

**The Revival and Evolution of *Maqāṣid* Thought: From al-Shāṭibī to Ibn ʿĀshūr and
the Contemporary *Maqāṣid* Movement**

by

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DEDICATION

For my parents Abderrahman Abderrazzaq and Zahieh Abderrazzaq

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ABSTRACT

The dissertation is a study of *maqāṣid* juridical theory that intersects premodern and modern Islamic intellectual history. It examines three areas of inquiry that would help us better understand the evolution of *maqāṣid* thought and its development from Abū Ishāq Ibrāhīm al-Shāṭibī (d. 790/1388), the distinguished ‘father’ of *maqāṣid* theory, to Muḥammad Ibn ‘Āshūr (d. 1973), its modern-day reviver. More concretely, the dissertation examines: (1) the purported marginalization of al-Shāṭibī’s *maqāṣid* theory for some five centuries; (2) the reemergence of al-Shāṭibī’s *maqāṣid* theory in the modern era; and lastly, the central issue of the work, (3) the vicissitudes of the theory today. The dissertation concludes that: (1) whereas theoretical *maqāṣid* and al-Shāṭibī’s *maqāṣid* theory in particular was inactive and dormant for some five centuries, the practical application of *maqāṣid* continued uninterrupted throughout this period; (2) al-Shāṭibī’s *maqāṣid* theory reemerges earlier in the modern era than is generally held by contemporary writers on the subject; and (3) Ibn ‘Āshūr as well as other contemporary *maqāṣid* thinkers had not only revived al-Shāṭibī’s *maqāṣid* theory, but left their own mark on the *maqāṣid* discipline. The dissertation demonstrates how Ibn ‘Āshūr and contemporary *maqāṣid* thinkers revamped the *maqāṣid* discipline in ways they believed were better suited for their time. It also contends that their work on *maqāṣid* challenges the notion that modern Muslim thinkers merely replicated and did not critically engage with al-Shāṭibī’s work. Finally, it argues that Ibn ‘Āshūr and the contemporary *maqāṣid* movement he ushered in attempted not simply to adapt to the demands of the age, but to transform Muslim juridical theory, both integrating and challenging certain modern convictions.

INTRODUCTION

The medieval Islamic period saw the emergence of an all-important legal theory that would redefine how Islamic tradition and the legal community in particular would engage with the world around it. The importance of this legal theory, also referred to in the Arabic as *maqāṣid al-Sharī‘ah* (the higher objectives of Islamic law), is that it offered an alternative methodological approach to that applied within medieval Islamic legal circles and legal theory in addressing matters of the day. Rather than merely building off of precedent, or recycling the views of earlier scholars, or simply remaining silent on difficult issues confronting Muslim society, this theory allowed scholars to take as their departing point a holistic and purpose oriented approach to the rulings and passages found in Islam’s primary sources. It synchronized revelation with reason; giving attention to informing contextual elements, while weighing all perceivable benefits and harms in deliberating over matters. What was absent from the methodologies of premodern Islamic legal theory (*uṣūl al-fiqh*) prior to *maqāṣid* theory was exactly this. The theory of *maqāṣid al-Sharī‘ah* thus allowed Islamic law to become adaptive where necessary while still preserving the overall integrity of Islamic tradition such that its core beliefs, rituals, ethics and the underlying objectives of its general and particular rulings were not compromised.

Among the foremost pioneers and arguably the distinguished ‘father’ of *maqāṣid* theory was Abū Ishāq Ibrāhīm al-Shāṭibī (d. 790/1388). The current narrative among some scholars of Islamic legal and intellectual history is that this theory remained marginalized

for some five centuries, and that al-Shāṭibī's work expounding on it was all but ignored until its reemergence in the twentieth century. Questions pertaining to this five century lapse have yet to be addressed, the story behind the reemergence of al-Shāṭibī's work has yet to be told, and the orientation that *maqāṣid* theory takes in the modern period has yet to be explored.

These central issues represent the focal point of this dissertation. We examine *inter alia*: (1) the validity of the contemporary thesis which holds that al-Shāṭibī's *maqāṣid* theory—and *maqāṣid* thought in general—was marginalized and virtually absent after al-Shāṭibī for some five centuries; (2) how the revival of al-Shāṭibī's theory in the modern era came about; and lastly, the most central issue of this work, (3) the orientation that *maqāṣid* theory takes in the modern period, focusing in particular on a comparative analysis between aspects of al-Shāṭibī's theory and the theories developed by modern *maqāṣid* thinkers, wherein we treat in particular the *maqāṣid* thought of the prominent Tunisian scholar Muḥammad Ibn 'Āshūr (d. 1973).

Method of Approach, Key Questions and Arguments, and Sources

Broadly speaking, this dissertation engages in a conversation on *maqāṣid* theory that intersects premodern and modern Islamic intellectual history. Through my own interjections of questions, commentarial musings and interpretive takes, I serve as a facilitator of this conversation, and the conversation between al-Shāṭibī and Ibn 'Āshūr in particular. The reader will thus find that I position myself both inside and outside the narrative.

This dissertation also captures the transformation of a term (*maqāṣid*) that began to acquire conceptual flesh with medieval figures such as al-Juwaynī (d. 478/1085) and al-Ghazālī (d. 505/1111); which then matures with al-Shāṭibī into a theory or philosophy¹ of law appended to an already established *uṣūl al-fiqh* tradition; and which then begins to develop into a self-standing discipline of its own in the modern era with Ibn ‘Āshūr and other contemporary Muslim thinkers—a discipline that, as we shall see, continues to develop today.

The dissertation is structured according to three corresponding parts, including their chapters and sections, which aim to resolve the issues raised above. Part One is comprised of two main chapters establishing the background needed to tackle these issues. Chapter One examines the linguistic and technical understanding of the term *maqāṣid*, as well as the possible scriptural roots and legitimization of the idea or concept of *maqāṣid al-Sharī‘ah* in the early Islamic period. Chapter One further looks at what the concept and discipline of *maqāṣid* actually means to both premodern and modern thinkers.

Chapter Two examines the medieval development of *maqāṣid* thought and key issues that arose therein, with particular attention given to its development with al-Shāṭibī, who is arguably—given the sheer substance he devoted to the subject in his writings coupled with his role in developing it into a discipline—the most central figure concerning *maqāṣid* thought. We treat, moreover, the rise of al-Shāṭibī’s *maqāṣid* theory including the

¹ The intended meaning of philosophy here is in the general sense: as a theory or system of ideas, opinions, or beliefs serving as guidance in practical affairs (Cf. the entry “philosophy” under definition nos. 6 and 8 in the Oxford English Dictionary (www.oed.com)). The reader will thus find the terms theory and philosophy used interchangeably in this text (namely for stylistic purposes) in reference to al-Shāṭibī’s *maqāṣid* thought or writing on *maqāṣid*, as well as in reference to post-Shāṭibīan *maqāṣid* thought or writing on *maqāṣid* (i.e., “*maqāṣid* theory” or “*maqāṣid* philosophy”).

factors that led to its emergence, precursors to and influences on his *maqāṣid* thought, and—as a relevant and crucial segue to the subsequent parts of this work pertaining to the state and development of post-Shāṭibīan *maqāṣid* thought—the original contributions that he made with his *maqāṣid* theory. Simply put, we need to understand what he did in order to understand what may have changed. Chapter Two also highlights certain areas of our analysis of al-Shāṭibī’s *maqāṣid* thought which diverge from Khaled Masud’s groundbreaking work on al-Shāṭibī. Additionally, we look at objections and controversies surrounding *maqāṣid* in the medieval period and offer reasons why there was some pause and even resistance from medieval thinkers in engaging with *maqāṣid* thought. Our treatment of al-Shāṭibī’s *maqāṣid* theory is important to understanding its revival in the modern period, which we treat in Part Two. It is especially important to Part Three, much of which will juxtapose al-Shāṭibī’s *maqāṣid* thought to that of Ibn ‘Āshūr’s and other contemporary *maqāṣid* thinkers’ *maqāṣid* thought in an attempt to determine the trajectory that *maqāṣid* takes in the modern period.

Part Two of this dissertation contributes an important study delineating the emergence of *maqāṣid* theory in the modern Muslim world. We consider the current narrative among historians of Islamic legal and intellectual thought that this theory remained marginalized for some five centuries, and that al-Shāṭibī’s work expounding on it was all but ignored until its reemergence in the late nineteenth and early twentieth centuries, the period commonly deemed by contemporary writers on the subject such as Muhammad Khalid Masud, Mohammad Hashim Kamali, and Felicitas Opwis, as the germinating point for its revival. We then focus on five areas of inquiry presented in five chapters. Chapter Three addresses why al-Shāṭibī’s *maqāṣid* theory was purportedly

ignored for some five centuries, only to be rediscovered in the modern period. Chapter Four explores whether *maqāṣid* in practice, as opposed to theoretical *maqāṣid*, was alive and active during this five century neglect of al-Shāṭibī's *maqāṣid* theory. Chapter Five through Seven then attempt to trace when and how al-Shāṭibī's thought and specifically his famous work on *maqāṣid* reemerges in the modern Muslim world, and whether it may have been earlier than the late nineteenth and early twentieth centuries that is suggested by the above contemporary writers on the subject. These chapters will identify the key figures who adopted and disseminated his thought, how they did this, as well as the possible links between them. Part Two, moreover, provides the socio-political, economic and religious context within which the *maqāṣid* thought of later thinkers such as Ibn 'Āshūr would emerge.

Ibn 'Āshūr and the contemporary *maqāṣid* movement he ushered in is the subject of Part Three of this work. Part Three will explore the orientation that *maqāṣid* theory takes in the modern era, focusing in particular on the *maqāṣid* thought of Ibn 'Āshūr, while also weaving in the thought of important *maqāṣid* thinkers of the twentieth and twenty-first centuries. Much of Ibn 'Āshūr's *maqāṣid* thought will be examined in juxtaposition to al-Shāṭibī's *maqāṣid* theory, allowing us to better determine any kind of evolution taking place within their philosophies, including factors or reasons which may be attributed to any differences, and the implications that these differences have on the balance of the *maqāṣid* discipline. This comparative analysis will also allow us to vet certain assertions made by some contemporary commentators, including Professor Sherman Jackson, that Ibn 'Āshūr's engagement with the *maqāṣid* discipline resulted in a mere replication of al-Shāṭibī's theory. More concretely, we consider Professor Sherman Jackson's contention

that Ibn ‘Āshūr’s approach to the *maqāṣid* falls in line with “juridical empiricism,” and that he was unable “to move beyond the pre-modern jurists’ abstractions of the *maqāṣid al-Sharī‘ah* to practical concretions that are responsive to the realities of the modern world.”² To the contrary, Part Three will argue that Ibn ‘Āshūr’s engagement with *maqāṣid* largely reflects Professor Jackson’s neoteric notion of “juristic induction,” and, moreover, that Ibn ‘Āshūr presented a *maqāṣid* theory which attempted to be meaningful and relevant for Muslims in the contemporary world. We demonstrate that he does this through both preservation and adaptation of certain elements within Islamic tradition. We make the case, moreover, that Ibn ‘Āshūr’s *maqāṣid* theory as well as that of other contemporary *maqāṣid* thinkers reflects an attempt to not simply be adaptive to the time, but transformative, both integrating and challenging certain modern sensibilities.

Part Three will attempt to achieve the aforementioned through several chapters and sections. The first chapter of Part Three introduces the life and career of Ibn ‘Āshūr along with relatively brief biographies of important *maqāṣid* thinkers of the twentieth and twenty-first centuries who were influenced by Ibn ‘Āshūr’s *maqāṣid* thought and/or are conversant with it. As already noted, the *maqāṣid* thought of these post-Ibn ‘Āshūr thinkers will be weaved into the various chapters and sections, helping us better understand the orientation and trajectory that the *maqāṣid* discipline takes in the contemporary world. The following chapter examines the motives behind Ibn ‘Āshūr’s *maqāṣid* work in juxtaposition to that

² Jackson, *Literalism, Empiricism, and Induction: Apprehending and Concretizing Islamic Law's Maqasid Al-Shari'ah in the Modern World*, 1470. For his association of Ibn ‘Āshūr with “juristic empiricism,” see p. 1478.

of al-Shāṭibī's. What, if anything, do the reasons behind why they composed their *maqāṣid* work, including the audience they were addressing, tell us about the evolution of *maqāṣid*?

The next several chapters and sections will further help us understand the evolution of *maqāṣid* thought between the premodern and modern eras by offering a comparative analysis between al-Shāṭibī and Ibn 'Āshūr and more recent *maqāṣid* thinkers on central topics pertaining to the *maqāṣid* discipline. These topics include the methodology to ascertaining *maqāṣid*, the role of *maṣlaḥah*, negotiating between competing *maqāṣid*, and interpreting the classical essential *maqāṣid*. Finally, Part Three will explore new contributions made to the *maqāṣid* discipline by Ibn 'Āshūr and other contemporary *maqāṣid* thinkers.

This dissertation draws primarily on the *maqāṣid* writings of premodern and modern Muslim thinkers. As much of the attention in this dissertation is given to the *maqāṣid* thought of al-Shāṭibī and Ibn 'Āshūr, especially in Parts One and Three, we of course rely heavily on their *maqāṣid* writing. For al-Shāṭibī, this is found mainly in his *al-Muwāfaqāt*, but also in his *al-I'tiṣām* as well as his *fatāwā*.³ In attempting to capture the precursors to and influences on al-Shāṭibī's *maqāṣid* theory, we also engage with the writings of several important medieval pioneers in *maqāṣid* thought. Among these are: Abū al-Ma'ālī al-Juwaynī's (d. 478/1085) *al-Burhān fī uṣūl al-fīqh*, Abū Ḥāmid al-Ghazālī's (d. 505/1111) *al-Mustaṣfā min 'ilm al-uṣūl*, al-'Izz Ibn 'Abd al-Salām's (d. 660/1262) *Qawā'id al-aḥkām fī maṣāliḥ al-anām*, Shihāb al-Dīn al-Qarāfī's (d. 684/1285) *Anwār al-burūq fī anwā' al-furūq*, and Ibn al-Qayyim al-Jawziyyah's (d. 751/1350) *I'lām al-*

³ For his *fatāwā*, see Shāṭibī, Ibrāhīm Ibn Mūsá, and Muḥammad Abū Al-Ajḫān. *Fatāwá Al-Imām Al-Shāṭibī*. (Al-Riyāḍ: Maktabat Al-'Ubaykān, 2001).

muwaqqi'īn. Also aiding us in understanding al-Shāṭibī's thought are two substantial studies that treat his *maqāṣid* theory, Muhammad Khalid Masud's *Shāṭibī's Philosophy of Islamic Law* and Aḥmad al-Raysūnī's *Imam Al-Shāṭibī's Theory of the Higher Objectives and Intents of Islamic Law*.

As for Ibn 'Āshūr's *maqāṣid* thought, we concentrate on his seminal work *Maqāṣid al-Sharī'ah* (1946), arguably the first critical encounter with and original contribution to *maqāṣid* theory since al-Shāṭibī's fourteenth century pioneering work. Ibn 'Āshūr's other works, including *A-laysa al-ṣubḥ bi qarīb*, *al-Ḥarakah al-adabiyah*, and *Uṣūl al-niẓām al-Ijtimā'ī fī al-Islām*, as well as various secondary sources, will also be useful in helping us reconstruct his environment and career. Additionally, several writings of contemporary *maqāṣid* thinkers will be introduced in Part Three. These thinkers were influenced by Ibn 'Āshūr's *maqāṣid* thought and/or are conversant with it, and have in some capacity contributed to the development of the field through their own original ideas. Though by no means do we exhaustively treat their works, we delve into certain topics they address that we deem useful in further understanding the formation of the *maqāṣid* discipline today. With respect to Part Two of this work, we draw on various primary sources, including the writings of reformist thinkers of the nineteenth and early twentieth century as well as secondary sources (modern histories) which help us trace the discovery of al-Shāṭibī's *al-Muwāfaqāt* and which capture the socio-political and religious environment of nineteenth and early to mid-twentieth century Tunisia that *maqāṣid* theory reemerges in.

PART I

The Development of *Maqāṣid al-Sharī'ah* in the Premodern Era

INTRODUCTION TO PART I

Central to this present work is the concept turned discipline known as *maqāṣid al-Sharī'ah*. Before proceeding to tackle the questions, issues and arguments that have already been put forward in the introduction, it is imperative here—especially in attempting to establish a ‘level playing field’—to provide discussion on what this concept and discipline actually means to both modern and premodern writers and thinkers on the subject, and furthermore, to understand this discipline’s early development along with the key issues that arose therein, focusing in particular on its development with one of its foremost pioneers, Abū Ishāq Ibrāhīm al-Shāṭibī. Part One will thus aim to achieve this through two main chapters along with their respective subsections. Chapter One will provide *inter alia*: (1) an elucidation of the linguistic understanding(s) of the term *maqāṣid*; (2) an exploration of the technical understanding of the concept *maqāṣid al-Sharī'ah*; (3) the important relationship between *maqāṣid* and the concept of *maṣāliḥ* (public interest); (4) the rootedness of the notion of *maqāṣid* in early Islam; and lastly, (5) the scriptural roots of *maqāṣid*. In Chapter Two of Part One, we attempt to examine and understand *inter alia*: (1) the importance of *maqāṣid* theory to the medieval period; (2) the rise of al-Shāṭibī’s *maqāṣid* theory; (3) precursors to and influences on al-Shāṭibī’s *maqāṣid* thought; and finally, as a relevant segue to the subsequent parts of this work pertaining to post-Shāṭibian *maqāṣid*, we attempt to (4) capture in particular the original contributions that al-Shāṭibī made to *maqāṣid* theory. Part One will therefore prepare the reader to navigate through

Parts Two and Three of this work, which examine *inter alia*: (1) the validity of the contemporary thesis which holds that al-Shāṭibī's *maqāṣid* theory—and *maqāṣid* thought in general—was marginalized and virtually absent after al-Shāṭibī for some five centuries; (2) how the revival of al-Shāṭibī's theory in the modern era came about; and lastly (3) the orientation that *maqāṣid* theory takes in the modern era, focusing in particular on important *maqāṣid* thinkers of the twentieth and twenty-first centuries.

While al-Shāṭibī's works (namely *al-Muwāfaqāt*, but also *al-I'tiṣām*, and his *fatāwā*) receive much of the attention in Part One, and particularly Chapter Two (as well as later again in Part Three), Part One (and later in Part Three) will also bring into discussion important pioneers in *maqāṣid* thought who precede al-Shāṭibī and who contribute in shaping the theory's early development. It is worthwhile here to introduce their main works pertaining to the subject of *maqāṣid*.

Abū al-Ma'ālī al-Juwaynī's *al-Burhān fī uṣūl al-fiqh* is considered one of the early seminal works on Islamic legal theory. It was praised by the famous historian Ibn Khaldūn (d. 1406) as well as by the historian and great scholar of Shāfi'ī *fiqh* Tāj al-Dīn al-Subkī (d. 1370). The latter characterized it as original in its content and the mystique of the Muslim community ("lughz al-ummah").⁴ Al-Juwaynī's *Burhān* is deemed among the earliest *uṣūl* works to offer a classification of human interests into the three categories of essentials (*al-ḍarūriyyāt*), exigencies (*al-ḥājjiyyāt*), and enhancements (*al-taḥsīniyyāt*).⁵

Al-Juwaynī's most notable student would be Abū Ḥāmid al-Ghazālī. Al-Ghazālī's *al-Mustasfā min 'ilm al-uṣūl*, considered the last of his works on law, was intended—with

⁴ For al-Subkī's praise of al-Juwaynī and his work see: Tāj al-Dīn Abī Naṣr 'Abd al-Wahhāb ibn 'Alī ibn 'Abd al-Kāfi al-Subkī, *Ṭabaqāt al-Shāfi'iyyah*. Edited by 'Abd al-Fattāḥ al-Ḥulū and Maḥmūd al-Tanāḥī. Vol. 10. (Cairo: 'Isā al-Bābī al-Ḥalabī, 1964), 5:165-222.

⁵ See Chapter Two of this work for more on al-Juwaynī's contribution to *maqāṣid* theory.

urging from his disciples—to offer a more coherent, systematic and comprehensive improvement of his previous *uṣūl* works, namely *al-Mankhūl* and *al-Tahdhīb al-uṣūl*; the former being a summary of his teacher’s work, al-Juwaynī’s *Burhān*.⁶ *Al-Mustaṣfā* includes further elaboration on the classical *maqāṣid*, as well as the levels of *maqāṣid* introduced by al-Juwaynī.

Al-‘Izz Ibn ‘Abd al-Salām’s *Qawā‘id al-aḥkām fī maṣāliḥ al-anām* is considered his magnum opus and one of the most important works on Islamic legal maxims. The work’s relevance to *maqāṣid theory* is particularly in its treatment of *maṣlaḥah* and *mafsadah*, and in its linking between rulings and their purposes. His thought on the role of reason as it pertains to *maqāṣid*, and his views on how notions of hardship as well as benefit and harm inform the formulation of *fiqh* and *ijtihād*, are discussed in Part One in juxtaposition to al-Shāṭibī’s views on these matters.

Another important medieval contributor to the development of *maqāṣid* thought is al-Qarāfī. Al-Shāṭibī in fact draws abundantly from al-Qarāfī’s works, and namely from *Anwār al-burūq fī anwā‘ al-furūq*. Among the important features to *maqāṣid* theory in al-Qarāfī’s *Furūq* is his distinguishing between different intents in which the Prophet Muhammad acted upon. Al-Qarāfī’s work becomes pivotal in informing Ibn ‘Ashūr’s methodology to assess and derive *maqāṣid* from the Sunnah.

Lastly, there is the important *uṣūl al-fiqh* work of the famous Ḥanbalī scholar Ibn al-Qayyim al-Jawziyyah. Ibn al-Qayyim’s *I‘lām al-muwaqqi‘īn* is viewed as one of the most accessible and comprehensive works on Islamic legal theory; accessible in its general clarity of language and organization, and comprehensive in the many critical subjects it

⁶ Al-Ghazālī, *al-Mustaṣfā*, 1:4.

substantially treats. Ibn al-Qayyim's thought on *maṣlaḥah*, *mafsadah*, and *ḥikmah*, and their relationship to *maqāṣid* are brought into discussion in Part One.

As a caveat, Part One is not concerned with providing any exhaustive treatment of the early development of *maqāṣid*. Though much remains to be done in this area, what has already been contributed by some contemporary writers on the subject, namely Aḥmad al-Raysūnī,⁷ Gamal Eldin Attia,⁸ Muhammad Hashim Kamali,⁹ and Jasser Auda,¹⁰ is adequate

⁷ Aḥmad al-Raysūnī (b. 1953) teaches *Uṣūl al-Fiqh and Maqāṣid al-Sharī'ah* at the College of Arts and Humanities, University of Muhammad al-Khamis, Morocco. The International Institute of Islamic Thought (IIIT), an educational and research institute established in 1981 (Herndon, VA) that focuses on addressing academic and societal issues from an Islamic perspective, considers al-Raysūnī among the foremost specialists in the field of *maqāṣid*. IIIT sponsored a *maqāṣid* research project in its early years and commissioned al-Raysūnī to pen a study on the *maqāṣid* thought of al-Shāṭibī. Al-Raysūnī's goal with his work on *maqāṣid* served two primary objectives: (1) to reform Muslims' ways of thinking, reordering and reformulating their priorities, and (2) to rebuild the Islamic cultural scheme, presenting modern humanistic and social knowledge from an Islamic perspective. His work is entitled *Naẓariyat al-maqāṣid 'inda 'l-imām al-Shāṭibī* (Ṭab'a 1. ed. Beirut: Al-Mu'assasa al-Ġāmi'īya, 1992). For the English translation of this work, see *Imam Al-Shatibi's Theory of the Higher Objectives and Intents of Islamic Law* (London: International Institute of Islamic Thought, 2005).

⁸ A native of Egypt, Gamal Eldin Attia is a scholar of Islamic law and legal theory. The International Institute of Islamic Thought (IIIT) considers Attia among the leading specialists in the field of *maqāṣid al-Sharī'ah*. IIIT published an Arabic edition of his work entitled *Naḥwah Tafīl Maqāṣid al-Sharī'ah* (London, International Institute of Islamic Thought, 2001), followed by an English translation entitled *Towards Realization of the Higher Intents of Islamic Law* (London, International Institute of Islamic Thought, 2007). Attia aimed "to bring this topic [*maqāṣid*] out of the phase of traditional writings and into the phase of innovation, planning and programs of action." This notion of the practicality of *maqāṣid al-Sharī'ah* has been a central theme in Attia's work. Attia states that one of the objectives of his work is "the realization of *maqāṣid* in our lives, both in the field of Islamic jurisprudence and on the level of our practical experience."

⁹ Mohammad Hashim Kamali (b. 1944) is a native of Afghanistan, former Professor at the Institute of Islamic Studies, McGill University, and former Professor of Law at the International Islamic University of Malaysia. He studied law at Kabul University, and holds an LL.M. in comparative law and a PhD in Islamic and Middle Eastern law from the University of London. Several of Kamali's many book and article publications on Islamic law are commonly used as reference works in courses on Islamic law at English speaking academic institutions worldwide. Kamali was among several Muslim scholars and academics to convene at a major conference sponsored by the International Institute of Islamic Thought (IIIT) in 1976 aimed to address what was deemed to be *inter alia* the poor state of Islamic intellectual thought, which was neither goal-oriented nor purposeful. What followed from the conference was a forward thinking campaign to seriously engage with the discipline of *maqāṣid al-Sharī'ah*. Among Kamali's several works on *maqāṣid* include *Maqasid Al-Shariah Made Simple* (London: International Institute of Islamic Thought, 2009).

¹⁰ Jasser Auda is among the most active researchers and writers on *maqāṣid* philosophy today. A native of Egypt, Auda is the Al-Shatibi Chair of Maqasid Studies at the International Peace College South Africa, the Executive Director of the Maqasid Institute, a global think tank based in London, and a Visiting Professor of

and may be referred to in filling in any void or background knowledge that might be relevant to the present work's treatment of post-Shāṭibīan *maqāṣid*. Again, our primary aim in Part One is to introduce the reader to the concept and discipline of *maqāṣid* and to provide them with enough grounding in its premodern manifestation, especially that which corresponds to al-Shāṭibī's thought, such that they are better able to contextualize and navigate through the more nuanced material arising in subsequent parts. Part One will be of certain value to those unfamiliar with *maqāṣid* theory. It will also serve useful for those already having adequate familiarity with the subject, especially in regards to our discussion of certain philosophical differences among premodern and modern *maqāṣid* thinkers and commentators concerning issues pertaining to *maqāṣid*. Part One, moreover, adds depth to certain issues and matters pertaining to *maqāṣid* that have not been addressed—to the best of my knowledge—in other works.

Islamic Law at Carleton University in Canada. Auda's study of Islam includes both traditional studies at Al-Azhar (Qur'ān, *fiqh*, *uṣūl al-fiqh*, and *ḥadīth*), and formal studies, completing a PhD in the philosophy of Islamic law from University of Wales in the UK, and a PhD in systems analysis from University of Waterloo in Canada. Auda's work, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (Herndon, Va: International Institute of Islamic Thought, 2007) is considered by the International Institute of Islamic Thought (IIIT) as a "pathbreaking study...[introducing] a novel method for analysis and critique, one that utilizes relevant features from systems theory, such as wholeness, multidimensionality, openness, and especially, purposefulness of systems."

CHAPTER 1

Understanding *Maqāṣid al-Sharī'ah*

1:1 | Linguistic Understanding of the Term *Maqāṣid*

Contemporary writings on the subject of *maqāṣid al-Sharī'ah* generally render its English meaning as any or all of the following: the “objectives,” “purposes,” “goals,” “aims,” “intents” or “wisdoms” of the *Sharī'ah*, with the *Sharī'ah* designating the moral-legal content stemming from the Qur’ān and Sunnah. One will similarly find any or all of the aforementioned meanings of the term *maqāṣid*, in addition to others, in modern Arabic-English lexical entries on *maqāṣid* or its root *Q-Ṣ-D*, such as in the popular *Hans Werber*. Overwhelmingly, however, and perhaps because of the multiple English connotations the term *maqāṣid* may carry, writers on *maqāṣid al-Sharī'ah* in English generally retain the Arabic term *maqāṣid* or its singular *maqṣid* throughout their writing on the subject, while intermittently and interchangeably using some—if not all—of the aforementioned English translations, depending on where they deem a specific one of them to be stylistically and/or contextually appropriate and cohesive with a particular point of discussion. For instance, a writer may speak about God’s “objective” or “intent” regarding a certain ruling(s), then later speak of the “wisdom” behind another ruling(s), all the while intending the reference to be to the subject matter of *maqāṣid*.

Classical writings on *maqāṣid al-Sharī'ah* generally do not give any treatment of the definition or semantics of the word *maqāṣid*. This perhaps because the meaning of the

word as was widely used in classical Arabic was straightforward and without multi-valiancy in application. Linguistically, the term *maqāṣid* is a plural form of the trilateral Arabic root *Q-Ṣ-D* (*qaṣada*). Definitions of *Q-Ṣ-D* and its word derivatives can at least be traced back to the first Islamic generations. The earliest known Arabic dictionary *Kitāb al-‘Ayn*, composed by the famous Arab lexicographer and philologists al-Khalīl ibn Aḥmad al-Farāhīdī ¹¹ (b. 100 AH/718-19 CE, d. 170-175 AH/786-791 CE), contains an entry of the trilateral root *Q-Ṣ-D* along with its various word derivatives and their meanings and common usages. The entry, which begins under the section entitled “*Bāb al-Qāf wa al-Ṣād wa al-Dāl, ma ‘humā Q-Ṣ-D, Ṣ-D-Q yasta ‘malān faqat,*” commences with a definition of the noun form *al-Qaṣd*, which he renders as “straight way” or “clear objective” (*al-qaṣdu istiḳāmatu al-ṭarīqati*).¹² This is then followed by examples of the various usages of other *Q-Ṣ-D* word derivatives. The very first of these examples is also the most significant with respect to dating the definition of the word *maqāṣid* as applied by the pioneers of *maqāṣid* thought including al-Juwaynī, al-Ghazālī, and al-Shāṭibī. Here al-Khalīl states that the objective of life (*al-qaṣdu fī al-ma‘aysha*) is a balance or middle way between the two extremes of waste and miserliness. He then follows this by referencing a common saying that uses the active or *ism fā‘il* form of *qaṣd*, that being *muqtaṣidun*; stating that the

¹¹ His full name is Abū ‘Abd al-Raḥmān al-Khalīl ibn Aḥmad ibn ‘Amr ibn Tammām al-Farāhīdī al-Azdī al-Yaḥmadī, but is more commonly known as al-Farāhīdī or al-Khalīl. His most famous work is his dictionary *Kitāb al-‘Ayn*, literally “the source book,” which he entitled to signify his objective of rendering the original usages of Arabic words. He authored other works on prosody and music, was a prominent figure in the Basran school of Arabic grammar, and was the teacher of the famous Arabic linguist and grammarian Sibawayh. For more on Al-Khalīl see introduction to *Early Medieval Arabic: Studies on Al-Khalīl Ibn Ahmad*, pg. 3. Ed. Karin C. Ryding. Washington, D.C.: Georgetown University Press, 1998; *Introduction to Arabesques: Selections of Biography and Poetry from Classical Arabic Literature*, pg. 13. Ed. Ibrahim A. Mumayiz. Volume 2 of WATA-publications: World Arab Translators Association. Philadelphia: Garant Publishers, 2006; Kees Versteegh, *The Arabic Linguistic Tradition*, pg. 4. Part of the Landmarks in Linguistic Thought series, vol. 3. London: Routledge, 1997; John A. Haywood, *Arabic Lexicography: Its History*, Leiden: Brill, 1965.

¹² The entry begins at the bottom of p. 54 and continues to p. 55.

balanced one neither gets too high nor too low (*mā 'āla muqtaṣidun wa lā ya 'īl*).¹³ Al-Khalīl's rendering of *Q-Ṣ-D* here, specifically in his reference to “the objective of life,” undoubtedly corresponds in usage to the later technical usage of the word *maqāṣid* as applied by the aforementioned pioneers of *maqāṣid* thought.

Al-Khalīl then goes on to offer some of the nuanced usages of the different word derivatives for *Q-Ṣ-D*. Among these include the connotation of balance and equilibrium; a rendering that is relevant yet overlooked by both contemporary and premodern writers on *maqāṣid*. Thus, more than just conveying the meaning of “objective” or “purpose,” al-Khalīl tells us that *Q-Ṣ-D* and certain derivatives also denote that which is balanced or procures balance, and is often used in reference to attaining physical, intellectual, and/or spiritual balance. As an example, he refers to the active form (*ism fā'il*) derivative *al-muqtaṣid*, and tells us that its general usage by the Arabs was in describing one who attained equilibrium in mind, body, and soul. What's interestingly significant here in this rendering is the additional connotation it lends to the meaning of the phrase “*maqāṣid al-Sharī'ah*.” With this additional rendering, the expression *maqāṣid al-Sharī'ah* not only conveys the meaning of the objectives or purposes of the *Sharī'ah*, but, and moreover, connotes the idea that the *Sharī'ah* is balanced or, and put differently, aims to procure intellectual, physical, and spiritual equilibrium. Ironically, this characterization of the *Sharī'ah* is something which though often portrayed by Muslim scholars in general, is never conveyed through the meaning of the word *maqāṣid*, which is more narrowly defined as “objectives” or “purposes.” It may well have been that early premodern writers on *maqāṣid* recognized this secondary rendering of *Q-Ṣ-D* but just never made a point to flesh

¹³ Al-Khalīl ibn Aḥmad al-Farāhīdī, *Kitāb al-'Ayn*, 55.

it out. Contemporary writers on *maqāṣid*, however, have certainly neglected to articulate this additional rendering of *Q-Ṣ-D*.

Just as interesting in al-Khalīl's entry and linguistic analysis of *Q-Ṣ-D* is his delving into *ʿilm al-ishtiḳāq*, or the science of etymology. Here al-Khalīl examines another trilateral root *Ṣ-D-Q*, which he tells us is a spin-off of *Q-Ṣ-D* by the rearranging of the radicals. Al-Khalīl alludes to an intricate relationship in meaning between these two roots. He tells us that *Ṣ-D-Q* is to manifest truth, or is the opposite of falsehood.¹⁴ But how is this related to *Q-Ṣ-D* with its meanings of “purpose,” “wisdom” and “balance”? Though al-Khalīl does not explicitly resolve this, he leaves us with just enough to attempt our own resolution at their correlation. The idea, perhaps, is that where there is wisdom and balance, there is truth; and reciprocally, where there is truth, there is wisdom and balance. In further extending these connotations to the context of the *Sharīʿah*, it can be said that the underlying objective, purpose or wisdom of the *Sharīʿah* is to procure balance and truth; and reciprocally, truth and balance can be found in understanding the objectives and wisdom of the *Sharīʿah*.

The *Lisān al-ʿArab* of Ibn Manẓūr (d. 1312),¹⁵ perhaps the most famous of medieval Arabic lexicons, provides many of the definitions of *Q-Ṣ-D* found in al-Khalīl's entry, in

¹⁴ Other derivatives of *Ṣ-D-Q* include *ṣādiq*, meaning one who is constantly truthful, and its superlative *ṣadīq*, commonly translated as friend, with *ṣadīq* being on the pattern (*wazn*) of *faʿīl*, denoting an intensification in meaning, otherwise referred to as *ṣiḡhatu al-mubālagha*. Thus, a *ṣadīq* is one who is immensely truthful; a characterization worthy of true friendship.

¹⁵ Born in 1233 CE, his full patronymic and tribal name is Muḥammad ibn Mukarram ibn ʿAlī ibn Aḥmad ibn Manẓūr al-Ansārī al-Ifrīqī al-Miṣrī al-Khazrajī Jamāl al-Dīn Abū al-Faḍl. He was a North African lexicographer, philologist, and judge (*qāḍī*) of Arab descent. His *Lisān al-ʿArab* is among the most comprehensive Arabic dictionaries, and was completed in 1290 CE.

addition to various other connotations and usages.¹⁶ Several of the renderings of *Q-Ṣ-D* and its derivatives in the *Lisān* correspond to the common modern usage of: aim, purpose, or intent (with verbal forms conveying the notion of aiming for, intending, pursuing, seeking, or endeavoring after). Ibn Manẓūr informs us that such renderings pertain to the abstract as well as the physical. With respect to the latter, certain physical objects manifesting the aforementioned connotations (e.g., aiming for) are identified by a nominal derivative of *Q-Ṣ-D*; as with the classical Arabic word for spear (*qaṣd*), whose essential function is to aim at something with purpose.¹⁷

Other renderings of *Q-Ṣ-D* in the *Lisān* convey the notion of moderation and/or balance. Here again, Ibn Manẓūr illustrates how such a rendering can manifest in both the abstract and physical. In demonstrating its usage in the latter sense, he references a ḥadīth pertaining to the Prophet Muḥammad’s physical stature, being described as neither exceedingly tall nor short, and neither overweight nor underweight; otherwise, balanced (*muqasad*).¹⁸ Several ḥadīth, in fact (such as those found in al-Tirmidhī’s (d. 892)¹⁹ famous *Shamā’il al-Nabī*, depict the Prophet’s physical as well as spiritual balance, and moderation in religious and worldly matters. With respect to moderation, these ḥadīth speak to the harm in going to extremes, whether in religion (e.g., practice that procures overwhelming hardship) or the mundane (e.g., miserliness and gluttony). In one tradition, the Prophet

¹⁶ For Ibn Manẓūr’s entry, see pp. 3642-3644 of: *Lisān al-‘Arab*, s.v. “QṢD,” accessed April 13, 2017, <http://ejtaal.net>.

¹⁷ *Lisān al-‘Arab*, 3644.

¹⁸ *Ibid.*, 3642.

¹⁹ Commonly referred to as Imām al-Tirmidhī, his full name is Abū ‘Īsa Muḥammad Ibn ‘Īsa al-Sulamī al-Ḍarīr al-Būghī al-Tirmidhī. He was a Persian compiler of ḥadīth, and is most famous for his *Jāmi‘ al-ṣaḥīḥ* (also known as *al-Jāmi‘ al-Tirmidhī* or *Sunan al-Tirmidhī*; one of the six canonical collections of ḥadīth (*al-Kutub al-Sittah*) in Sunni Islam) and his *Shamā’il al-Nabī*.

directly addresses extremism, saying: “Beware of going to extremes, for those before you were only destroyed through excessiveness.”²⁰ And similarly, the Qur’ān states: “O people of the Book, do not be excessive in your religion.”²¹ This notion of moderation and its association with *Q-Ṣ-D* comes across in several places of Ibn Manẓūr’s entry.

Lane’s lexicon as well highlights a variety of phrases or expressions (several of which are taken from Ibn Manẓūr’s *Lisān*) wherein moderation coupled with the notion of justice are attached to the usage of some derivative of *Q-Ṣ-D*. For example, he provides the following in reference to the form *iqtaṣada* (i.e., the phrase *iqtaṣada fī*):

...he followed the middle and most just way in the affair; and did not exceed the due bounds therein...he acted in a moderate matter, in a manner between that of prodigality and that of parsimoniousness, in the affair... he acted in a manner the contrary of that of extravagance in the affair... he was content with a middle course with respect to his means of substance (*fī ma ṭshatīhi*)...²²

This last expression here (“he was content with a middle course with respect to his means of substance”) conveys not only the notion of moderation, but also a sense of justice towards circumstances, and is thus quite meaningful to *maqāṣid* theory and its operability within *ijtihād*. Put differently, this rendering offers the notion of moderation as a consequence of context sensitivity (read: “with respect to his means of substance”), which

²⁰ Sunan al-Nisā’ī

²¹ Qur’ān, 4:171.

