar’ (*ta.āruḍun fī dhihn al-mujtahid*) (Ibn Taymiyah, n.d., p. 131). This means that two seemingly disagreeing (*muta.āriḍ*) evidences are not necessarily in contradiction. It is the perception of the jurist that they are in contradiction which can occur as a result of some missing information or dimension regarding the evidence’s timing, place, circumstances, or other conditions (Al-Bukhari, 1997, Vol. 3, p.77).

On the other hand, true contradiction takes the form of a single episode narrated in truly contradicting ways by the same or different narrators (Auda, 2006, pp. 65-68). This kind of discrepancy is obviously due to errors in narration related to the memory and/or intentions of one or more of the narrators (Al-Subki, 1983, p. 218). The ‘logical’ conclusion in cases of contradiction is that one or more of the narrations is inaccurate and should be rejected.

For example, Abu Hurairah narrated, according to Bukhari: ‘Bad omens are in women, animals, and houses’. However, (also according to Bukhari) Aisha narrated that the Prophet (peace be upon him) had said: ‘People during the Days of Ignorance (*jāhilīyah*) used to say that bad omens are in women, animals, and houses’. These two ‘authentic’ narrations are at odds and one of them should be rejected. It is telling that most commentators rejected Aisha’s narration, even though other ‘authentic’ narrations support it (Auda, 2006, p. 106). Ibn al-Arabi, for example, commented on Aisha’s rejection of the above hadith as follows: ‘This is nonsense (*qawlun sāqit*).

Aisha is rejecting a clear and authentic narration that is narrated through trusted narrators' (Ibn al-Arabi, n.d., Vol. 10, p. 264). (!)

According to various traditional and contemporary studies on the issue of *ta-āruḍ*, contradiction, in the above sense, is rare. Most cases of *ta-āruḍ* are disagreements between narrations because of, apparently, a missing context, not because of logically contradicting accounts of the same episode. There are six strategies that jurists defined to deal with these types of disagreements in traditional schools of law (Badran, 1974, Ch. 4):

1. Conciliation (*Al-Jam*): This method is based on a fundamental rule that states that, 'applying the script is better than disregarding it (*i-māl al-naṣṣi awlā min ihmālih*)'. Therefore, a jurist facing two disagreeing narrations should search for a missing condition or context, and attempt to interpret both narrations based on it.
2. Abrogation (*Al-Naskh*): This method suggests that the later evidence, chronologically speaking, should 'abrogate' (juridically annul) the former. This means that when verses disagree, the verse that is (narrated to be) revealed last is considered to be an abrogating evidence (*nāsikh*) and others to be abrogated (*mansūkh*). Similarly, when prophetic narrations disagree, the narration that has a later date, if dates are known or could be concluded, should abrogate all other narrations. Most scholars do not accept that a hadith abrogates a verse of the Quran, even if the hadith were to be chronologically subsequent.

The concept of abrogation, in any of the above senses, does not have supporting evidence from the words attributed to the Prophet (peace be upon him) in traditional collections of hadith. Etimologically, abrogation (*naskh*) is derived from the root *na sa kha*. I carried out a survey on this root and all its possible derivations in a large number of today's popular collections of hadith, including, Al-Bukhari, Muslim, Al-Tirmithi, Al-Nasa'i, Abu Dawud, Ibn Majah, Ahmad, Malik, Al-Darami, Al-Mustadrak, Ibn Hibban, Ibn Khuzaimah, Al-Bayhaqi, Al-Darqutni, Ibn Abi Shaybah, and Abd al-Razzaq. I found no valid hadith

attributed to the Prophet that contains any of these derivations of the root *na sa kha*. I found about forty instances of ‘abrogations’ mentioned in the above collections, which were all based on one of the narrators’ opinions or commentaries, rather than any of the texts of the hadith. I concluded that the concept of abrogation always appears within the commentaries given by companions or other narrators, commenting on what appears to be in disagreement with their own understanding of the related issues. According to traditional exegeses, the principle of abrogation does have evidence from the Quran, although the interpretations of the related verses are subject to a difference of opinion (Nada, 1996, p. 25).