²² For Lane’s entry, see pp. 2531-32 of: *Lane’s Lexicon*, s.v. “QṢD,” accessed April 13, 2017, <http://ejtaal.net>.

is part and parcel to the principle of *maṣlahah* and *maqāṣid* thought (as we shall see further below in the theories of al-Shāṭibī, Ibn ‘Āshūr, et al.). For *maqāṣid* thinkers, such consideration of context leads to the right way and truth, fulfilling the spirit of the *Sharī‘ah*. Coincidentally or not, Ibn Manzūr includes among his connotations for *Q-Ṣ-D*: “a right way which leads to truth; acting with justice or equity; to aim at that which is right and just.” In elaborating on the idea of justice in *Q-Ṣ-D*, he goes on to quote Abū al-Laḥām al-Tha‘labī,²³ who states: It is incumbent on the judge upon being approached regarding a case, that he does not deviate from what is right, but act with justice (‘*ala al-ḥakami al-mā’tī yawmān ‘idhā qaḍā; qaḍiyyatahu ‘an lā yajūra wa yaqṣidu*).²⁴

As we noted with al-Khalīl’s entry, all of the connotations we have highlighted above (namely: purpose, balance, moderation, and justice) offer added depth to our understanding of the term *maqāṣid*, and particularly its meaning to the concept of *maqāṣid al-Sharī‘ah*. The concept “*maqāṣid al-Sharī‘ah*,” therefore, can be understood to not only refer to the objectives, purposes, or aims of the *Sharī‘ah* (common modern renderings), but these in addition to the idea that the *Sharī‘ah* should preserve balance, moderation, and justice; renderings, again, which are virtually never articulated by writers on the subject in their explanation of the term *maqāṣid* or the concept *maqāṣid al-Sharī‘ah*.

1:2 | Technical Understanding of the Concept of *Maqāṣid al-Sharī‘ah*

At the most rudimentary level, the notion of *maqāṣid al-Sharī‘ah* is fundamentally concerned with understanding the “why” of what God has revealed. Stated differently, it

²³ It is uncertain who this is, but it may be referring to the Persian Shāfi‘ī scholar and exegete Abū Ishāq Aḥmad Ibn Muḥammad Ibn Ibrāhīm Al-Tha‘labī (d. 1036).

²⁴ *Lisān al-‘Arab*, 3642; Lane’s Lexicon, 2531.

attempts to determine the greater objective, purpose, goal, aim, intent, or wisdom behind the content including the moral and legal expressions found in the Qur’ān and Sunnah. In the discipline of *maqāṣid*, ascertaining the *maqāṣid* (as we will observe in more detail below) is attained through some symbiosis of sound reasoning and wisdom that is rooted in textual reflection and evidence. Pioneering *maqāṣid* thinkers like al-Shāṭibī, whose *maqāṣid* thought we treat in Chapter Two, ultimately envisioned that the *maqāṣid* serve to protect the spirit and sound interpretation of the *Sharī‘ah*, keeping it from being manipulated and distorted. The *maqāṣid*, moreover, are determined by taking into account the totality (rather than just isolated or cherry picked texts) of the content in the Islamic primary sources of the Qur’ān and Sunnah, including the normative methodological and interpretive sciences used to approach them. It is as such that the *maqāṣid* ensure that the one who engages with the *Sharī‘ah* does not miss seeing the forest for the trees.

In searching for a more formal definition of the idea of *maqāṣid al-Sharī‘ah* among premodern scholars, we are hard-pressed to find anything substantive. This is certainly understandable with respect to scholars of the pre-Shāṭibīan era because of the sheer fact that the subject matter of *maqāṣid* would not develop into what could reasonably be called a ‘philosophy’ or ‘discipline’ until al-Shāṭibī’s own writing on the subject. Modern researchers on the early development of *maqāṣid*, including al-Raysūnī, Attia, Kamali, and Auda, commonly maintain that premodern thinkers on *maqāṣid* never provided a definition for it. In his exhaustive survey of premodern writings on *maqāṣid*, al-Raysūnī, for instance, tells us: “Nor have I found a definition of the term *maqāṣid al-Sharī‘ah* in the writings of the *uṣūliyyūn* (theorists) and other scholars who treated the subject in early times.”²⁵

²⁵ Al-Raysūnī, xxii.

Similarly, Kamali states: “classical texts do not provide a clear definition of the *maqāṣid*, nor do they provide a methodology for their identification.”²⁶ It would have been expected of al-Shāṭibī, the de facto ‘father’ of *maqāṣid* theory, to have denoted some clear and substantive definition for it in his extensive writing on the subject. Modern thinkers, however, appear to be shortchanged in offering one up on his behalf. Al-Raysūnī asserts that al-Shāṭibī “...showed little concern to provide a definition...”, and goes on to explain that the possible reasons for this were that the concept was self-explanatory, not requiring further elucidation, and, moreover, that al-Shāṭibī intended his audience to be the scholarly class who should have been well-familiar with the concept.²⁷

The term *maqāṣid*, or the phrase *maqāṣid al-Sharī‘ah*, for all intents and purposes, is straightforward and ostensibly not in need of any elaborate or even succinct denotation. It stands self-evident and intelligible on its own. What is more essential for any reader on the subject is to comprehend just how and from where these *maqāṣid* are ascertained, as well as to understand their function in the larger scope of things. On this, al-Shāṭibī provides an extensive explication in his *al-Muwāfaqāt*. In short, the *maqāṣid* according to al-Shāṭibī are identified through three primary means:

1. Explicit texts from the Qur’ān or the Sunnah which identify the basis or occasion (*illa*) of Islamic legal rulings.
2. Inductive analysis of the actions of the Lawgiver, which may be divided into two types. The first type is an inductive reading of the legal rulings whose bases (*ilal*) have been determined by means of recognized

²⁶ Kamali, 25.

²⁷ Al-Raysūnī, xxi.

approaches (*masālik al-‘illa*), yet without an explicit text from the Qur’ān or the Sunnah. The second is an inductive reading of the various pieces of textual evidence in support of legal rulings which have a common purpose and basis (*bā‘ith*).

3. The Companions’ understanding of the rulings found in the Qur’ān and the Sunnah.²⁸

Beyond the primary sources of the Qur’ān and Sunnah, and the commentary of the Companions, al-Shāṭibī was also inclusive of reason—albeit guardedly and within certain limits—as a means by which the *maqāṣid* could be realized. Al-Shāṭibī explains that if reason is employed in the discipline of *maqāṣid*, “it is only used in tandem with textual evidence, in support thereof, and as a means of confirming the basis [of a legal ruling], and the like.”²⁹ As such, reason alone, without it being adequately backed by the primary sources, is to be disallowed in the search for *maqāṣid*. He further states: “It [reason] is not employed independently, as a self-contained guide to meaning, since the consideration of this type of evidence is the consideration of a matter pertaining to Islamic law, and reason is not a Lawgiver, a fact which may be seen clearly in scholastic theology.”³⁰

Al-Shāṭibī’s exceptional concern for unchecked reason in determining the *maqāṣid*, and whether on the basis of human experience or custom, was largely informed by the potential perils he perceived it could lead to; concerned that it would open the door to an unmitigated pursuit of deleterious whims and earthly desires. He feared that the

²⁸ *Al-Muwāfaqāt*, 313, 168-399; Ibn ‘Āshūr, 20-22; Al-Raysūnī, 241-256; Attia, 1. Trans. by Nancy Roberts in Attia, 1.

²⁹ *Al-Muwāfaqāt*, 1:35; Attia, 8-10.

³⁰ *Al-Muwāfaqāt*, 1:35; Attia, 8-10.

consequences of this pursuit would offer “neither materiel nor spiritual benefits,” but rather result in “disorder, strife and destruction.”³¹ In response to advocates of unchecked reason, who argued that such reason only aimed to secure benefit, and that benefit in itself was the underlying objective of the *Sharī‘ah*, al-Shāṭibī countered that while the *Sharī‘ah* in principle does aim to secure benefit, what qualifies as a benefit or harm must also coincide with other universal objectives of the *Sharī‘ah*, and in accordance with their prioritization.³²

Other notable premodern scholars including ‘Izz al-Dīn ibn ‘Abd al-Salām (d. 660/1262), Ibn Taymiyyah (d. 728/1327), and Ibn al-Qayyim (d. 1751/1350) would also touch upon the role of reason in thinking about the *maqāṣid*, albeit not as elaborate as al-Shāṭibī’s explication. ‘Izz ibn ‘Abd al-Salām, to whom al-Shāṭibī was likely addressing in articulating his above remarks regarding unchecked reason, held that reason alone was just as capable as revelation in arriving at benefit and harm in this world. He states in his work *al-Fawā‘id*: “The sources of benefit and harm associated with the life to come can only be known through the Law; as for earthly sources of benefit and harm, they can be known through human experience and customs.”³³ Thus, ‘Izz ibn ‘Abd al-Salām makes a distinction between worldly benefit and harm, which reason can generally arrive at without revelation, and otherworldly benefit and harm, which he held could only be known through

³¹ *Al-Muwāfaqāt*, 1:35; Attia, 8-10.

³² *Al-Muwāfaqāt*, 1:35; Attia, 8-10.

³³ ‘Izz al-Dīn ‘Abd al-‘Azīz ibn ‘Abd al-Salām, *Qawā‘id al-Aḥkām fī Maṣāliḥ al-Anām*. Ed. Ṭāhā ‘Abd al-Raūf Sa‘ad, 2 Parts (Beirut: Dār al-Jīl, 1980), 1:5-10, 2:189; Attia, 3-6. With regards to matters of worship, ‘Izz ibn ‘Abd al-Salām held that this could not be arrived at through reason, stating that acts of ritual worship: “have no rationally discernible basis and which are, therefore, to be adhered to in unquestioning submission.” And elsewhere regarding worldly affairs, he says: “Most sources of earthly benefit and harm are discernible through human reason; moreover, the truth of this affirmation is recognized by most divinely revealed laws.” Trans. by Nancy Roberts in Attia, pp. 3-6.

the scriptures. Al-Shāṭibī's main contention with 'Izz ibn 'Abd al-Salām on this matter is that even if reason can arrive at worldly benefit and harm, it need clearly be specified that it cannot be independently relied upon, but rather, must be validated by and supported with sound evidence from the scriptural primary sources.

Both expressions on this point are more similar than not. 'Izz ibn 'Abd al-Salām's remarks—depending on how one interprets them—do not necessarily preclude al-Shāṭibī's position that independent reasoning should be in some way epistemologically rooted and validated by scripture. Al-Shāṭibī perhaps just happened to emphasize this more so than 'Izz 'Abd al-Salām, who may have thought this point was implicitly understood. One cannot therefore necessarily interpret 'Izz ibn 'Abd al-Salām's remarks as suggesting that reason can override scripture; rather, he deemed reason as a supplementary aid to addressing matters not explicitly found within scripture, while not contradicting the underlying aims (*maqāṣid*) of scripture.

Ibn Taymiyyah's position on worldly benefit and harm is quite similar to 'Izz ibn 'Abd al-Salām's position. Ibn Taymiyyah, however, incorporates and emphasizes the notion of inborn nature (*fiṭrah*) in his discussion, giving it a central role in deciphering worldly benefit and harm. Thus, he holds that inborn nature is divinely created in human beings, and by it (i.e., independently) benefit and harm in this world may be realized.³⁴

As for Ibn Taymiyyah's disciple Ibn al-Qayyim, he sees the *maqāṣid* of scripture to be the overriding determinant of benefit and harm. He tells us that “*Sharī'ah* is structured and founded upon wise purposes,” which ultimately serve “the best interests of God's

³⁴ Ibn Taymiyyah, *Naqd al-Manṭiq* (Cairo: Maktabah al-Sunnah al-Muḥammadiyyah, 1951), 29; Attia, 6-7.

servants both in this world and the next.”³⁵ He further highlights what the *Sharī‘ah* aims to achieve, which is “pure justice, pure mercy, pure benefit, and pure wisdom.”³⁶ And in regards to these aims not being secured, he says: “Anything which embodies injustice rather than justice, cruelty rather than mercy, harm rather than benefit, or folly rather than wisdom does not originate from the *Sharī‘ah*, even if it happens to have been interpolated therein by means of interpretation.”³⁷ Ibn al-Qayyim thus lays out a simple litmus test to evaluate the legitimacy of any derived or interpreted ruling or law that claims to be “Islamic” in its basis, that being that it ultimately upholds justice and mercy, procures benefit, and that the process is arrived at through wisdom. Though Ibn al-Qayyim’s approach here appears to be straightforward and commendable on the surface, and though it offers us somewhat of an understanding of how the *maqāṣid* are to serve Islamic law, it does not account for complexities that are bound to arise, such as in cases where there are competing *maqāṣid*.

Nevertheless, while premodern thinkers on the subject of *maqāṣid*, including the aforementioned, didn’t offer an explicit formal definition of *maqāṣid al-Sharī‘ah*, that they delved into matters, issues and points of discussion pertaining to it does provide the uninitiated a relatively firm grasp of just what the subject matter is about. Modern thinkers and writers on *maqāṣid*, on the other hand, have attempted to formulate more clear

³⁵ Ibn al-Qayyim, *I‘lām al-muwaqqi‘īn* (Cairo: Maktabah al-Kulliyāt al-Azhariyyah, 1968), 3:3.

³⁶ Ibid.

³⁷ Ibid.

definitions and articulations of the concept of *maqāṣid*. Among them is Ibn ‘Āshūr³⁸ (1296-1394/1879-1973), arguably the foremost writer and thinker on *maqāṣid* in the modern era.

Before offering an extensive exposition on the purpose of *maqāṣid*, as well as the methodological approaches to ascertaining and applying them, Ibn ‘Āshūr provides a relatively concise definition on just what the notion of *maqāṣid* is. He tells us that: “The general objectives (*maqāṣid*) of Islamic Law are the meanings and wise purposes on the part of the Lawgiver (God) which can be discerned in most or all of the situations to which the Law applies....”³⁹ Hence, as Ibn ‘Āshūr defines it, the *maqāṣid* not only establish the greater meanings and wisdoms behind the moral-legal content found in the primary sources, but such meanings and wisdoms are not obscured from realization and can rather be known by those with the adequate and requisite knowledge, insight, and wisdom to discover them. Ibn ‘Āshūr asserts that virtually every ruling has a wisdom that just needs to be searched out, and: “It is, therefore, the duty of the scholars of the *Sharī‘ah* to search for the reasons and objectives of legislation, both the overt and the covert.”⁴⁰ Ibn ‘Āshūr notes, however, that the process in ascertaining the less obvious *maqāṣid* is by no stretch quick nor easy. He says: “Some underlying reasons might be hidden, and people’s minds vary in perceiving and detecting them. Now, if some or all the scholars of a given period fail to discover some of these objectives, this does not necessarily mean that the scholars

³⁸ Muhammad al-Ṭāhir ibn ‘Āshūr was a prominent Tunisian scholar, jurist and exegete. He is perhaps best known for his Qur’ānic exegesis, *al-Taḥrīr wa’l-tanwīr*, and is among the most significant contributors to *maqāṣid* thought in the Modern era. Ibn ‘Āshūr’s seminal work on *maqāṣid*, entitled *Maqāṣid al-Sharī‘ah* (first published in 1946), is considered by contemporary commentators on the subject to have been the first serious engagement with *maqāṣid* philosophy since al-Shāṭibī’s fourteenth century pioneering work. For more on Ibn ‘Āshūr, see Part Three of this work.

³⁹ Ibn ‘Āshūr, *Maqāṣid Al-Sharī‘ah Al-Islāmīyah*. (Tunis, 1946), p. 50; Al-Raysūnī, xxii.

⁴⁰ Ibn ‘Āshūr Muḥammad, and Muḥammad Mīsāwī. *Ibn Ashur: Treatise on Maqāṣid Al-Sharī‘ah* (Herndon, VA.: International Institute of Islamic Thought, 2006), p. 65.

who come after them will also fail.”⁴¹ Ibn ‘Āshūr’s statement here is significant in that he positions himself as navigating away from the fetters of absolute *taqlīd*, allowing the primary sources to take on new insight for future generations; an insight which may also have implications to the interpretation and application of the *Sharī‘ah* for those generations.

Elsewhere, Ibn ‘Āshūr tells us that the *maqāṣid* may be general or specific. With respect to the former, they are universal, relevant and familiar to all, time-tested, and their benefit (*maṣlahah*) is self-evident. As for the latter, *maqāṣid* that are specific, these may pertain to a certain aspect or area of life, and these as well proffer benefit that is self-evident and tangible. According to Ibn ‘Āshūr, both the general and specific *maqāṣid* can be arrived at through sound evidence and certainty, and they do not change according to time, place, and people. Finally, with respect to arriving at these *maqāṣid*, Ibn ‘Āshūr reintroduces us to the Shāṭibīan method of induction (*istiqrār*), wherein through the process of a holistic reading of the primary sources and the extrapolation of particular references from within them, one can ascertain through induction general or specific *maqāṣid*.⁴² We will have an opportunity later in this work to further explore Ibn ‘Āshūr’s thought on *maqāṣid*, juxtaposing his contributions to al-Shāṭibī’s’.

A contemporary of Ibn ‘Āshūr’s, the Moroccan jurist ‘Allal al-Fāsī (d. 1971), provides the following and somewhat variant definition of *maqāṣid*, stating that they are: “the goals and purposes of *Sharī‘ah* and the hidden wisdoms (*al-asrār*) the Lawgiver has

⁴¹ Ibid., 66.

⁴² Ibid., 71-73.

considered in the enactment of all of its rulings.”⁴³ The first part of ‘Allal’s definition, that the *maqāṣid* are “the goals and purposes of the *Sharī‘ah*,” is self-evident and commonly rendered by virtually all modern-day writers on the subject. But it is in the remainder of ‘Allal’s definition, his characterization that the *maqāṣid* are “hidden wisdoms,” that at least one notable contemporary writer on the subject, Mohammad Hashim Kamali, finds objectionable. Kamali holds that the *maqāṣid* are by no means hidden but rather “are premised on openness and accessibility.”⁴⁴ Yet, Kamali himself later acknowledges that some *maqāṣid* “may be less than self-evident.”⁴⁵ Kamali’s statement here is not that dissimilar from ‘Allal’s characterization that some *maqāṣid* are “hidden wisdoms” (*asrār*)—depending on how one interprets what ‘Allal means by “hidden wisdoms.”” Making Kamali’s critique of ‘Allal’s definition somewhat perplexing is that Kamali then goes on to provide Ibn ‘Āshūr’s definition of *maqāṣid*, which, as provided above, clearly alludes to there being some *maqāṣid* that are not only hidden, but—and according to Ibn ‘Āshūr—may not be accessible to every generation. Kamali, however, doesn’t appear to have any qualms with Ibn ‘Āshūr’s rendering. Nor does he appear to acknowledge—perhaps unknowingly or unintentionally—that the definitions rendered by Ibn ‘Āshūr and al-Fāsī show a strong resemblance, if not virtually identical.

Al-Raysūnī’s definition of *maqāṣid* also closely resembles Ibn ‘Āshūr’s. After referencing al-Shāṭibī, Ibn ‘Āshūr, and al-Fāsī, he offers the common rendering that: “...*al-maqāṣid* are the purposes which the Law was established to fulfill for the benefit of

⁴³ See Kamali, “Law and Ethics in Islam: the Role of the *Maqāṣid*,” 25.

⁴⁴ Ibid.

⁴⁵ Ibid.

humankind.”⁴⁶ He then elaborates on this and provides three classifications of *maqāṣid*. The first of these are the general *maqāṣid*, which are broader in scope and therefore of particular importance. The second of these are *maqāṣid* of specific areas, such as family and the judiciary. And the third classification of *maqāṣid* are those which are particular to a legal ruling. In other words, these *maqāṣid* have a one-to-one relationship with a specific injunction in scripture, providing the greater wisdom, purpose, or aim behind it. This last classification of *maqāṣid* is what he says jurists devote most attention to.⁴⁷ Moreover, this classification is basically and otherwise the *‘usūlī* determination of the *‘illa* for a particular legal ruling, where *‘illa* and *maqāṣid* are apparently interchangeable for al-Raysūnī.

Professor Sherman Jackson provides—in this author’s estimate—the most lucid explanation of how premodern *maqāṣid* thinkers, particularly al-Shāṭibī, conceived the *maqāṣid*, including how they envisioned its function and role in the larger schema of the *Sharī‘ah*. In expounding on al-Shāṭibī’s theory of *maqāṣid*, Professor Jackson explains:

For al-Shāṭibī, a text’s weight was to be based neither on its substance nor its authenticity alone but on its relationship to a universe of meanings and values that were inductively extrapolated from an *aggregate* of texts. On this understanding, legal matters were to be resolved by reference to inductively-established values and principles, even in the absence of explicit texts.⁴⁸

⁴⁶ Al-Raysūnī, xxiii.

⁴⁷ Ibid., xxiv.

⁴⁸ Sherman A. Jackson, “Literalism, Empiricism, and Induction: Apprehending and Concretizing Islamic Law’s *Maqāṣid al-Sharī‘ah* in the Modern World,” *Michigan State Law Review* (2006), 1477.

Jackson goes on to explain and clarify that this process of induction (*istiqrār*) did not aim to validate what he refers to as “extra-textual biases, hunches, speculation, and presupposition,” but rather (and through determining the meaning of an aggregate amount of texts interpreted literally) attempted to remain epistemologically rooted within the scriptures.⁴⁹ As such, ‘juristic empiricism’—a concept he introduces which describes the juristic tradition of keeping any knowledge of the *Sharī‘ah* based exclusively on explicitly documented references in the scriptures—was not ignored, but became part of the induction process, with induction arising out of explicit and individual textual references. The product of induction à la al-Shātibī was thus essentially conceived to safeguard against particular or individual textual references from being misinterpreted, misapplied, manipulated, or grossly distorted.

The contemporary writer on *maqāṣid* Jasser Auda characterizes the *maqāṣid al-Sharī‘ah* as “principles that provide answers” to the purpose or intent behind the rules and regulations found in the Qur’ān and Sunnah.⁵⁰ Auda, like Kamali and al-Raysūnī, appears to endorse the idea that the concept of *maqāṣid* is virtually synonymous with the notion of *maṣāliḥ*, ‘people’s interests’. But just how are *maqāṣid* and *maṣlaḥah* interlinked? And does it then logically follow that *maqāṣid* and the Ḥanafī concept of *istiḥsān* are also interlinked—being that there is a close affiliation between *maṣlaḥah* and *istiḥsān*?

⁴⁹ Ibid., 1466-80.

⁵⁰ Auda, *Maqāṣid Al-Shārī‘ah*, 1.

1:3 | The Relationship between *Maqāṣid* and *Maṣāliḥ*

Several notable medieval scholars, in fact, used *maqāṣid* and *maṣāliḥ* interchangeably, including al-Juwaynī (d. 478/1185), al-Ghazālī (d. 505/1111), al-Rāzī (d. 606/1209), al-Qarāfī (d. 684/1285), al-Ṭūfī (d. 716/1316), and Ibn al-Qayyim al-Jawziyyah (d. 751/1350). The close relationship between *maqāṣid* and *maṣāliḥ* is well-captured by al-Qarāfī in his reference to a fundamental principle which states: “A purpose (*maqāṣid*) is not valid unless it leads to the fulfilment of some good (*maṣlaḥah*) or the avoidance of some mischief (*mafsadah*).”⁵¹ Ibn al-Qayyim, as we have already noted above, saw the *maqāṣid* as serving “the best interests [*maṣlaḥah*] of God’s servants both in this world and the next.”⁵² Thus, the underlying characteristic of all objectives (*maqāṣid*) of the *Sharī‘ah* is that they secure a benefit (*maṣlaḥah*) for people and prevent harm for them. And since the prevention of harm can conversely be thought of as a benefit, the procurement of benefit (*maṣlaḥah*) for people is said to be the overriding aim or objective of all objectives of the *Sharī‘ah*. As Kamali states, “*maṣlaḥah* has generally been regarded as the summa of the *maqāṣid*,” and therefore why the ulema use them interchangeably.⁵³ Al-Raysūnī adds that in attempting to understand primary source texts, and in the process of drawing conclusions from them (i.e., deriving law), one must keep in mind throughout this process the principle of achieving benefit and preventing harm. Similarly, in the process of *qiyās*, where an analogy is drawn between an extra-textual case and an existing ruling from a text, this principle of achieving benefit and preventing harm must be at the forefront in deriving any new ruling. For al-Raysūnī, the whole notion of searching for benefit and preventing harm

⁵¹ Shihāb al-Dīn al-Qarāfī, *al-Dhakhīrah* (Beirut: Dār al-‘Arab, 1994), vol. 5, p. 478; Auda, 2.

⁵² Ibn al-Qayyim, *I‘lām al-muwaqqi‘īn* (Cairo: Maktabah al-Kulliyāt al-Azhariyyah, 1968), 3:3.

⁵³ Kamali, “Higher Objectives,” 3.

is firmly rooted in the Sunnah of the Prophet Muḥammad and the practice of the Companions, especially with ‘Umar.⁵⁴ The relationship between *maqāṣid* and the notion of *maṣlaḥah*, nonetheless, is a demonstration within Islamic tradition of the interaction between revelation and reason, where revelation and reason coincide cooperatively and symbiotically. Knowing the *maqāṣid*, moreover, allows Muslim scholars engaging with new and perplexing issues, to consider such factors as *inter alia* context to realize and achieve *maṣlaḥah*.

1:4 | The Early Origins of the Concept of *Maqāṣid*

The notion of understanding the “why” or the objectives, purposes, and wisdoms behind the moral-legal injunctions found in the Qur’ān and Sunnah in fact well-predates the pioneering contributions to *maqāṣid* thought made by al-Juwaynī, al-Ghazālī, al-Shāṭibī, et al. Like other Islamic concepts, disciplines, or sciences (‘*ulūm*) that would arise, develop and mature typically well-after the early Islamic period of the Prophet Muḥammad and the generations of his Companions (*ṣaḥābah*) and their Followers (*tābi‘īn*), the discipline or science of *maqāṣid*—if we may call it as such⁵⁵—is a later development (in both its technical name and as a discipline or science) that has its roots in the aforementioned early Islamic period. Therefore, though the technical terminology including the designation “*maqāṣid al-Sharī‘ah*” was not yet in circulation during this early period, the essential application or practice of the discipline, that of attempting to determine

⁵⁴ Al-Raysūnī, 46-52.

⁵⁵ Whether the notion of *maqāṣid al-Sharī‘ah* is an independent discipline or subject area within the science of *uṣūl al-fiqh* is a debate among Muslim scholars (discussed in subsequent parts of this work).

particular and overarching objectives and wisdoms behind the moral-legal content of the Qur’ān and later of the Sunnah, can be readily identified during this period.

In their histories of the development of *maqāṣid* thought, contemporary writers such as Aḥmad al-Raysūnī and Jasser Auda have tried to situate and demonstrate the practice of *maqāṣid* in the early Islamic period. According to both writers, there are numerous examples during the era of the Companions that demonstrate searching for *maqāṣid*, and both reference several of these examples. Al-Raysūnī provides perhaps the most thorough and compelling case for the rootedness of *maqāṣid* thought and its closely related concept of *maṣlaḥah* in the early Islamic period. He devotes a book chapter entitled “The Objectives Prior to al-Shāṭibī” comprising of seventy-two pages that delineate the early development of *maqāṣid*. Al-Raysūnī’s arguments are clear and straightforward, and he aims to definitively demonstrate that the genealogy of *maqāṣid*, *maṣlaḥah*, and even the Ḥanafī affiliated concept of *istiḥsān* run deeply through the Mālikī school and the early generations of the scholars of Medina, and inevitably go back to their origins in the era of the Companions, namely with ‘Umar ibn al-Khaṭṭāb.

For al-Raysūnī, that the ‘father’ of *maqāṣid* theory, al-Shāṭibī, was also a staunch Mālikī is fittingly appropriate, for the Mālikī school, he argues, is “the school of objectives,” and it is “set apart from other schools of Islamic jurisprudence by its particular interest in and consideration for the objectives of Islamic Law.”⁵⁶ But the Mālikī school was only the recipient, the inheritor of a longstanding *maqāṣid* tradition dating back to the Companions. It is as such that al-Raysūnī goes as far as suggesting that the notion of a

⁵⁶ Al-Raysūnī, 38.

“Mālikī” school may be somewhat misleading, even a misnomer. He brazenly contends that “Mālik did not bring this school into being, nor did he lay its foundations or formulate its principles....[rather], having inherited it as a complete, mature system, he adhered to it and proceeded to issue independent interpretations and judgments within the framework which it provided.”⁵⁷ Though al-Raysūnī is careful not to undermine Mālik’s contributions to Islamic thought, he nonetheless asserts that Mālik has been overly credited with an already existing body of knowledge and philosophical outlook that was largely inherited from the scholars of Medina and the Companions. By attempting to epistemically root the Mālikī school in the thought and practice of revered Companions such as ‘Umar, al-Raysūnī to all appearances is seeking and claiming greater authority for the rulings, teachings, and thought traditionally associated with the Mālikī school, a matter perhaps that is so ostensibly crucial to him that he is willing to sacrifice along the way Mālik’s name as the eponymous founder. Al-Raysūnī, who self-identifies as a proud follower of the Mālikī school, does at least acknowledge that Mālik certainly did play a pivotal role in both disseminating what he had inherited and partaking in building upon it, contributing in certain and particular areas his own interpretive thought.

Al-Raysūnī is by no means pulling his contentions out of thin air. Lest he be chastised and branded a Mālikī deserter by those who may stubbornly want to hold on to the idea that early Mālikī thought was Mālik-centric in origin, al-Raysūnī wisely buttresses his argument with Mālik’s own words attesting to the sources and origins of the knowledge he was disseminating. Attempting to show that Mālik had unquestionably inherited a school “which was already established in both theory and practice,” and which had

⁵⁷ Ibid., 38-9.

originated with the Companions of the Prophet “in the form of both narratives and practical applications,” he provides an important and telling exchange between Mālik and a questioner regarding a number of phrases that Mālik employs in his famed *al-Muwaṭṭa*.⁵⁸ The full version of this relatively long exchange can be found in al-Raysūnī’s work (pp. 39-40), but it is worthwhile here to highlight portions of it in so far as it captures the strength of al-Raysūnī’s evidence.

Al-Raysūnī cites this exchange from Ibn Farḥūn’s *al-Dībāj*⁵⁹, which narrates that one by the name of Ibn Abī Uways stated that a questioner asked Imām Mālik what he means by such phrases as:

‘that which is agreed upon among us,’ ‘the view held among us,’ ‘in our city,’ ‘I came upon those with knowledge,’ ‘the Sunnah as understood and practiced among us,’ ‘I heard those with knowledge say,’ ‘the view which I found people to hold,’ ‘what I most treasure of what I heard’ or ‘the best thing I heard.’⁶⁰

After which Mālik responds:

The book consists primarily of opinions. But I tell you truly, they are not my opinions. Rather, they are the views which I heard from many knowledgeable men and the exemplary imams from whom I received learning. It is they who were most conscious of God Almighty. Then, having

⁵⁸ Ibid., 39.

⁵⁹ Burhān al-Dīn Abū al-Fidā’ Ibrāhīm Muḥammad Ibn Farḥūn, *al-Dībāj al-mudhahhab fī ma’rifat a’yān ‘ulamā’ al-madhhab* (Beirut: Dār al-Kutub al-‘Ilmiyyah, n.d.).

⁶⁰ Al-Raysūnī, 39.

accumulated such a vast amount on their authority, I recorded my own opinion as well, and it is, indeed, my opinions. As for their views, they are the views which they found the Companions adhering to before them; and I likewise found them to be adhering to these points of view.⁶¹

Mālik goes on in the remainder of the exchange to further clarify the particular meaning of each of his statements being asked about, reiterating that many of the views he had disseminated, including those contained in his *al-Muwattaʿa*, have been passed down to him from an entire community and chain of scholars, jurists, or religious leaders that link back to the Companions in their knowledge. He further adds that there are also matters in which he has had to contribute his own thought or *ijtihād*, but that he did so only after sincerely seeking the truth and, moreover, “based on the Sunnah, the prevailing practices of those with knowledge who have served as examples for others to follow, and the views in accordance with which we have been conducting ourselves since the days of the Messenger of God and the rightly guided imams.”⁶²

The *fiqh* and knowledge attributed to Mālik and the early Mālikī tradition was therefore—either directly in its explicit content, or epistemologically in the methods employed to derive new *fiqh*—deeply rooted in the thought of the Companions, especially ‘Umar ibn al-Khaṭṭāb. This is a narrative confirmed by a number of leading scholars and jurists both within and outside the Mālikī school including the great Indian scholar Shāh Walī Allāh al-Dihlawī (d. 1176/1762) and the famous Ḥanbalī Ibn Taymiyyah (d.

⁶¹ Ibid., 39-40.

⁶² Ibid., 40.

728/1328).⁶³ Al-Raysūnī maintains that Mālikī *fiqh* is virtually ‘Umar’s *fiqh*, and he holds undoubtable that such fundamental Mālikī principles as unrestricted interests (*al-maṣāliḥ al-mursalāh*) and blocking the means (*sadd al-dharā’i*) were first introduced by ‘Umar, both in theory and practice.

For al-Raysūnī, it is perhaps far more sensible that the Mālikī school be named after ‘Umar ibn al-Khaṭṭāb. He opines that “if the Mālikite school must be attributed to an individual, there is no one worthier of this attribution than ‘Umar.”⁶⁴ He then goes on to explain that between the lifetime of ‘Umar and Mālik, and for some period after Mālik, the name ‘Mālikī school’ had no circulation, but rather the appellation that was used was the ‘the Madinah school’. This appellation was then gradually supplanted by the eponymous designation ‘Mālik’s school,’ and later ‘the Mālikī school’ or ‘the Mālikite school,’ all of which al-Raysūnī finds objectionable. His strong aversion to appellations that have eponymous designations comes through emphatically here, remarking that this: “burgeoning custom of naming schools of jurisprudence after individuals and limiting such schools to what these individuals had come to represent...[was] an unhealthy phenomenon,” the spread of which “signaled a phase of stagnation and decadence.”⁶⁵ However, al-Raysūnī’s claim of drawing an unmitigated correlation between the custom of identifying a school by an eponymous founder and a school’s subsequent decline is—though conceivable—largely unfounded. He presents nothing to support this claim, and it arguably runs quite contrary to the lived reality of the four surviving Sunni legal schools, all of which, as we will comment on further below, have attained longevity all the while

⁶³ Ibid., 41-2.

⁶⁴ Ibid., 42-3.

⁶⁵ Ibid., 43.

maintaining within them a legal community of jurists who were actively—rather than passively or blindly—engaged in law-making.

Though al-Raysūnī does not elaborate further on the correlation he makes between appellations that have eponymous designations for a school and a school’s decline, his position here parallels and implicitly validates the famous theory of the closure of the gate of *ijtihād* (‘*insidād bāb al-ijtihād*’) following the consolidation of the schools of law; a theory also popularized by Western academics, most notably Joseph Schacht who held that Muslim jurists discontinued the practice of *ijtihād* after the 4th/10th century.⁶⁶ Al-Raysūnī’s position however has a slight twist in that he deems the closure of the gate of *ijtihād* to be largely the result of a mindset that restricted law-making to the legal thought of the ‘founding father’ of a school, somewhat different from Schacht’s focus on the notion that Muslim jurists of all the schools believed that all essential questions had been thoroughly addressed and settled, and that the age of independent reasoning was over. Thus, al-Raysūnī’s view is that there developed a ‘founding father syndrome’ in which jurists, rather than directly engaging with the scriptural sources as independent *mujtahidūn*, resorted to a blind imitation of the rulings and methods of the purported founding father of the school, and hence leading to what he characterizes as ‘stagnation’.

This notion of stagnation or *ijtihād* closure after the 4th/10th century has, nonetheless, been commented on and formally challenged by a number of Western academics, most notably Wael Hallaq and Sherman Jackson. In his popular rebuttal to Schacht’s ‘closure of the gate of *ijtihād*’, Hallaq contests that the gate of *ijtihād* was never

⁶⁶ Joseph Schacht, *An Introduction to Islamic Law* (Oxford: The Clarendon Press, 1982), pp. 69-71.

closed, neither in theory nor in practice. Contrary to Schacht's thesis, Hallaq attempts to demonstrate through a systematic and chronological study of legal literature from the 4th/10th century onwards that the exercise of *ijtihād* continued uninterrupted in all the schools.⁶⁷ Jackson, however, takes somewhat of a middle course between the positions of Schacht and Hallaq. Jackson argues that while it cannot be said that *ijtihād* following the 4th/10th entirely disappeared per Schacht's thesis, he disputes Hallaq's narrative that suggests *ijtihād* was virtually commonplace or dominant throughout the medieval period. Jackson asserts: "*Ijtihād*, understood here as not merely as the fresh, unfettered and direct interpretation of scripture but also as the clear and open advocacy of views as having resulted from such a process, ceased to dominate from around the 6th/12th century."⁶⁸ But Jackson also renders a more nuanced and positive understanding of the notion of *taqlīd* than the less favorable depiction given by Schacht and Hallaq, seeing it not merely as 'blind imitation' that consequently leads to decline or stagnation in the legal community, but rather—and at least with the *taqlīd* he speaks of post-6th/12th century—as an active and dynamic engagement with an historically established and authoritative legal community.

It is here that Jackson introduces to Western academic Islamic law discourse the idea of "legal scaffolding," a concept he borrows from the legal historian Allan Watson. This idea of legal scaffolding within the context of Islamic law accounts for the process that took place in which post-formative generations of jurists of the schools of law (post-formative designating the era after the "settling down of the schools of law") engaged not merely in blind imitation of the output of previous generations of legal scholars, but rather

⁶⁷ Wael Hallaq, "Was the Gate of Ijtihad Closed?" *International Journal of Middle East Studies* 16 (1984): 3-41.

⁶⁸ Sherman A. Jackson, *Islamic Law and the State* (Leiden: E.J. Brill, 1996), 78.

attempted to expand the law with some link to previous authoritative voices of the school, including the eponymous founders; an attempt these later generations of jurists deemed necessary for claiming their own legal output as authoritative, and so to be persuasive.

Taqlīd, as Jackson explains:

...should not be understood as primarily a movement in search of the content of previous interpretations. It was, rather, an attempt to gain authority for one's interpretation by associating it with the name or doctrine of an already established authority-figure.⁶⁹

Jackson's depiction of medieval *taqlīd*, therefore, is novel to the debate and stands in stark contrast to Schacht's and Hallaq's version of *taqlīd*. But Jackson will not go as far as equating the activity within this type of *taqlīd* with the *ijtihād* performed by the eponymous Imām, which he says is what is commonly done. Jackson states:

This new activity is often identified as a form of *ijtihād*, "*al-ijtihād fī al-madhhab*," as it is oftentimes called. But this, in my view, is misleading. For it conceals the fact that the *mujtahid* (i.e., the eponymous Imām) functions as an authority in himself, requiring no intermediaries between him and scripture, whereas the so-called "*mujtahid fī al-madhhab*," derives authority for his interpretations from his association with the *mujtahid-Imām*, who in effect stands between him and scripture.⁷⁰

⁶⁹ Sherman A. Jackson, 'Taqlīd, Legal Scaffolding and the Scope of Legal Injunctions in Post-Formative Theory', *Islamic Law and Society* 3 (1996), 169.

⁷⁰ *Ibid.*

It is somewhat perplexing, however, that Jackson would characterize the notion of “*al-ijtihād fī al-madhhab*” as being “misleading,” and that it “conceals” the true nature of the role of one vis-à-vis the other. I say perplexing because medieval juristic discourse very well recognized and distinguished between different levels of *ijtihād*, and that there was a hierarchical order of *mujtahid* roles. It was well-understood that the *mujtahid fī al-madhhab* was a notch lower on the *ijtihād* scale than the eponymous Imām, who was often referred to as the *mujtahid muṭlaq*, independent or absolute *mujtahid*. Moreover, the qualifications of each of these and of all the levels within the hierarchy was elaborated on in detail in medieval legal works. There are in fact several works, especially in *uṣūl al-fiqh*, which present typologies of *mujtahid imāms*, among the more popular ones being the *al-Majmūʿ* of al-Nawawī (d. 676/1277), and the *al-Radd ʿala man akhlada ʿila al-ard* of al-Suyūṭī (d. 911/1505).⁷¹

Nonetheless, and in turning back to al-Raysūnī’s thesis regarding the founding father syndrome, it is at second glance not much dissimilar from Jackson’s presentation of medieval *taqlīd* and *ijtihād*. The parallels lie mainly in their assessment that the *mujtahid fī al-madhhab* was held back from engaging directly with scripture and was ultimately

⁷¹ For more on the subject of typologies of *mujtahids* and *muftīs*, see Norman Calder, “Al-Nawawī’s Typology of *Muftīs* and its Significance for a General Theory of Islamic Law,” *Islamic Law and Society* 3 (1996): 137-164; ʿAlawī b. Aḥmad Saqqāf, *Mukhtasar al-fawāʿid al-Makiyyah fīmā yahtājuhu ṭalabat al-Shāfʿiyya* (Beirut, 2004); Wael Hallaq, “*Ifiāʾ* and *Ijtihād* in Sunni Legal Theory: A Developmental Account,” in M.K. Masud, B. Messick, D. Powers (eds.), *Islamic Legal Interpretation, Muftīs and their Fatwās* (Cambridge, MA, 1996), pp. 33-43. Al-Suyūṭī purportedly claimed that he was of the highest rank of *ijtihād*, otherwise *mujtahid muṭlaq*. See J. O. Hunwick, ed., “Ignaz Goldziher on al-Suyuti,” *Muslim World* 68, no. 2 (April 1978): 98.

confined to the authority of the eponymous Imām. Though for al-Raysūnī, this highlights the stagnation he speaks of.

Al-Raysūnī's ultimate objective in his presentation, however, concerns the rootedness of *maqāṣid* in a genealogical strain that runs primarily through the Mālikī school via the Madinan school and back to the Companions. It is as such that he attempts to impart unbiased evidence to represent this strain, going on to recruit authoritative figures beyond the Mālikī school to make the case. And there is no better non-Mālikī authoritative figure to recruit than the famous Ḥanbalī Ibn Taymiyyah. Al-Raysūnī provides a number of remarks from Ibn Taymiyyah which vouch for the soundness in both methodology and output of the Madinan school, and which offer effusive praise to one of its most heralded associates, Imām Mālik. All this he puts forward to clarify that when he speaks of the Mālikī school and its contributions to Islamic law, he is genuinely referring to a communal school that originates with 'Umar. Thus, when he speaks about *maqāṣid* or other principles and concepts associated with Mālikī jurisprudence, they should fundamentally be recognized as epistemologically rooted in the thought and practice of the generation of the Companions, therefore vindicating their authoritativeness and authenticity.

Al-Raysūnī's case of situating the *maqāṣid* in the era of the Companions is convincing. Other contemporary writers on the subject, including Jasser Auda, follow along and offer similar histories of the development of *maqāṣid*, tracing its practice back to the Companions' era. Auda asserts that: "The history of the idea of speculating a certain underlying purpose, aim, or intent of Qur'ānic or Prophetic instructions goes back to the

Companions of the Prophet, as narrated in a number of incidents.”⁷² Auda also goes on to furnish detailed accounts of several of these incidents, with virtually all of them involving ‘Umar. However, he places far less emphasis than al-Raysūnī does on the genealogy and transmission of *maqāṣid* practice through the link of ‘Umar, the Madinan school, and the Mālikī school.

Oddly, neither of these commentators on the subject devote any effort to elucidating the roots, or at least the idea, of *maqāṣid* in the Qur’ān and Sunnah; a practice that is often done by proponents of a discipline, as are al-Raysūnī and Auda, when that discipline is received critically by a segment of the Muslim community, whether of the scholarly and intellectual class, or of the masses. Its fulfillment, therefore, would certainly go far in securing *maqāṣid*’s acceptance as an authentic component of normative tradition. That these two active writers on *maqāṣid* have neglected to secure the discipline’s roots in the primary sources, only going as far as situating the *maqāṣid* with the Companions, does not preclude *maqāṣids*’ validation—at least its idea and/or practice—in the primary sources. The task of extrapolating the notion of *maqāṣid* from the Qur’ān and Sunnah, however, may be more involved and may require perhaps greater interpretive creativity than that of validating it through the practice of the Companions’ generation. But one can discover, nevertheless, and through both linguistic and practical applications within these two primary sources, the idea and practice of *maqāṣid*.

⁷² Jasser Auda, *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (Herndon, Va: International Institute of Islamic Thought, 2007/8), p. 9.

1:5 | Scriptural Roots of *Maqāṣid*

From a linguistic standpoint, though the technical usage of *maqāṣid* or its derivatives is not found in the Qur’ān nor in the *ḥadīth* corpus, there are at least a few terms in these primary scriptural sources that closely correspond to the term *maqāṣid*. The most discernable and related of these arguably is the word *ḥikmah*, typically rendered as ‘wisdom’. Though several commentators on *maqāṣid*, both premodern and modern, have associated the term *ḥikmah* with *maqāṣid*, hardly ever do they make any tangible connections between *maqāṣid* and the Qur’ānic usage of the word *ḥikmah*.

Al-Raysūnī and the medieval jurists he references are case in point. Al-Raysūnī offers a relatively substantial discussion of how *ḥikmah* is not only used synonymously with the term *qaṣd* and its derivatives, but that it is used more frequently in conveying the concept of *maqāṣid*. To illustrate this, he references a number of instances in medieval *fiqh* and *uṣūl al-fiqh* literature where *ḥikmah* is used to connote the notion of the ‘wise purposes’ or the ‘objectives’ of some verse, ruling, or injunction. The evidences he provides include the Mālikī jurist Ibn Farḥūn (d. 799 /1397) and his usage of the term *ḥikmah* in identifying the objectives of the judiciary;⁷³ the Mālikī al-Wansharīsī (d. 914/1509), who commented that the word *ḥikmah* in the nomenclature of legal scholars meant the purpose (*maqṣid*) behind a ruling;⁷⁴ and the Ottoman Ḥanafī jurist Shams al-Dīn

⁷³ Al-Raysūnī, xxv. In referring to the objectives of the judiciary, Ibn Farḥūn states: “As for its wise purpose [*ḥikmah*], it includes elimination of unrest and disturbances, suppression of acts of wrongdoing, support and protection of the oppressed, putting an end to contention, commanding the doing of what is good, and forbidding the doing of what is evil. This is in agreement with what was said by Ibn Rāshid and others.” (Trans. by Nancy Roberts, citing Burhān al-Dīn Abū al-Fidā’ Ibrāhīm Muḥammad Ibn Farḥūn, *Tabṣirat al-ḥukkām fī uṣūl al-‘aḳḳiyah wa manāḥij al-aḥkām* (Beirut: Dār al-Kutub al-‘Ilmiyyah, n.d.), vol. I, p. 8.

⁷⁴ Al-Raysūnī, xxv. An example of the *ḥikmah* behind a certain legal ruling according to al-Wansharīsī is the alleviation of hardship by shortening prayers for the one who is traveling. (see Abū al-‘Abbās al-Wansharīsī,

al-Fanārī (d. 834/1431), who in speaking about the dispensation of shortening prayers during travel, described its objective or *ḥikmah* as being the alleviation of hardship.⁷⁵ Al-Raysūnī's aim here again is just to show that medieval jurists and legal theorists used *ḥikmah* and *maqāṣid* interchangeably, and that the word *ḥikmah* was even more frequently used to connote the idea of *maqāṣid* than the word *maqāṣid* itself. But what al-Raysūnī and the medieval figures he cites neglect to do is to make a connection between the Qur'ānic usage of *ḥikmah* and the idea of *maqāṣid*.

There are arguably at least two scriptural validations for the notion or idea of *maqāṣid*. The first of these comes in the word *ḥikmah* as found in the Qur'ān and *aḥadīth*. The word *ḥikmah* appears in several places in both of these primary sources. Interestingly, within the Qur'ān, *ḥikmah* is often found alongside the word *al-kitāb*, with *al-kitāb* connoting scriptural revelation, i.e., the Qur'ān. The context in which these two terms typically appear pertains to God granting or teaching the scripture (*al-kitāb*) and wisdom (*ḥikmah*) to His prophet(s).⁷⁶ That the Qur'ān mentions scripture and wisdom as two distinct entities signifies or implicates that both are integral to the fulfillment of 'higher knowledge', of faith and religious understanding. It can thus be inferred from this that scripture alone, without an adequate intellectual and experiential capacity to understand, interpret and applicate it—otherwise possessing *ḥikmah* alongside with it—is susceptible to distortion.

al-Mi'yār al-mu'rab wa al-jāmi' al-mughrab 'an fatāwā ahl Ifrīqiyah wa al-Andalus wa al-Maghrib (Moroccan Ministry of Religious Endowments, 1981), vol.I, p. 349.

⁷⁵ Al-Raysūnī, xxvi. Cited from Shams al-Dīn al-Fanārī *Fuṣūl al-badāyi' fī uṣūl al-sharāyi'* vol. 2, p. 371.

⁷⁶ See for instance Q: 2:129.

Such was the point that the fourth caliph ‘Alī (d. 40/661) was attempting to convey to the rigidly puritanical group among his party, the *Khawārij*⁷⁷ (Seceders), who in disputing with his decision to negotiate with the Umayyad Mu‘āwiyah (d. 60/680) in order to end the standoff between their respective followers and the rising schism that was enveloping the Muslim community, called for judgement to be made by *al-kitāb*, or the Qur’ān. ‘Alī, in a dialectical exchange with them, turned to the Qur’ān and literally called on it to resolve the disputation before them; a logical teaching point illustrating to them that the Qur’ān alone doesn’t speak, but rather is invariably filtered through human understanding, which again may be prone to deviancy absent of the adequate knowledge and wisdom (*ḥikmah*) to interpret it.

The possession of *ḥikmah*, therefore, brings an added dimension of insight and perspicacity to human understanding and to engagement with scripture and the surrounding world. And here lies *ḥikmah*’s link to the notion of *maqāṣid*, for the *maqāṣidic* approach goes beyond a mere literalistic and myopic encounter with scripture and the surrounding world, but rather engages with them through the lens of wise discernment and judgement that is *ḥikmah*. The essential characteristics of *maqāṣid* can be found in the definition of *ḥikmah* that is provided by one of the most frequently cited dictionaries of classical Arabic, al-Zabīdī’s (d. 1205/1790) *Tāj al-‘Arūs*. Al-Zabīdī tells us that:

Ḥikmah is to be able to judge justly. It is possessing knowledge of the reality of things as they really are. It has been described as having strength in knowledge-based logic. It has also been defined as attaining the truth with

⁷⁷ For more on this group, see Mohammad Abderrazzaq, “Khawarij and Ibadīyya,” in *The Oxford Encyclopedia of the Modern World*, ed. Peter N. Stearns, (Oxford: Oxford University Press, 2009).

both knowledge and action. And when it is said ‘*aḥkamahu*’, it means that one has been prevented from committing evil.⁷⁸

Al-Zabīdī’s definition of *ḥikmah* here can virtually apply to *maqāṣid*, for judgment with justice, logic, and with the purpose of preventing evil—as found in his definition—are all fundamental aspects of the function of *maqāṣid*. The essential purpose of the *maqāṣidic* approach in fact, and as conceived by *maqāṣid* thinkers such as al-Shāṭibī and Ibn ‘Āshūr, is to prevent the misrepresentation and misapplication of scripture such that the interpretive process of engagement with scripture does not deviate from the underlying spirit and aim of its legal and ethical content. Preventing this deviation, conversely, includes possessing a wise-purposeful understanding (*ḥikmah*) of how scripture should be interpreted and applied within a given set of contextual determinants informed by such matters as time, place, and people, all the while upholding the core theological tenants and the overarching objectives of the *Sharī‘ah*.

One also finds *aḥādīth* in which the correspondence between *ḥikmah* and *maqāṣid* can—though indirectly—be identified. In one *ḥadīth*, the Prophet Muḥammad says:

There should be no envy except in the case of two persons: one having been endowed with wealth and power to spend it in the cause of Truth, and [the other] having been endowed with wisdom (*ḥikmah*) and decides cases with the help of it and teaches it [to others].⁷⁹

⁷⁸ *Tāj al-‘Arūs*, 8/353.

⁷⁹ *Saḥiḥ Muslim*.

Here, as with the Qur’ānic distinction of *ḥikmah* as a necessary supplement to the Qur’ān in attaining a higher and more meaningful knowledge, the Prophet Muḥammad distinguishes the great merit and essentiality of possessing *ḥikmah* for judgment, otherwise for the process of interpreting, deriving and applying law in a sound and just manner. The notion of *maqāṣid* involves just that; going beyond mere particular, literal and myopic readings of scripture, and approaching scripture holistically, such that its underlying aims and objectives are never lost nor compromised.

As already mentioned above, medieval scholars such as al-Shāṭibī commonly used *ḥikmah* and *maqāṣid* interchangeably. The famous Ḥanbalī scholar Ibn Qayyim al-Jawziyyah (d. 751/1350) offers a relatively elaborate discussion on the meaning and function of *ḥikmah*, from which we can draw a further illustration of its distinct congruity with the idea of *maqāṣid*. In expounding on what *ḥikmah* is, he says: “*Ḥikmah* is to do that which needs to be done, in the matter in which it needs to be done, and at the time in which it needs to be done.”⁸⁰ Here we see described pertinent aspects of *maqāṣid*, which as alluded to by Ibn al-Qayyim’s definition of *ḥikmah*, allow there to be consideration of contextual determinants that are informed by such matters as time, place, and people.

Ibn al-Qayyim goes on to further elaborate on the notion of *ḥikmah*, deconstructing it into types and levels. He tells us that there are two types of *ḥikmah*, the first type pertaining to knowledge, and the second pertaining to action. The first relates to knowing the essence of things, and the ability to decipher the links between cause and effect with respect to creation, the occurrences of events, fate, and law. The second type, that

⁸⁰ *Madārij as-sālikīn*, 2/479.

pertaining to action, concerns situating things in their proper place.⁸¹ It is the first type in particular, that of deciphering associations between cause and effect in regards to creation, events, fate and law, that directly correspond to the idea of discovering the higher purposes of things characteristic of *maqāṣid* thought.

With respect to Ibn al-Qayyim’s designation of levels of *ḥikmah*, he tells us that there are three such levels. The first of these is that everything is given its due right without exceeding or transgressing the limits in these rights, and without these rights being compromised by haste or delay. In the second of these levels, he tells us that: “you come to realize God’s intent in His promise, His justice in His decision, and His grace in withholding you from something or withholding something from you.”⁸² Moreover, at this level, “*ḥikmah* consists of knowing the lofty and praiseworthy goals, [otherwise the *maqāṣid*], that are necessitated by His creating and commanding, and for which He predestined.”⁸³ Lastly, at the third level of *ḥikmah*, he says: “...one attains the highest levels of knowledge when making deductions and coming to conclusions.”⁸⁴ At this level, one possesses an insight so profound that it penetrates the heart with certainty. Such a level, he explains, is “an exclusive level that has been reserved for the Companions over the rest of the Ummah, and it is the highest level that the scholars can attain.”⁸⁵ The characteristics of *maqāṣid* are certainly discernable in Ibn al-Qayyim’s description of this level of *ḥikmah*. In fact, his particular statement that “*ḥikmah* consists of knowing the lofty and

⁸¹ Ibid., 2/478.

⁸² Ibid.

⁸³ Ibid.

⁸⁴ Ibid.

⁸⁵ Ibid.

praiseworthy goals that are necessitated by His creating and commanding, and for which He predestined,” unequivocally defines just what *maqāṣid* is.

Modern scholars have also drawn definitive parallels between *ḥikmah* and *maqāṣid*. Ibn ‘Āshūr, who often used *ḥikmah* interchangeably with *maqāṣid*, stated that: “*Ḥikmah* has been explained as knowing things for what they really are, as much as is possible. In other words, it is such that one is not confused by various doubtful possibilities mixed together, and is not mistaken as to why certain things have occurred.”⁸⁶ It is in his last point here, that one “is not mistaken as to why certain things have occurred,” that we find a direct parallel between *ḥikmah* and *maqāṣid*, for *maqāṣid* again seeks to understand the “why” of things. And with respect to scripture, the *maqāṣidic* approach is to understand the “why” or “purpose” of what God has revealed in His injunctions and commands, and to then mark this as the starting point in the interpretation and application of these injunctions and commands.

The Egyptian exegete Sayyid Qutb is undoubtedly explicit in linking *ḥikmah* to *maqāṣid*, stating that *ḥikmah* is: “...accuracy and justice, and realization of reasons and goals [*maqāṣid*], and enlightened insight that guides one to that which is correct and accurate...”⁸⁷ Contemporary thinkers on *maqāṣid* as well, including al-Raysūnī, Kamali, and Auda, all continue to use *maqāṣid* and *ḥikmah* interchangeably, seeing the former a result of the latter, and seeing the latter a prerequisite of the former. Thus, for premodern

⁸⁶ *al-Taḥrīr wa al-tanwīr*, 3/61.

⁸⁷ *fī dhilāl al-Qur’ān*, 1/312.

and modern *maqāṣid* thinkers alike, the identification and proper application of *maqāṣid* is an endeavor that fundamentally requires *ḥikmah*.

The upshot in demonstrating above the congruity between *ḥikmah* and *maqāṣid* is to consider the idea of *maqāṣid* as being rooted in the scriptural sources by extension of *ḥikmah*, with *ḥikmah* of course being readily found in the scriptures. But aside from the scriptural validation of the idea of *maqāṣid* through the word *ḥikmah*, one may also extrapolate the idea of *maqāṣid* through various content within the scriptures. The most palpable of these in terms of conveying the idea of *maqāṣid* comes in the dispensations that the Qur’ān provides in certain cases for rituals and acts of worship that are otherwise obligatory. For example, the obligatory fast in Ramadan may be excused in the case of travel or illness (Q: 2:184-85). Similarly, illness or financial burden may exempt one from having to fulfill the obligatory Hajj. The Qur’ānic justification for these dispensations is to maintain what is deemed to be a greater priority or higher objective (*maqṣid*), including the well-being of the worshipper in the aforementioned examples. We thus clearly see here Qur’ānic engagement with the notion of *maqāṣid*.

One should note, however, the Prophet Muḥammad’s statement: “I am only a human. If I command you to do something in your religion, then take it; but if I tell you to do something based on personal opinion, then [realize] that I am only human.”⁸⁸ And in another narration: “You know better of your worldly affairs.”⁸⁹ Similarly, and as a reflection of these ḥadīth, ‘Umar made a distinction between ‘acts of worship’ (*‘ibādāt*)

⁸⁸ This ḥadīth can be found in Ṣaḥīḥ Muslim, Sunan Ibn Mājah, Ṣaḥīḥ Ibn Ḥibbān, Musnad Aḥmad and other sources. Another narration states: “Yet if I inform you of something from Allah, then do it, for indeed I will never convey an untruth on behalf of Allah Mighty and Majestic.”

⁸⁹ Ibid.

and ‘worldly actions’ (*mu‘āmalāt*). As such, in terms of offering dispensations for acts of worship (*‘ibādāt*), all the schools of law unanimously confer that one should generally not go beyond what has unambiguously and already been provided in the scriptural sources. Al-Shāṭibī further commented on this matter, stating: “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 (*mu‘āmalāt*).”⁹⁰ Thus, preserving the integrity and compulsory requirement of that which falls under the *‘ibādāt*, especially the obligatory *‘ibādāt* (the *farā‘id*), is an absolute priority of jurists, who must safeguard against arbitrary dispensations; resorting to dispensations only in cases of dire necessity and in which there is a greater objective (*maqṣid*) to be met or harm and/or evil to be avoided.

One also finds examples in the *ḥadīth* corpus that illustrate the Prophet Muḥammad’s consideration of *maqāṣid* with respect to deliberation over some course of action. In one *ḥadīth*, the Prophet Muḥammad says: “A liar is not one who tries to bring reconciliation amongst people and speaks what is good (in order to avert dispute).”⁹¹ Here, the Prophet Muḥammad is articulating the high value and merit which should be afforded to the objective of avoiding hostility, belligerence and the like, even at the expense of diverting from disclosure of what would normally appear to be true. Thus, while Islamic ethics holds in the highest regard the virtues of honesty and truthfulness, and while their opposite—lying and deception—are despised and prohibited, there may be certain exceptional instances where the honest or truthful disclosure of something may not procure

⁹⁰ Al-Shāṭibī, *al-Muwāfaqāt*, vol.3, p.5; Trans. by Auda, *Maqāṣid*, 11.

⁹¹ Saḥīḥ Muslim

an ethical right, but may rather lead to some greater evil or harm. As such, one should proceed with tact to a course of action that is grounded upon wisdom, context, and the realization and prioritization of higher objectives that are in accordance with the *Sharī'ah*.

CHAPTER 2

Maqāṣid and the Medieval Period

In Chapter One, we provided important foundational knowledge relevant to the present work, offering a discussion on the linguistic and technical understanding of the term *maqāṣid*, as well as the possible scriptural roots and legitimization of the idea or concept of *maqāṣid al-Sharī'ah*, with attention being primarily devoted to the early Islamic period. It is in the medieval Islamic period, however, that we begin to see the maturation of what would develop into a specialized discipline in its own right. It is therefore critical that we now turn our attention to understanding the development of *maqāṣid* thought in the medieval period, focusing in particular on the rise of al-Shāṭibī's *maqāṣid* theory, including the factors that led to its emergence, precursors to and influences on his *maqāṣid* thought, and—as a relevant and crucial segue to the subsequent parts of this work pertaining to the state and development of post-Shāṭibīan *maqāṣid* thought—the original contributions that he made with his *maqāṣid* theory.

Before proceeding, it is worthwhile to offer some words here regarding how our analysis of al-Shāṭibī's *maqāṣid* theory situates itself vis-à-vis others within Western academia. There are of course several references to and discussions—however brief they may be—of al-Shāṭibī's *maqāṣid* thought within academic works that treat Islamic legal thought and legal theory in particular. These, however, are typically introductory expositions lacking substantive analysis. Focused and in-depth treatment of al-Shāṭibī's

legal thought as an isolated topical study has therefore been virtually absent in the writings of Islamicists.

To the best of my knowledge, and as far as the academy is concerned, Muhammad Khalid Masud's (b. 1939) dissertation thesis, entitled "Shāṭibī's Philosophy of Islamic Law" (McGill University, 1973; later published under the same title in 2000), is the first known and most significant focused treatment of al-Shāṭibī and his legal thought. That none before Masud had given any serious attention to the thought of this pioneering figure is telling of not only Masud's groundbreaking contribution, but of the nascent stages in the study of al-Shāṭibī's thought within Islamic studies. In attributing originality to his research, Masud writes: "despite the prominence and the wide acknowledgement of Shāṭibī's contribution, no exclusive study is yet known to have been made either on the life and works of Shāṭibī or on his legal thought."⁹²

Masud's claim begs the question of why had such a notable thinker possessing such a game-changing philosophical approach—one that would appeal to reform-minded Muslim thinkers generations to follow—not have been given the attention it so deserved by Islamicists? Masud takes a stab at addressing this enigma, offering two possible explanations for the glaringly negligible material on a critical figure whose thought had far-reaching implications. The first of these, he quite subjectively suggests, is the sheer complexity of the subject matter as presented by al-Shāṭibī.⁹³ Masud qualifies what he means here by adding that it is not that al-Shāṭibī's writing is complex per se—though

⁹² Muhammad Khaled Masud, "Shāṭibī's Philosophy of Islamic Law" (McGill University, 1973), p. 6.

⁹³ Masud acknowledges that he takes this view from 'Abd Allāh Darrāz, who had written a commentary on al-Shāṭibī's *al-Muwāfaqāt*. See Masud's thesis, p. 7.

Margoliouth⁹⁴ and others would think otherwise—but rather that the whole concept of *maqāsid* was so unfamiliar to Islamicists that they did not recognize its importance, nor possess the requisite knowledge to approach al-Shāṭibī’s work.⁹⁵ As for his second explanation, it is “a generally skeptical attitude of Islamicists towards studies of Islamic doctrines on the formal level.”⁹⁶ To illustrate his point, Masud refers specifically to the attitudes of Gibb (d. 1971),⁹⁷ S. Hurgronje (d. 1936),⁹⁸ Chehata (d. 1994),⁹⁹ and Schacht (d. 1969).¹⁰⁰ All of whom, he maintains, considered the study of formal doctrines—whether in legal theory or theology—futile and of little value to a meaningful understanding of Islam. For them, rather, it was approaching the realities of Muslim religious attitudes and practice that was most conducive to a true understanding of Islam.¹⁰¹

⁹⁴ The Oxford orientalist D.S. Margoliouth reviewed al-Shāṭibī’s *al-I’tisām* (another source for al-Shāṭibī’s *maqāsid* thought) in *The Journal of the Royal Asiatic Society* in 1916 and described it as “occupied with juristic subtleties and distinctions which become more and more confused toward the end of the book” (D.S. Margoliouth, “Recent Arabic Literature”, in *The Journal of the Royal Asiatic Society* (London: 1916), pp. 397-98; Masud takes from Margoliouth’s remark here that he implicitly “rejected the work as not worthy of scholarly attentions.” See Masud’s thesis, p. 9.

⁹⁵ Masud, p. 7. Masud includes here an understanding of the fields of *fiqh*, *uṣūl al-fiqh*, theology, as well as the context of al-Shāṭibī’s environment, including time and place.

⁹⁶ *Ibid.*

⁹⁷ Sir Hamilton Alexander Roskeen Gibb, known commonly as H.A.R. Gibb, was a Scottish historian of Arabic and Islamic Studies. He held professorships in Arabic at the School of Oriental and African Studies (SOAS) at London University, St. John’s College at Oxford University, and at Harvard University. He served as editor of the *Encyclopedia of Islam*. Among his well-known works include *Arabic Literature: An Introduction* (1926) and an English translation of the travels of *Ibn Batuta* (1929).

⁹⁸ Christiaan Snouck Hurgronje was a Dutch scholar of Oriental Studies and an Advisor to the Dutch government on Muslim/Islamic affairs. He received his doctorate from Leiden University in 1880 upon completing his dissertation “The Festivities of Mecca.” It is said that he pretended to be Muslim, and he became one of the first Western scholars of Oriental Studies to make pilgrimage to Mecca.

⁹⁹ Georges Shehata Anawati was an Egyptian born Christian philosopher and researcher of Oriental Studies. He was founder of the Dominican Institute for Oriental Studies (IDEO) in Cairo, whose mission it was to better understand Islamic theology, law and culture. His writings include works on Islamic theology and Muslim-Christian dialogue.

¹⁰⁰ Joseph Franz Schacht was a British-German professor of Arabic and Islamic studies at Columbia University. Among his more popular works include *Origins of Muhammadan Jurisprudence* (1950) and *An Introduction to Islamic Law* (1964).

¹⁰¹ Masud, pp. 7-8.

Needless to say, the task of bringing to light al-Shāṭibī's innovative and consequential approach to the law was taken up by Masud. Masud goes on to examine in particular al-Shāṭibī's concept of *maṣlaḥah*. He argues that al-Shāṭibī's doctrine—that the main objective of Islamic law is to benefit people—was “a product of the grave need of his time to adapt Islamic legal theory to the new social conditions.”¹⁰² Masud's study of *maqāṣid* and *maṣlaḥah* is therefore drawn within the context of the adaptability of Islamic law. According to Masud, *maṣlaḥah* is the key agent for proponents of adaptability. The way *maṣlaḥah* is communicated to members of society is through the institution of *iftā'*, wherein *fatāwā* are pronounced. And since *fatāwā* affect members of society and therefore society as a whole, it can bring about social change.¹⁰³ Masud goes on to argue that reason, social context, and adaptability are core elements operating in al-Shāṭibī's approach to Islamic law. Moreover, he maintains that not only was al-Shāṭibī attempting to steer Islamic thought (and thinking about law in particular) away from overly rigid and demanding applications, but, and as al-Shāṭibī himself would state: “not to limit oneself to a search for causes in a particular doctrine or case, but to review Shari'ah as a whole and discover the intent of the Lawgiver.”¹⁰⁴ Masud's work was pioneering in its own right, and it stands to be an indispensable starting point for any discussion of al-Shāṭibī and his thought.

Masud's thesis characterizing al-Shāṭibī's theory on *maqāṣid* and *maṣlaḥah* as the key agents for modern proponents of the adaptability of Islamic law is picked up by

¹⁰² Ibid, p. iii.

¹⁰³ Ibid, pp. 370-72.

¹⁰⁴ As cited by Masud in Muhammad Khalid Masud. *Shatibi's Philosophy of Islamic Law*. Islamabad: The Islamic Research Institute, 1995. p. 118.

Professor Armando Salvatore.¹⁰⁵ Salvatore's interest in al-Shāṭibī comes *inter alia* in the context of his work on Islam and the public sphere.¹⁰⁶ For Salvatore, al-Shāṭibī's ideas on *maqāṣid* and *maṣlaḥah* are crucial for modern Muslim thinkers who seek to present a *Sharī'ah* to Muslim societies that has the tools to facilitate a rational concern for the common good and to affect social change. Salvatore states: "It was especially through the work of al-Shāṭibī that *maslaha* became a concept that was no longer to be confined to the toolkit of jurisprudence and legal theory, but was one capable of covering a theory of social action and interaction finalized to what we call the 'common good'."¹⁰⁷ Salvatore goes on to echo Masud in emphasizing just how intrinsic al-Shāṭibī's ideas on *maṣlaḥah* were to several leading scholars and reformers of the late nineteenth and early twentieth centuries.

Our own analysis of al-Shāṭibī's thought—though considerably scaled back in scope relative to Masud's study—both shares and departs from certain aspects of Masud's overall thesis. Wherein we converge is namely in regards to al-Shāṭibī having developed the mechanisms for the adaptability of Islamic law. These mechanisms, as we will discuss, include a holistic engagement with the primary sources, a thoughtful consideration of the concepts of *maqāṣid* and *maṣlaḥah*, and consideration of such variables as time, place, and people. The mechanisms for the adaptability of the law, moreover, operate within the

¹⁰⁵ Armando Salvatore is Professor of Global Religious Studies (Society and Politics), and Barbara and Patrick Keenan Chair in Interfaith Studies at McGill University. He is a sociologist of religion, culture and communication.

¹⁰⁶ Some of these works include: *Islam and Modernity: Key Issues and Debates* (2009), *The Public Sphere: Liberal Modernity, Catholicism, Islam* (2007, pb 2010), *Islam in Process: Historical and Civilizational Perspectives* (2006), and *Public Islam and the Common Good* (2004, pb 2007).

¹⁰⁷ Armando Salvatore, "The Reform Project in the Emerging Public Spheres," in Muhammad Khalid Masud, Armando Salvatore, and Martin van Bruinessen, *Islam and Modernity* (Edinburgh, GB: Edinburgh University Press, 2009), p. 194.

institutions of *ijtihād* and *iftā'*. Relative to our analysis, Masud's analyses offers a more substantive treatment of how the adaptability of the law is carried out according to al-Shāṭibī's theory, this again being mainly through the legal institutions of *ijtihād* and *iftā'*.¹⁰⁸

There are, however, at least two main aspects to our presentation of al-Shāṭibī's thought that somewhat depart from Masud's thesis. The first of these concerns the epistemological foundations of al-Shāṭibī's *maqāṣid* and *maṣlaḥah* thinking. Whereas Masud offers a more limited narrative explaining the genesis of al-Shāṭibī's reason-based approach, arguing that it largely arose out of his environment, we emphasize that it was not just his environment that gave birth to this legal philosophy but rather that it was just as much an inherited philosophy arrived at through a genealogy that extended back to the early Islamic period via the Mālikī school, wherein al-Shāṭibī had indubitably developed and advanced it. As for the second aspect of departure, it mainly concerns the contextualization of al-Shāṭibī's *maqāṣid* theory. Whereas Masud's thesis is primarily framed within the context of al-Shāṭibī as an agent of the adaptability of Islamic law, our analyses attempts to balance al-Shāṭibī by presenting him as an equal proponent of preserving tradition while accommodating adaption where need be. More concretely, we attempt to highlight al-Shāṭibī as a preservationist of what he deemed to be the core of Islam, including its creedal tenets, body of liturgical worship, and its universal principles that were either explicit or arrived at through induction, while we also highlight al-Shāṭibī as a selective revisionist when it came to the positive law of the scholars, laws which he held to have been applied for a certain context, at a certain time, and at a certain place.

¹⁰⁸ See Masud's thesis, Chapter Eight.

2:1 | The Importance of *Maqāṣid* Thought

The Scottish historian and philosopher Thomas Carlyle once stated: “A person with a clear purpose will make progress on even the roughest road. A person with no purpose will make no progress on even the smoothest road.” While Carlyle was speaking about the individual, his sagacious remarks can aptly apply to the context of the *maqāṣid* and its value to the *Sharī‘ah* and Islamic tradition as a whole. Thus, it may be said that a *Sharī‘ah* understood with a clear purpose will make progress on even the roughest road. And a *Sharī‘ah* understood with no purpose will make no progress on even the smoothest road.

At first thought, the notion of seeking or trying to discover the purposes, wisdoms, or aims behind the content of the primary sources would seem like a foregone conclusion; an undoubtedly praiseworthy act of devotion for the faith believer, and perhaps even a duty. After all, identifying the wisdom or trying to ascertain the aim of the content within the textual primary sources is an attempt at understanding what God intends. And this desire to understand what God intends is ultimately about properly obeying, worshipping, and getting closer to and knowing God, the purpose of mankind’s creation as reflected in the oft-referenced Qur’ānic passage: “I created jinn and mankind only to worship Me,”¹⁰⁹ with the notion of worship (*ya‘budūn*), according to some exegetes, meaning that one advances—metaphorically speaking—closer to God, or increases in their knowing of God.

Seeking the wisdom or aim of the content in the primary sources is, moreover, a devout exercise in reflecting on God’s signs; the *ayāt* of revelation as contained in both the

¹⁰⁹ Qur’an 51:56. Trans. by M.A.S. Abdel Haleem. *The Qur’an: A New Translation* (Oxford, UK: Oxford University Press, 2004).

Qur'ān and the lived reality of the Prophet Muḥammad, who in Islamic tradition is held as the “walking Qur'ān,” for his life and example is said to reflect an embodiment of its understanding and its application. A number of passages in the Qur'ān, in fact, call upon one to contemplate, ponder, or reflect on God's *ayāt*. In addition, several Qur'ānic passages and *ḥadīth* ask God for a proper understanding of his revelation that is accompanied by wisdom, or that supplicate to God for wisdom. Given all this, why then would there be any objection to the notion of *maqāṣid*?

The answer perhaps lies beyond the matter of what the *maqāṣid* intend to achieve—which for all intents and purposes, and given the above, should neither be objectionable nor controversial—but in the process and consequential results. To be more concrete, there are at least two main issues that would and should give at the very least pause for the believer when delving into or putting into effect the *maqāṣid*. These two issues, while distinct within themselves, are also very much interrelated. The first of these relates to the notion as well as the Qur'ānic passage of *sami'nā wa 'aṭa'nā*, “we hear and we obey.” Within Islamic tradition, the mark of a believer is humility (*tawāḍu'*), God consciousness (*taqwā*), submission (*khudū'*), and obedience (*tā'a*) to God, all of which translate into recognition of God's Knowledge, Will, Power, and other attributes which convey God's Omnipotence, Majesty and Transcendence. As such, one's fulfillment of the aforementioned characteristics of a believer should not be conditioned solely upon having acquired complete insight into the wisdoms or aims of everything that is contained within the corpus of the primary sources. In other words, faith should not simply sway with what one has or has not been able to intellectually or existentially grasp from the revelatory content.

The famous Qur'ānic passage 3:7, in fact, speaks directly to this matter. It concerns in particular the proper approach to the interpretation (*ta'wīl*) of Qur'ānic verses that are multivalent or less obvious in meaning (*mutashābihāt*). According to the dominant exegetical interpretation of Q:3:7, including that offered by the renowned medieval exegete Fakhr al-Dīn al-Rāzī (d. 1209) in his famous *Tafsīr al-kabīr*, the *true* meaning of the *mutashābihāt* verses are known to God alone. Even those who have attained an exceptional level of learning, knowledge and understanding, about whom the verse identifies as *al-rāsikhūna fī al-'ilm*, they readily acknowledge their own limitations and contentedly believe in the divine source of these verses (*yaqūlūna 'āmannā bihi kullu min 'indi rabbinā*). Thus, the idea that Muslims need an extra-textual method to arrive at knowledge of the wisdoms and aims of the content contained within the primary sources is for critics of *maqāṣid* an abandonment of the notion of *sami'nā wa 'aṭa'nā*.

The second and overlapping issue we speak of which should give pause to engaging in *maqāṣid* relates in particular to the element of speculation involved in ascertaining the *maqāṣid*, especially those attained through processes of induction. Despite that *maqāṣid* thinkers like al-Shāṭibī conceived the *maqāṣid* to be an extension of the primary sources by being directly extrapolated from them, the reality is that they are not explicitly identified within them but are arrived at through interpretive processes such as induction, processes of which for opponents of *maqāṣid* do not provide the certainty that an explicit text itself provides. As such, opponents of *maqāṣid* argue that such methods are speculative at best and susceptible to human interpretive error. Making it all the more futile is that the *maqāṣid* are given a central role; intended to serve as the overriding determinant in the understanding and application of the *Sharī'ah*. Such a role, they hold, should not be

designated to a process that operates under any degree of speculation or probability, no matter how minuscule it may be.

The aversion towards *maqāṣid* for its apparent flirting with speculative assumptions is in some ways similar to the opposition that Islamic discursive or rational theology (*‘ilm al-kalām*) faced from its opponents, who shunned the speculative modes that informed its epistemology. Though the practitioners of *‘ilm al-kalām*, the *mutakallimūn*, were dialecticians with pietistic aims to probe matters pertaining to God and His attributes, and sought to redress misguided foreign theological thought emerging within Muslim societies, the speculative underpinnings of *‘ilm al-kalām* in the view of traditionalists posed a challenge to the integrity of revelation. Speculative theology especially à la the Mu‘tazilah threatened to undermine revelation by assuming a superseding role over it. The danger was not in rational approaches to revelation, but rather in the relegation of revelation to a subordinate of reason, while sanctioning the intellect with unmitigated free reign. In time, Sunni creedal formulations would develop to obviate the kind of speculative theology espoused by the Mu‘tazilah.¹¹⁰ These included the creedal doctrines developed by Abū Ḥanīfah and his follower Imam al-Ṭahāwī, Abū Manṣūr al-Māturīdī, and Abū al-Ḥasan al-Ash‘arī. The aforementioned rooted their doctrines in the primary scriptural sources, “avoid[ing] the speculations of the Mu‘tazilah, [while] adhering as closely as possible to the texts and explicating only when they feel it absolutely necessary.”¹¹¹ The doctrines

¹¹⁰ For a more elaborate discussion of the development of Sunni creedal doctrines in response to *‘ilm al-kalām*, see Hamza Yusuf’s introduction to *The Creed of Imam Al-Taḥāwī* (Zaytuna Institute, 2007).