3. Elimination (*Al-tarjīh*): This method suggests endorsing the narration that is ‘most authentic’ and dropping or eliminating other narrations. The ‘eliminating’ narration is called *al-riwāyah al-rājiḥah*, which literally means the narration that is ‘heavier in the scale’. According to scholars of hadith, an eliminating (*rājiḥah*) narration must have, as compared to the other narration, one or more of the following characteristics: a larger number of other supporting narrations, a shorter chain of narrators, more knowledgeable narrators, narrators more capable of memorisation, more trustworthy narrators, first-hand account versus indirect accounts, shorter time between the narration and the narrated incident, narrators able to remember and mention the date of the incident versus others, less ambiguity, less rhetoric, and a number of other factors.
4. Waiting (*Al-tawaqquf*): This method recommends that the scholar is not to make any decision until one of the above three methods is evident.
5. Cancellation (*Al-tasaquṭ*): This method recommends that the scholar is to disregard both narrations because of the uncertainty in both.
6. Choice (*Al-takhīr*): This method allows the scholar to choose whatever is rendered suitable for the situation at hand.

Hanafis apply abrogation before any other method, followed by the method of elimination (Al-Haj, 1996, Vol. 3, p. 4). All other schools of law give priority, theoretically, to the method of conciliation (*al-jamʿ*). Although most schools of law agree that applying all scripts is better than disregarding any of them, most scholars do not seem to give priority, on a practical level, to the method of conciliation. The methods that are used in most cases of *taʿāruḍ* are abrogation and elimination (Auda 1996, pp. 105-110). Therefore, a large number of evidences are cancelled, one way or the other, for no good reason other than that the jurists' failing to understand how they could fit them in a unified perceptual framework. Thus, invalidating these evidences is more or less arbitrary. For example, narrations are invalidated (outweighed) if narrators did not happen to 'mention the date of the incident', the wording related to the Prophet (peace be upon him) happened to be more 'metaphoric', or a narrator happened to be female - in which case the male's 'opposing' narration takes precedence (Al-Sousarah, 1997, p. 395). Therefore, *al-naskh* and *al-tarjīḥ* reflect the general feature of binary thinking in fundamental methodology. It is essential that the method of conciliation make use of the concept of multi-dimensionality in overcoming this drawback and consider the dimension of *maqasid* in the understanding of the scripts.

One practical consequence of cancelling a large number of verses and prophetic narrations in the name of *naskh* and *tarjīḥ* is a great deal of 'inflexibility' in the Islamic law, i.e., inability to address various situations adequately. Reflection upon pairs of *mutaʿāriḍ* or opposing narrations show that their disagreement could be due to a difference in surrounding circumstances, such as war and peace, poverty and wealth, urban and rural life, summer and winter, sickness and health, or young and old. Therefore, the Quranic instructions or the prophet's actions and decisions, as narrated by his observers, are supposed to have differed accordingly. Lack of contextualisation limits flexibility. For example, eliminating the evidences that occurred in the context of peace for the sake of evidences that occurred in the context of war, combined with literal methods, limits the jurist's ability to address both contexts. When this is combined with a strict binary

methodology, the outcomes result in specific rulings for specific circumstances that are made universal and eternal.

One important example is Al-Tawbah 9:5: ‘But when the forbidden months are past, then slay the pagans wherever you find them, and seize them’, which has come to be named, ‘The Verse of the Sword’ (*āyat al-saif*) and which have been claimed to have abrogated hundreds of verses and hadith. One significant hadith that was claimed to have been abrogated is ‘The Scroll of Medina’ (*ṣaḥīfat al-madīnah*), in which the Prophet (peace be upon him) and the Jews of Medina wrote a ‘covenant’ that defined the relationship between Muslims and Jews living in Medina. The scroll stated that, ‘Muslims and Jews are one nation (*ummah*), with Muslims having their own religion and Jews having their own religion’ (Zurairi, 1996, p. 353). Classic and neo-traditional commentators on the *ṣaḥīfah* render it ‘abrogated’, based on the verse of The Sword and other similar verses (p. 216). Seeing all the above scripts and narrations in terms of the single dimension of peace versus war might imply a contradiction, in which the ‘final truth’ has to ‘belong’ to either peace or war. The result will have to be an unreasonable fixed choice between peace and war, for every place, time, and circumstance. This (mis)understanding eliminates the profession, ministry, and art of foreign policy altogether!