¹¹¹ Yusuf, 22. To be clear, and in expounding on Yusuf’s statement here, it is not that the Māturīdīs and Ash‘arīs entirely eschewed rational speculation. They did in fact resort to rational speculation in the sense of metaphorical interpretation (*ta’wīl*) of scriptural texts that might imply anthropomorphism with respect to God’s attributes (i.e., doing so when it was deemed absolutely necessary). They, moreover, apply rational speculation in the sense of deploying rational proofs for God’s existence and attributes, the truth of revelation,

especially of al-Māturīdī and al-Ash‘arī were able to synthesize tradition (*naql*) and reason (*‘aql*) such that neither one was subjugated to the other, but rather, a balanced and symbiotic interaction between the two was formed. As the contemporary Muslim scholar Hamza Yusuf describes in characterizing the achievement of al-Māturīdī:

Avoiding the subjugation of tradition to reason, characteristic of the Mu‘tazilah, and the complete subjugation of reason to tradition, characteristic of the literalists, he struck a balance between the two, recognizing the necessity of reason to properly understand the revealed texts and to also respond appropriately to the relentless intellectual challenges that confront Muslims.¹¹²

Just as al-Māturīdī and al-Ash‘arī were able to strike a balance between tradition (*naql*) and reason (*‘aql*) in treating matters of theology, so too would al-Shāṭibī bring reason in the fold to treat matters of law, the outgrowth of which would become his *maqāṣid* theory. But of course the comparison between the *‘ilm al-kalām* and *maqāṣid* movements goes so far. *Maqāṣid* thought, for one, is not as concerned with explicit and sensitive theological matters—matters of belief or *īmān*—as is *‘ilm al-kalām*. As such, the *maqāṣid* movement did not have to deal with the kind of fierce resistance that *‘ilm al-kalām* had encountered. In fact, *maqāṣid* theory up to the present has generally been acceptable among

and in resolving apparent textual conflicts in scripture. The Māturīdīs and Ash‘arīs thus deem “rational speculation” (i.e., metaphorical interpretation or rational proofs) to be absolutely necessary namely in the aforementioned cases. Otherwise, and for most matters of faith, they adhered “as closely as possible to the texts.”

¹¹² Ibid.

various trends within Sunni Islam, including those inclined towards traditional or conservative thought.

Needless to say, unavoidable and pressing practical considerations led Muslim thinkers, and most notably al-Shāṭibī, to engage with this nascent *maqāṣid* discipline, deeming it as a crucial approach to the primary sources and to the medieval world of that time. One needs only consider the context of al-Shāṭibī's time and of course his own words to understand the impetus behind his groundbreaking legal thought and *maqāṣid* theory.

2:2 | The Rise of al-Shāṭibī's *Maqāṣid* Theory

Al-Shāṭibī's fourteenth-century Granada was undergoing unprecedented developments within all facets of society, including political, economic, legal, religious, and social. On the political front, Muslim Granada under the rule of Banū Nasrid had sustained relative calm and stability following the rampant turmoil of the thirteenth century that included Christian-Muslim strife as well as intra-Muslim discord. This in turn provided the intellectual space for the kind of scholarly activity and reassessment of tradition that was needed to address the oncoming challenges.¹¹³

¹¹³ Masud, 82. Masud asserts that some of the most epic works of medieval Islam which reflect on the trajectory of tradition follow the turmoil of the thirteenth century in both the Muslim East and West, with the former having been afflicted by the Mongol invasion. He says: "This is no doubt the reason why we find that a number of distinguished works dedicated to the re-evaluation, systematization and readjustment of the tradition appeared in this period. In North Africa, Ibn Khaldūn (808/1406) worked on a philosophy of history. In Syria, Ibn Taymiyya (728/1328) reviewed the entire tradition of political and legal theory. In Persia, Al-ʿĪjī (756/1355) re-systematized Sunni theology. In Spain, al-Shāṭibī was occupied with the philosophy of Islamic law. All of these efforts imply some breakdown in the community's sense of itself, and are acknowledgements by their very existence, of the need for new and more satisfactory formulation of certain basic values and standpoints." p. 83.

Deeply concerned with how Islamic tradition would respond, al-Shāṭibī took initiative and rose to the forefront in attempting to treat numerous and perplexing issues confronting the Muslim masses and the religious scholarly class. Al-Shāṭibī himself was well-qualified to tackle these issues, having been adept in both the traditional and rational sciences, and having achieved according to at least one of his biographers Aḥmad Bābā the rank of *mujtahid*, despite having been much maligned by many of his contemporaries for what they came to perceive as his radical and deleteriously innovative thought.¹¹⁴ Al-Shāṭibī, moreover, believed that the platform to meet the challenges of his day had to begin with Islamic legal theory (*uṣūl al-fiqh*), especially being that the prevalent *fiqh* of his time was bankrupt of the epistemological, methodological and philosophical underpinnings he deemed necessary to adequately address these new changes and developments in society.

Much of al-Shāṭibī's career coincided with the reign of the Banū Nasrid Sultan Muḥammad V, who paved the way for a cosmopolitan Granada. Muḥammad V had been able to secure peace treaties with the neighboring Christian territories to the north, including the more powerful kingdoms of Castille and Aragon, and the rivaling Banū Marīn to the south. The outgrowth of this was the exchange and integration of ethnically and religiously diverse peoples including Christian, Jewish and Muslim scholars and mystics, all of which would have a significant social and intellectual impact on Granadian society. The Andalusian historian and contemporary of al-Shāṭibī, Lisān al-Dīn Ibn al-Khaṭīb (d. 776/1374), for instance, writes about the frequent inter-religious and intra-religious

¹¹⁴ As far as it is known, al-Shāṭibī never claimed a rank of *ijtihād* for himself. Aḥmad Bābā, who provides in his *Nayl al-ibtihāj* (Cairo: 'Abbās ibn 'Abd al-Salām, 1351 A.H.) the first known biographical sketch on al-Shāṭibī, does not attribute a specific rank of *ijtihād* for al-Shāṭibī. For more on al-Shāṭibī's education and career, see Masud, Chapter IV, "Shāṭibī: His Life and Works," pp. 165-208.

polemics and disputations that took place in Granada on various intellectual and religious subjects.¹¹⁵

Masud offers an interesting narrative that accounts for the main factors informing and shaping the development of *uṣūl al-fiqh* in fourteenth-century Granada and al-Shāṭibī's *maqāṣid* theory in particular. Masud's thesis examines in particular al-Shāṭibī's concept of *maqāṣid* and *maṣlaḥah*. He argues that al-Shāṭibī's doctrine—which was that the main objective of Islamic law is to benefit people—was “a product of the grave need of his time to adapt Islamic legal theory to the new social conditions.”¹¹⁶ Masud's study of *maqāṣid* and *maṣlaḥah* is therefore drawn within the context of the adaptability of Islamic law. According to Masud, *maṣlaḥah* is the key agent for proponents of adaptability. In Masud's estimate, the rise of *taṣṣawuf* (Sufism) and pure rationalism in Granada would have a considerable impact on legal thought and theory. It is worthwhile here to capture his narrative and to assess its plausibility.

Masud's account tells us that prior to the increase of its popularity in fourteenth-century Granada, Sufism was hardly tolerated among the *fuqahā'*. The conservative Mālikī *fuqahā'* of Granada, who were among the elite of society with political clout and who had control over the institutions of learning, went to great extents to safeguard religious learning from what they perceived to be noxious threats to Islamic tradition, foremost among them being the innovations of Sufism including Sufi *ṭarīqas*.¹¹⁷ These *fuqahā'*

¹¹⁵ Masud, 90; For more on the accounts of these exchanges by Ibn al-Khaṭīb see Aḥmad Muktar 'Abbādī, (ed.) *Mushāhadāt lisān al-dīn Ibn al-Khaṭīb fī bilād al-Maghrib wa al-Andalus*. Iskandariyya: Jāmi'a Iskandariyya, 1958, p.99.

¹¹⁶ Masud, iii.

¹¹⁷ *Ibid.*, 105.

initially repulsed much of Sufism, even the more moderate and ‘sober’ Sufism presented by the celebrated al-Ghazālī in his famous *Ihyā’ ‘ulūm al-dīn*, which had for some time been banned by the Mālikī Granadian *fuqahā’*.¹¹⁸ Al-Shāṭibī was also among those who condemned certain Sufi elements, as for example his renouncement of substituting Sufi practices such as *dhikr* and *samā’* for rituals prescribed by *fiqh*.¹¹⁹ Sufism, however, not only crept its way into Granadian society, it would eventually gain more favor with the masses sometime in the fourteenth century. The Sufis brought an emphasis on spiritual ethics, which in turn, according to Masud, would affect the rigidly legalistic Granadian Mālikī *fiqh* tradition. In time, “the *fuqahā’* had to make concessions,” and Mālikī scholars began to discuss matters of spiritual ethics in their *uṣūl al-fiqh*.¹²⁰

Masud further maintains that the emergence of rationalism (appealing to reason in engaging with matters of religion) and its penetration into Granadian legal discourse was another significant factor that would inform and shape the course of *uṣūl al-fiqh* and al-Shāṭibī’s *maqāṣid* theory in fourteenth-century Granada. Rationalism encouraged *inter alia* free thinking and intellectual activity, and Mālikī scholars purportedly picked up on it. Masud contends that the rationalistic thought of Fakhr al-Dīn al-Rāzī (d. 606/1209) in particular, through his *uṣūl* work *al-Muḥaṣṣal*, had a significant impact on Granadian Mālikī legal thought.¹²¹ Al-Shāṭibī himself was introduced to al-Rāzī’s work through his teacher al-Maqqarī, the latter of whom had composed an abridgement of *al-Muḥaṣṣal* as

¹¹⁸ Ibid., 113-14.

¹¹⁹ Ibid., 119. Masud also discusses al-Shāṭibī’s averseness to the *zāwiyyah* and his *fatwā* concerning it. See pp. 121-22.

¹²⁰ Ibid., 115-16. Masud refers to al-Qarāfī for example, who “discussed *zuhd* [asceticism] and *wara’* [abstinence] as one of the basis of *fiqh*.”

¹²¹ Ibid., 111-12.

well as a commentary on Ibn Ḥājib’s abridgement of the same work, which was arguably the original introduction of al-Rāzī’s thought into Mālikī *uṣūl al-fiqh*.¹²²

Masud’s thesis, however, suggesting a significant role for fourteenth-century Sufism and rationalism—especially al-Rāzī’s rationalism—in informing Mālikī *uṣūl al-fiqh* and contributing to the rise of al-Shāṭibī’s *maqāṣid* thought, is somewhat misleading and exaggerated in this author’s estimate. We say this in light of al-Raysūnī’s study on the development of Mālikī *uṣūl al-fiqh* and al-Shāṭibī’s *maqāṣid* theory, as well as our demonstration of *maqāṣid* tendencies in the primary scriptural sources. As discussed earlier, al-Raysūnī makes a compelling case that the rootedness of Mālikī *uṣūl al-fiqh* and al-Shāṭibī’s *maqāṣid* theory stretches through a genealogical strain of knowledge and scholarship that runs purely through the Mālikī school via the Madinan school and back to the Companions. Moreover, and with respect to al-Rāzī, mention of al-Rāzī in al-Shāṭibī’s writings, especially in his *al-Muwāfaqāt*, is often accompanied by critical reflection and disagreement.¹²³ We have also demonstrated in our discussion above, regarding the early and linguistic roots of *maqāṣid*, that rationalistic and *maqāṣidic* tendencies are discernably found within the first generation of Islam, including in the Qur’ān and Sunnah. Thus, Mālikī *uṣūl* and al-Shāṭibī’s *maqāṣid* theory already had the foundational mechanisms from within to inform what it ended up producing in fourteenth-century Granada. Masud therefore overstates the influence that fourteenth century Sufism and al-Rāzī’s rationalism had on Mālikī *uṣūl al-fiqh* and al-Shāṭibī’s *maqāṣid* theory. If anything, al-Shāṭibī’s *maqāṣid* theory can be characterized as having been a reaction to these emerging trends;

¹²² Ibid., 173.

¹²³ Al-Raysūnī, 293.

not necessarily drawing from them, but rather serving as a ‘checks and balances’ in preventing them (i.e., certain Sufi and rationalistic approaches and ideas) from misappropriating tradition.

But among the factors that certainly did give rise to al-Shāṭibī’s *maqāṣid* theory—and by al-Shāṭibī’s own admission—was the diverging legal positions among the jurists and Islamic legal schools both in Granada and historically in Islamic legal tradition, including within al-Shāṭibī’s Mālikī school. Al-Shāṭibī acknowledges that disagreement among jurists, including early differences between the eponym of his school Imām Mālik and Mālik’s companions, was an issue that troubled him throughout his career. It occupied his thinking to the extent that he would often write to his contemporaries and teachers among the *fuqahā*’ to address the matter.¹²⁴ It was largely in this light that al-Shāṭibī penned *al-Muwāfaqāt* and his *maqāṣid* theory therein, intending to offer his audience of fellow jurists in the legal community a theoretical framework that could broaden consensus and diminish longstanding divisions including increased divisiveness that was fermenting as a result of the changing currents of his time, namely (and as already discussed) unprecedented developments within all facets of society, including political, economic, legal, religious, and social.

In regards to the differences among the jurists of Granada, these could be attributed to several factors. For one, diversity of opinions arose as a consequence of the Mālikī tradition’s recognition of local custom (*urf*) as a source of law. As such, that the reality on the ground in cosmopolitan Granada reflected an array of local customs, the by-product—

¹²⁴ Al-Shāṭibī, *al-Muwāfaqāt*, Vol. IV, pp. 144-45; Aḥmad Bābā, *Nayl al-ibtihāj*, p. 221, Masud, pp. 175 and 184.

as a matter of course—was disparate rulings. Differences among the jurists of Granada, moreover, stemmed from disagreement as to whether a traditionally non-Muslim territory such as Granada should be designated as Muslim territory or not. This designation had implications in determining how Islamic law was to be legislated and applied. Since jurists held different designations, their rulings naturally reflected that designation, and hence differed. And finally, differences also arose out of confusion over the function of a muftī's *fatwā* vis-à-vis a *qādī*'s *ḥukm*. Some held that a *fatwā*, unlike a *ḥukm*, was only a probabilistic opinion that should not be binding. Others, however, held that both a *fatwā* and a *ḥukm* were rulings or statements about God's command, and both, therefore, should be binding.¹²⁵

For al-Shāṭibī, how Muslims were to understand that there were differences among the jurists had significant implications, especially theological. Al-Shāṭibī was concerned that these differences would be attributed to conflicting evidences, which in turn would erroneously be portrayed as contradictions within the *Sharī'ah* itself including its scriptural primary sources. Al-Shāṭibī of course did not see the *Sharī'ah* as yielding contradictory evidence. He understood that there was naturally a human dimension involved in the interpretive process which was prone to yield differences in understanding, but the *Sharī'ah* itself, established upon the Qur'ān and Sunnah, was absolutely unified in its aims or objectives. If jurists arrived at different conclusions regarding a single matter, then either only one conclusion was correct, or each conclusion could be correct for a certain and valid

¹²⁵ Masud, 141-2.

Sharī'ah objective. In whatever case, there was no contradiction in the objectives of the *Sharī'ah* itself, and there could not be equally valid contradictory conclusions.¹²⁶

To remedy the disputations and rifts he found in Granadian Islamic law and generally within Islamic legal tradition including his Mālikī school, al-Shāṭibī pursued a platform of legal unification. He believed that this unification could be achieved by conforming Islamic law to higher objectives. Through identifying the wisdom, purpose, or aim of what God had revealed, the application of law would be reoriented towards the underlying spirit of the *Sharī'ah*. Put differently, the objectives or goals of the *Sharī'ah* would assume the role of trustee of the law, guiding its derivation and application. No longer would Islamic law be myopically bound by excessive scholasticism or rigid legal formalism that was devoid of purposeful outcomes and a meaningful engagement with surrounding reality. But at the core of al-Shāṭibī's agenda was more than just redressing the perceived dysfunctional state of Islamic law at his time and the divisions within it. He was motivated by a devotional and ethical impulse that sought, through the elucidation of the objectives of the *Sharī'ah*, to instill within Muslims a deeper sense of appreciation for the *Sharī'ah*, and, moreover, to inspire within them self-motivation to adhere to and navigate through its teachings.

¹²⁶ The rendering provided here of al-Shāṭibī's view regarding juristic differences is this author's brief summarized interpretation of al-Shāṭibī's presentation of this discussion. The reader can refer to al-Shāṭibī's discussion in *al-Muwāfaqāt*, Vol. IV, pp. 118-132. For Masud's rendering of al-Shāṭibī's discussion, see his thesis *Shāṭibī's Philosophy of Islamic Law*, pp. 184-200. Al-Shāṭibī refers to several cases to illustrate his position. In regards to the *mutashābihāt* verses, he reminds the reader that Qur'an 3:7 clearly states that their true meaning is only known to God, despite that they could yield multivalent interpretations. Al-Shāṭibī also recognizes that the *mujtahid* can still be rewarded by God for their *ijtihād* even if they do not arrive at the correct *ijtihād*, as long as a valid methodology (including requisite knowledge) was used to arrive at it.

2:3 | Precursors to and Influences on al-Shāṭibī's *Maqāṣid* Theory

Before proceeding to examine what happened to *maqāṣid* thought post-Shāṭibī, it is essential here to capture the main features of his theory, including that which can be said to be his own contribution to this concept turned discipline. Doing so will prepare us for the subsequent parts of this work, which address *inter alia*: (1) the validity of the contemporary thesis which holds that al-Shāṭibī's *maqāṣid* theory—and *maqāṣid* thought in general—was marginalized and virtually absent after al-Shāṭibī for some five centuries; (2) how the revival of al-Shāṭibī's theory in the modern era came about; and lastly (3) the orientation that *maqāṣid* theory takes in the modern era, focusing in particular on important *maqāṣid* thinkers of the twentieth and twenty-first centuries. With respect to capturing the main features of al-Shāṭibī's *maqāṣid* theory, we rely of course on al-Shāṭibī's own works including *al-Muwāfaqāt* and *al-I'tiṣām*, as well as his *fatāwā*.¹²⁷

Al-Shāṭibī's *maqāṣid* theory was undoubtedly a pioneering and transformative achievement that inevitably reoriented Islamic thought and shaped the way future generations of Muslim scholars and thinkers engaged with the duality of Islamic primary sources and lived reality. It would be rather presumptuous to deny for al-Shāṭibī the unparalleled contribution he made and the revolutionary impact his thought had on future Muslim generations, especially modern Muslim scholars and thinkers. But it is also just as presumptuous to believe that al-Shāṭibī's *maqāṣid* thought arose in a vacuum. Not only did the context of his environment and the events of his time—as we have already discussed—

¹²⁷ We also are indebted here to two crucial and substantial studies that treat al-Shāṭibī's *maqāṣid* theory, Muḥammad Khālid Mas'ūd's *Shāṭibī's Philosophy of Islamic Law*, and Aḥmad al-Raysūnī's *Imam Al-Shāṭibī's Theory of the Higher Objectives and Intents of Islamic Law*.

play a most compelling role in influencing his thought, but so too did preceding generations of inheritors of Islamic sacred knowledge inform what in legacy came to be seen as his creative renewal (*tajdīd*) of Islam.

As we have already contended and demonstrated, the genealogy of *maqāṣid* runs deeply through the Mālikī school and the early generations of the scholars of Madinah, and inevitably go back to their origins in the era of the Companions, the Sunnah of Muḥammad, and the Qur’ān. While al-Shāṭibī was conscious of the unique and pioneering aspects of his *maqāṣid* theory, he also believed that his theory was an extension of normative precedent. He explicitly asserts in his *al-Muwāfaqāt* that what he has presented concerning the *maqāṣid* is: “confirmed by the verses of the Qur’ān and the accounts passed down through the Prophetic Sunnah, whose strongholds have been guarded by our most virtuous ancestors, whose contours have been shaped by the most learned of scholars, and whose foundations have been laid by the insights of the most discerning.”¹²⁸ Al-Shāṭibī, moreover, held that the notion of *maqāṣid* was especially part and parcel to the thinking of the Companions, foremost among them being ‘Umar.

In the immediate few centuries preceding al-Shāṭibī, we find works specifically treating the *maqāṣid* of normative rituals and rulings, wherein there is an attempt to reflect on the greater purpose or wisdom behind them. In the tenth century, you have Muslim scholars devoting writings to the *maqāṣid* of worship (*‘ibadāt*) and transactions (*mu‘āmalāt*). For instance, al-Tirmidhī al-Ḥakīm (d. 296/908) composes a work entitled *al-Ṣalāh wa maqāṣiduhā* (The Prayer and its Purposes). Abū Zayd al-Balkhī writes on the

¹²⁸ *Al-Muwāfaqāt*, 1:25; al-Raysūnī, 290.

maqāṣid of transactions in his work *al-Ibānah ‘an ‘ilal al-diyānah* (Revealing Purposes in Religious Practices). Al-Qaffāl al-Kabīr (d.365/975) offers a manuscript on the *maqāṣid* of purification and prayers in his *Maḥāsin al-Sharā’i* (The Beauties of the Laws). The famous Shia jurist Ibn Bābawayh al-Qummī (d.381/991) composes a work on the *maqāṣid* of beliefs and worship in his *‘Ilal al-Sharā’i* (The Reasons behind the Rulings). And al-‘Āmirī al-Faylasūf (d. 381/991) examines the *maqāṣid* of criminal punishment in Islamic law (*ḥudūd*) in his *al-I‘lām bi-manāqib al-Islām* (Awareness of the Traits of Islam).¹²⁹ By the eleventh through thirteenth centuries, important and foundational *maqāṣid* related principles begin to be formulated and incorporated in the legal writings of a few notable Muslim scholars including Abū al-Ma‘ālī al-Juwaynī (d. 478/1085), Abū Ḥāmid al-Ghazālī (d. 505/1111), al-‘Izz Ibn ‘Abd al-Salām (d. 660/1262), and Shihāb al-Dīn al-Qarāfī (d. 684/1285). These figures are frequently referenced in al-Shāṭibī’s writings, namely in his *al-Muwāfaqāt*, wherein he cites certain points of theirs pertaining to *maqāṣid*, and then expounds upon them by offering his own ruminations.

Of the aforementioned figures, al-Juwaynī is typically held to be the forebear of the early theoretical phases of *maqāṣid* thought, and he appears to represent this role with al-Shāṭibī.¹³⁰ Al-Juwaynī was certainly central in the development of Islamic legal theory, and it is in his foundational *uṣūl* work *al-Burhān fī uṣūl al-fiqh* that we get the well-known and critical classification of human interests into the three categories of essentials (*al-ḍarūriyyāt*), exigencies (*al-ḥājjiyyāt*), and enhancements (*al-taḥsīniyyāt*).¹³¹ Moreover, al-

¹²⁹ For more on these figures and their *maqāṣid* thought, see Auda, 13-16.

¹³⁰ Some commentators on *maqāṣid* consider al-‘Āmirī al-Faylasūf to arguably be considered the earliest known theoretician of *maqāṣid*, though he seems to be al-Shāṭibī. See Auda, 16.

¹³¹ There are various English renderings for these three levels, including, and commonly, “necessities” for *al-ḍarūriyyāt*, “needs” for *al-ḥājjiyyāt*, and “embellishments” for *al-taḥsīniyyāt*. Further discussion of these

Juwaynī sets the precursor to what his student al-Ghazālī would eventually develop into the famous five *maqāṣid*, namely the protection (*al-‘iṣmah*, or, and as coined by al-Ghazālī, *al-ḥifẓ*) of life, religion, faculty of reason, progeny, and material wealth.¹³² These would be adopted by al-Shāṭibī, who in turn provided evidence for their existence in the primary sources through an inductive analysis of them.

Al-Shāṭibī would go on to springboard from what al-Juwaynī had already laid out of his legal theory and thought on *maqāṣid*. In fact, al-Shāṭibī begins his *al-Muwāfaqāt* much the same way that al-Juwaynī does his *al-Burhān*, wherein al-Shāṭibī amplifies al-Juwaynī’s asseveration that the corpus of principles within the science of Islamic legal theory (*uṣūl al-fiqh*) are unquestionably definitive rather than speculative in nature. Al-Shāṭibī later argues that the *maqāṣid*, likewise, possess this same definitive and authoritative quality. Elsewhere, he echoes al-Juwaynī’s view that legal rulings may alter depending on whether they apply at the communal level or at the individual level. Al-Shāṭibī then expounds upon this, bringing the subject into the context of his discussion of human interests, wherein he notes for instance that commerce at the individual level would normally be designated under the human interest classification of enhancements

levels can be found later in this work, in examining how some modern thinkers on *maqāṣid* have viewed and reinterpreted them, while also designating additional categories alongside them. See for instance Gamal Eldin Attia’s five levels in his *Naḥwah taf’īl maqāṣid al-Sharī‘ah* (IIIT, 2001), and also in his *Towards Realization of the Higher Intents of Islamic Law* (IIIT, 2007), 41-42.

¹³² Al-Juwaynī’s actual presentation of the five *maqāṣid al-Sharī‘ah* were the protection of “faith, souls, minds, private parts, and money.” See Auda, 17, who cites al-Juwaynī, *al-Burhān*, 4th ed, vol. 2, p.621-22, 747.

(*taḥsīniyyāt*) or exigencies (*ḥājīyyāt*), whereas it would fall under the classification of essentials (*ḍarūriyyāt*) at the communal level.¹³³

Al-Juwaynī had thus played an important role in spurring some of al-Shāṭibī's own thinking about *maqāṣid*. But even more so than al-Juwaynī's influence was the impressionable impact that al-Ghazālī had in shaping and developing al-Shāṭibī's theories. This is well-attested to by the sheer number of references to al-Ghazālī found in both *al-Muwāfaqāt* and *al-I'tiṣām*, which are ostensibly with greater frequency than reference to any other Muslim figure besides Imām Mālik, and which virtually always convey al-Shāṭibī's endorsement. Among the common points which al-Shāṭibī raises repeatedly and throughout his works is the notion that the essentials, or the *maqāṣid* which underlie them, are universally accepted by all religious traditions as well as all legal traditions, a point he borrows directly from al-Ghazālī. Al-Shāṭibī, moreover, builds upon several vital principles which had been expressed by al-Ghazālī in his *Iḥyā' 'ulūm al-dīn*. Among these is the critical imperative that one should wisely consider the outcome or consequences of an action before partaking in it.¹³⁴ As will be discussed further below, al-Shāṭibī would expound upon this principle with greater detail in his discussions on the role of the *maqāṣid* and context sensitivity within the institution of *ijtihād*. Elsewhere, in referencing al-Ghazālī, al-Shāṭibī discusses how common terms used in jurisprudence, such as 'valid' and 'invalid', may apply not only within the context of tangible or visibly outward and observable matters, but also to matters within the context of spirituality or spiritual ethics,

¹³³ *Al-Muwāfaqāt*, 2:23, 2:180-182, 3:130-134; For al-Juwaynī's discussion of this, see *al-Burhān*, 2:919-923 and 928; *Al-Raysūnī*, 291-292.

¹³⁴ *Al-Muwāfaqāt*, 1:228.

such as that which concern the refinement of character or the purification of the spiritual heart.¹³⁵

With respect to the influence that al-‘Izz Ibn ‘Abd al-Salām and Shihāb al-Dīn al-Qarāfī had on al-Shāṭibī, it is especially evident in al-Shāṭibī’s discussion on how the notions of hardship as well as benefit and harm inform the formulation of *fiqh* and *ijtihād*. Both al-‘Izz Ibn ‘Abd al-Salām and al-Qarāfī categorized hardship according to the three levels of severe, mild, or moderate. And the alleviation of the hardship depended on determining which of these levels it fell under.¹³⁶ Al-Shāṭibī followed this same division, wherein he assessed that a hardship which was severe and procured greater harm than benefit called on it to be alleviated. While a hardship which was mild would not affect a prescribed law. As for a hardship that was deemed moderate, it was given further assessment so as to determine the degree(s) of its benefit and harm, at which point a judgement was to be made regarding whether or not it was to be alleviated.¹³⁷ Al-Shāṭibī would go on to offer, as we shall see later below, further detail in engaging with the issue of how hardship, and benefit and harm inform the formulation of *fiqh* and *ijtihād*. Al-Shāṭibī, moreover, would adopt al-Qarāfī’s addition of a sixth *maqṣid*, that of honor (‘*ird*’), to go along with the five developed by al-Juwaynī and al-Ghazālī.

Beyond the influence of al-Juwaynī, al-Ghazālī, and al-‘Izz Ibn ‘Abd al-Salām, all of whom were Shafī‘īs, it was the influence of the Mālikī school and figures such as al-

¹³⁵ Ibid., 1:292. Al-Shāṭibī specifically here refers to al-Ghazālī’s discussions of refinement of character (*al-takhalluq*) in the section of the *Iḥya*’ titled *al-Niyyah wa al-ikhlās* (Intention and Sincerity).

¹³⁶ For al-‘Izz Ibn ‘Abd al-Salām’s discussion of this see his *Qawā‘id al-ahkām fī maṣāliḥ al-anām*, (ed.), Taha Abd al-Rauf Sad (Dār al-Jīl, 1980).

¹³⁷ *Al-Muwāfaqāt*, 2:156-158.

Qarāfī that would have the most influence in informing al-Shāṭibī’s *maqāṣid* thought. As we have noted earlier in our discussion of the early roots of *maqāṣid* thought, al-Shāṭibī’s work on *maqāṣid* is arguably most indebted to the genealogical strain that runs primarily through the Mālikī school via the Madinan school and back to the Companions. Al-Shāṭibī’s Mālikī school in particular manifested thinking about objectives more than any of the other legal schools. As al-Raysūnī asserts, it is “set apart from other schools of Islamic jurisprudence by its particular interest in and consideration for the objectives of Islamic Law.”¹³⁸ But does this preclude that scholars and legal thinkers of other schools besides the Mālikī school and besides the aforementioned Shāfi‘īs had an influence on al-Shāṭibī’s *maqāṣid* thought?

This has been somewhat of a contentious issue among contemporary writers on *maqāṣid* history. Some commentators such as Muḥammad al-Shannawī have laid claim that al-Shāṭibī was also influenced by the Ḥanbalī school, and Ibn Taymiyyah and Ibn al-Qayyim in particular.¹³⁹ Al-Raysūnī, however, shoots down this claim, stating that: “[al-Shannawī] has not adduced a single piece of evidence—nor even a hypothesis—to show that al-Shāṭibī was influenced by either Ibn Taymiyyah or Ibn al-Qayyim.”¹⁴⁰ Al-Raysūnī’s staunch rejection of al-Shannawī’s claim, however, may be somewhat premature given other pieces of information that al-Raysūnī himself provides elsewhere in his work on al-Shāṭibī. Specifically, and in bolstering his argument that the Madinan school was the main source for Imām Mālik and the Mālikī school, al-Raysūnī references none other than Ibn

¹³⁸ Al-Raysūnī, 38.

¹³⁹ See Muḥammad al-Shannawī, *Madā al-ḥājah lil-akdh bi nazṭariyāt al-maṣāliḥ al-mursalāh fi-l-fiqh al-Islāmī*, 2nd edn. (1991), 1:150.

¹⁴⁰ Al-Raysūnī, 302. Al-Raysūnī also shoots down a similar claim made by Muḥammad Abū al-‘Ajfān.

Taymiyyah as vouching for the soundness in both methodology and output of the Madinan school, and as offering effusive praise for its eponym Imām Mālik.¹⁴¹ As it is evident that both al-Shāṭibī and Ibn Taymiyyah had drawn from the Mālikī school and the Madinan school, it would naturally follow that there be some correspondence in their thought on issues pertaining to *maqāṣid*. And that Ibn al-Qayyim was a direct student of Ibn Taymiyyah, it would also be plausible that some of his thought corresponded to the thought of both his teacher and al-Shāṭibī.

The upshot here is that though al-Raysūnī may be in the right that al-Shāṭibī had not been directly influenced by Ibn Taymiyyah or Ibn al-Qayyim—noting further that neither of their names are to be found anywhere in al-Shāṭibī’s extant writings, nor did their views have any influence in North Africa or Andalusia during al-Shāṭibī’s era—it is apparent that they all drew from the same sources. Thus, and though al-Shannawī may have overstated the influence he suggests, it is not implausible that al-Shāṭibī was at least familiar with Ibn Taymiyyah’s and Ibn al-Qayyim’s views on *maqāṣid*, and decided—perhaps for political reasons and because he already had direct access to Mālikī sources—that it was counterproductive and/or unnecessary to make reference to them.

We touched upon earlier another contentious issue concerning the extent to which the Shāfi‘ī Fakhr al-Dīn al-Rāzī influenced al-Shāṭibī. To recap, Masud intimates that al-Rāzī’s rationalism played a significant role in influencing al-Shāṭibī’s *maqāṣid* thought. His claim, however, decidedly clashes with al-Raysūnī’s compelling illustration of how al-Shāṭibī’s *maqāṣid* thought is overwhelmingly an outcome of a wealth of precedent within

¹⁴¹ Ibid., 41-42.

his Mālikī school via the Madinan school, and is rooted in the practice of Companions such as ‘Umar. Moreover, mention of al-Rāzī in al-Shāṭibī’s writings is virtually always accompanied by critical reflection and disagreement.¹⁴² It would be a stretch, therefore, to say that al-Shāṭibī was “influenced” by al-Rāzī in the sense of borrowing from him.

Lastly, and with respect to influences on al-Shāṭibī, there is the matter of al-Shāṭibī’s contemporaries and the influence which they may have had in informing his *maqāṣid* thought. What is evident is that al-Shāṭibī’s writing on *maqāṣid* make no reference to any of the scholars of his time. Moreover, there was a general antagonism between al-Shāṭibī and many of his contemporaries, especially over his legal theory, which they perceived to be at the cusp of heretical innovation—if not already. Al-Shāṭibī, in turn, was quite expressive about the weakness of the scholarship of his time, shunning the books of his contemporaries for what he perceived to be a rather shallow and simplistic approach to what was needed for the age. He promulgated, instead, a deeper reengagement with the classical sources as well as with the thought of earlier scholars.¹⁴³ And this he did, approaching these sources with a profound depth of reflection, wherein he would not only build upon them, but would advance his own transformative thinking.

Al-Shāṭibī generally demonstrated restraint in not exposing the names of his detractors and opponents, maintaining proper etiquette (*adab*) throughout his disputations with them, perhaps for the sake of avoiding greater rancor while not wanting divisiveness to spill over into the community. It is as such that in several disputes with his own shaykh

¹⁴² Ibid., 293.

¹⁴³ *Al-Muwāfaqāt*, 1:97-99.

Abū Sa‘īd Ibn Lubb¹⁴⁴ (d. 782/1381), disputes which eventually became well-publicized,¹⁴⁵ al-Shāṭibī refrained from making any mention of Ibn Lubb by name. In his *al-I‘tiṣām* for instance, he provides a lengthy discussion of his dissent with some *shaykh*—otherwise Ibn Lubb—over the issue of an *imām* routinely keeping communal supplication following ritual prayers, wherein Ibn Lubb deemed it acceptable while al-Shāṭibī held it to be a blameworthy innovation that had developed as a customary habit while lacking precedent in the foundational sources.¹⁴⁶ In other words, al-Shāṭibī saw that a customary habit, which may be permissible in itself, was being misconstrued as an obligatory ritual or regulatory prophetic practice, when his evidence showed otherwise. Without delving into the details of this debate, the point to be made here is that not once throughout the several pages of al-Shāṭibī’s lengthy rehash of this dispute does he make any mention of Ibn Lubb by name. That the *shaykh* to whom al-Shāṭibī is referring to is in fact Ibn Lubb becomes quite apparent in an account of a *fatwā* by Ibn Lubb found in al-Wansharīsī’s¹⁴⁷ (d. 914/1509) *Mi‘yār*, wherein Ibn Lubb’s *fatwā* corresponds point by point to al-Shāṭibī’s refutation of it in his *al-I‘tiṣām*.¹⁴⁸

¹⁴⁴ Abū Sa‘īd Faraj ibn Lubb was the *muftī* of Granada.

¹⁴⁵ Abū al-‘Abbās al-Wansharīsī, *al-Mi‘yār al-mu‘rab wa al-jāmi‘ al-mughrab ‘an fatāwā ahl Iḥrīqiyah wa al-Andalus wa al-Maghrib* (Moroccan Ministry of Religious Endowments, 1981), 11:131; *Nayl al-ibtihāj*, pp. 49-50; *al-I‘tiṣām*, 2:121-123; al-Raysūnī, 356.

¹⁴⁶ *al-I‘tiṣām*, 1:354-2:6; al-Raysūnī, 87.

¹⁴⁷ Abū al-‘Abbās Aḥmad ibn Yaḥya al-Wansharīsī was a prominent North African theologian and jurist of the Mālikī school and a leading authority on issues pertaining to Iberian Muslims living under Christian rule after the Christian *Reconquista* of Islamic al-Andalus. He is best known for his work *al-Mi‘yār al-mu‘rib*, a multivolume compilation of North African and Andalusian legal opinions (*fatāwā*). It became part of the educational curriculum in North Africa by the sixteenth century, and it is still studied today as an important source of information on the cultural, economic, juridical, religious and social practices of medieval al-Andalus and North Africa.

¹⁴⁸ *al-Mi‘yār*, 6:364-373; al-Raysūnī, 93.

The intellectual differences that many of al-Shāṭibī's contemporaries had with him would ferment into outright enmity. Though al-Shāṭibī was restrained in not allowing himself to be drawn into a vicious cycle of polemics, he does disclose with some heavy-heartedness in his *al-I'tiṣām* what appears to have been a trying and emotional episode of his life.¹⁴⁹ More concretely, al-Shāṭibī speaks in candor about a host of vehement aspersions directed at him by some of his contemporaries, while again not revealing any of their names. The despondent state that had overcome him as a result of these aspersions is quite revealing in the following verse he penned:

I have been afflicted, O people, in myriad ways, by those whom I have treated with gentle courtesy, till it nearly proved the death of me. To ward off harm is one thing, to bring benefit another, yet God is my sufficiency in both reason and faith.¹⁵⁰

The context of al-Shāṭibī's words here pertain of course to all the rabid backlash he faced as a result of the positions he had taken on a number of issues, including the aforementioned issue of regular communal supplication following ritual prayer. On this issue, he was erroneously misrepresented as having rejected the act of supplication itself, when all he had intended was to distinguish between that which had grounding as a practice in the primary religious sources and that which had emerged as a practice with the customary habits of the people.

¹⁴⁹ *Al-I'tiṣām*, 1:25-35.

¹⁵⁰ Aḥmad Bābā al-Sūdānī al-Tunbuktī, *Nayl al-ibtihāj bi taṭrīz al-dībāj* (Beirut: Dār al-Kutub al-'Ilmiyyah, n.d.) p. 49; al-Raysūnī, 85 (trans. by Nancy Roberts).

Other slanderous accusations and attacks came at al-Shāṭibī as a result of his other positions. He was pejoratively labeled a Shi‘ī and Rāfiḍī for simply not keeping with the practice of mentioning the rightly guided caliphs in his sermons; a practice which had of course developed after the Prophet Muḥammad’s lifetime as well as after the lifetime of the rightly guided caliphs themselves. He was accused, moreover, of promoting disobedience to the *imāms* (presumably the political-religious leadership) for not mentioning them in his sermons; a practice, again, that had no precedent in the Sunnah. He was much maligned for consistently adhering to the dominant opinions of the Mālikī school over weaker or minority opinions within the school. And he was accused of dishonoring righteous Sufi saints (*awliyā’*) when he was critical of certain behavior or acts of theirs that he deemed to be innovatively blameworthy and in contradiction of the Sunnah.¹⁵¹ Al-Shāṭibī again does not disclose any specific names of individuals or groups behind these aspersions, but only offers his intentions behind his positions, while also expressing his contentment with having defended, in his mind, the Sunnah. He states:

...to perish [while] emulating the Sunnah is deliverance, and people will avail me naught if I have not God by my side. I approached the issue of reform in certain matters gradually. Despite this, however, all hell broke loose against me, the fires of reproach were kindled beneath me, and censure’s arrows rained down upon me. I was branded a heretic and reprobate, relegated... to the ranks of the foolish and ignorant...’’¹⁵²

¹⁵¹ *Al-I’tisām*, 1:25-35.

¹⁵² *Ibid.*, 1:27; al-Raysūnī, 84 (trans. by Nancy Roberts).

It was within this highly-charged atmosphere against him that al-Shāṭibī would go on to pen *al-I'tiṣām*, a work that arguably became the most substantial treatment of the subject of religious innovations (*bid'ah*) in Islam up to that time.¹⁵³

2:4 | Innovative Aspects of al-Shāṭibī's *Maqāṣid* Theory

While al-Shāṭibī wholeheartedly believed that the notion of *maqāṣid al-Sharī'ah* was epistemically rooted in the primary sources and with the early Muslim generations, and while he acknowledged the foundational underpinnings to the field of *maqāṣid* that medieval scholars had laid down before him, expressing his indebtedness to them, al-Shāṭibī was also undoubtedly conscious of the creative aspects and the transformational potential that he brought to the table with his *maqāṣid* theory. Al-Shāṭibī in fact was quite explicit in expressing not only the unique and original aspects of his *maqāṣid* theory, of which he maintains had never previously been put forward, but also the profoundly epiphanic nature in which his ideas and thoughts on *maqāṣid* had come to him. He characterizes this experience as an episode in his life “when the secret which had been so well concealed manifested itself and when God in His bounty granted me access and guidance to that which He willed to reveal thereof ...”¹⁵⁴ Yet, despite what he believed to be both the concretely normative and the divinely inspirational basis for his *maqāṣid*

¹⁵³ Al-Raysūnī asserts: “This is a truth that has been attested to my numerous scholars and writers, among them Muḥammad Rashīd Riḍa.” He goes on to cite Riḍa as having said: “Never among all those who have written on the subject of religious innovations in Islam, have we seen anyone who has engaged in the kind of scholarly, principles-based research on the subject undertaken by Abū Ishāq al-Shāṭibī.” See, al-Raysūnī, fn. 52, p. 379.

¹⁵⁴ *Al-Muwāfaqāt*, 1:23. Trans. in Imam al-Shāṭibī's Theory of Islamic Law, 308.

theory, al-Shāṭibī warily anticipated that his unprecedented presentation of his *maqāṣid* thought would generate a vitriolic reaction from both scholarly contemporaries and the lay. As a preemption to this reaction, he offers his audience the following plea in his *al-Muwāfaqāt*:

You may be inclined to repudiate this book, you may find it difficult to perceive its inventive and creative aspects, and you may have been beguiled—by the fact that nothing like this has ever been heard before, nor has anything like it ever been written in the realm of the traditional legal sciences—into believing that you would be better off not listening to what it has to say just as you would be better off steering clear of [unfounded] religious innovations. If so, then I urge you not to heed such doubts without putting them to the test, and not to forfeit potential benefits without forethought. For it is, thanks be to God, something which is confirmed by the verses of the Qur’ān and the accounts passed down through the Prophetic Sunnah.¹⁵⁵

As these words expressly illustrate, al-Shāṭibī had attentively reflected on how his work would be received. Interestingly, his words here also tell us something about the religious climate surrounding him. That he harps on defending the innovative and creative aspects of his newly introduced theory of *maqāṣid* is suggestive of the *taqlīdī* orientation of his times and the hypersensitivity there was to anything that reeked of rationalistic thought or that was unfamiliar to longstanding tradition, all of which conferring what we have already

¹⁵⁵ *Al-Muwāfaqāt*, 1:25.

mentioned regarding the religious dynamics of fourteenth century Granada. Al-Shāṭibī's plea to his opponents and detractors, however, is anything but polemical; calling on them to just give his theory a chance, for they will find in it a pragmatism that when applied will render undeniable benefits which have the full authoritative backing of the Qur'ān and Sunnah.

But what's just as interesting as al-Shāṭibī's remarks defending his *maqāṣid* theory and conveying its foreseen merits is certain remarks he directs to the reader at the close of *al-Muwāfaqāt* regarding content he could have added but chose instead to omit. Al-Shāṭibī says:

...there remain things which it has not been possible to mention, and whose recipients—however great the thirst for such things—are few in number. Hence, fearing lest such readers not come to drink from their springs or be able to assemble their scattered pieces in the course of this investigation, I have checked my desire to set them forth clearly, and restrained my pen and fingers from declaring them in detail.¹⁵⁶

Why would al-Shāṭibī choose to make such a provocative statement, especially recognizing that the content he had already penned would stir considerable controversy? Perhaps he believed that his audience or future audiences would inevitably come around to realizing the value of what he had offered, and he thus wanted it to be incontrovertibly understood that his word was not the final word on the subject but rather that others should continue

¹⁵⁶ Ibid.

to explore what he had tried to bring to the fore. Whatever the case, though we have no material evidence to assess how immediate generations following al-Shāṭibī reacted to *al-Muwāfaqāt*, with the likely possibility that his *al-Muwāfaqāt*—as we will discuss in Part Two of this work—was all but lost for some five centuries, modern-day Muslim scholars and commentators on *maqāṣid* overwhelmingly avow the innovativeness and creativity found in his theory.

Several modern Muslim scholars including the famous Muḥammad Rashīd Riḍa (d. 1935) claimed for al-Shāṭibī the honorific appellation of “*mujaddid*,” the renewer of Islamic tradition for his time on account of his pioneering *maqāṣid* theory.¹⁵⁷ Other contemporary scholars and commentators heap praise for what they deem to be the utter brilliance of *al-Muwāfaqāt*. Muḥammad al-Zarqa characterizes it as “the most illustrious book,”¹⁵⁸ while Muṣṭafa al-Khinn remarks, “In this book of his, the author has trodden a singular path on which no one has gone before him...”¹⁵⁹ Some liken the impact that al-Shāṭibī’s *maqāṣid* theory had on *uṣūl al-fiqh* and Islamic tradition to the similar impact made by al-Shāfi‘ī. For instance, ‘Umar al-Jaydī asserts that al-Shāṭibī should “rightly be viewed as the first scholar to establish the science of *maqāṣid al-Sharī‘ah*,” and that his

¹⁵⁷ The notion of *mujaddid* is based on the famous *ḥadīth* narrated by Abū Ḥurairah that the Prophet Muḥammad said: “Allah will raise for this community at the end of every hundred years one who will renovate its religion for it.”—Sunan Abū Dāwūd, Book 37: *Kitāb al-malāḥim*, *Ḥadīth* Number 4278. It therefore refers to a Muslim who appears at the turn of every century of the Islamic calendar who renews Islamic tradition by purging it of corruptive elements. Muḥammad Rashīd Riḍa’s designation of *mujaddid* for al-Shāṭibī can be found in his *Tārīkh al-Ustādh al-Imām Muḥammad ‘Abduh* (Cairo: Maktabat al-Manār, 1931), p. *jīm*. Riḍa’s designation is further echoed by the Azharī Shaykh ‘Abd al-Muta‘āl al-Ṣa‘īdī in his book *al-Mujaddidūn fil-Islām min al-qarn al-awwal ilā al-rābi‘ ‘ashar* (al-Jamāmīz, Maktabat al-Ādāb, n.d.), p.309.

¹⁵⁸ Muḥammad Aḥmad, *Al-Madkhal al-fiqhī al-‘āmm* (Damascus: Dār al-Qalam, 1988), 1:119.

¹⁵⁹ Muṣṭafa Sa‘īd al-Khinn, *Dirāsah tārikhiyah lil-fiqh wa uṣūlihī* (Damascus: Al-Sharikah al-Muttaḥidah lil-Tawzī‘, 1984), p.219.

“unprecedented and unrivaled [work]...made a contribution similar to that made by al-Shāfi‘ī to the study of the fundamentals of jurisprudence.”¹⁶⁰ And Ibn ‘Āshūr, al-Shāṭibī’s virtual modern-day protégé who was arguably the first since al-Shāṭibī to delve deeply into the discipline of *maqāṣid* with his own substantial work on the subject, avouched for the sheer ingenuity of al-Shāṭibī’s *maqāṣid* thought, describing him as “the genius who applied himself to systematizing this discipline.”¹⁶¹

What therefore did al-Shāṭibī particularly disseminate in the area of *maqāṣid* that set him apart from earlier *maqāṣid* thinkers, and that had warranted for him such appellations as *mujaddid*? To begin with, al-Shāṭibī’s legal writings, especially *al-Muwāfaqāt*, presented a radical departure from and a drastic overhaul of approaches to the law and legal discussions that had been predominantly found in the legal literature preceding him. *Fiqh* works, *fatāwā*, and works in Islamic legal theory, or *uṣūl al-fiqh*, prior to him were simply devoid of engagement with the law from within the purview of higher objectives. The unprecedented transformation that he would bring to Islamic law can be especially detected in his approach to *ijtihād*. As we will expound upon further below, al-Shāṭibī singlehandedly set the stage for a paradigmatic shift in how *ijtihād* should operate,

¹⁶⁰ ‘Umar al-Jaydi, *al-Tashrī‘ al-Islāmī: uṣūluhu wa maqāṣiduhu* (Matba‘at al-Najāḥ al-Bayḍā’, Manshūrāt ‘Ukāz, 1987), 243. A similar remark is made by Ujayl al-Namashi in his article “*Muqaddimāt fī ‘ilm uṣūl al-fiqh*,” in *al-Sharī‘ah wa al-dirāsāt al-Islāmiyah* magazine (The College of Islamic Law, Kuwait University, No. 2, Muḥarram 1405/November 1984).

¹⁶¹ Muḥammad Al-Ṭāhir Ibn ‘Āshūr and Muḥammad Al-Ṭāhir Mīsāwī, *Ibn Ashur: Treatise on Maqāṣid Al-Sharī‘ah*. (Herndon, VA.: International Institute of Islamic Thought, 2006.), xxiii. Ibn ‘Āshūr does also acknowledge the contributions to *maqāṣid* made by ‘Izz ‘Abd al-Salām and al-Qarāfi, whom he credits for laying down its foundations. But he points to al-Shāṭibī for elevating it to an entirely different level as a substantial and systematized science. For the Arabic see Muḥammad Al-Ṭāhir Ibn ‘Āshūr, *Maqāṣid al-Sharī‘ah al-Islāmiyah* (Tunis, 1946), 8.

incorporating an amalgamation of informing factors that included a symbiotic interaction between primary textual references and discursive approaches.

Al-Shāṭibī's forte was undoubtedly his aptitude for exploring and determining the wisdoms and objectives of the *Sharī'ah*. His pioneering methodological approaches to ascertain these wisdoms and objectives was an exclusively new contribution to the domain of Islamic law and legal theory. Not only did al-Shāṭibī attempt to ascertain the objectives of the scriptural source content, but he further sought to capture the objectives of humanity. He believed that the objectives of the Lawgiver and the objectives of humanity were intrinsically aligned, and any discussion of one included a discussion of the other. Al-Raysūnī remarks that: “by appending an analysis of human objectives to his analysis of the objectives of the Law and explicating the necessary, integral connection between them—al-Shāṭibī has introduced an entirely new element into this type of discussion.”¹⁶² All of this was thus a new feat that had never been incorporated before in Islamic legal tradition, nor arguably in any other legal tradition.

As Ibn ʿĀshūr mentions, al-Shāṭibī had introduced an unprecedented systemization to the concept of *maqāṣid al-Sharī'ah*, establishing it as a science within itself. Al-Shāṭibī had for the first time formulated a number of principles that essentially scientized *maqāṣid* thought. These principles were both broad and particular, and in them lay the foundation of a seminal achievement that would in time prove to be indispensable for the renewal program of later Muslim thinkers (a matter this work treats in its subsequent parts). Aḥmad al-Raysūnī has generously extrapolated a copious number of these principles from al-

¹⁶² Al-Raysūnī, 315-16.

Shāṭibī's *al-Muwāfaqāt* and *al-I'tisām*, fifty-four in all, and has provided a tripartite taxonomy in which they all fall under, namely: (1) the objectives of the Lawgiver, (2) human objectives, and (3) how the objectives of the Lawgiver may be known.¹⁶³ We can further identify a more particularized taxonomy of these principles than the rather broad tripartite that al-Raysūnī has offered. This author would suggest six categories which by and large capture the wealth of al-Shāṭibī's rules and principles, subsuming al-Raysūnī's select fifty-four extrapolated principles under these six categories. And rather than listing out all of these principles in the manner in which al-Raysūnī has done, where many of them overlap or are repetitive, we can provide a relatively terse summary of each of the six categories they fall under, with each category containing a subset of these fifty-four principles.

The first of these categories, paralleling al-Raysuni's first thirteen principles, are rules and principles that relate to the notion that *the objectives of the Sharī'ah are to preserve human interests*. These "human interests" include both material and spiritual well-being. In other words, God intends with His revelation to provide the way or means by which one can achieve ultimate success in this life, and as a consequence, a felicitous outcome in the Hereafter. The notion of success, moreover, is not necessarily or superficially a quantitative measure, as for example amassing wealth for the mere purpose of becoming materialistically wealthy. Rather, achieving success is to live life, including experiencing its lows and highs, its tribulations and its good fortune, in a manner in which one is conscious of God, or conversely, in which one's experiences invoke God

¹⁶³ These principles are delineated from pp. 316-323. Al-Shāṭibī's selection of these are based upon what he found "to be the clearest and most fully developed."

consciousness; and in a manner in which one's interaction and reaction to these experiences—the lows and highs—embraces the ways or means which God has provided in His revelation.

Al-Shāṭibī explains that human interests are of three levels of priority, those that are of necessity (*al-ḍarūriyyāt*), those that are of need (*al-ḥājjiyyāt*), and those that are of embellishments (*al-taḥsīniyyāt*)—levels of which al-Juwaynī had previously established, but which al-Shāṭibī further expounds upon.¹⁶⁴ Those human interests that are of the highest priority, that of necessity, are as such because of the dire consequences that their absence or neglect would procure, essentially making life unbearable, corrupting, or impossible. These necessities which the *Sharī'ah* aimed to preserve are namely: life, progeny, material subsistence, the ability to practice religion, and the faculty of reason.¹⁶⁵ Later medieval scholars like al-Qarāfī would add the objective of dignity or honor to the fold. (In subsequent parts of this work, we will touch upon variant or alternative interpretations that modern Muslim thinkers have provided for these essential necessities; interpretations that are especially relevant to the context of modernity.) The next level of priority for human interests are “needs” or “exigencies.” What distinguishes this level from the aforementioned “necessities” is that the absence of humanity's needs does not necessarily result in life becoming unbearable, corruptive, or impossible. Their absence, however, may result in distress or hardship, or the forfeiture of ease and comfort.¹⁶⁶ Lastly, the third level of priority for human interests are what may be referred to as the “embellishments” of life. That they are deemed at the third level of priority does not

¹⁶⁴ *Al-Muwāfaqāt*, 2:49-51.

¹⁶⁵ *Ibid.*, 2:8.

¹⁶⁶ *Ibid.*, 2:11.

diminish their tremendous value and importance. The absence of the embellishments, however, should not make life unbearable, corruptive, or impossible, nor do they necessarily remove ease and comfort, or procure distress and hardship. The embellishments, moreover, may relate to material things or to ethical and spiritual matters. An example of the former would be the physical or aesthetic qualities of one's home; things such as the style of furniture, or the colors of the décor.

Al-Shāṭibī goes on to assert that the incumbency to preserve all of these levels—the necessities (including its five essentials, which are rooted in the Qur'ān and Sunnah), the needs, and the embellishments—is unanimously agreed upon within Islamic tradition as well as other religious traditions. He further explains that there is a symbiotic and trickle down relationship between these three levels; hence, the level of necessities is of course the foundational level for the levels of needs and embellishments such that the latter two may cease to be relevant if the level of necessities is destabilized. Similarly, and conversely, matters of the needs and embellishments may take on—within a certain context—a higher priority that is equivalent to one of the essential necessities.¹⁶⁷

Another set of rules and principles which al-Shāṭibī provides and which serve in the determination of human interests concern the subject matter of *benefit and harm*.¹⁶⁸ Humanity is enjoined to pursue that wherein lies benefit, and they are enjoined to avert that wherein lies harm. For matters which manifest both benefit and harm, discretion must be applied to determine the weight of each. In the case where the benefit outweighs the harm, it is generally enjoined to be pursued. And conversely, if the harm outweighs the benefit,

¹⁶⁷ Ibid., 2: 10-23.

¹⁶⁸ These are principles fourteen through seventeen in al-Raysūnī's extrapolation of al-Shāṭibī's principles.

it is enjoined to be averted.¹⁶⁹ Al-Shāṭibī explains, moreover, that there is a proportional correlation between the magnitude of benefit or harm there is and the value given to an act of obedience or disobedience. In other words, the greater the benefit resulting from some action, the more significant the act of obedience is in partaking in that action. And conversely, the greater the harm resulting from some action, the more significant the act of disobedience is in partaking in that action. It can otherwise be said that the merit of an action is proportional to the degree of its benefit, and conversely the sinfulness or wrong of an action is proportional to the degree of its harm. As such, the greatest acts of obedience correspond to preserving the five essentials, while the greatest acts of disobedience correspond to the violation of the same five essentials.¹⁷⁰

Al-Shāṭibī further incorporates the *uṣūlī* and reasoning principle *sadd al-dharāʿi*, or blocking the means, in his discussion of benefit and harm. This principle was considered a source of legislation by many jurists before al-Shāṭibī, especially within his Mālikī school.¹⁷¹ *Sadd al-dharāʿi* essentially entails prohibiting a lawful action (in itself) that would lead to a sinful or unlawful action. Those jurists who applied this principle generally agreed that for the principle to take effect, the probability leading to the unlawful action should be greater than the probability of not leading to it. However, there was no uniformity among them as to how to systematize or scientize the evaluation of the probability. Many

¹⁶⁹ *Al-Muwāfaqāt*, 2:26-27.

¹⁷⁰ *Ibid.*, 2:298-299.

¹⁷¹ The four orthodox Sunni schools of law, as well as the Zaydīs and Ibāḍīs, all would eventually adopt this principle. The Shia and the Zāhirīs, however, generally didn't consider this principle as a valid source for legislation. For more on this principle see: Muḥammad Abū Zahrah, *Uṣūl al-fiqh* (Cairo: Dār al-Fikr al-ʿArabī, 1958), 271-273; Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence* (Cambridge: Islamic Texts Society, 1991); Auda, *Maqāṣid al-Sharīʿah*, 125-127.

of them, including al-Shāṭibī, adopted four categories of probability, “certain,” “most probable,” “probable,” and “rare,” and gave case examples for each. Al-Shāṭibī, for instance, held that the act of selling grapes procured a “rare” harm, which was that some people would use it for winemaking, with winemaking being of course unlawful. But it was also understood that the vast majority of people would not use it for that purpose, and therefore al-Shāṭibī and other jurists held that it was permissible to sell grapes in general, and that a rare probability did not validate the application of *sadd al-dharā’i’*.¹⁷² Selling grapes directly to a winemaker, however, fell in the category of “most probable” harm for these jurists. While al-Shāṭibī, the Mālikīs, and others, including Ḥanbalīs, held that the high probability of it leading to harm should make it prohibitive to sell it to a winemaker, other jurists adopted the position that *sadd al-dharā’i’* could only be validated in that which is deemed as “certain” to lead to harm.

Subjectivity and contextual variants led to wide disagreements among jurists in the general application of *sadd al-dharā’i’*. Contemporary Muslim legal thinkers such as Jasser Auda propose alternative ways, a more “non-porous” system, to evaluate probability with respect to *sadd al-dharā’i’*. Nonetheless, al-Shāṭibī believed that latitude or strictness in the application of *sadd al-dharā’i’* should be guided by the level of severity of the harm. He maintained, moreover, that the *Sharī‘ah* placed a higher priority on averting harm than it did on attaining benefit.¹⁷³

¹⁷² *Al-Muwāfaqāt*, 2:249.

¹⁷³ *Ibid.*, 4:272; *al-Iṭṣām*, 1:104.

Al-Shāṭibī further provides principles which address matters pertaining to *acts of worship* (*‘ibādāt*).¹⁷⁴ He stipulates that obedience should ideally be the default approach to acts of worship, regardless of one having ascertained their underlying purpose or wisdom (al-Shāṭibī’s treatment of matters pertaining to hardship and dispensations in acts of worship is discussed below). This, he juxtaposes to matters pertaining to daily transactions (*mu‘āmalāt*), whose approach—to the contrary—should be with attention to their underlying purpose or wisdom.¹⁷⁵ And lest one think that there is no purpose or wisdom behind a certain prescribed act of worship, al-Shāṭibī provides an overall objective that applies to all prescribed acts of worship, telling us that it is to attain submission to God, to establish awe and reverence for Him, to glorify and exalt His Majesty, and to draw closer to Him.¹⁷⁶ Moreover, in reflecting on all of the blessings that God has created, blessings of which sustain creation, as well as in which creation derives comfort and pleasure from, al-Shāṭibī tells us that their purpose is so that we seek them, enjoy them, and ultimately know God and praise Him for them.¹⁷⁷ Thus, for example, in the foods that sustain creation, there is the added blessing that God has created them such that we also derive joy and pleasure in consuming them. This, like many other aspects in creation, is no mere coincidence or chance, but rather reflects a system that is utterly sophisticated and intelligent, while merciful and compassionate.

¹⁷⁴ These are principles eighteen through twenty in al-Raysūnī’s extrapolation of al-Shāṭibī’s principles.

¹⁷⁵ *Al-Muwāfaqāt*, 2:300-301; *al-I’tiṣām*, 2:135.

¹⁷⁶ *Al-Muwāfaqāt*, 2:300-301.

¹⁷⁷ *Ibid.*, 2:321.

Another set of rules and principles that al-Shāṭibī treats pertain to hardship, desires, and matters of asceticism (*zuhd*).¹⁷⁸ Reflecting on the objectives of the moral-legal content which God has revealed, al-Shāṭibī surmises that they are intended *inter alia* to procure and maintain an equilibrium in our desires such that they don't become our master and we their slave. This freedom from slavery to our desires, moreover, allows one the choice of being God's servant, as one already is by necessity.¹⁷⁹ Al-Shāṭibī therefore emphasizes moderation with one's desires and warns that just as excessively pursuing them may lead to hardship and harm, likewise could abandoning or suppressing them lead to hardship and harm. Such an outcome is not the aim of God and the moral-legal content He has revealed. Rather, "God has granted human beings sufficient latitude with respect to the satisfaction of their desires and the pursuit of enjoyment that need not lead either to harm and corruption or to hardship."¹⁸⁰

Al-Shāṭibī goes on to elaborate on the dimensions of hardship, clarifying certain misrepresentations of its applicability in law. He provides a very useful and elucidating universal principle that should anchor one's thinking about hardship in general and in light of God's revelation in particular, stating that God "does not command any action with the intention of causing us hardship or pain."¹⁸¹ There are undoubtedly certain actions which God has commanded that involve some degree of effort and difficulty; however, the difficulty or hardship involved is in itself *not* the intended purpose of God commanding that action. Rather, as al-Shāṭibī asserts, God intends in the action the resulting benefit that

¹⁷⁸These are principles twenty-one through thirty-three and thirty-nine through forty in al-Raysūnī's extrapolation of al-Shāṭibī's principles.

¹⁷⁹ Al-Muwāfaqāt, 2:168.

¹⁸⁰ *al-I'tiṣām*, 1:377; Al-Raysūnī, 319-20.

¹⁸¹ *Al-Muwāfaqāt*, 2:121; Al-Raysūnī, 320.

follows or accrues for the one engaging in the said action.¹⁸² The effort or difficulty involved regarding certain actions which God has commanded is therefore to be endured, but—and importantly—within certain limits and conditions. Here al-Shāṭibī elaborates, stating that: “If the hardship entailed by a given requirement of the Law is so extreme that it undermines someone’s spiritual integrity or material well-being, then the Law’s objective is to eliminate it, other things being equal.”¹⁸³ Thus, when the effort or hardship stemming from an action could lead to harm or something unbearable, then it is here that one should seek to avert this undue hardship or harm through a dispensation (*rukḥṣah*).

The *Sharī‘ah* is ultimately about achieving benefit, and neither of the two extremes of excessive austerity or excessive laxity is a desired goal. Moderation, therefore, should be the underlying characteristic in the application of the *Sharī‘ah*. Al-Shāṭibī here forewarns that if one does encounter or observe a tendency in a legal ruling towards either of the two extremes of excessive austerity or excessive laxity, “this is due to the fact that the ruling in question is intended to counter an opposing tendency in human beings, be it actual or anticipated.”¹⁸⁴ Contextual circumstances as such are among the crucial determining factors informing the interpretation and application of the law. But all in all, al-Shāṭibī reminds, humans should persevere—to the extent that they can and while avoiding harm—in the various virtuous actions which God has enjoined. His statement here also provides added clarity to the variety of approaches found for example in the *ḥadīth* corpus, where one can observe variagated virtuous actions with differing degrees of

¹⁸² *Al-Muwāfaqāt*, 2:123-124.

¹⁸³ *Ibid.*, 2:156; *Al-Raysūnī*, 320.

¹⁸⁴ *Al-Muwāfaqāt*, 2:163-167; *Al-Raysūnī*, 321.

effort and difficulty that the Prophet encouraged or prescribed, and which procure some type of reward proportional to the action. As such, it can be understood that God in His Mercy provides numerous opportunities for the variety of motivational and capacity levels in individuals, the strong and the weak, to partake in righteous actions and to acquire spiritual benefit and growth.

Al-Shāṭibī further provides principles which address the subject of hardship within the purview of human objectives (in contradistinction to his discussion of hardship as presented above, which is within the purview of God’s objective per the *Sharī‘ah*). These particular principles regarding engaging in hardship are likely in direct response to the extreme *zuhd* of certain Sufis that had been gaining wide popularity among the masses in fourteenth-century Granada. One of these principles unequivocally condemns partaking in or seeking out hardship for its own sake, “since it is in conflict with the Lawgiver’s intent, and because God has not established self-torment as a means of drawing near to Him or attaining to His presence.”¹⁸⁵ He adds that one should also not seek out hardship for its reward. Rather, one may seek the reward for a virtuous action that happens to contain hardship in it, but as long as one’s intent is not for the hardship itself, and as long as the hardship does not lead to harm.¹⁸⁶ Interestingly, Ibn al-Jawzī employs what is ostensibly *maqāṣid* thinking in his *Talbīs iblīs* to address this matter of engaging in severe hardship per certain ascetics and Sufis of his time.¹⁸⁷

¹⁸⁵ *Al-Muwāfaqāt*, 2:129 and 134; *al-I’tisām*, 1:341; *Al-Raysūnī*, 322.

¹⁸⁶ *Al-Muwāfaqāt*, 2:128.

¹⁸⁷ See the sections: “How the Devil Deludes the Ascetics” and “How the Devil Deludes the Sufis,” in Ibn al-Jawzī, ‘Abd al-Raḥmān B. ‘Alī, D.S Margoliouth, and N.K. Singh. *Talbīs Iblīs: (Delusion of the Devil)*. New Delhi: Kitab Bhavan, 2003.

Another set of rules and principles that al-Shāṭibī offers pertain to the subject of intent, with his discussion here falling under the broader subject matter of human objectives.¹⁸⁸ He commences his discussion on intention by referencing the famous *ḥadīth* articulating what al-Shāṭibī adopts as a fundamental principle, which is that actions correspond to the intentions which govern them. Therefore, and in keeping with the orientation of his Mālikī tradition, al-Shāṭibī holds that human intention is to be afforded consideration in matters of the law, including that which falls under the category of worship (*‘ibādāt*) as well as that which pertains to daily transactions (*mu‘āmalāt*).¹⁸⁹ Al-Shāṭibī adds that God’s objective for human beings is that the intentions behind their actions align with the intended purpose of the revealed moral-legal content. As such, if one partakes in an action that the *Sharī‘ah* has commanded, but formulates an intention for that action which is contrary to the *Sharī‘ah*’s intended purpose for that action, then one’s conflicting intention invalidates his action.¹⁹⁰ For example, and in the realm of worship, if one’s intention in performing prayer is other than devotion to God, then the prayer becomes invalid before God, despite that its outward or physical features are in proper accordance to ritual law.

Finally, al-Shāṭibī provides several principles pertaining to *how the objectives of the Lawgiver may be known*.¹⁹¹ Fundamentally, the process involved in ascertaining these

¹⁸⁸These are principles thirty-four through thirty-eight and forty-one through forty-four in al-Raysūnī’s extrapolation of al-Shāṭibī’s principles. We should note here that the subject of intent in Islamic law is relatively complex. For a substantial study of this subject, see Paul R. Powers, *Intent in Islamic Law: Motive and Meaning in Medieval Sunni Fiqh* (Leiden: Brill, 2006).

¹⁸⁹ *Al-Muwāfaqāt*, 2:323.

¹⁹⁰ *Ibid.*, 2:331-333; *al-I’tisām*, 1:349.

¹⁹¹These are principles forty-five through fifty-four in al-Raysūnī’s extrapolation of al-Shāṭibī’s principles.

objectives must be founded upon clear evidence, not mere opinion nor conjecture.¹⁹² As mentioned earlier, ascertaining the *maqāṣid* is attained through some symbiosis of sound reasoning and wisdom that is rooted in textual reflection and evidence. Such evidence may be an individual explicit text from the Qur’ān or the Sunnah that directly conveys an objective, or it may be deduced from the combining of a number of textual references from these sources.¹⁹³ This later type, in other words, extrapolates an objective from the inductive reading (*istiqrār*) of an aggregate of references, without the employment of any explicit statement conveying that objective. Al-Shāṭibī further maintained that objectives may be ascertained by examining the Companions understanding of the rulings found in the Qur’ān and Sunnah.¹⁹⁴ And in general, he held that that which supports an objective of the *Sharī‘ah* may in itself become an objective.¹⁹⁵ Lastly, and as discussed earlier, al-Shāṭibī was not antithetical to rationalistic methods in the process of ascertaining the *maqāṣid*. The condition he sets is that such methods are not independently employed, but rather engage in direct tandem with textual evidence from the Qur’ān and Sunnah.¹⁹⁶ For al-Shāṭibī, this was a necessary stipulation that served as a deterrence to freewheeling and unchecked reason and the pursuit of deleterious whims which neither fulfilled beneficial worldly objectives nor spiritual objectives.

Al-Shāṭibī’s well-formulated and ingenious *maqāṣid* theory would have its most significant and far-reaching impact in the area of *ijtihād*. He conceived the process of *ijtihād* to be tightly bound to thinking about *maqāṣid* and *maṣlaḥah*, a shift from the status

¹⁹² *Al-I’tiṣām*, 1:80.

¹⁹³ *Ibid.*, 1:39.

¹⁹⁴ *Al-Muwāfaqāt*, 313, 168-399; Ibn ‘Āshūr, 20-22; Al-Raysūnī, 241-256; Attia, 1.

¹⁹⁵ *Al-Muwāfaqāt*, 2:397.

¹⁹⁶ *Ibid.*, 1:35; Attia, 8-10

quo that had generally occupied the *ijtihādī* scene prior to and up to his time, invariably constrained by legal formalism and a lack of purposefulness. Al-Shāṭibī sought more than just a theoretical framework that would alienate practical considerations. Rather, he intended his *maqāṣid* theory to directly address pressing practical issues confronting the medieval world of his time, especially unprecedented political, economic, legal, religious, and social developments that were impeding upon a successful outcome for fourteenth-century Muslim Granada.

Al-Shāṭibī sought to revolutionize the epistemological underpinnings of *ijtihād*. For centuries, the *uṣūl al-fiqh* community had designated numerous conditions, many of which intricate, for the qualification of a *mujtahid*. Though al-Shāṭibī did not aim to dilute the knowledge-base of the institution of *ijtihād*, he did deem many of its conditions to be ineffectual, misplaced, or rather unnecessary. Elaborating on this point al-Shāṭibī states:

If *ijtihād* is employed in order to derive rulings from texts, knowledge of the Arabic language will be required. If, on the other hand, it is for the purpose of discerning sources of benefit and harm regardless of what particular texts have to say, or is based on some ruling which is accepted by all on the authority of a scholar who has already engaged in *ijtihād* based on particular texts, this does not require knowledge of the Arabic language. Rather, all it requires is a complete, detailed knowledge of the higher objectives of the Law.¹⁹⁷

¹⁹⁷ *Al-Muwāfaqāt*, 3:162; *Al-Raysūnī*, 358.

Al-Shāṭibī believed that knowledge of the *maqāṣid* must be the backbone of *ijtihād*, and that the first and foremost qualification of a *mujtahid* should be to understand both the *maqāṣid* and their application within a given context.¹⁹⁸ By reassessing the longstanding qualifications of the *mujtahid*, shortening the list of requirements and putting at the fore one fundamentally important requisite of knowing the *maqāṣid* and their application, al-Shāṭibī had in effect opened wide the gate of *ijtihād*, streamlining the process of becoming a *mujtahid* and of producing *ijtihād*. He held that: “if one reaches a point where he perceives the Lawgiver’s intention as it pertains to every question of the Law and every area thereof, he will have achieved a station which qualifies him to serve as the Prophet’s vicegerent in the realms of instruction and the issuance of legal decisions and rulings concerning what God wills.”¹⁹⁹ Al-Shāṭibī had thus pioneered the central role of *maqāṣid* in the realm of *ijtihād*, and had altered the course of Islamic law for future generations.

Al-Shāṭibī is quite explicit in his rebuke of those scholars who failed to incorporate the *maqāṣid* in their *ijtihād*, maintaining that the neglect of the *maqāṣid* in the endeavor of *ijtihād* would likely lead to erroneous and futile outcomes. He states: “Errors committed by scholars most frequently occur when they fail to take account of the objectives of the Law as they pertain to the particular situation to which they are applying independent reasoning.”²⁰⁰ What was worse for al-Shāṭibī was that such scholars had the audacity to think they were well-qualified to be performing *ijtihād* or spewing out *fatāwā* without any recourse to the *maqāṣid*. And the ramifications of this were deep; the wholesale distortion of Islamic tradition. Al-Shāṭibī speaks specifically here to the practice of engaging with the

¹⁹⁸ *Al-Muwāfaqāt*, 4:105-106.

¹⁹⁹ *Ibid.*, 4:106-107; *Al-Raysūnī*, 331.

²⁰⁰ *Al-Muwāfaqāt*, 4:170; *Al-Raysūnī*, 332.

particulars of the primary source content in isolation of the universals and the greater objectives that underlie them. He points out that the most overt perpetrators of this approach are the *Khawārij*,²⁰¹ a group that wreaked havoc in early Islam. It is this non-holistic and piecemeal approach to legal thinking that al-Shāṭibī believed was creating the fissures in the legal community and that could inevitably bring to ruin Islamic law.

Al-Shāṭibī, moreover, reflects on the famous Qur’ānic verse 3:7 (which we have already touched upon above) within the context of those who isolate particulars from the universals. These people engage in the *mutashābihāt* or multivalent verses, overlooking the *muḥkamāt* or the verses that are clear in meaning, while heedless of the overarching principles and wisdoms of the *Sharī‘ah*. In contrast to them are “those firmly rooted in knowledge,” of which Qur’ān 3:7 speaks of, and who al-Shāṭibī identifies as those who “approach evidence by treating the Law as an integrated whole based on its established universals, with its particulars being ordered in accordance therewith.”²⁰² The former, preoccupied with the *mutashābihāt*, are prone to fall into gross error, while the latter have a discerning and comprehensive understanding of the revealed sources such that their *ijtihād* is truly capable of treating the most complex of issues. These are the people who should be most relevant to the masses in confronting the conditions and challenges of their time.

Al-Shāṭibī rehashes in several places of his *al-Muwāfaqāt* the contrast and relationship between particulars and universals, and specifically, that a myopic or literal reading of a particular textual ruling without reflection on its underlying cause (*‘illa*) and

²⁰¹ *Al-Muwāfaqāt*, 4:174-179.

²⁰² *Al-I’tisām*, 1:244-245; *Al-Raysūnī*, 333.

reference to the universal *maqāṣid* can lead to the procurement of harm rather than benefit. Moreover, just as one should not engage with the particulars without reference to the *maqāṣid*, likewise he admonishes that one cannot apply the *maqāṣid* without reference to the particulars, including all of its related contextual elements.²⁰³ This symbiotic relationship between the two is part and parcel to any formulation of sound *ijtihād*. He further adds that concern for human interests that are not explicitly manifest in the primary sources can and should serve as a premise in the process of *ijtihād*, provided that such human interests are arrived at genuinely and are in accordance with the *maqāṣid al-Sharī‘ah*.²⁰⁴ These human interests that extend beyond explicit textual references in the primary sources, otherwise referred to as unspecified or unrestricted interests (*al-maṣālīḥ al-mursalah*), are given priority over the output of other reason-based *uṣūlī* principles such as *qiyās*, or analogical deduction for the great benefit or removal of harm that they procure. The term that essentially defines this notion of overriding a *qiyāsī* determinant with that which is deemed to procure more benefit or to remove more harm is known as *istiḥsān*. Al-Shāṭibī’s justification, moreover, for allowing unrestricted interests to trump *qiyās* is simply that unrestricted interests are essentially rooted in the *maqāṣid al-Sharī‘ah*, and as the *maqāṣid* are universal, they should naturally be the ultimate guide to any particular reason-based principle including one which is directly tied to the primary sources such as *qiyās* (where *qiyās* in itself is not certain but speculative and a means to an end rather than an end).²⁰⁵

²⁰³ *Al-Muwāfaqāt*, 3:5-15.

²⁰⁴ *Ibid.*, 4:206.

²⁰⁵ *Ibid.*

A good practical example of al-Shāṭibī's theory on *maqāṣid* and *maṣlaḥah* being applied in a real case *ijtihād* and where *maqāṣid* and *maṣlaḥah* override an established particular ruling is his *fatwā* which renders permissible the otherwise impermissible imposition of a tax on the populace. The gist of al-Shāṭibī's reasoning is that if the state is unable to provide for the needs of the populace through the zakat based state treasury, then this could lead to harm. And the imposition of a tax that could offset that harm and procure a needed *maṣlaḥah* for the populace is therefore justifiable and in keeping with the higher objectives of the *Sharī'ah*.²⁰⁶

Though al-Shāṭibī's recourse to *maṣlaḥah* here is within the framework of the higher objectives (*maqāṣid*) and appears to provide an authentically authoritative, just and logical basis to circumvent an established particular ruling from the foundational texts, this procedure nevertheless exposes itself to all sorts of contortion, contrivance, and subterfuge, otherwise understood in Islamic legal parlance as *ḥiyal* or legal stratagems of the inadmissible type. It is as such that al-Shāṭibī's own shaykh Abū Sa'īd ibn Lubb²⁰⁷ (d. 782/1381) sternly opposed his *fatwā* in what became a well-publicized disagreement.²⁰⁸ For al-Shāṭibī, however, as long as the modus operandi of such devices was within the confines of the higher objectives of the *Sharī'ah*, they were necessarily admissible.²⁰⁹

²⁰⁶ *Al-I'tiṣām*, 2:121-123; Also see Abū al-'Abbās al-Wansharīsī, *al-Mi'yār al-mu'rab wa al-jāmi' al-mughrab 'an fatāwā ahl Iḥrāqiyah wa al-Andalus wa al-Maghrib* (Moroccan Ministry of Religious Endowments, 1981), 11: 127-128; *Nayl al-Ibtihāj*, pp. 49-50; al-Raysūnī, 356.

²⁰⁷ Abū Sa'īd Faraj ibn Lubb was the *muftī* of Granada.

²⁰⁸ *Al-Mi'yār*, 11:131; *Nayl al-ibtihāj*, pp. 49-50; *al-I'tiṣām*, 2:121-123; al-Raysūnī, 356.