What added to the problem is that the number of cases of abrogation claimed by the students of the companions (*al-tābi.īn*) is higher than the cases claimed by the companions themselves, a fact I concluded based on the survey mentioned earlier. After the first Islamic century, one could furthermore notice that jurists from the developing schools of thought began claiming many new cases of abrogation, which were never claimed by the *tābi.īn*. Thus, abrogation became a method of invalidating opinions or narrations endorsed by rival schools of law. Abu al-Hassan al-Karkhi (d. 951 CE), for one example, writes: ‘The fundamental rule is: Every Quranic verse that is different from the opinion of the jurists in our school is either taken out of context or abrogated’ (Al-Alwani, 2001, p. 89). Therefore, it is not unusual in the *fiqhī* literature to find a certain ruling

to be abrogating (*nāsikh*) according to one school and abrogated (*mansūkh*) according to another. This arbitrary use of the method of abrogation has exacerbated the problem of lack of multi-dimensional interpretations of the evidences.

Multi-dimensional thinking, introduced by the *maqāṣidī* approach, could offer a solution for the dilemmas of a large number of ‘opposing’ evidences. Two evidences might be ‘in opposition’, in terms of this one attribute, such as war and peace, order and forbiddance, standing and sitting, men and women, and so on. If we restrict our view to one dimension, we will find no way to reconcile the evidences. However, if we expand the one-dimensional space into two dimensions, the second of which is a *maqṣid* to which both evidences contribute, then we will be able to ‘resolve’ the opposition and understand/interpret the evidences in a unified context based on the purpose/*maqṣūd* of both evidences.

The following are typical examples from the classic literature on *ikhtilāf al-adillah* (opposition of evidences) (Ibn Qutaybah, 1978), which also represent some traditionalist and modernist views today. However, it will be shown that the ‘opposition’ claimed could be resolved via the multi-dimensional and purposeful method proposed above.

1. There is a large number of opposing evidences related to different ways of performing ‘acts of worship’ (*ibādāt*), all attributed to the Prophet (peace be upon him). These opposing narrations have frequently caused heated debates and rifts within Muslim communities. However, understanding these narrations within a *maqṣid* of magnanimity (*taṣṣir*) entails that the Prophet (peace be upon him) did carry out these rituals in various ways, suggesting flexibility in such matters (Auda, 2006, Ch. 3). Examples of these acts of worship are the different ways of standing and moving during prayers, concluding prayers (*tashahhud*), compensating prostration (*sujūd al-sahū*), reciting ‘God is Great’ (*takbīr*) during *ṣalāt* prayers, making up for breaking one’s fasting in Ramadan, details of pilgrimage, and so on.

2. There is a number of opposing narrations that address matters related to customs (*al-urf*), which were also classified as ‘in opposition’. However, these narrations could all be interpreted through the *maqsid* of ‘universality of the law’, as Ibn Ashur had suggested (Ibn Ashur, 1997, p. 236). In other words, differences between these narrations should be understood as differences in the customs for which the various narrations attempted to show consideration, rather than ‘contradiction’. One example is the two narrations, both attributed to Aisha, one of which forbids ‘any woman’ from marriage without the consent of her guardian, while the other allows previously married women to make their own independent choices on marriage. It is also narrated that Aisha, the narrator of the two narrations herself, did not apply the ‘condition’ of consent in some cases (Al-Siwasi, n.d., Vol. 3, p. 258). Hanafis explained that, ‘the (Arabic) custom goes that a woman who marries without her guardian’s consent is shameless’ (Ibn Abedin, 2000, Vol. 3, p. 55). Understanding both narrations in the context of considering customs based on the law’s ‘universality’ resolves the contradiction and provides flexibility in carrying out marriage ceremonies according to different customs in different places and times.

The above method allows juridical policies related to the family law which accommodate the socio-cultural norms that do not contradict with the fixed matters of Islam, even if they manifest in forms that are different from the forms they had during the early time of the message of Islam.

3. A number of narrations were classified under cases of abrogation, even though they were, according to some jurists, cases of gradual application of rulings. The purpose behind the gradual applications of rulings on a large scale is, ‘facilitating the change that the law is bringing to society’s deep-rooted habits’ (M. Al-Ghazaly, 2002, p. 194). Thus, ‘opposing narrations’ regarding the prohibition of liquor and usury, and the performance of prayers and

fasting, should be understood in terms in the prophetic ‘tradition’ and ‘policy’ of the gradual application of high ideals in any given society that is originally far from these ideals.