²⁰⁹ Though all kinds of *ḥiyal* were widely rejected especially within the Shafi'ī and Ḥanbalī schools, a more moderate and nuanced position eventually arose across all the schools. For instance, the fourteenth-century Ḥanbalī scholar Ibn Qayyim al-Jawziyya distinguished between three types of *ḥiyal*, (1) clearly inadmissible, (2) clearly admissible and (3) of doubtful admissibility, wherein the higher objectives of the law informed admissibility. The Ḥanafī school has long approved—going back to Abū Ḥanifā—certain types of *ḥiyal*. In

But what would prevent a ruler, for instance, from coopting or colluding with a *mujtahid* to disingenuously use this procedure and seek additional revenue for the state in the name of the higher objectives and the public good? Al-Shāṭibī's *fatwā* and the foreseen drawbacks associated with it would later be redressed by a contemporary of his, the Andalusian *mufīṭ* Abū 'Umar ibn Manzūr (d. 887/1482).²¹⁰ Ibn Manzūr, who accepts al-Shāṭibī's *fatwā* in principle, goes on to expound upon it in detail, providing several stringent conditions that are intended to repel any potential *ḥiyal* of the inadmissible type, and that must be met in order to justify the imposition of a tax on a populace. He states:

...such a tax may only be levied under the following conditions. (1) There must be a genuine need. Hence, if there are sufficient funds in the state treasury for it to fulfill the aforementioned functions, it is not permitted to impose anything on the people in keeping with the words of the Prophet, "No poll tax shall be levied upon Muslims," and, "No one who has levied taxes will enter Paradise," which applies to the unjust imposition of duties or taxes. (2) The state must dispose of the proceeds justly; hence, it is unacceptable for the state treasury to keep the money for itself rather than distributing it among its Muslim subjects, nor may it spend the money wastefully, give it to those who do not truly deserve it, or give anyone more than he deserves. (3) The funds must be disbursed in accordance with existing needs, not with an aim to achieving some purpose of its own. (4) Taxes may only be levied on those who are able to pay them without suffering harm or injustice as a result. As for those who have little or nothing, no taxes may be required of them. (5) The state treasury must monitor its financial status at all times, since there may come a time when it no longer needs to increase its available funds.²¹¹

fact, a substantial literature on *ḥiyal* can be found in the Ḥanafī school. See for example *Kitāb al-maḥārij fī l-ḥiyal* by Muḥammad al-Shaybānī (d. 189/805).

²¹⁰ 'Uthmān ibn Muḥammad ibn Manzūr, commonly known as al-Qaḍī Abū 'Umar ibn Manzūr, was a prominent Andalusian judge and *mufīṭ*. Many of his *fatāwā* are cited by al-Wansharīsī in his *al-Mi'yār*.

²¹¹ *Al-Mi'yār*, 11:127-128; al-Raysūnī, 357-358 (trans. by Nancy Roberts).

The full account of Ibn Manẓūr's *fatwā* can be found in al-Wansharīsī's²¹² (d. 914/1509) *Mi'yār*, wherein it demonstrates instances which would validate the evasion of a particular established ruling through the application of *maṣlaḥah*.

Among the attributes that distinguished al-Shāṭibī from other jurists was his relentless commitment to surveying the entire possible field of variables and contextual elements that could inform his *ijtihād*, as well as his exceptional ability to discern the consequences of the *ijtihād*. In this vein, he vigilantly held to the principle that 'rulings are inseparable from their objectives.' This notion of keeping a perspicacious eye on what one's ruling or *ijtihād* would reap was for al-Shāṭibī often found missing in the practice of the professed *mujtahidīn* and muftis of his time. He felt that they merely thought their task was but to provide a legal ruling, nothing more. Reemphasizing some of the fundamental duties of the qualified *mujtahid*, al-Shāṭibī states:

Heeding the outcomes of actions is consistent with the higher objectives of the Law, whether the actions concerned are in accordance with the Law or in violation thereof. Therefore, the person engaging in *ijtihād* is not to judge a human action, be it one of commission or omission, until after he has given careful thought to the consequences to which the said action will lead.²¹³

²¹² Abū al-ʿAbbās Aḥmad ibn Yaḥya al-Wansharīsī was a prominent North African theologian and jurist of the Mālikī school and a leading authority on issues pertaining to Iberian Muslims living under Christian rule after the Christian *Reconquista* of Islamic al-Andalus. He is best known for his work *al-Mi'yār al-mu'rib*, a multivolume compilation of North African and Andalusian legal opinions (*fatāwā*). It became part of the educational curriculum in North Africa by the sixteenth century, and it is still studied today as an important source of information on the cultural, economic, juridical, religious and social practices of medieval al-Andalus and North Africa.

²¹³ *Al-Muwāfaqāt*, 3:196; *Al-Raysūnī*, 358-359.

Thus for al-Shāṭibī, the one who is unable to do this is an incompetent *mujtahid* who has utterly failed the office of the *mujtahid* as well as those who have sought to receive and apply his *ijtihād*. They negligently deliver their *ijtihād* or *fatwā* to their audience without being attuned to its effect or consideration of its consequences. They fail to consider such factors as time, place and people which inform thinking about the consequences of an *ijtihād* or *fatwā*. Moreover, they have abandoned the practice of the Prophet and the Companions in the consideration of outcomes. The fate of such a self-proclaimed *mujtahid* should be to be deposed from the practice and ranks of *ijtihād*.

Al-Shāṭibī further gives discussion to the contrast between an *ijtihād* which may apply generally to the masses and an *ijtihād* which may apply specifically to an individual. The latter type of *ijtihād* serves the unique circumstances of an individual and requires the *mujtahid* to possess certain distinct capabilities that go beyond mere knowledge of the traditionally learned scholastic sciences typically associated with the field of Islamic law and the ranks of the *mujtahid*. Al-Shāṭibī characterized this type of *mujtahid* as “someone endowed with a divine light by means of which he knows people's souls and recognizes their aspirations, their disparate levels of understanding, their ability, or lack thereof, to tolerate the Law's requirements and bear its burdens, and the importance, or lack thereof, which they attach to earthly satisfactions.”²¹⁴ Al-Shāṭibī is essentially speaking of what this author would term ‘differentiated *ijtihād*’, wherein each individual is recognized as possessing their own unique and distinct peculiarities, and wherein the *mujtahid* takes on a holistic approach in formulating a particularized *ijtihād* for an individual. This type of

²¹⁴ *Al-Muwāfaqāt*, 4:98; *Al-Raysūnī*, 361.

ijtihād includes *inter alia* consideration of such matters as an individual's environmental, emotional, psychological, social, and spiritual state.

Al-Shāṭibī is under no illusion in thinking that with the *mujtahid* having fulfilled these conditions, their resulting *ijtihād* will automatically procure absolute infallibility. Rather, and in this vein, he cites the well-known ḥadīth in which the Prophet Muḥammad articulated that the *mujtahid* may not necessarily ascertain the absolute correct *ijtihād*, but wherein they would still merit a reward for their genuine effort in applying the appropriate means to achieving it, while if they did ascertain the proper *ijtihād*, they are rewarded twofold. The upshot is not to encourage complacent mediocrity in *ijtihād*, but rather to encourage both the endeavor of *ijtihād* and the endeavor for its successful outcome. For al-Shāṭibī, the conditions he has put forth for the *mujtahid*, which include knowledge of *maqāṣid* and those matters already mentioned that extend beyond the traditional scholastic sciences associated with *ijtihād*—otherwise the tools to produce differentiated *ijtihād*—give increase to achieving the most successful outcome for an *ijtihād*.

The notion of differentiated *ijtihād* thus calls for the *mujtahid* to recognize that no matter what perceived similarities are found between case to case, each case should be approached anew and with the presumption that there lay within them peculiarities—no matter how subtle—to formulate an original and distinct *ijtihād*. Even if the resulting *ijtihād* turns out to mirror a precedential one, the *mujtahid* can at least feel at ease for having striven to exhaust the opportunities to arrive at the soundest *ijtihād*. And in so doing, the *mujtahid* has done his part to gain the two-fold reward promised in the ḥadīth, and more importantly, the pleasure of God for the intellectual struggle along the way.

Al-Shāṭibī had undoubtedly set forth with his *maqāṣid* theory a revolutionary and transformative system of thought that had all the makings of generating a seismic shift throughout Islamic tradition. What actually happens to *maqāṣid* thought post-Shāṭibī, however, is a matter that has largely gone unexplored. The subsequent parts of this work will attempt to do just that. More concretely, it will examine *inter alia*: (1) the validity of the contemporary thesis which holds that al-Shāṭibī's *maqāṣid* theory—and *maqāṣid* thought in general—was marginalized and virtually absent after al-Shāṭibī for some five centuries; (2) how the revival of al-Shāṭibī's theory in the Modern era came about; and lastly (3) the orientation that *maqāṣid* thought takes in the Modern era, focusing in particular on important *maqāṣid* thinkers of the twentieth and twenty-first centuries.

PART II

Post-Shāṭibīan *Maqāṣid al-Sharī'ah*

INTRODUCTION TO PART II

Part Two of this dissertation contributes an important study that treats and delineates the emergence of an all-important Islamic legal theory into the modern Muslim world. This legal theory, as we have illustrated in Part One, goes back to the medieval period, and among its pioneers and central figures in developing it is the famous Muslim legal thinker Abū Ishāq Ibrāhīm al-Shāṭibī (d. 1388). The current narrative among historians of Islamic legal and intellectual thought is that this theory remained marginalized for some five centuries, and that al-Shāṭibī's work expounding on it was all but ignored until its reemergence in the late nineteenth and early twentieth centuries, the period commonly deemed by contemporary writers on the subject, such as Muhammad Khalid Masud, Mohammad Hashim Kamali, and Felicitas Opwis, as the germinating point for its revival.

For instance, the earliest of modern figures that Masud holds to have adopted the ideas of *maṣlaḥah* and *maqāṣid* in their legal thought is Muḥammad 'Abduh. For Masud, it is the 1884 edition of al-Shāṭibī's *al-Muwāfaqāt* that would impact 'Abduh's legal thought. Masud, therefore, does not consider nor explore the possibility that al-Shāṭibī's thought may have been accessible to modern Muslim thinkers prior to this 1884 edition.²¹⁵ Mohammad Hashim Kamali holds the revival of *maqāṣid* thought to be the mid-twentieth century. He further maintains that al-Shāṭibī's

²¹⁵ Masud, 4-5. Masud goes on to list other modern legal thinkers of the twentieth century to have been influenced by al-Shāṭibī's thought.

thought on *maqāṣid* and *maṣlaḥah* (two terms he views as virtually interchangeable)²¹⁶ was marginalized for some five centuries prior to this. Kamali, who offers a chronological history of *maqāṣid* up to the late twentieth century, does not give any attention to *maqāṣid/maṣlaḥah* thinkers post-al-Shāṭibī and prior to the mid-twentieth century.²¹⁷ And in her article, “Maṣlaḥa in Contemporary Islamic Legal Theory,” the earliest of modern Muslim figures that Opwis treats with respect to the revival of *maṣlaḥah* thought, a central component of *maqāṣid* theory, is Jamāl al-Dīn al-Qāsimī (1866-1914) and Muḥammad Rashīd Riḍā (1865-1935). Though Opwis does not explicitly claim that *maqāṣid* thought or *maṣlaḥah* was absent from earlier reformist thinkers; that her point of departure is with al-Qāsimī and Riḍā suggests that the early twentieth century was for her the main juncture of this revival.

What’s noteworthy about the two figures who anchor Opwis’ twentieth century *maṣlaḥah* revival is the absence of al-Shāṭibī from their circle of medieval scholarly influence. Rather, we learn that it is al-Tūfī to whom ideas on *maṣlaḥah* would become influential for Qāsimī and Riḍā.²¹⁸ And according to Opwis, among the earliest modern-day proponents of al-Shāṭibī’s

²¹⁶ Kamali’s explanation of what he views to be a synonymous interchangeability of the terms *maqāṣid* and *maṣlaḥah* is as follows: “In all cases, whatever the aim or justification of the individual *aḥkām*, however, it is to be noted that the underlying objective is the realization of some *maṣlaḥah* (benefit). It is for this reason that the objective of *maṣlaḥah* has generally been regarded as the summa of *al-Maqāṣid*. For, in the final analysis, *‘Adl* and *Tahdhib al-Fard* may also be seen as manifestations of *maṣlaḥah*. The *maṣāliḥ* (pl. of *maṣlaḥah*) is thus another name for the *maqāṣid*, and the ulema have used these two terms almost interchangeably.” Moreover, he sees an interchangeable relationship between the concepts of *rahma* and *maṣlaḥah*, saying: “The ulema have, thus, generally considered *rahmah* to be the all-pervasive objective of the Shari’ah, and have, to all intents and purposes, used it synonymously with *maṣlaḥah*.” (Kamali, *Higher Objectives*, 2-3)

²¹⁷ Kamali’s view is that if anything had been contributed to *maqāṣid/maṣlaḥah* thought prior to the mid-twentieth century, it would have simply been a restating of Shāṭibī’s contributions. (Kamali, *Law and Ethics in Islam, The Role of the Maqāṣid*, 24)

²¹⁸ Opwis tells us that: “In the early 14th/20th century the model of *maṣlaḥah* that was espoused by the reform-oriented jurists Jamāl al-Dīn al-Qāsimī (1866-1914) and Muḥammad Rashīd Riḍā (1865-1935) was that of al-Tūfī. Al-Qāsimī edited al-Tūfī’s treatise on *maṣlaḥah* in 1324/1906, and Rashīd Riḍā reprinted it in his journal *al-Manār* shortly thereafter. Both men endorsed al-Tūfī’s views, and his thought significantly influenced their interpretation of *maṣlaḥah*, especially that of Rashīd Riḍā. Why did these figures herald al-Tūfī’s model of *maṣlaḥah*? The short answer

thought on *maqāṣid* and *maṣlahah* are the Lebanese jurist Ṣubḥī Rajab Mahmasānī²¹⁹ (1327-1406/1909-1986), the Moroccan jurist ‘Allāl al-Fāṣī²²⁰ (1328-1394/1910-1974), and the Sudanese reformer Maḥmūd Muḥammad Ṭāha²²¹ (1327 or 1329-1405/1909 or 1911-1985). The upshot here is that al-Shāṭibī’s thought, despite purportedly not having made its appearance until sometime towards the end of the nineteenth century, was—and according to Masud, Kamali, and Opwis—still considered to have been relatively unknown in modern Islamic circles.

Questions pertaining to this five century lapse have yet to be addressed and the story behind the reemergence of al-Shāṭibī’s work has yet to be told. Part Two of this dissertation tackles *inter alia* these matters. More concretely, it focuses on five areas of inquiry presented in five chapters. Chapter Three addresses why al-Shāṭibī’s *maqāṣid* theory was purportedly ignored for some five centuries, only to be rediscovered in the modern period. Chapter Four begins to explore whether *maqāṣid* in practice, as opposed to theoretical *maqāṣid*, could have been alive and active during this five century neglect of al-Shāṭibī’s *maqāṣid* theory. Chapters Five through Seven then attempt to trace when and how al-Shāṭibī’s thought and specifically his famous work on *maqāṣid* reemerges in the modern Muslim world, and whether it may have been earlier than the late nineteenth and early twentieth centuries that is suggested by the above contemporary writers on the subject. These chapters will identify the key figures who adopted and disseminated his thought, how they did this, as well as the possible links between them. Part Two, moreover, provides the

is that this model best suited the aims of these modern reformers.” (Opwis, 198) See Felicitas Opwis, “Maṣlahah in Contemporary Islamic Legal Theory,” in *Islamic Law and Society*, Vol. 12, No. 2 (2005), pp. 182-223, [<http://www.jstor.org/stable/3399225>. Accessed: 18/01/2015 15:18]

²¹⁹ Opwis, 202.

²²⁰ Ibid., 206.

²²¹ Ibid., 207.

socio-political, economic and religious context within which the *maqāṣid* thought of later thinkers such as Ibn ʿĀshūr would emerge.

CHAPTER 3

The Long Lapse of al-Shāṭibī's *Maqāṣid* Theory

Because *maqāṣid* thought is so intrinsically tied to al-Shāṭibī, to say that his opus on the subject, *al-Muwāfaqāt*, was ignored for some five centuries is to arguably say that *maqāṣid* thought was too. The notion that *al-Muwāfaqāt* was all but forgotten during this stretch between the fourteenth and nineteenth centuries is not at all implausible, despite the great popularity it eventually came to receive in the modern period and its standing legacy as one of the great works of the Islamic legal and intellectual tradition. Perhaps among the more compelling and attestable clues suggesting—at least on the surface—the reality of this five century *al-Muwāfaqāt* lapse is the vacuum in commentaries on *al-Muwāfaqāt* during this period²²² and that we are hard-pressed to identify either the text or its teaching in the curriculums of two of the most preeminent and storied Islamic educational institutions of that time, al-Azhar and Zaytūnah, the latter of which was heavily Mālikī and virtually in al-Shāṭibī's 'backyard,' so to speak.²²³ As far as it is known, it was not taught at al-Azhar or Zaytūnah until the late modern period and well after 'Abduh's

²²² For instance, no commentaries on al-Shāṭibī's *al-Muwāfaqāt* between the mid-fourteenth to nineteenth centuries are listed in 'Abd Allāh Muḥammad al-Ḥabshī's *Jāmi' al-shurūḥ wa al-ḥawāshī: mu'jam shāhid li-'asmā' al-kutb al-mashrūḥa fī al-turāth al-islāmī wa bayān shurūḥuḥa* (Abū Dhabi: al-Majma' al-Thaqāfī, 2004).

²²³ For more on *al-Muwāfaqāt*'s appearance at al-Azhar and Zaytūnah, see sections further below. Azhar of course taught all the mainstream Sunni legal schools during this time. Zaytūnah had been predominately Mālikī since the eight century, and though Ottoman rule introduced Ḥanafī law to Zaytūnah in the sixteenth century, Mālikī law continued to have equal representation during this time. For the history and curriculum of Zaytūnah, see Keith W. Martin, "The Reformation and Secularization of Zaytūnah University." PhD diss., University of Utah, 1975.

lifetime, with ‘Abduh having retrieved the purported first edition of *al-Muwāfaqāt* in Tunis in 1884.²²⁴ And if it was not relevant at al-Azhar nor at Zaytūnah during that supposed five century lapse, then it was likely not popular anywhere else.

With respect to identifying the reasons for the purported five century lapse of al-Shāṭibī’s *al-Muwāfaqāt* and by extension its subject matter of *maqāṣid* and *maṣlahah*, the Egyptian scholar and pupil of Muḥammad ‘Abduh’, Muḥammad ‘Abdullah Darrāz (1894-1958), is, as far as it is known, the only one to attempt to provide any explanation—albeit cursory—for what has become a perplexing enigma of sorts. In his own edition of *al-Muwāfaqāt*, likely the second edition to appear in modern print after the 1884 Tunisian edition,²²⁵ Darrāz asks the obvious and perhaps long-overdue question: “...why has it remained out of our vision for all these years and has not been granted its rightful share of popularity?”²²⁶ With this conundrum put forward, Darrāz goes on in the introduction of his edition to address the matter by way of two approaches. First, he challenges the very premise that a books popularity corresponds to its significance and intellectual worth. He then goes on to directly engage with the mystery of *al-Muwāfaqāt*’s purported neglect for some five centuries.

In the first of these, Darrāz challenges the underlying premise that is implicit in the very question he poses; the premise being that the value of a work is judged by its popularity, whether be it among the general public or the scholarly class. For Darrāz, “superiority and inferiority are not dependent upon popularity.”²²⁷ To illustrate his point, he offers two seemingly straightforward

²²⁴ For more on ‘Abduh’s contact and role with *al-Muwāfaqāt*, see sections further below.

²²⁵ A more substantial examination of Darrāz’s edition is provided in another section of this work further below.

²²⁶ Ibrāhīm ibn Mūsá al-Shāṭibī and Muḥammad ‘Abd Allāh Darrāz. *Muwāfaqāt fī uṣūl al-Sharī’ah* (Miṣr: al-Maktabah al-Tijāriyyah al-Kubrā, 1975), p. 11; Ibrāhīm ibn Mūsá al-Shāṭibī and Imran Ahsan Khan Nyazee. *The Reconciliation of the Fundamentals of Islamic law* (Reading, UK: Garnet Publishing, 2011), p. xxiii.

²²⁷ al-Shāṭibī and Darrāz, 11; al-Shāṭibī and Nyazee, xxiii.

ruminations. In the first, he likens books to men, rhetorically remarking: “How many learned men have remained hidden, while useless persons have become famous?” But in case his logic is not compelling enough here, he goes on to deliver a second ratiocination which offers a more germane analogical argument to further prove his point. He considers the Azharī curriculum of his time, and critically points out that the texts being used, though popular, are far from the best. The particular example he provides is in the popular study of al-Suyūṭī’s²²⁸ (d. 911/1505) *Jāmi‘ al-Jawāmi‘*, which he maintains is inferior to a host of other available works in its subject area, yet, has overwhelmingly been favored as the choice work at al-Azhar and other centers of learning in Egypt. Darrāz states:

Take a look at *Jāmi‘ al-Jawāmi‘* by al-Suyūṭī, with its commentary by al-Maḥallī, which has been for a long time the only book that has been studied at al-Azhar as well as other centers of learning in Egypt despite the existence of *al-Iḥkām* by al-‘Āmidī, *al-Muntahā* and *al-Mukhtaṣar* by Ibn al-Ḥājjib as well as *al-Taḥrīr*, *al-Mihāj*, and *Musallam al-Thubūt* along with a host of other books dealing with the same discipline that was dealt with by *Jāmi‘ al-Jawāmi‘*. Most of these books have been ignored and none of them has surpassed the other with respect to circulation, except for this latter period of ours. No two persons will differ about the fact that *Jāmi‘ al-Jawāmi‘* is the least beneficial of these books, but has received the greatest attention.²²⁹

²²⁸ Jalāl al-Dīn al-Suyūṭī was a prominent Egyptian scholar and jurist of the Shāfi‘ī school. A prolific writer, al-Suyūṭī penned numerous works in various Islamic disciplines such as jurisprudence (*fiqh*), traditions (*ḥadīth*), exegesis (*tafsīr*), and theology. He also authored several works in other intellectual and scientific disciplines including history, philology, and medicine. He’s been named a *mujaddid* (renewer) of his time, and he claimed for himself the rank of a *mujtahid*.

²²⁹ Al-Shāṭibī and Nyazee, 1.

Though it could be argued that Darrāz’s line of reasoning here comes with a degree of subjectivity and could certainly be exposed to counter arguments (e.g., that al-Suyūṭī’s *Jāmi‘ al-Jawāmi‘* offers certain things that these others don’t), his point, nonetheless, comes through unambiguously, which is that the lack of acclaim or attention that *al-Muwāfaqāt* had received since it’s authorship is by no way indicative of its value to the legal genre or to the Islamic intellectual milieu as a whole. Darrāz’s first approach here holds logically sound, but it is immaterial to addressing the greater issue at hand—why al-Shāṭibī’s *al-Muwāfaqāt* had never received the acclaim or attention that modern thinkers now believe it deservedly warrants?

It is in Darrāz’s second approach that he directly attempts to resolve—subjective as it is—the greater issue of why *al-Muwāfaqāt* was all but forgotten for some five centuries. Darrāz assertively presents two reasons that he would have as definitive explanations to the enigmatic five century void of *al-Muwāfaqāt* and by extension *maqāṣid* thought. The first of these is what he characterizes as the “novel and unique” discussions in the book, combined with an already established discipline in *uṣūl al-fiqh* which in effect dissuaded ulema from giving it any serious consideration.²³⁰ In other words, that there was already in place a methodological system in *uṣūl al-fiqh* which had become well-familiar and popular within the legal community, and which had firmly gained authoritative recognition as an authenticating approach to deriving and engaging with the law, simply steered away any would-be scholar with interest to delve into *al-Muwāfaqāt* from approaching such an untried and what may have been perceived to be a competing alternative. Given our understanding of the evolution of medieval Muslim legal culture, where traditionalism,

²³⁰ Ibid., xxiii-iv.

taqlīd and “legal scaffolding”²³¹ became the hallmark of that culture, Darrāz’s reasoning here seems quite sensible and should come as no surprise. But to what extent does it hold unchallengeable?

Darrāz’s second and perhaps the more pragmatic of the two reasons for why *al-Muwāfaqāt* was all but forgotten for some five centuries concerns the complex and highly advanced style in which al-Shāṭibī pens his thoughts. To comprehend the words and meanings that al-Shāṭibī was attempting to convey, one had to first unpack the layers of background knowledge in the various Islamic disciplines, which alone would pose an indefatigable challenge for those wanting to access *al-Muwāfaqāt*. Darrāz says:

He writes after fully grasping the Sunna, the work of the commentators, the discussion of *‘ilm al-kalām*, and the special ways of the Sufis. It was not possible for him to include all this detail in his book. It is from this perspective that one finds it difficult to understand the book, and there is a need for the simplification of its meanings, the elaboration of many of its concepts, and support for the bearing of its burdens.²³²

Though Darrāz’s view here that the level of sophistication and complexity of al-Shāṭibī’s writing deterred others from engaging with it is quite conceivable, it stands to be reduced to mere conjecture by the glaring fact that he offers no supporting evidence to buttress this view. It would have served him well to cite figures from within the five century *al-Muwāfaqāt* void who expressly

²³¹ See Sherman Jackson, “Taqlīd, Legal Scaffolding and the Scope of Legal Injunctions in Post-Formative Theory Muṭlaq and ‘Āmm in the Jurisprudence of Shihāb al-Dīn al-Qarāfī.” *Islamic Law and Society*, Vol. 3, No. 2, Issues and Problems (1996), pp. 165-192.

²³² *Ibid.*, xxiv.

reflect his characterization of al-Shāṭibī's writing style and thus support his greater argument that this was a reason why *al-Muwāfaqāt* didn't receive the attention it deserved.

Nevertheless, it is Darrāz who apparently figured out just how to access *al-Muwāfaqāt*, despite the intrinsic challenges it posed. Not that he possessed any intellectual or scholarly abilities superior to those who had failed to appreciate it, but rather, he had managed to sort out a method to reading it; one which included diligent cross-referencing within the work itself such that certain disconnected parts were able to explain other parts.²³³ Darrāz's overall analysis of *al-Muwāfaqāt* is fashioned within a tone that is consistently and deeply reverential towards its author, comfortably and profusely praising al-Shāṭibī for his keen intellect and the acute sophistication of his writing, all the while being quite apologetic in regards to those areas of the work that are much maligned by al-Shāṭibī's critics and detractors. (A more thorough examination of Darrāz's analyses of *al-Muwāfaqāt* will be treated further below.)

Darrāz's overall thesis regarding the five century *maqāṣid* void would hold up to the present. Later writers on the development of *maqāṣid* history would restate this same thesis. For instance, the contemporary scholar Muḥammad 'Ābid al-Jābirī²³⁴ (d. 2010) points to the difficulty that readers would have had in reading al-Shāṭibī's text. He says that those who attempt to delve into al-Shāṭibī's writing "will not be able to understand his purposes or perceive the various

²³³ Ibid.

²³⁴ Al-Jābirī was a Moroccan intellectual, social theorist, and a professor of Islamic philosophy and Arabic. A prolific writer, he authored numerous books and articles exploring such areas as contemporary Arab thought, education, sociology, and Islamic philosophy. Among his important works is an examination and contextual analysis of Ibn Khaldun's ideas. Al-Jābirī attributed "continuing stagnation" in the Arab world to imitation rather than critical thinking.

innovative aspects of his thought...²³⁵ Al-Jābirī then adds that two conditions need to be met for any serious access to al-Shāṭibī's discussion: "The first condition is that they be well-read, not only in the field of jurisprudence and its fundamentals, but, in addition, in the various branches of Arab culture and civilization, including Qur'ānic interpretation, ḥadīth, jurisprudence and its fundamentals, scholastic theology, logic, philosophy and Sufism..."²³⁶ While al-Jābirī is a creative thinker and intellectual in his own right, his remarks here clearly mirror Darrāz's, whom he does not make any mention of. Al-Shāṭibī's contemporary commentator Aḥmad al-Raysūnī rebukes al-Jābirī for his own failure to be true to these same conditions, finding his scholarship on al-Shāṭibī to be shoddy, and his particular claim that al-Shāṭibī's *maqāṣid* theory was influenced by the younger Ibn Rushd to be outlandish. Al-Raysūnī, however, fails to mention (consciously or not) that al-Jābirī's remarks on al-Shāṭibī mirror Darrāz's, the latter of which al-Raysūnī interestingly directs no criticism towards.

Other than Darrāz's presentation as to why al-Shāṭibī's work was ignored for so long, we are hard-pressed to find any serious treatment of this matter, and moreover, why nothing new in *maqāṣid* theory had been contributed. Interestingly, one of the considerations that Darrāz does not give any attention to regards the possibility that *al-Muwāfaqāt* was avoided purely out of its controversial content. And here we speak of more than just that the material was original or that it was difficult to grasp, per Darrāz's argument, but rather that it was thought of as being so highly innovative, a *bid'a*, that it was simply avoided. Lending credence to this is that al-Shāṭibī was essentially isolated during his discourse on *maqāṣid*. Evidence to this is that al-Shāṭibī never references or mentions his *shuyūkh* or the scholars of his age in his discussions of *maqāṣid*.

²³⁵ Muḥammad 'Ābid al-Jābirī, *Bunyat al-'aql al-'Arabī*, 1st ed. (Casablanca: Al-Markaz al-Thaqāfī al-'Arabī, 1986) p. 552; Raysūnī, 300.

²³⁶ Ibid.

Moreover, there were “manifestations of tension and discord between al-Shāṭibī and the jurists of his generation, and in fact, al-Shāṭibī was only in agreement with the most insignificant minority of them, among whom was al-Qabbāb, muftī and magistrate of Fez.”²³⁷ To put it plainly, al-Shāṭibī was working on his own in his theorization program on *maqāṣid*, having not received any real support, neither from his teachers nor his peers. By means of his *maqāṣid* theory, al-Shāṭibī was understandably trying to identify solutions to address the perplexing political, economic, and social matters confronting his native Andalusia. But the epistemological means by which his solutions came from were just not acceptable to his contemporaries, and these controversies must have carried forth after his lifetime. It is thus reasonable to presume that the controversies stirred by al-Shāṭibī’s contemporary detractors as a result of his *al-Muwāfaqāt* carried over for some time—a long five centuries after his death.

²³⁷Aḥmad al-Raysūnī, *Imam Al-Shatibi's Theory of the Higher Objectives and Intents of Islamic Law* (London: International Institute of Islamic Thought, 2005), p. 306; *Nazarīyat al-maqāṣid ‘inda ‘l-imām al-Shāṭibī*. Ṭab‘a 1. ed. (Bairūt: Al-Mu‘assasa al-Jāmi‘īya, 1992).

CHAPTER 4

Was *Maqāṣid* Thought in Practice Active before and during the Five Century

Neglect of al-Shāṭibī's *Maqāṣid* Theory?

Beyond the question of whether or not Darrāz's argument for the five century *al-Muwāfaqāt* absence holds true is the still looming matter of whether or not *maqāṣid* activity was also at a standstill for five centuries? Again, *maqāṣid* thought and al-Shāṭibī's work are so interlinked that to say al-Shāṭibī's work was neglected for some five centuries is to virtually say that *maqāṣid* thinking was too. However, writers on *maqāṣid* have not inquired into nor considered whether *maqāṣid* thought in practice—as opposed to its theoretical discourse—continued during this purported lapse, and, moreover, whether it continued without reference to al-Shāṭibī.

As we discussed in Part One, al-Shāṭibī introduced an unprecedented systemization to the concept of *maqāṣid al-Sharī'ah*—formulating a number of rules and principles that essentially codified *maqāṣid* thought and established it as a scientific discipline within itself. We laid out in Part One the workings of his *maqāṣid* theory and discussed how it redefined the making of *fiqh* and *ijtihād*. In short, one of the central aspects of his theory was ensuring that the result of any *fiqh* or *ijtihād* aligned with universal higher objectives of the *Sharī'ah*. The process of achieving this included giving attention to an entire possible spectrum of variables and contextual elements, and the weighing of all perceivable benefit(s) and harm(s) while keeping an eye on higher objectives. This central aspect of al-

Shāṭibī’s theory along with the process of achieving it—which al-Shāṭibī had codified and which largely defined his *maqāṣid* theory—was, we could argue, not lost during the purported five century absence of his *maqāṣid* theory. An informal and practical manifestation of *maqāṣid* thought existed, and it existed without reference to al-Shāṭibī’s theory, during and even before the five century period in which his theory is held to have been neglected.

Though it is beyond the scope of this work to thoroughly investigate the extent to which features of al-Shāṭibī’s theory were manifest before or during the purported five century neglect of his theory, we can at least begin to offer some indicators that suggest that they were manifest. In the *adab/akhlāq* genre—which includes topics that intersect *fiqh*, and whose literature extends of course before and after al-Shāṭibī’s *maqāṣid* theory—there are ample themes and issues whose approach essentially necessitated Muslim jurists and ethicists to consider a holistic thinking about objectives, context, and the weighing of benefit and harm. We say “necessitated” because these Muslim jurists and ethicists were well-aware that approaching such themes or issues absent of the aforementioned considerations would result in a deviation from the spirit of the *Sharī‘ah*—leading to some sort of injustice, harm or greater ethical dilemma. It did not suffice for them to address, for instance, such concepts as *ḥisba* (the doctrine of “commanding good and forbidding evil”—*al-amr bi’l-ma‘rūf wa’l-nahy ‘an al-munkar*) or *madiḥ* (praise) by only considering some particular scriptural reference to them. Rather, they allowed for other possible factors, including other scriptural references, the context of a situation, the objectives that were being pursued, and the weighing of benefit and harm—essentially features of *maqāṣid* theory—to inform the application of these concepts in real-world matters. To demonstrate

what we mean here, let us consider the concepts of *ḥisba* and *madiḥ*, and how they were dealt with using features characteristic of al-Shāṭibī's *maqāṣid* theory.

The famous Ḥanbalī scholar Ibn al-Jawzī (d. 597/1201), whose career precedes al-Shāṭibī's by about two centuries, attempted to articulate (influenced by and largely accepting al-Ghazālī's treatment of *ḥisba*) a more nuanced and non-absolutist approach to such concepts as *ḥisba*, applying *maqāṣid* thinking including *maṣlaḥah* and context sensitivity in treating it.²³⁸ Ibn al-Jawzī in fact laid out a series of conditions, rules and procedural steps that guided the application of *ḥisba* such that it would not be mismanaged and deviate from broader universal objectives.²³⁹ These conditions, rules and procedural steps spoke to such things as the qualifications needed to perform the *ḥisba*, how the context of a situation affects the performance of the *ḥisba*, how one's motive or intention to apply the *ḥisba* affects its application, how consideration of the objectives of the *ḥisba* and the consequences of applying the *ḥisba* affects whether or not to apply it or the way it should be applied, and the different effective manners of applying the *ḥisba* such that it maximizes a successful outcome. Much of the aforementioned can be found framed within principles

²³⁸ Ibn al-Jawzī resorts to *maqāṣid* thinking, including *maṣlaḥah* and context sensitivity, elsewhere, such as in his treatment of certain Sufī and ascetic practices in his *Talbīs Iblīs*; taking a more nuanced approach by considering a variety of factors that would inform the validity or impermissibility of such practices.

²³⁹ For Ibn al-Jawzī's treatment of *ḥisba*, see the headings in his *Minhāj al-qasidīn* addressing *al-amr bi'l-ma'rūf wa'l-nahy 'an al-munkar*. See also Ibn Qudāmah's *Mukhtaṣar minhāj al-qāṣidīn*. (Ammān: Dār al-Fayḥā': Dār 'Ammār, 1986). We should note here that Ibn al-Jawzī's *Minhāj al-qasidīn* is a revised summary of al-Ghazālī's *Iḥyā'*. One will thus similarly find al-Ghazālī deploying *maqāṣid* thought, including *maṣlaḥah* and context sensitivity, in his treatment of *ḥisba*. The Ḥanbalī Ibn Qudāmah al-Maqdisī (d. 1223) would later offer an abridgement of Ibn al-Jawzī's *Minhāj al-qasidīn* with his *Mukhtaṣar minhāj al-qāṣidīn*, and he as well would resubmit a similar treatment of *ḥisba* which utilizes *maqāṣid* thought. The upshot here is that *maqāṣid* thinking applied to real world matters, such as with the legal/ethical concept of *ḥisba*, both precedes al-Shāṭibī and finds acceptance and circulation across juridical schools spanning centuries (as in the case of the treatment of *ḥisba* with al-Ghazālī, Ibn al-Jawzī, and Ibn Qudāma).

in al-Shāṭibī's *maqāṣid* theory. In his *al-Muwāfaqāt*, for example, al-Shāṭibī discusses contextual informing factors and outcomes, and speaks of the obligation that human beings have (when engaging with worldly matters) to weigh benefit and harm, and to give diligent consideration to a given action's possible results and ultimate consequences.²⁴⁰ We thus see many of the principles found in al-Shāṭibī's *maqāṣid* theory being applied to Ibn al-Jawzī's treatment of *ḥisba*.

Ibn al-Jawzī goes on to provide several situations that might involve *ḥisba* and that concern deviances in such areas as ritual practice, social interaction, commerce and trade, public works, and government and politics. For Ibn al-Jawzī, even if a deviance in these areas appears to obviously call for *ḥisba*, informing factors need to be judicially evaluated before beginning the *ḥisba* and/or throughout the *ḥisba* process. One case example he raises is the matter of state corruption. Though corruption or a misuse of authority is clearly a transgression that appears to call for the application of *ḥisba*, whether or not to do so or how to do it can be rather complex. Ibn al-Jawzī acknowledges the fundamental ethic in Islamic tradition of speaking truth to power. But for him, applying this needs understanding of context, careful deliberation of consequences, and knowing what the higher objectives are. With respect to context, he points out that while earlier generations of Muslim scholars courageously reprimanded rulers, they did so in a time when such rulers honored and revered the scholarly class. Whereas, in his time, this was not the case. Given these circumstances, he asserts that a modification is needed in how to perform the *ḥisba* with the state. Ibn al-Jawzī, moreover, considers potential consequences of scholars applying the *ḥisba* with the state, including how these consequences correspond to higher objectives.

²⁴⁰ Al-Muwāfaqāt, 1:228.

In the case of offering *ḥisba* to the state during his time, he deems that not searching for an alternative, softer approach with the *ḥisba* might otherwise result in a greater harm or evil such as the repression of the scholarly class and by extension cutting off religious guidance and knowledge. Such an outcome, he assesses, had a strong probability of severely undermining essential objectives including the preservation of religion (*ḥifẓ al-dīn*) and the preservation of life (*ḥifẓ al-nafs*). He held that if one could not preserve these objectives in parallel to addressing state corruption, then priority should be given to preserving these higher objectives.

For Ibn al-Jawzī, evidence for flexibility in how to perform the *ḥisba* comes in the famous *ḥadīth* wherein the Prophet Muḥammad states: “Whoever of you sees something wrong, let him change it with his hand. If unable to, then let him change it with his tongue. If unable, then with his heart. This is the weakest degree of faith.”²⁴¹ Authoritative scriptural references such as this provided a basis for Ibn al-Jawzī and proponents of *maqāṣid* thought to activate rational approaches including thinking about context, weighing of benefit and harm, and objective oriented thinking into the process of *fiqh*.

Centuries later, within the modern world, and just prior to the discovery and revival of al-Shāḥibī’s *maqāṣid* theory, we have, as in Ibn al-Jawzī’s writings, features characteristic of *maqāṣid* thought in the *adab/akhlāq* writings of the Mauritanian Mālikī scholar and ethicist Muḥammad Mawlūd (1844-1905).²⁴² It is in Mawlūd’s didactic poem *Maḥārim al-lisān*, which treats a number of moral-legal issues pertaining to

²⁴¹ Reported in the *ḥadīth* collection of *Ṣaḥīḥ Muslim*.

²⁴² Muḥammad Mawlūd was trained within the traditional *maḥḍara ‘ijāzat al-tadrīs* system of Mauritania and writes within the classical tradition, often referencing pre-modern scholars within and beyond the Mālikī School.

communication, that he employs *maqāṣid* thinking, including *maṣlahah* and context sensitivity.²⁴³ To understand why Mawlūd needs to resort to *maqāṣid* thought in treating such topics as praise, and before discussing how he employs *maqāṣid* thought to treat it, it is worthwhile here for us to capture the different manifestations of praise.

The Arabic term *madiḥ* is commonly rendered as praise, which in turn is defined as an expression of commendation or laudation. Praise may be expressed intransitively or transitively, and implicitly or explicitly. Praise can also be categorized into that which occurs among and within creation (i.e., among or between human beings) and that which is devotional (e.g., praise for the Divine). What we are concerned with here is the former.

Intransitive praise does not have an object beyond oneself that the praise is being directed towards. It is self-serving, and can appropriately be referred to by any of the terms “self-praise,” “self-aggrandizement,” or “ego-aggrandizement.” Intransitive praise can manifest either orally, written, be physically gestured, or it may remain inwardly in the heart such that one inwardly attaches praise to oneself but without a deliberate attempt to disclose it through an outward communicative means (oral, written, or physically gestured). This latter praise is often coupled with what may be termed as “inner” or “hidden” arrogance.

Intransitive praise can further be classified into explicit communicative intransitive praise and implicit communicative intransitive praise. Explicit communicative intransitive

²⁴³ Mawlūd’s didactic poem is comprised of 145 lines. While a substantial portion of the poem reflects the title and concerns moral-legal injunctions pertaining to speech, the last 38 lines of the poem address particular moral issues pertaining to the ears and eyes (listening and seeing).

praise is self-praise that is direct and unambiguous to its audience, and includes more often than not the usage of the first person singular “I” followed by some laudatory expression. So, for example, to say, “I am great,” would be an example of explicit communicative intransitive praise.

Implicit communicative intransitive praise is self-praise that attempts to be less obvious or less direct to its audience, but with the motive of praising oneself. Implicit communicative intransitive praise often manifests by praising something associated with the self for the purpose of praising the self, such as mentioning, for example, that “I graduated from “Prestigious University X,” or that “ I own “Luxurious Vehicle Y,” with the intention of drawing praise upon oneself.

Transitive praise is praise that has a direct object and is thus intended to extol or commend someone/something beyond the self. As transitive praise takes a direct object, it must be communicative, and manifests either orally, written, or through physical gesture. Like intransitive praise, transitive praise may either be explicit or implicit.

Explicit communicative transitive praise is praise that is direct and unambiguous to its audience. It commonly occurs in the grammatical second or third person (singular or plural, and with gender or neuter). To say, “You are very intelligent,” “she is extremely beautiful,” or “it is the most wonderful story,” is an example of explicit communicative transitive praise.

Implicit communicative transitive praise is praise that attempts to be less obvious or less direct to its audience, but with the motive of praising some object beyond the self. Implicit communicative transitive praise often manifests by praising something associated

with the object to be praised for the purpose of praising that object, like mentioning, for example, that Person X graduated from “Prestigious University X”, or that Person Y owns a “Luxurious Vehicle Y,” with the intention of drawing praise upon the respective person(s).

Virtually everyone, to various degrees, likes to be praised or at least appreciates receiving praise. The obvious reasons for this is that the self derives some sort of pleasure from praise (the pleasure here not necessarily always in the negative sense). It simply makes us feel good. Among the common pleasures that may be derived include increased self-esteem, confidence, satisfaction or gratification for being appreciated, a sense of significance, or a feeling of superiority. These pleasures can all potentially affect and influence one’s psych, emotions, character, or behavior. Within the Islamic ethical spectrum, these pleasures may range from being healthy and beneficial, inimical and detrimental, or simply innocuous.

The Islamic ethical view of praise is quite nuanced and can be said to be informed ultimately by context and the weighing of benefit and harm that may result from the praise, particularly concerning how the praise affects the character, emotions, or behavior of all parties that may potentially be affected by the praise, including the one praising, the one being praised, and a third or more party that is ear to the praise. Praise in itself, therefore, absent of context and consequences, is a neutral determinant in Islam. In other words, the moral value or ethical judgment concerning praise is dependent entirely upon factors that inform it and the aims it achieves. This is readily understood from a holistic and contextualized reading of prophetic traditions, which either encourage or discourage praise. As such, and in examining the Sunnah from the vantage of its intents or *maqāṣid*, we can

ascertain that instances in which the Prophet Muḥammad encouraged praise was in order to achieve some sort of virtuous benefit, while instances in which he discouraged praise was in order to repel some perceived harm, which in essence can be said to also be a benefit.

Muslim ethicists have thus to consider both kinds of traditions, those that encourage praise and those that discourage praise, in their moral deliberations, judgements, and elaborations concerning praise. Failure to do this, i.e., selectively ignoring other traditions in favor of one, is the type of misappropriation or misapplication of the spirit of the Sunnah that *maqāṣid* thinkers like al-Shāṭibī and Ibn ‘Āshūr have cautioned against.

In his didactic poem *Maḥārim al-lisān*, Muḥammad Mawlūd demonstrates this nuanced approach concerning moral thinking about praise. Mawlūd begins his discussion on praise by immediately coupling our thinking of it (i.e., the proper Islamic ethical protocol of when and how to praise) to two overarching objectives, the avoidance of any harm and the securing of benefit upon the character or behavior of all parties associated with the praise, including the one praising, the one being praised, and any other party that may be ear to and affected by the praise. Between benefit and harm there is the third possibility of neutrality, in which it can be determined that neither harm nor benefit is the perceived outcome of the praise. The presumption in this case, considering Mawlūd’s words (“unless one is sure there will be not harm”), is that praise deemed neutral would fall under the valuation of permissibility (*mubāḥ*), as only a greater propensity towards harm is associated with impermissibility. Thus, if it can be determined with certainty or at least strong probability (and not mere conjecture) that no harm, or a higher degree of benefit or even neutrality will be the outcome of the praise, then the praise would be ethically sanctioned and even encouraged where there is benefit. Mawlūd is thus essentially telling

us that our thinking about the ethical protocol concerning praise is entirely dependent upon a broader value framework of higher virtuous objectives which is anchored by the general principle of avoiding harm and promoting benefit. The appropriate ethical protocol with respect to the act of praising—be it intransitive or transitive, and explicit or implicit—need therefore be bound to context and the identification and negotiation of higher objectives that promote good character and deter flawed character. It is here that the concepts of *maqāṣid* and *maṣlaḥah* play a central role in moral thinking about the common human tendency to praise.

Just as we found central features of al-Shāṭibī's *maqāṣid* theory in Ibn al-Jawzī's treatment of *ḥisba*, we also find here in Mawlūd's treatment of praise central features of al-Shāṭibī's *maqāṣid* theory. By virtue of the time period of Ibn al-Jawzī's and Mawlūd's writings, we can thus conclude that central aspects of al-Shāṭibī's *maqāṣid* theory were likely prevalent in practice both before al-Shāṭibī constructed his *maqāṣid* theory as well as during the five century period in which his theory is purportedly neglected.

Be that as it may, it was at some point in the early modern period that al-Shāṭibī's *al-Muwāfaqāt* and his thought would gain new life, rediscovered by Muslim thinkers who found in it a powerful agent by which to reengage with the times they were in. The story of the rise of al-Shāṭibī's thought and of *maqāṣid* theory in the modern period has yet to be told and is what we now turn to.

CHAPTER 5

The Emergence of *Maqāṣid* Thought upon the Modern Scene:

al-Shāṭibī's *al-Muwāfaqāt* Revived

The 1884 Tunisian edition of *al-Muwāfaqāt* looms large in that it would putatively be through this edition that the modern Muslim world is first introduced to al-Shāṭibī's work on *maqāṣid*. Khaled Masud, perhaps the earliest to pen a critical study of al-Shāṭibī and his thought, tells us that it is the 1884 Tunis edition that is the first publication of *al-Muwāfaqāt*.²⁴⁴ Eickelman echoes Masud in remarking that "after a long eclipse," al-Shāṭibī's work "returned to prominence in the late nineteenth century."²⁴⁵ And Nafi tells us that as a result of the 1884 edition, Muslim interest in *maqāṣid al-Sharī'ah* was renewed, especially in Arab-Islamic reformist circles.²⁴⁶ The 1884 edition would later give impetus to other editions of *al-Muwāfaqāt*, but more significantly, it was as a result of this edition that *al-Muwāfaqāt* arguably became the most influential and consequential work to impact modernist thinkers in their attempt to secure a favorable place for *Sharī'ah*'s relevance to the changing of time and to encounters with new issues. For these

²⁴⁴ Muhammad Khaled Masud, "Shāṭibī's Philosophy of Islamic Law" (McGill University, 1973), 5. Masud, who completed his dissertation in 1973, tells us that since the 1884 edition, there have been five other editions of *al-Muwāfaqāt* to appear up to his time, "all edited and annotated by well-known scholars such as Mūsā Jār Allāh, Muḥammad al-Khiḍr Ḥusayn and 'Abdullāh Darrāz." Masud, *Shāṭibī's Philosophy of Islamic Law*, 5.

²⁴⁵ Eickelman, *Shāṭibī's Philosophy*, 389.

²⁴⁶ Naf'i, Basheer M. "Ibn 'Āshūr: The Career and Thought of a Modern Reformist, with Special Reference to his Work on Tafṣīr." *Journal of Qur'anic Studies*, 2005. p. 16.

modernist thinkers, *al-Muwāfaqāt* was heaven-sent, providing them with an authoritative voice that spoke to matters of their age. In characterizing the profound influence that al-Shāṭibī’s work had on modern day Muslim thinkers of the late nineteenth and twentieth centuries, Masud tells us that “modern writers on *uṣūl al-fiqh* (Islamic legal theory) owe their greatest debts” to *al-Muwāfaqāt*, and that “it is largely al-Shāṭibī upon whose arguments the modern reformists have relied.”²⁴⁷ Elsewhere, he asserts that *al-Muwāfaqāt* was “so extensively used by modern authors on Islamic law that one cannot doubt the significance of al-Shāṭibī’s contribution to the modernists’ conception of Islamic law.”²⁴⁸ The 1884 edition thus stands large, and its momentous arrival upon the late nineteenth century modern scene would prove to have long-term ramifications. But what more do we know about this edition, the circumstances which gave rise to it, to its spread, and to its eventual recognition among modern-day Muslim thinkers as a pivotal work among the great works of Islamic civilization—a work that would be relied upon on to help reconcile tradition and modernity?

5: 1 | Tunisia on the Eve of al-Shāṭibī’s *al-Muwāfaqāt* Edition and the Modern-Day *Maqāṣid* Movement

The 1884 Tunisian edition of *al-Muwāfaqāt*, four volumes in total, offers no introduction other than al-Shāṭibī’s own, nor does it provide any information that would shed light on its emergence. It contains therefore only the original content of al-Shāṭibī’s *al-Muwāfaqāt*. What we do know is that its publisher in 1884 was Maṭba‘at al-Dawlah al-Tūniyyah. And a copy of this

²⁴⁷ Masud, *Shāṭibī’s Philosophy of Islamic Law*, 4.

²⁴⁸ *Ibid.*

edition is currently housed in the Princeton University Arabic collection, with a digital copy preserved through the Hathi Trust collection.²⁴⁹ Beyond this, however, we are left on our own to fill in the story of this far-reaching edition. Fortunately, the availability of ample primary source references²⁵⁰ from nineteenth century Tunisia as well as other parts of the Muslim world provide us with both the context (socio-religious, political, cultural) in which it emerges, and the key figures who would arguably play a crucial role in not only bringing attention to it, but in inevitably putting it on the map of great works in Islamic civilization.

The 1884 edition of *al-Muwāfaqāt* surfaces during a turbulent period of modern Tunisian history, a period marked by the modernization taking place across nineteenth-century Ottoman culture. Tunisia in particular had undergone and was still undergoing vast changes in restructuring that had begun during the reign of Aḥmad Bey (reg. 1837-55). The reform policies initiated under Aḥmad Bey were largely inspired by parallel policies instituted through the Egyptian and Ottoman programs of modernization. These policies included the modernization of Tunisia's army and navy with the help of French military expertise, the establishment of a national bank that would manage financial affairs, the abolition of slavery, and the facilitation of European immigration through an open door policy, which not only increased Tunisia's European populace, but lead to foreign involvement in Tunisian internal affairs. Aḥmad Bey believed that these reform policies would

²⁴⁹ The complete bibliographic record for the 1884 *al-Muwāfaqāt* edition is: Shāṭibī, Ibrahīm ibn Mūsa. *al-Juz' al-awwal [-al-rābi'] min kitāb al-muwāfaqāt*. Tūnis: Maṭba'at al-Dawlah al-Tūnisiyyah, 1302 [1884]. It's housed under the Princeton University Arabic collection, cn. 9402587.01.; Princeton University Arabic collection., Phase II. A digital copy can be found at: <http://babel.hathitrust.org/cgi/pt?id=njp.32101076413028;view=1up;seq=32>.

²⁵⁰ Some of the important primary sources for this period include: Aḥmed Ibn Abī al-Diyāf, *Ithāf ahl al-zamān bī akhbār Tūnis wa mulūk 'ahd al-amān* (Tunis:1963-68). Diyāf (1804-74) was a prominent Tunisian scholar and statesmen who had graduated from Zaytūnah Mosque-University and had served as private secretary for six successive beys; Khayr al-Dīn al-Tūnisī, *Aqwām fī ma'rifat aḥwāl al-mamālik*, ed. al-Moncef al-Chenoufi (Tūnis: Bayt al-Hikmah, 2000). Khayr al-Dīn would become an influential Muslim reformist of nineteenth century Tunisia; Sheikh Muḥammad Bayram V, *Safwat al-i'tibār bī-mustawda' al-amsār wa al-aqtār*, ed. Alī ben al-Ṭāhir al-Chenoufi et al. (Tūnis: Bayt al-Hikmah, 2000).

ultimately spare Tunisia—as a preemptive of sorts—the fate that had been dealt to Algeria by French encroachment and eventual conquest.²⁵¹

After a brief period of relative stagnation in restructuring during the reign of Muḥammad Bey (reg. 1855-9), major reform policies would resume under Muḥammad al-Ṣādiq Bey (reg. 1859-82). Al-Ṣādiq Bey would ratify *inter alia* the separation of powers, regulations on executive decision making, and the creation of a new court system along with a high council which would serve the dual role of parliament and supreme-court.²⁵² A key figure during al-Ṣādiq Bey's restructuring was the notable reform thinker Khayr al-Dīn al-Tūnisī (1822-89), who had been appointed as the first president of the newly established High Council. Khayr al-Dīn's leadership of the High Council, however, was short-lived, and he would resign due to the inability of the High Council to properly fulfill its constitutionally mandated functions, including overseeing the government's conduct. The particular circumstances which lead to Khayr al-Dīn's resignation included frequent meddling and interference from the bey's circle of government officials and advisors, especially from his influential prime minister Khaznadar, who tried at all costs to circumvent anything that threatened the government's interests or attempted to restrict its powers.²⁵³

²⁵¹ For more on Tunisia's restructuring under Ahmad Bey, see Leon Carl Brown, *The Tunisia of Ahmad Bey* (Princeton: Princeton University Press, 1974). See also Nafi, *Ibn 'Ashūr: The Career*, 2.

²⁵² See Jamil M. Abu-Nasr, *A History of the Maghrib in the Islamic Period* (Cambridge: Cambridge University Press, 1987), 278; Nafi, *Ibn 'Ashūr: The Career*, 3.

²⁵³ See the following references for detailed accounts of the events that transpired: Sheikh Muhammad Bayram V, *Ṣafwat al-i'tibār bi-mustawda' al-amṣār wa al-aqtār*, ed. Alī ben al-Ṭāhir al-Chenoufi et al. (Tunis: Bayt al-Hikmah, 2000), 2:461-63; Mohamed-Salah Mzali and Jean Pignon, *Khereddine homme d'état: Mémoires* (Tunis: Maison Tunisienne de L'adition, 1971, 0, 17). "A mes enfants: ma vie privée et politique," 23; Muhammad al-Fadil ibn 'Ashūr, *Al-Ḥarakah al-adabiyyah wa al-fikriyyah fī Tūnis* (Tunis: al-Dār al-Tūnisiyyah li-al-Nashr, 1983), 38. El-Mesawi, Mohamed El-Tahir. *Muslim Reformist Action in Nineteenth-century Tunisia*. *The American Journal of Islamic Social Sciences*, 25 (2). pp. 49-82.

It would be in the period subsequent to Khayr al-Dīn's resignation in 1862, about a seven year span in which he withdrew from public service to travel to Europe and Istanbul, that he would reflect deeply on his previous experiences and refine his thought on the reform (*iṣlāḥ*) of Muslim society. Khayr al-Dīn along with several like-minded and pro-reformist contemporaries concurred that a clear vision for Muslim societies must be put forward before European expansionism/imperialism would wipe away all things of local and Islamic tradition. Out of this came perhaps his most consequential writing, *Aqwām al-masālik li ma'rifat aḥwāl al-mamālik* (*The Surest Path to Knowledge Regarding the Condition of Countries*); a work which would greatly impact Tunisian political and intellectual discourse, as well as modern Muslim thought moving forward, prevailing upon much of the public.²⁵⁴ The impact that Khayr al-Dīn's vision had for nineteenth century Tunisia and beyond cannot be overstated. But for what concerns us here, Khayr al-Dīn arguably created the intellectual space which would make receptive a work such as al-Shāṭibī's *al-Muwāfaqāt*. It is worthwhile thus to capture in more detail this visionary's thought and accomplishment, for not only do we find that he paved the way for *al-Muwāfaqāt*'s reception, but we also see that he himself may have been influenced by al-Shāṭibī and his theory on *maqāṣid* and *maṣlaḥah*.

²⁵⁴ The first Arabic edition came out in 1867 and was published by the Tunisian government Official Press. The full record is: Khayr al-Dīn al-Tunisi, *Aqwām fī ma'rifat aḥwāl al-mamālik* (Tunis: Official Press, 1867). For more on the life of Khayr al-Dīn and his *Aqwām*, see Albert Hourani, *Arabic Thought in the Liberal Age, 1798-1939* (Cambridge: Cambridge University Press, 1983), pp. 84-95. See also El-Mesawi, Mohamed El-Tahir (2007-8) *Muslim Reformist Action in Nineteenth-century Tunisia*. *The American Journal of Islamic Social Sciences*, 25 (2). pp. 49-82. *Aqwām fī ma'rifat aḥwāl al-mamālik* has also been translated into French under the title: *Réformes nécessaires aux pays musulmans: Essai formant la première partie de l'ouvrage politique et statistique intitulé: La Plus Sûre Direction pour Connaître l'état des nations*.

5:2 | Khayr al-Dīn al-Tūnisī: An Early Modern Progenitor of al-Shāṭibī's Thought

Khayr al-Dīn's famous *Aqwām al-masālik* (hereinafter referred to as *Masālik*) offered a thorough and thoughtful critique of the Muslim nations of his time, including the factors attributing to their decline and the basis for European progress. His analysis and reflections on the rise and fall of nations was in many ways reminiscent of Ibn Khaldūn.²⁵⁵ His critique was with purpose and with an agenda to ultimately revive Muslim society to its rightful place of honor and relevance amongst the community of advanced nations. In his own words, and in describing the aim of *Masālik*, he says: "I was inspired to believe that if I gathered what years of thought and reflection had produced, and what I had observed during my travels to various European states (...), then my effort would not be lost, especially if it inspires those working together in preserving Islamic tradition."²⁵⁶ Khayr al-Dīn's reform project was in many ways a reflection of the Ottoman Tanzimat, but it was no mere replica of it, as it would also address the Tunisian context in particular.

Masālik spoke to the entire Muslim *ummah*, and it addressed in particular the influential elite of society including politicians, intellectuals, and the ulema. His underlying message was loud and clear:

...an appeal to those statesmen and savants having enthusiasm and resolution to seek all possible ways leading to the improvement of the condition of the Islamic

²⁵⁵ El-Mesawi in particular draws significant parallels between the writings of Khayr al-Dīn and Ibn Khaldūn. See Mohamed El-Tahir El-Mesawi, *Muslim Reformist Action in Nineteenth-century Tunisia*. The American Journal of Islamic Social Sciences, 25 (2). pp. 60-1. A tangential debate that El-Mesawi introduces here regards whether Muslim intellectuals and traditional ulema are indebted to European Orientalists for becoming acquainted with Ibn Khaldūn. El-Mesawi opines that "Muslim intellectual circles including 'traditional' ulama, at least in nineteenth-century Tunisia, did not wait until European Orientalists "discovered" Ibn Khaldūn to become acquainted with this great Muslim philosopher." See El-Mesawi, p. 62, fn. 133.

²⁵⁶ Khayr al-Dīn, *Aqwām al-masālik*, 1:95-96; El-Mesawi, *Muslim Reformist Action in Nineteenth-century Tunisia*, 62; Brown, *The Surest Path*, 72-73.

ummah and the promotion of the means of her civilizational development, [...and] a warning for the heedless among the Muslim masses against their persistent rejection of what is praiseworthy and in conformity with our Law in the conduct of others, simply because they are possessed by the idea that the behavior and organization of non-Muslims must be renounced.²⁵⁷

Khayr al-Dīn well-understood that Europeans had made significant strides in areas of *inter alia* science, technology, institution building, and organization. He argued that learning and borrowing from the good of that which they possessed, especially with the aim of revitalizing Muslim society, was in fact a Qur'ānic imperative. Moreover, much of what Europe had contributed to the various fields of knowledge, he reminded, was indebted to the achievements of great Muslim civilizations.²⁵⁸ His arguments were all the more compelling in that they were both rational and grounded in tradition. Though these arguments were not novel, being that they were premised by preceding reformists of the nineteenth century including his teacher and the eminent Zaytūnah scholar Shaykh Maḥmūd Qabadu (1812-71),²⁵⁹ Khayr al-Dīn became the mouthpiece for them and he would in legacy become identified as the leading figurehead of the nineteenth century Tunisian Islamic modernist movement.

Khayr al-Dīn's thought, particularly in his penchant for forward thinking and renewal ideas for Muslim society, arguably paved the way and prepared the intellectual space necessary for the

²⁵⁷ Khayr al-Dīn, *Aqwām al-masālik*, 1:98-99; Brown, *The Surest Path*, 74; El-Mesawi, *Muslim Reformist Action in Nineteenth-century Tunisia*, 62-3.

²⁵⁸ Khayr al-Dīn, *Aqwām al-masālik*, 1:194; Brown, *The Surest Path*, 165; El-Mesawi, *Muslim Reformist Action in Nineteenth-century Tunisia*, 63.

²⁵⁹ Shaykh Maḥmūd Qabadu was a prominent reformist of nineteenth century Tunisia and one of Khayr al-Dīn's teachers at the new Bardo Polytechnic School founded in 1840 as part of Aḥmad Bey's reforms. Ahmad Bey assigned Qabadu to head the teaching and training of the traditional Islamic sciences, a division of this new school which had also a strong focus in military training. Khayr al-Dīn, though a student, was appointed as supervisor of the school. See Aḥmed Ibn Abī al-Diyāf, *Ithāf ahl al-zamān bi akhbār Tūnis wa mulūk 'ahd al-āmān* (Tūnis: 1963-68); El-Mesawi, *Muslim Reformist Action in Nineteenth-century Tunisia*, 50; Abū al-Qāsim Muḥammad Kirru, *A'limuna: Khayr al-Dīn* (Tūnis: Dār al-Maghrib al-'Arabī, 1970 [1958]), 19.

reception of al-Shāṭibī's *al-Muwāfaqāt*. A clear demonstration of how Khayr al-Dīn paved this way and of his own *maqāṣid* and *iṣlāhī* thinking was his strong advocacy (per his remarks above) to learn and borrow from European achievements, and his dismissal of particular interpretive inter-religious polemical views for standing in the way of fulfilling what he incontrovertibly saw to be a greater and beneficial objective (*maqṣid*) in preserving Islam's role in society while unifying and reviving the Muslim ummah.

There are more pronounced demonstrations of Khayr al-Dīn's *maqāṣid* and *maṣlaḥah* thinking put on display elsewhere in his *Masālik* that specifically suggest a Shāṭibian influence. In one instance, and in pointing out the merits of the Tanzimat, Khayr al-Dīn says that it essentially “rest[s] on two pillars – justice and freedom – both of which are two fundamental things in our *Sharī'ah*.”²⁶⁰ In another instance, and in addressing and critiquing in particular the ulema, he says: “They [the ulema] should consider realizing the *ummah*'s interest by promoting what is beneficial and keeping to a minimum what is harmful.”²⁶¹ And elsewhere, he engages in a more elaborative discussion on the application of *maṣlaḥah*, including the roles of *ijtihād* and context sensitivity in its formulation.

His discussion of *maṣlaḥah* is framed within the context of justifying the necessity of having collaboration between statesmen and the ulema, two groups he asserts to be responsible for the success of the Muslim state and society. It was essential for both groups to work cooperatively “for the benefit of the *ummah* by furthering her interests and warding off her harms.”²⁶² Moreover, he deemed this working relationship as “one of the most important duties in the *Sharī'ah* for

²⁶⁰ Khayr al-Dīn, *Aqwām al-masālik*, 1:103; Brown, *The Surest Path*, 79; El-Mesawi, *Muslim Reformist Action in Nineteenth-century Tunisia*, 63.

²⁶¹ Khayr al-Dīn, *Aqwām al-masālik*, 1:147; Brown, *The Surest Path*, 125; El-Mesawi, *Muslim Reformist Action in Nineteenth-century Tunisia*, 66.

²⁶² Khayr al-Dīn, *Aqwām al-masālik*, 1:146; Brown, *The Surest Path*, 123-24; El-Mesawi, *Muslim Reformist Action in Nineteenth-century Tunisia*, 65.

making the public interest prevail.”²⁶³ To arrive at the *maṣlaḥah* for society, scholars had to be keenly aware of ongoing circumstances. The importance he gives to context sensitivity in informing *ijtihād* and arriving at *maṣlaḥah* emphatically comes through when he remarks that: “just as the administration of the *Sharī‘ah* rulings depends on knowledge of the texts, so too it depends upon knowledge of the circumstances that should be considered in implementing those texts.”²⁶⁴ Clearly in all this we see the etchings of *maqāṣid* and *maṣlaḥah* philosophy à la al-Shāṭibī. The question that thus arises here is whether Khayr al-Dīn himself was familiar with al-Shāṭibī’s *al-Muwāfaqāt*, and, moreover, whether he had a more direct role in its introduction to Tunisian society and the modern Muslim world than thought to be?

As far as it is known, nowhere does Khayr al-Dīn explicitly reference *al-Muwāfaqāt* or al-Shāṭibī in his writings. Nor do the several studies on Khayr al-Dīn make any connection between these two transformative figures. Yet, this alone should not preclude the plausibility that there was some link. It is unlikely that Khayr al-Dīn’s thought and renewal program, including his demonstration of *maqāṣid* and *maṣlaḥah* thinking, is arrived at in a vacuum, *ex nihilo*; that it is epistemically modern and disconnected from the intellectual output of premodern Islamic tradition. His writings, rather, well-attest to a grounding in this tradition as demonstrated by substantial referencing of and authoritative reliance on—all be it selective—the views of medieval scholars. In his *Masālik*, for instance, he references the thought of al-Māwardī²⁶⁵ (d. 450/1058),

²⁶³ Khayr al-Dīn, *Aqwām al-masālik*, 1:147; Brown, *The Surest Path*, 124. El-Mesawi, *Muslim Reformist Action in Nineteenth-century Tunisia*, 65.

²⁶⁴ Khayr al-Dīn, *Aqwām al-masālik*, 1:147; Brown, *The Surest Path*, 124. El-Mesawi, *Muslim Reformist Action in Nineteenth-century Tunisia*, 65.

²⁶⁵ Abū al-Ḥasan al-Māwardī was a Kurdish jurist of the Shāfi‘ī school. He is well-known for his works on government, the most famous of which is his *al-Aḥkām al-sulṭāniyyah w’al-wilayāt al-dīniyyah* (*The Ordinances of Government*).

al-Ghazālī²⁶⁶ (d. 505/1111), Ibn ‘Aqīl²⁶⁷ (d. 513/1119), Ibn al-Qayyim al-Jawziyyah²⁶⁸ (d. 751/1350), al-Taftāzānī²⁶⁹ (d. 792/1390), Ibn Khaldūn²⁷⁰ (d. 808/1406), and al-Mawwāq²⁷¹ (d. 897/1492).²⁷² The person of Muḥammad al-Mawwāq is interesting in that he is a Mālikī jurist and spiritual leader of fifteenth century Spain who employed *maqāṣid* and *maṣlaḥah* thinking in treating interreligious matters between Muslims and non-Muslims. We will touch upon him later in this work where we address *maqāṣid* and *maṣlaḥah* thinking between al-Shāṭibī and the modern period. But for what concerns us here, he provides a potentially important intellectual link between Khayr al-Dīn and al-Shāṭibī.

Why then is al-Shāṭibī not mentioned in Khayr al-Dīn’s writings? We can only speculate here, but one possible reason may have had to do with the nature or genre of his discourse, being primarily oriented to matters of the state. As such, it was perhaps more conducive to his case for state reforms if his proposals and arguments were couched in the thought of figures having authoritative clout in matters of polity. And so, when he argues for the necessity of having a dialectical and functional relationship between political authority and those qualified to elect or

²⁶⁶ Abū Ḥamīd Muḥammad ibn Muḥammad al-Ghazālī is one of the most influential figures in Islamic history. He was a jurist of the Shāfi‘ī school, a theologian, philosopher, and a Sufi. Among his most famous works is the *Iḥyā’ ‘Ulūm al-Dīn* (The Revival of the Religious Sciences).

²⁶⁷ Abū al-Wafā’ ‘Alī Ibn ‘Aqīl was a well-known Ḥanbalī jurist and theologian who was somewhat controversial within the Ḥanbalī school for his espousal of rationalistic approaches to certain religious matters.

²⁶⁸ Muḥammad Ibn Qayyim al-Jawziyyah, also known as Ibn al-Qayyim, was a famous Ḥanbalī scholar and pupil of Ibn Taymiyyah. His extensive works in *fiqh*, *tafsīr*, *ḥadīth*, and spiritual ethics have been widely influential both within and beyond the Ḥanbalī school.

²⁶⁹ Sa‘d al-Dīn al-Taftāzānī was a Persian polymath, having expertise in several religious and intellectual sciences including jurisprudence, theology, logic, rhetoric, and linguistics. He followed the Ḥanafī school in law and the Māturīdī school in matters of theology. His works especially in theology were widely used in Ottoman as well as Shī‘ah madrasahs.

²⁷⁰ Abū Zayd ‘Abd al-Raḥmān ibn Khaldūn was a Tunisian historiographer and historian best known for his famous work *al-Muqaddimah* (lit. *The Introduction*, also known as the *Prolegomena* in Greek).

²⁷¹ Muḥammad bin Yūsuf al-‘Abdarī al-Mawwāq was a prominent Mālikī jurist of Granada.

²⁷² Khayr al-Dīn, *Aqwām al-masālik*, 1:58, 106, 113-15, 148-49; El-Mesawi, *Muslim Reformist Action in Nineteenth-century Tunisia*, 65-71.

depose leadership (*ahl al-ḥall wa al-‘aqd*), he draws primarily upon the views of prominent medieval political philosophers including al-Māwardī and Ibn Khaldūn.²⁷³ Elsewhere, on a similar issue, we find him citing the political thought of al-Jurjānī²⁷⁴ (d. 816/1413), al-Taftāzānī, al-Mawwāq, al-Qarāfī, Ibn ‘Aqīl, and Ibn Qayyim al-Jawziyyah.²⁷⁵ Thus, it may have been that not only was the thought of these aforementioned figures more relevant to the political content he was treating, but—and if we accept the thesis of a five century marginalization of al-Shāṭibī’s thought, along with the controversial baggage that came with his *maqāṣid* and *maṣlaḥah* work—he may have deemed a relatively unpopular al-Shāṭibī to be a liability or at the very least non-strategic in promoting his cause to statesmen and ulema. Granted that this is mere speculation, further evidence is warranted to link Khayr al-Dīn to al-Shāṭibī and his *al-Muwāfaqāt*.

5:3 | Clues that Khayr al-Dīn was Familiar with *al-Muwāfaqāt*

We know that Khayr al-Dīn would spend the latter part of his life (1878-90) in Istanbul, having been offered a government post there by the Ottoman sultan upon losing his government position at Tunis in 1877.²⁷⁶ We also know that his *Masālik* was completed by 1867. The upshot is that if Khayr al-Dīn had access to *al-Muwāfaqāt*, he would have had it at the very least before 1867, much in advance of it being introduced to Tunisian society and the rest of the modern Muslim world in 1884. That he had access to *al-Muwāfaqāt* and that this access was before the

²⁷³ Khayr al-Dīn, *Aqwām al-masālik*, 1:58, 106, 113-15, 148-49; El-Mesawi, Muslim Reformist Action in Nineteenth-century Tunisia, 65-71. We should note here that he also references al-Ghazālī’s political views in his discussions.

²⁷⁴ ‘Alī ibn Muḥammad al-Jurjānī, also known as al-Sharīf al-Jurjānī, was a Persian scholar who was well-known for his theological commentaries.

²⁷⁵ Khayr al-Dīn, *Aqwām al-masālik*, 1:58, 106, 113-15, 148-49; El-Mesawi, Muslim Reformist Action in Nineteenth-century Tunisia, 65-71.

²⁷⁶ The Ottoman sultan had given Khayr al-Dīn a mansion in Istanbul in 1878. He would spend his remaining years in Istanbul till his death in 1890, where he would be buried. His body was repatriated to Tunisia in 1986. See Julia Clancy-Smith’s *Mediterraneans: North Africa and Europe in an Age of Migration* (2011), 337-338, and particularly Chap. 9, “Khayr al-Dīn al-Tunisi and a Mediterranean Community of Thought,” 315-341.

1884 Tunisian edition is certainly plausible especially considering other pertinent information we have concerning Khayr al-Dīn, including his strong familiarity with medieval ulema and their works, his library collection, his strong commitment to educational reform and development, and his role in reestablishing the same printing press that would publish *al-Muwāfaqāt*. We shall string these together in what follows here.

Beyond being a political activist and reformer, Khayr al-Dīn was a bibliophile who had great fervor for learning. It was recognition of his intellectual maturity and promising erudition that afforded a young Khayr al-Dīn, an eighteen year old student at the newly formed Bardo Polytechnic School, the opportunity to supervise that school while still a student. He was comfortable navigating the great classics of Islamic tradition, and he became well familiar with their authors. He was, moreover, grounded in their ideas and was able to reference their subtle arguments in articulating his own thought, setting him apart from the mere dilettante. His depth of engagement with the Islamic intellectual tradition impressed upon others that he was among the class of ulema, a scholar in his own right. The Azharī scholar Rifā‘ah Rāfī‘ al-Ṭaḥṭāwī (1801-1873) acknowledged his own indebtedness to Khayr al-Dīn’s *maqāṣid* and *maṣlaḥah* ideas for renewing Muslim society in informing his own platform for renewal. Ṭaḥṭāwī’s proposals for renewal, in fact, had relied heavily on Khayr al-Dīn’s *Masālik*, as we shall observe further below. Given, therefore, Khayr al-Dīn’s acumen in the Islamic scholarly tradition, his thinking about *maqāṣid* and *maṣlaḥah*, and considering that Khayr al-Dīn’s intellectual career developed within a predominately Mālikī setting, it would not have been at all surprising that he had familiarity with and was influenced by al-Shāṭibī and *al-Muwāfaqāt*.

There is then the correspondence that existed between Khayr al-Dīn’s library/manuscript collections, his educational reforms, the printing press he reestablished, and the publication of the

1884 Tunisian edition of al-Shāṭibī's *al-Muwāfaqāt*. To begin with, Khayr al-Dīn's penchant for acquiring knowledge had not been confined to the Islamic intellectual tradition. Embodying the spirit of the famous prophetic *ḥadīth* that "wisdom is the lost property of the believer," Khayr al-Dīn would actively seek out and learn from any he deemed to possess beneficial knowledge, including Europeans, whose achievements he highly regarded despite detesting their imperialistic prowess and hubris. Among the many European developments that Khayr al-Dīn greatly admired was their libraries. He genuinely appreciated how these libraries housed works in all branches of knowledge, which was, as he says, "out of their desire to expand knowledge...the foundation of human progress and civilization."²⁷⁷ He was so fascinated with these libraries that he even provided statistical details for them, including the ratios that many of the European countries had between the number of books in their possession and their population. What especially intrigued Khayr al-Dīn was that all people could have access to knowledge and therefore benefit through these library collections.

Inspired by Europe's libraries and open access to knowledge, Khayr al-Dīn sought to recreate a similar atmosphere in Tunisia. To do so, he saw to it that a national library be established, one of several educational reform initiatives he would oversee during his years as Tunisia's premier (1873-77). He also saw to it that a printing press be established to disseminate important works which would then be housed in the library and which the broader public could have access to. Among these works which he sought to disseminate and publish through the printing press he set-up came out of his own collection that had comprised of some 1,100 manuscripts; manuscripts of which he had also donated to the library as its first gift.²⁷⁸ What is especially pertinent here with

²⁷⁷ Khayr al-Dīn, *Aqwām al-masālik*, 1:186-88; Brown, *The Surest Path*, 156-57; El-Mesawi, *Muslim Reformist Action*, 69.

²⁷⁸ Educational reform would be a priority during his tenure as premier. Besides investing in a state library, he introduced other programs including the complete overhaul and expansion of schools, and the renewal of Tunisia's

respect to Khayr al-Dīn and *al-Muwāfaqāt* is that it is this same printing press,²⁷⁹ *Maṭba‘at al-Dawlah al-Tūnisiyyah*, which would publish the 1884 edition of al-Shāṭibī’s *al-Muwāfaqāt*.

Coming full circle, therefore, to what we know about Khayr al-Dīn’s contributions, including his holistic and progressive thought, of which (as we have already alluded to) demonstrate *maqāsid* and *maṣlahah* thought in the mold of one who would be attune to al-Shāṭibī’s *al-Muwāfaqāt*; his establishment of a national library that importantly housed 1,100 of his own manuscript collection; and his establishment of the printing press which published for the first time in the modern world an edition of *al-Muwāfaqāt*, with the very real possibility that this edition came out of his 1,100 manuscript collection, then there is every reason to ascribe to this nineteenth century figure a critical role in introducing al-Shāṭibī’s thought to the modern Muslim world and/or at the very least paving the way for its reception and eventual rise up through contemporary times.

gazette (*Al-Ra‘id at-Tunisi*). For more on the library and these other reforms, see Khayr al-Dīn, *Aqwām al-masālik*, 1:186-89; Brown, *The Surest Path*, 156-58; El-Mesawi, *Muslim Reformist Action in Nineteenth-century Tunisia*, 69-70; Ibn `Ashur, *Al-Harakah*, 40-45; Ganiage, *Les Origines*, 456; and Abdesselem, *Les Historiens*, 133-137.

²⁷⁹ Khayr al-Dīn, *Aqwām al-masālik*, 1:186-88; Brown, *The Surest Path*, 156-57; El-Mesawi, *Muslim Reformist Action*, 69. This press further led to the dissemination of other great works that would also leave their mark on modern Islamic thought, including great classical works in Islamic law, hadith, history, and several other disciplines. His reforms, including the libraries and his large manuscript collection, the revamping of schools, and the revival of the press, were, as Brown tells us, “crucial to the rise of a dynamic intellectual and cultural activity,” and would have “a great impact on Tunisian circles, which would continue long after the French occupation.”

CHAPTER 6

From Khayr al-Dīn to Muḥammad ‘Abduh and Rifā‘ah al-Taḥṭāwī:

The Transmission of al-Shāṭibī’s Thought

Khayr al-Dīn al-Tūnisī certainly left his mark on modern day Muslim thought. He was a progressive for his time; a critical thinker who had the courage and foresight to call for a shift in socio-religious attitudes and a change from the economic and political status quo that he believed had been plundering his native Tunisia and other regions of the Muslim world. His message had broad appeal throughout Muslim lands, and his ideas for reviving society was picked up by subsequent modern thinkers, among them Muhammad ‘Abduh and Rifā‘ah al-Taḥṭāwī. If we are not completely certain as to the extent of Khayr al-Dīn’s relationship with and role in introducing and disseminating al-Shāṭibī’s *al-Muwāfaqāt* to the modern world, we have more of a surety in the role that ‘Abduh would play in bringing attention to it and reviving this epic work along with the thought of its celebrated author. It is also through ‘Abduh that we may better understand Khayr al-Dīn’s relationship to al-Shāṭibī’s thought.