4. A number of opposing narrations are considered ‘contradictory’ because their statements entail different rulings for similar cases. However, taking into account that these prophetic statements addressed different people (companions) could ‘resolve the opposition’. In these cases, the juridical *maqṣid* of ‘fulfilling the best interest of people’ would be the key to interpreting these narrations based on the differences between these companions. For example, a few narrations reported that the Prophet (peace be upon him) told a divorcee that she loses her custody of her children if she gets married (Ibn Rushd, n.d., Vol. 2, pp. 42-44). Yet, a number of other ‘opposing’ narrations entail that divorcees could keep their children in their custody after they get married. The opposing narrations included Umm Salamah’s case; Umm Salamah kept custody of her children after she married the Prophet (peace be upon him). Thus, relying on the first group of narrations, most schools of law concluded that custody is automatically transferred to the father if the mother gets married. They based their elimination of the second group of narrations on the fact that the first group was ‘more authentic’, being narrated by Bukhari and Ibn Hanbal. Ibn Hazm, on the other hand, accepted the second group of narrations and rejected the first group based on his suspicion of one of the narrator’s capability of memorisation. However, after citing both opinions, al-Sanaani commented: ‘The children should stay with the parent who fulfils their best interest. If the mother is the better caregiver and will follow up on the children diligently, then she should have priority over them ... The children have to be in the custody of the more capable parent, and the Law cannot possibly judge otherwise’ (Al-Sanaani, 1379 AH, Vol. 3, p. 227). This very issue is a subject of repeated and strong complaints from legal reformers and women’s right activists in various Muslim countries and communities. A maqasidi

approach to this matter, which is al-Sanaani's approach mentioned above, puts first the welfare of children of divorce in this particular family policy. This is the policy that is closest to the Islamic system of values outlined before.

Multi-dimensionality also entails considering more than one *maqṣid*, if applicable. In this case, the way of 'resolving oppositions' that fulfils these *maqāṣid* in the highest order should be given priority, according the hierarchies of *maqāṣid* that scholars had mentioned, for example, necessities (*ḍarūrāt*), needs (*ḥājīyāt*), and luxuries (*taḥṣīnīyāt*), in this order.

The *Sharī'ah*'s Universality across Cultures

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 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.

A final word

Before calling for the ‘application of the shariah’ in Muslim societies or juridical systems, policy and methods have to be based on new *ijtihad* in understanding and applying the evidences of the verses of the Quran or the hadith of the Prophet (peace be upon him). In order for this *ijtihad* to meet the needs of Muslims with changing circumstances, this booklet suggested that it should be based on the following three criteria:

1. Differentiating between Changing Means and Absolute Ends: Some verses or hadiths are ‘scripts of means’ (*nuṣuṣ wasā'il*) and are not meant as ends in their own right; hence are

not meant to be applied to the letter. A *maqāṣidi* understanding of these scripts helps in identifying their purposes.

2. A Multi-Dimensional Understanding of ‘Opposing Evidences’: A *maqāṣidī* approach offers a solution for the dilemma of the large number of ‘opposing’ evidences in our juridical heritage. If we restrict our view to one dimension, such as war and peace, order and forbiddance, standing and sitting, men and women, and so on, we will find no way to reconcile the evidences. However, if we expand the one-dimensional space into two dimensions, the second of which is a *maqṣid* to which both evidences contribute, then we will be able to ‘resolve’ the opposition and understand/interpret the evidences in a unified context based on the purpose/*maqṣūd* of both evidences.
3. Understanding the *sharīʿah*’s Universality across Cultures: A *maqāṣidī* approach offers a method of interpreting the hadith narrations themselves through understanding their underlying Arabic cultural context, rather than treating them as unqualified rules.

Failing to include the above criteria in that *ijtihād* would create applications (or rather, misapplications) of the *sharīʿah* that are reductionist rather than holistic, literal rather than moral, and reductionist rather than multidimensional. Thus, the proposed *maqāṣidi* approach takes juridical decisions and policies to a higher philosophical ground, and hence, leads to a methodology that is holistic, moral, and multidimensional. This methodology achieves a much needed flexibility of the Islamic rulings with the change of time and circumstances; a flexibility that is essential for the universality of Islam and its way of life.

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