It was the winter of 1884 and visiting Tunisia was the noted Professor of al-Azhar Shaykh Muḥammad ‘Abduh. It would be the first of two such visits that ‘Abduh would make to Tunisia in the span of almost two decades, the second one coming on September 9, 1903, just two years prior to his death. ‘Abduh was thirty-six years old at the time of his first visit and a popular figure who had already gained name recognition across the Muslim world for his anti-colonial views and for his call to social reform and religious renewal, much of which was promulgated through his

teaching, public lectures, and through various periodicals including writings for the *al-Ahrām* (The Pyramids), *al-Waqā'i al-Miṣriyya* (The Egyptian Events),²⁸⁰ and the famous Islamic revolutionary journal *al-'Urwa al-Wuthqā* (The Firmest Bond).

'Abduh had arrived in Tunis from Paris, where he had been residing and working with his reform minded teacher and mentor Jamāl al-Dīn al-Afghānī on *al-'Urwa al-Wuthqā* during part of his six year exile from Egypt.²⁸¹ Though numerous studies have been devoted to various aspects of 'Abduh's life and thought, his visit to Tunisia and his relationship to al-Shāṭibī and Khayr al-Dīn has been relatively neglected. What exactly drew 'Abduh to Tunis and what the purpose of his visit was has been somewhat of an uncertain and contestable matter for contemporary historians, with various though correlative views being put forward. Some commentators hold that 'Abduh came to raise funds and to promote *al-'Urwa al-Wuthqā*.²⁸² Others suggest that his visit had a deliberate agenda to dissuade Tunisian Muslims from succumbing to French offerings of naturalized citizenship.²⁸³ In this regard, 'Abduh laid out for them his politico-religious reforms,

²⁸⁰ *Al-Waqā'i al-Miṣriyya* was the official state newspaper where he had been appointed as editor and chief (Riḍā, *Ta'rīkh*, 2:15–48; Adams, 37–40).

²⁸¹ Anke von Kügelgen, "'Abduh, Muḥammad.'" *Encyclopaedia of Islam*, THREE. Edited by: Kate Fleet, Gudrun Krämer, Denis Matringe, John Nawas, Everett Rowson. Brill Online, 2014. Reference. Tufts University. 25 November 2014. 'Abduh's exile from Egypt by the British in 1882 was for his alleged involvement in the Egyptian nationalist revolt of 1879 which was led by Ahmad 'Urābī Pasha (though 'Abduh denied that he had been supporting 'Urābī). See Riḍā, *Ta'rīkh*, 1:819–20; *al-A'māl*, 2:363–6; Amīn, *Rā'id*, 49). 'Abduh would also have a brief stay in England during this time, where he had the opportunity to present his politico-religious views to high-ranking British officials. A portion of 'Abduh's six years in exile was also spent in Ottoman Lebanon, where he played a significant role in developing the Islamic educational system as well as founding a secret society in Beirut aimed at fostering dialogue and cooperation among the Abrahamic traditions (Riḍā, *Ta'rīkh*, 1:819–20; *al-A'māl*, 2:363–6; Amīn, *Rā'id*, 49).

²⁸² According to Green, his visit was "partly for sightseeing, but mainly with the intention of promoting *al-'Urwa al-Wuthqā* and raising funds (See Green, Arnold "The Tunisian Ulama, 1873-1915: Social Structure and Response to Ideological Currents" (unpublished PhD dissertation, University of California at Los Angeles, 1973), 148–9; Nikki Keddie also holds that 'Abduh's visit to Tunisia was "for money-raising efforts." See Nikki R. Keddie, *Sayyid Jamal ad-Dīn al-Afghani* (Berkeley: University of California Press, 1972), p.261; Martin, *The Reformation and Secularization of Zaytūnah*.)"

²⁸³ 'Abduh was cognizant not to offend the French in presenting his reformist ideas. See Chenoufi, Moncef, "Les Deux Sejours De Muhammad 'Abduh Tunisie," *Les Cahiers De Tunisie*. XVI, No. 61-64 (1968), p. 65; Martin, *The Reformation and Secularization of Zaytūnah*.

attempting to reassure the Tunisian people, including ulema and statesmen, the ways in which Islamic tradition could serve as the framework for building a vibrant society and a viable Muslim state. Certainly, Zaytūnah, being a major institution of higher learning with its influence in shaping and training religious leadership, would have been an important audience for ‘Abduh and his message and another reason that would draw him to Tunis. Perhaps it was for all the above reasons that ‘Abduh came to Tunis. But there is an additional consideration which has not been given attention and which may have served as a key motivating factor influencing ‘Abduh’s visit, this being that ‘Abduh was spurred on to Tunis by Khayr al-Dīn al-Tūnisī.

The connection between Muḥammad ‘Abduh and Khayr al-Dīn is one that very few writers or studies on either of these figures have made. Providing evidence for their connection is all the more tenuous when neither of these figures is known to have made explicit mention of the other, whether in their writings or public discourses. Though this may imply that there was neither interaction nor influence, it does not definitively rule out that there was such interaction and influence, as we will examine further below.

With respect to secondary literature that might touch upon a Khayr al-Dīn-‘Abduh link, it is more likely to be the literature which treats ‘Abduh rather than Khayr al-Dīn, owing to what we know of the time periods of their respective careers and lives, with the tail end of Khayr al-Dīn’s life and career falling at the prime of ‘Abduh’s such that it would have likely been the former to have influenced the latter. That ‘Abduh’s religio-political thought and ideas (esp. concerning Islam and modernity, and the renewal of Muslim society) so closely resemble the elder Khayr al-Dīn’s, we might at the very least expect to find some mention from writers on ‘Abduh of a possible link, even if the two had not physically encountered and even if any such influence would have been indirect. Yet, even here we are hard pressed to find anything. For instance, there is no mention of

an ‘Abduh-Khayr al-Dīn link in either of the two main full biographies on ‘Abduh in English; these being Charles C. Adams’ *Islam and Modernism in Egypt: A Study of the Modern Reform Movement Inaugurated by Muḥammad ‘Abduh*²⁸⁴ (1933) and Mark Sedgwick’s more recent work *Muḥammad ‘Abduh*²⁸⁵ (2010). Similarly, in one of the main studies of ‘Abduh in Arabic, ‘Uthmān Amīn’s *Muḥammad ‘Abduh*,²⁸⁶ we find nothing of a Khayr al-Dīn-‘Abduh link. In fact, Amīn entirely ignores ‘Abduh’s first visit to Tunis in 1884. And though he does mention ‘Abduh’s second visit to Tunis in 1903, there is nothing of Khayr al-Dīn to be brought into the picture.²⁸⁷ Other modern Arab writings on the accounts of ‘Abduh’s visit to Tunis also neglect any mention of Khayr al-Dīn. Al-Fāḍil Ibn ‘Āshūr, for example, provides a relatively substantial address of ‘Abduh’s affiliation to the Tunisian reform movement, but again, nothing of Khayr al-Dīn is given any consideration. And he also ignores ‘Abduh’s initial 1884 visit to Tunis.²⁸⁸

²⁸⁴ Charles C. Adams. *Islam and Modernism in Egypt: A Study of the Modern Reform Movement Inaugurated by Muḥammad ‘Abduh*. London : Oxford University Press, 1933.

²⁸⁵ Mark J. Sedgwick. *Muḥammad ‘Abduh*. Oxford, England: Oneworld, 2010.

²⁸⁶ ‘Uthmān Amīn. *Muḥammad ‘Abduh*. translated from the Arabic by Charles Wendell. Washington, American Council of Learned Societies, 1953.

²⁸⁷ ‘Uthmān Amīn was a Professor of Philosophy at Cairo University and a disciple of Muṣṭafa ‘Abd al-Rāziq, who was in turn a student of Muhammad ‘Abduh. In describing ‘Abduh’s connections to Tunis, Amīn says: “Indeed the Professor al-Imam [Muḥammad ‘Abduh] had an obvious impact on North Africa through the journal *al-Manar*. In the summer of 1903, the Imam wanted, on his return from Europe, to see for himself the conditions of the Muslims in North Africa. Consequently he visited Algeria and Tunisia. There, as one French journalist noted in the French newspaper, *Le Temps*, he discovered the existence of a reformation party which adhered to ‘Abduh.” Thus, Amin entirely ignores ‘Abduh’s first visit in 1884, and there is no mention of Khayr al-Dīn. See ‘Uthmān Amīn, *Ra’id al-Fikr al-Miṣrī* (Cairo, 1955), p. 225 (translation by Hanna, pp. 42-43).

²⁸⁸ Al-Fāḍil Ibn ‘Āshūr writes: “In 1901 the intellectual renaissance in Tunisia acquired more momentum as a result of the rise of many newspapers. . . . These papers highly praised *al-Manar* and Muhammad ‘Abduh as well as admiring ‘Abduh’s lessons, and books, especially *Risalat at-tawḥīd*, *al-Islām wan-Nasraniyyah*, and *Ma’al-’ilm wal-Madaniyyah*. News of this tremendous recognition given to ‘Abduh reached Egypt, and ‘Abduh himself felt the Tunisians’ enthusiasm in the Tunisian press. It was something he had not been able to realize in Egyptian news-papers, most of which were against him. Nor had he found in other Islamic papers such an overwhelming support. Consequently he realized that the most fertile soil in which to sow the seeds of his call would be in Tunisia. He also realized that much of the lofty ideals which he wanted to realize in Egypt had already been brought in to being in Tunisia as a result of the establishment of al-Khaldūniyyah.” See al-Fāḍil Ibn ‘Āshūr, *al-Ḥarakah al-fikriyyah wal-adabiyyah fī Tūnis* (Tunis, 1972), p. 75 (translation by Hanna, pp. 42-43).

Sammi Hanna and George Gardner are, to the best of my knowledge, the only ones to have suggested that an encounter and exchange of ideas took place between Khayr al-Dīn and ‘Abduh. Though Hanna and Gardner do not provide definitive evidence for their claim, their novel theory nonetheless carries weight and deserves consideration. Under the title “Khayr Ad-Din and Muhammad Abduh: Did They or Didn't They?”, Hanna and Gardner offer thirty pages of piecing evidences and inductive reasoning to demonstrate the plausibility that ‘Abduh and Khayr al-Dīn were not only familiar with each other, but had personal interaction and live discourses on the socio-political and politico-religious matters affecting Muslim society. According to their article, it is likely that ‘Abduh and Khayr al-Dīn had meetings in Ottoman Turkey. During these encounters, ‘Abduh would have gained a strong familiarity with reform efforts in Tunis, the dynamics surrounding Zaytūnah, and, more broadly, a keen understanding of Tunisian society. In addition, ‘Abduh had likely read Khayr al-Dīn’s *Masālik*, furthering his grasp on the thought and ideas of its author. Hanna and Gardner maintain, moreover, that Khayr al-Dīn was an influential supporter of and contributor to al-Afghāni’s and ‘Abduh’s *al-Urwa al-Wuthqā*.²⁸⁹ It is worthwhile here to further examine the evidence available that would suggest a Khayr al-Dīn-‘Abduh connection, especially considering that such a connection may shed more light and bear consequences on our understanding of al-Shāṭibī’s *maqāṣid* revival in the modern Muslim world.

The question of a Khayr al-Dīn-‘Abduh connection comes down to two main inquiries that are not necessarily mutually exclusive. The first of these is whether the two actually met? And the second of these is whether there was some sort of influence between them? Either or both of these may hold true. Put differently, there are four possible scenarios to a Khayr al-Dīn-‘Abduh link: (1)

²⁸⁹ Hanna, Sami Hanna and George Gardner, “Khayr Ad-Din and Muhammad ‘Abduh: Did They or Didn't They?,” *American Journal of Arabic Studies*, Vol. II, (1974), pp. 21-51.

that they met, but that there was no influence; (2) that they met and there was influence; (3) that they didn't meet, but there was influence; and (4) that they didn't meet and that there was no influence.

6:2 | Determining if Khayr al-Dīn and 'Abduh actually Met

In examining the first of these, whether Khayr al-Dīn and 'Abduh actually met, we should note that Hanna and Gardner offer relatively very little on this matter, focusing instead on the second inquiry, regarding Khayr al-Dīn's influence on 'Abduh. With respect to a Khayr al-Dīn-'Abduh encounter, we need to determine all the possibilities where they could have crossed paths at some point and somewhere. Khayr al-Dīn was born in 1820 and died in 1890. Muḥammad 'Abduh was born in 1849 and died in 1905. Thus, any meaningful encounter they may have had must fall—setting aside 'Abduh's childhood years—somewhere between 1860 and 1890.

This thirty year window can be further narrowed by determining where Khayr al-Dīn and 'Abduh were during this period, and *when* were they there. We can disregard with some surety a Khayr al-Dīn-'Abduh encounter in Egypt, as Khayr al-Dīn never mentions a visit there; and it would be highly unusual and unlikely that he would have made such a visit without making some mention of it in his writings, especially knowing of his detail to describing the places he visited and lived throughout his career and life travels. Moreover, he would have been a public figure and known at least in political circles during this time between 1860 and 1890, and any visit to Egypt would most certainly have been covered by the Egyptian press at that time, of which—as far as it can be determined—there is nothing.²⁹⁰

²⁹⁰ The major Egyptian newspapers during this timeframe were *al-Waqā'i 'a al-Maṣriyyah* and *Al-Ahrām*. *Al-Waqā'i 'a al-Maṣriyyah* (Egyptian Affairs) was founded in 1828 under the Khedive Muḥammad 'Alī, and was the first indigenous Middle Eastern newspaper. For its history see Charles Tripp, *Contemporary Egypt: Through Egyptian Eyes* (New York: Routledge, 1993), p. 2; Amin, Fortna, Frierson, *The Modern Middle East: A Sourcebook for History*,

We can also rule out a Khayr al-Dīn-‘Abduh encounter in Tunisia for the following reasons. Muḥammad ‘Abduh’s first visit to Tunisia, by his own account, was 1884. We know that Khayr al-Dīn was in Istanbul at this time. In fact, Khayr al-Dīn would permanently leave Tunisia in 1878, having been summoned to Istanbul by the Ottoman Sultan Abdul Hamid II to take up two high-ranking posts, initially becoming head of the Financial and Economic Commission, and later to be appointed to the distinguished office of Prime Minister of the Ottoman Empire.²⁹¹ Khayr al-Dīn would end up spending the remainder of his life there, passing away in 1890. Therefore, and with some relative surety, we can exclude the two having met in either of their own homelands of Tunisia and Egypt.

We can further narrow the timeframe in which they could have met by considering more precisely the actual amount of time they each had spent in their homeland, reducing substantially this thirty year window. Beginning with ‘Abduh, we should note that his whereabouts throughout his career are well documented in his autobiography as well as in some of his other writings.²⁹² And we are fortunate to have with some detail and in chronological order not only his whereabouts, but also the contextual circumstances surrounding where he was, all of which will serve to inform

(Oxford: Oxford University Press, 2006), p. 99. *Al-Ahrām* was founded in Alexandria in 1875 and is the most widely circulating Egyptian daily newspaper, and the second oldest, after *al-Waqā’i‘a al-Maṣriyyah*. Both ‘Abduh and al-Afghānī were early writers for the newspaper. For more on *al-Ahrām* see Arthur Goldschmidt, *Biographical Dictionary of Modern Egypt*. (London: Lynne Rienner Publishers, 2000), p. 21.

²⁹¹ Though Khayr al-Dīn had a strong relationship with the ruling elite, who put great trust in his leadership and recommendations, he would also have his share of detractors who posed strong opposition to his reform vision and agenda. It is as such that these appointments were relatively short lived. This was also not Khayr al-Dīn’s first time in Istanbul, having served as a servant-companion to the son of Talsin Bey in 1839. For more on Khayr al-Dīn’s Ottoman years see Hanna, 25-26; Hourani, 84-87.

²⁹² ‘Abduh’s autobiography is somewhat fragmented, having never completed it. The primary sources here include *al-Manār* and *al-Tarīkh*. We rely substantially here on Charles Adam’s biography of ‘Abduh entitled *Islam and Modernism in Egypt: A Study of the Modern Reform Movement Inaugurated by Muḥammad ‘Abduh* (London: Oxford University Press, 1933).

our objective here in pinpointing and factuating where and when he may have possibly encountered Khayr al-Dīn.

Generally speaking, much of ‘Abduh’s life was in Egypt. He was born in the Gharbiyyah Province and spent most of his childhood years there before he and his family relocated to Maḥallat Naṣr at the age of ten. There, between the ages of ten and twelve (1860-1862), he would complete the memorization of the Qur’ān under the guidance of a *ḥāfiẓ*. In 1862, at the age of thirteen, ‘Abduh’s father sent him off to the school of the Aḥmadī Mosque in Ṭanṭā where he would hone his Qur’ānic recitation skills and advance his knowledge in the science of *tajwīd*, one of the beginning subjects learned in Islamic education. In 1864, at the age of fifteen and while still at the Aḥmadī Mosque, he proceeded in his lessons with the study of the sciences of Arabic.²⁹³ It was at this point in his religious schooling that ‘Abduh became somewhat disenchanted with the progress in his studies and decided that his interests lay elsewhere. He would pack-up and return to his village in Maḥallat Naṣr with the aim of earning a livelihood there in following the way of his relatives and tending to agriculture. A year later in 1865 and at the age of sixteen, ‘Abduh would marry. Just forty days later, he was compelled by his father to return to the Aḥmadī Mosque in Ṭanṭā where he would continue his religious education.²⁹⁴

The events surrounding his return trip to Ṭanṭā would mark a transformative episode in ‘Abduh’s life. It was during this return trip that ‘Abduh, in his intransigence against continuing his studies, boldly detoured his way back to hide out with relatives in the village of Kanayyisat Adreen. Describing his time there, ‘Abduh says: “I chanced upon one who taught me how to seek learning from its nearest point of approach, so that I tasted its attractiveness and persevered in the search

²⁹³ Adams, *Islam and Modernism*, 20-21.

²⁹⁴ *Ibid*, 22. a

for it.”²⁹⁵ The person ‘Abduh refers to here who had made such an indelible impression on him and who had kindled within him a deep appreciation for religious learning and a pious way of life was his father’s uncle Shaykh Darwīsh Khadr.²⁹⁶ His memorable and transformative two weeks with Shaykh Darwīsh provided him with a new outlook and motivation to further his religious studies, and by October of 1865 ‘Abduh had resumed his studies at the school in Ṭantā. He would spend less than a year at Ṭantā, before taking his new found zeal for the sacred sciences to the renowned al-Azhar in March of 1866. The next four years between 1866 and 1870 would find ‘Abduh devoted to fulfilling the Azharī curriculum prescribed for his study. Of note during these four years is ‘Abduh’s first encounter with Jamāl al-Dīn al-Afghānī, which would occur over an evening meal during al-Afghānī’s brief visit to Cairo in 1869.²⁹⁷

‘Abduh’s spiritual journey had taken an interesting course during his time at al-Azhar. His penchant for the mystical path which was sparked by Shaykh Darwīsh lead him to increased seclusion and a more acute level of asceticism. Shaykh Darwīsh had noticed these changes in ‘Abduh during the latter’s visit to him in 1871. Recognizing that ‘Abduh’s religious approach and spiritual lifestyle was veering towards a state of disequilibrium, Shaykh Darwīsh prodded him to find a balance between his spiritual proclivity and worldly existence, conveying to him that the two were not mutually exclusive and that complete abandonment of matters of the mundane world was not necessarily a goal nor a healthy way of life for a true devotee and believer.²⁹⁸

Though Shaykh Darwīsh’s guidance was important in shaping and redirecting ‘Abduh’s

²⁹⁵ Muḥammad ‘Abduh, *Tafsīr sūrat al-‘aṣr wa khiṭāb ‘āmm fī al-tarbiyyah wa al-ta’līm* (Cairo: Al-Manār Press, 1911), pp. 67-8. Translation from Adams, 23.

²⁹⁶ Shaykh Darwīsh, who was trained himself in the Shādhilī *ṭarīqah*, introduced ‘Abduh to the inner sciences of Islam. For more on Shaykh Darwīsh see Adams, pp. 23-32.

²⁹⁷ Adams, 26-33. ‘Abduh and al-Afghani were accompanied in this encounter by Shaykh Ḥasan al-Tawīl, who had set up the meeting.

²⁹⁸ *Ibid*, 32.

religious outlook, what was to have a greater impact on his religious development was the guidance and mentoring of al-Afghānī. On March 22, 1871, a year and a half removed from his initial visit to Egypt, al-Afghānī reappears in Cairo after having spent time in Istanbul.²⁹⁹ It is important to note here something that Hanna and Gardner fail to make mention of, which is that Khayr al-Dīn was also in Istanbul during this time that al-Afghānī was there. This not only offers the plausibility of a Khayr al-Dīn-al-Afghānī encounter, but it may also provide an important lead to a Khayr al-Dīn-‘Abduh connection and encounter.

With al-Afghānī’s presence in Cairo, ‘Abduh began regular study with him and would “follow him like his shadow.”³⁰⁰ For the next eight years between 1871 and 1879, ‘Abduh would work closely in Egypt with al-Afghānī. He would also begin writing and contributing to *al-Ahrām* in 1876, the year of its first publication.³⁰¹ By May of 1877, ‘Abduh had finally completed his Azhar studies and received his degree as “*‘ālim*”.³⁰² ‘Abduh’s teaching career and the beginning of his public life would begin in the same year.³⁰³ Besides teaching at Azhar, and towards the latter part of 1878, he would also be appointed by then Prime Minister Riāḍ Pasha as teacher of history at the recently founded Dār al-‘Ulūm school.³⁰⁴ The following year in 1879, upon the accession of Ṭawfīq Pasha as Prime Minister, al-Afghānī would be forced to leave Egypt for the last time,

²⁹⁹ There is some discrepancy concerning the exact date of his arrival. See Adams p. 33, Fn. 2.

³⁰⁰ *Al-Manār*, viii, 399-400; Adams, 33-4.

³⁰¹ Five of ‘Abduh’s articles from this year were preserved in the *Biography* by Muḥammad Rashīd Rida. See *Beitraage*, xiii (1916), 88-9; Adams, 37.

³⁰² ‘Abduh had to overcome some considerable obstacles to pass his exams and obtain his degree. He had purportedly been prejudiced against by many of his examiners who tried to keep him from passing. The matter would however be resolved at the intervention of the then liberal Azharī rector Shaykh Muḥammad al-‘Abāsī, who considered his examination work to be exceptional. See *Al-Manār*, viii, 393; Adams, 43.

³⁰³ On the subjects he taught at al-Azhar, see *Al-Manār*, viii, 404; Adams, 44.

³⁰⁴ The school was founded in 1873 at the behest of ‘Alī Pasha Mubārak, then Minister of Education. It was intended to supplement Azharī studies by offering modern sciences which were precluded at al-Azhar. It also allowed for traditional sciences and works to be taught which al-Azhar didn’t offer, including Ibn Khaldūn’s *Muqadimmah*, with ‘Abduh teaching it there for the first time. For more on the Dār al-‘Ulūm school, see *Tarīkh*, iii, 242; Adams, 45.

having spent eight years working with the young ‘Abduh who was at this point thirty years old.³⁰⁵ Ṭawfīq Pasha also saw to it that ‘Abduh be relieved of his teaching duties at the Dār al-‘Ulūm. The order came in September of 1879 and ‘Abduh was placed in defacto house arrest, compelled to return to his village Maḥallat Naṣr and ordered not to leave it.³⁰⁶

In 1880, the former liberal Prime Minister Riāḍ Pasha, who had been away at the time of al-Afghānī’s expulsion, had returned to Egypt and appointed ‘Abduh in September as one of three editors and later editor-in-chief of the state sponsored and oldest Egyptian journal *al-Waqā’i ‘al-Miṣriyyah*.³⁰⁷ The following year, upon the creation of a Superior Council³⁰⁸ to the Department of Education on March 31, 1881, ‘Abduh would be appointed as member to this council and its subcommittee to study educational reform throughout Egypt. Before long, however, the same forces that put an end to his teaching career would summons him once again, but this time to see to it that ‘Abduh’s voice and presence in Egypt would no longer be. His alleged involvement in Aḥmad ‘Urābī’s revolutionary movement would be the straw to break the camel’s back and seal his fate and eventual exile. ‘Abduh’s work with *al-Waqā’i ‘al-Miṣriyyah* would come to a close in May of 1882. The government would prosecute ‘Abduh and all those allegedly involved with the Urābī movement in September of 1882. By the end of that year, ‘Abduh was sentenced to exile and forbidden to return for at least three years and until permission was granted by the Egyptian government. ‘Abduh left Egypt by the end of 1882 and headed north towards Ottoman Syria where he would seek residence until permission was granted for his return.³⁰⁹

Given, therefore, the above timeline of ‘Abduh’s whereabouts between 1849 and 1882,

³⁰⁵ For more on the departure of al-Afghānī see *Mashāhīr*, i.281; Adams, 18, 46.

³⁰⁶ It was ‘Abduh’s ties to al-Afghānī and his own reformist ideas which purportedly lead to his ouster. See Adams, 46.

³⁰⁷ Adams, 46. See Fn. 31 above for more on this journal.

³⁰⁸ For more on the work of this council, see *Al-Manār*, viii. 407; Adams, 48.

³⁰⁹ For more details on the events surrounding ‘Abduh’s exile, see *Tarīkh*, ii., 528-29; Adams, 51-57.

which was entirely in Egypt, and knowing that Khayr al-Dīn never made it there during this time, it is improbable that there was any direct encounter between him and Khayr al-Dīn during these years. The window for such an encounter therefore narrows to sometime between 1883 and 1890. We can also confine the location for any possible encounter to that of Ottoman Turkey and Istanbul, knowing that Khayr al-Dīn had permanently settled there between 1878 until his death in 1890. The question thus becomes whether ‘Abduh made it to Ottoman Turkey and Istanbul during this time?

Having left Egypt in late 1882, ‘Abduh’s plans to find abode in Syria detoured to Beirut. He would reside in Beirut for about a year, until the beginning of 1884. While in Beirut, he had been in contact by letter with al-Afghānī; the latter having been in Paris since the beginning of 1883. Towards the end of 1883, ‘Abduh had received a letter from al-Afghānī telling him to come to Paris for purposes of working on what al-Afghānī dubbed as “the question of Egypt.”³¹⁰ By early 1884, ‘Abduh had left Beirut to join al-Afghānī in Paris. He would spend approximately the next ten months of 1884 in Paris working on *al-‘Urwah al-Wuthqā’* with al-Afghānī, while also making a couple of brief visits to England in between where he would meet with British high officials concerning conditions in Egypt and Sudan.³¹¹

‘Abduh and al-Afghānī would part ways at the end of 1884, largely as a result of the opposition they were encountering in publishing their controversial and provocative journal. It was during this time that ‘Abduh left for Tunis.³¹² ‘Abduh’s stay in Tunis was relatively brief, and it is reported that once he departed Tunis, he traveled incognito to a number of other countries, likely in North Africa, before entering Egypt towards the end of 1884 under secrecy and in disguise. His

³¹⁰ For more on the communication between ‘Abduh and al-Afghānī see *Al-Manār*, viii. 455; Adams, 58.

³¹¹ *Al-Manār*, viii. 458-61; Adams, 58.

³¹² Al-Afghānī would leave for Russia. *Al-Manār*, viii. 462; Michel, p. xxxv; *Tarīkh*, i. 380; Adams, 58.

plan was to make preparations there in anticipation of rejoining al-Afghānī in Sudan and purportedly with the larger agenda of “organiz[ing] the forces of the Mahdi as a means of freeing Egypt from the Occupation.”³¹³ The details of this time is not clear, but in any case, we know that by the beginning of 1885 ‘Abduh was back in Beirut.³¹⁴

‘Abduh would spend the next three and a half years in Beirut, and by all accounts he had much good fortune in terms of propagating Islam (*da‘wah*) and advancing religious education during this stay. His home there was frequently visited by scholars and students, as well as by people of all sects and faith traditions. By the end of 1885, he was appointed as a teacher in the Sulṭāniyyah School, and during his tenure there, he was able to improve the administration, revise the curriculum, and introduce courses in the Islamic sciences.³¹⁵

‘Abduh would travel to other parts of Ottoman territory during these three years between 1885 and 1888, including northeast of Beirut to Syria, but we have no detail that he made any visit to the Ottoman capital of Istanbul. What we do know is that ‘Abduh did have communication with the Shaykh al-Islam at Istanbul during these years. Whether these two met we are not explicitly told. However, ‘Abduh for certain had addressed two papers in 1886 on the subject of reform and the state of Islam in the Ottoman territories to the Shaykh al-Islam. These papers show that ‘Abduh had the utmost respect for the Shaykh and considered the preservation of the Ottoman Empire as a third fundamental belief after the belief in God and His prophet, for he saw it as the means by which the religion of Islam and its territories could be maintained.³¹⁶ Thus, given that ‘Abduh had

³¹³ Adams, 58; The account concerning ‘Abduh’s secret entry into Egypt in 1884 can be found in *Al-Manār*, viii. 462. See also Michel, p. xxxv; *Tarikh*, i. 380.

³¹⁴ He had left al-Afghānī to work on his own till the latter’s death. See Adams, 64.

³¹⁵ These courses included theology, law, ethics, and history. See *Al-Manār*, vii. 463; Adams, 64-5.

³¹⁶ Among the other matters that ‘Abduh addresses in these papers is the general ignorance that people in Ottoman territories had about Islam, which, he opined, consequently lead to the moral decay of Muslim society and blind following of certain deleterious foreign paradimes. See, Adams, 61-5.

an immense devotion to the Ottoman Caliphate, and that Istanbul was the hub of the empire that he was so devotedly committed to; given also that he was already in Beirut and relatively not far from this hub; and given that travel there shouldn't have been an issue, especially knowing that he was able and willing to journey to more distant regions such as in Europe and North Africa,³¹⁷ it would be rather odd that 'Abduh wouldn't have payed a visit to Istanbul. Yet, we have no specific evidence that he did. Whatever the case may be, 'Abduh would eventually leave Beirut for Egypt in the latter part of 1888 after having his exile lifted.³¹⁸

For the remaining two years that Khayr al-Dīn was alive in Istanbul from 1888 to his passing in 1890, 'Abduh was back in Egypt. This leaves us with the years 1883 and 1885 to 1888 as the only probable times that the two could have met. But the question remains that if they had indeed met, why then do neither of them make any mention of it, anywhere, whether publicly or in their writings? Presuming that they did meet, and that neither had made mention of it, we can perhaps speculate and offer the following reasons for this.

To begin with, the notion that a meeting between Khayr al-Dīn and 'Abduh would have been a momentous occasion that should have been somehow recorded at the time is to a large extent our own projection that such an encounter was noteworthy for that time; a projection informed by the legacies we have adopted of them. Put differently, and in addressing why perhaps such a meeting(s) may not have been noteworthy and drawn any attention, we need to disassociate the popular legacies we have of them posthumously from what their meetings realistically meant at that time. Doing so allows for a more fair characterization of their possible encounter at that time, which realistically may have been nothing beyond the ordinary and therefore unnoteworthy.

³¹⁷ During the interim of six years since he had left Egypt, he had travelled in several European countries. He also made it to many Muslim lands. See *Al-Manār*, viii. 465; *Tarīkh* ii. 421-58, iii. 84; Adams, 66-7.

³¹⁸ At this point, Khedive Ṭawfīq Pasha had secured pardon for him, with mediation coming from a number of influential persons, including Lord Cromer. See *Tarīkh* ii. 421-58; Adams, 66.

Moreover, if we consider the fact that there were other several like-minded and influential reform thinkers around them in that nineteenth century reform scene, then it is also reasonable to presume that they or any around them saw nothing eventful or special about such meetings; meetings of which were perhaps all too common within that circle.

6:3 | Parallels between the Reformist Thought of Khayr al-Dīn and ‘Abduh

That Khayr al-Dīn and ‘Abduh belonged to the same intellectual and cultural world, and that their vision and renewal programs for Muslim society so closely aligned, it would be almost unimaginable that the two were not familiar with each other. As Hanna and Gardner remark, “it is inconceivable that Muḥammad ‘Abduh could have been unaware of him as a major figure in the reform movements, as well as the interactions with Europe, that surged back and forth through Islamic Ottoman society during this period.”³¹⁹ As we have already mentioned, that neither makes mention of the other in their writings in no way rules out that they were familiar with each other and that there had been some influence between them.

The most obvious—though by no means conclusive—testament to a Khayr al-Dīn-‘Abduh connection is their corresponding thought. Both gave reason a central role that would be coupled with an absolute confidence in Islamic solutions to modern day issues. Both had tremendous respect for and greatly valued Western civilizational achievements, believing it incumbent upon Muslims to learn from these achievements in advancing their own society. Both believed that any meaningful reform to the state apparatus began from the ground up and with an unwavering commitment to the educational reform of the masses and of the youth in particular. Both were unabashed advocates for navigating through Islamic scholarly tradition to sift through and weed

³¹⁹ Hanna, 26.

out non-essential or anachronistic opinions that conflicted with or belied focus on the major objectives of the present. All this they shared in common, but more interestingly was that all of this was also well in line with and reflected the philosophical outlook presented in the thought of Abū Ishāq al-Shāṭibī. No doubt, the nineteenth century Muslim world shared much in common with al-Shāṭibī's fourteenth century Andalusia, but were the similitudes in the thought of these three figures just a coincidence, or could the notion of a Shāṭibī-Khayr al-Dīn-ʿAbduh link be a possibility that historians have ignored to render?

ʿAbduh and Khayr al-Dīn's *Masālik*

If Khayr-Dīn and ʿAbduh had not met, and if ʿAbduh had been influenced by Khayr al-Dīn, then how exactly would this influence have come about. There may have been several avenues in this regards. We have already mentioned that al-Afghānī was in Istanbul during the same time (1871) that Khayr al-Dīn was there, and that not long afterward al-Afghānī would return to Egypt, at which point he and ʿAbduh would have their longest continuous time of study together, a period spanning eight years. But beyond this probable link through al-Afghānī is perhaps another more conceivable and likely means by which ʿAbduh's thought is impacted by Khayr al-Dīn; through access to the latter's *Masālik*.

Khayr al-Dīn's *Masālik* was originally written in Arabic in Paris and published in Tunis in 1867, and a French translation of it would be published in Paris in 1868. There would also be an English edition of it published in Athens in 1874, a second French edition in Paris in 1875, an Arabic edition published in Istanbul in 1876, followed by a Turkish edition in the same location in 1878, and an Arabic edition published in Egypt in 1881 right about the time of the ʿUrābī revolt in

Egypt (1881-1882).³²⁰ What does all this mean? It means that ‘Abduh had plenty of opportunity to get hold of it, or at least to learn about its contents. But at which point, we are not certain; and the possibilities are many. The earliest possible information on its contents, or perhaps a copy he may have received, could have been through al-Afghānī in his return trip from Istanbul in 1871, assuming that al-Afghānī would have been familiar with it or picked it up from there and through the author himself. ‘Abduh may otherwise have had access to the Egyptian edition that came out in 1881, a year before his six year exile. It is imaginable that copies—in French and Arabic—could have been in Beirut upon ‘Abduh’s arrival there in 1882. We know that there was already an Arabic and French edition of *Masālik* in Paris upon ‘Abduh’s arrival there in the early part of 1884. And of course, he could have picked up a copy of the Tunis edition upon his arrival there towards the end of that same year.

If Khayr al-Dīn and/or his *Masālik* prompted ‘Abduh’s visit to Tunis, then ‘Abduh must have been familiar with Khayr al-Dīn and his work prior to his 1884 Tunis visit. Moreover, ‘Abduh’s reform ideas—virtually identical to those of Khayr al-Dīn’s—were beginning to take shape and be disseminated to the public around the late 1870s and early 1880s. Therefore, ‘Abduh would have had to have been familiar with Khayr al-Dīn and his work at least by this time, which, based on all we know concerning the publication dates of the *Masālik*, is very plausible. Adding more credence that it was around this time, and specifically the year 1881 (the year of the *Masālik*’s Egyptian publication), that ‘Abduh had access to and was inspired by Khayr al-Dīn’s *Masālik* are the ‘Urābī events which also took place at this time, and of which ‘Abduh was caught up in the center of. What is suggested here is that it was by no mere coincidence that Khayr al-Dīn’s

³²⁰ Besides these editions, there have been two other editions, one in English in the United States in 1967 and the other in Arabic in Tunis in 1972. For more on all of these editions see Hanna, 27. For details on the Egyptian edition see Al-Huṣṣry, op. cit., p. 37, fn. 9.

Egyptian edition of his *Masālik* appears right at the time of these revolutionary events of which ‘Abduh had played a role. Rather, it is very well plausible that the *Masālik* had provided ‘Abduh and others the inspiration in bringing the reformist spirit to life. This view is also taken up by Hanna and Gardner, who remark:

It is unreasonable, in our view, to suppose that there was no connection between the appearance of Khayr al-Dīn's book and this effort on the part of Egyptians to achieve reform. *Al-Masālik* must have provided a contribution to a movement which was attempting to implement any of its theoretical recommendations. Muḥammad ‘Abduh surely made the acquaintance of the book at this time.³²¹

What makes this view still tenuous in affirming, however, is the still lingering fact that reference to the *Masālik* does not appear in any of ‘Abduh’s writings. But are there other leads?

6:4 | Rifā‘ah Rāfi‘ al-Ṭaḥṭāwī: A Key Link between ‘Abduh, Khayr al-Dīn and al-Shāṭibī’s Thought

There is another lead that may well seal the deal in showing that indeed Khayr al-Dīn not only had a profound impact on modern Egyptian reformist thought, but that he was a germinal link in a chain of reformers extending to ‘Abduh and others, and that he may have been the key link between al-Shāṭibī’s thought and the modern world. This lead comes in the person of Rifā‘ah Rāfi‘ al-Ṭaḥṭāwī³²² (1801-1873), another Egyptian reformer we have yet to consider and who not only had access to Khayr al-Dīn’s *Masālik*, but deemed it crucial to a reform program for Egypt.

³²¹ Hanna, 41.

³²² There is yet to be a comprehensive study of al-Ṭaḥṭāwī, but there are a few works that offer substantial treatment of certain aspects of his life and thought. These include P. J. Vatikoti. *The Modern History of Egypt* (New York: Praeger, 1976); James L. Gelvin. *The Modern Middle East: a History*. Oxford: Oxford University Press, 2005; Daniel Newman. *An Imam in Paris: Al-Ṭaḥṭāwī's Visit to France (1826–31)*, London: Saqi Books, 2004; Albert Hourani.

Before elaborating further on the Ṭaḥṭāwī-Khayr al-Dīn connection, it is worthwhile here to offer some background detail on al-Ṭaḥṭāwī, an understudied figure relative to other more famous modern reformist thinkers. Al-Ṭaḥṭāwī's early career and experiences abroad in Western lands proved to be significant in shaping the reform ideas he would later develop and which would have an impact on modern Egyptian reformist thought. Having stood out for his mature academic and intellectual abilities while a young student at al-Azhar, al-Ṭaḥṭāwī had been appointed at the age of twenty-five to lead and offer religious guidance to a group of Egyptian students for study abroad in Paris in 1826, a program initiated at the behest of then Khedive of Egypt Muḥammad 'Alī. Al-Ṭaḥṭāwī would spend the next five years there immersing himself in European culture and advancing his knowledge of European scientific and intellectual contributions, before returning to Egypt in 1831.³²³ Having gained valuable knowledge and experience from his time in Europe, what followed for al-Ṭaḥṭāwī was a commitment to bringing reform to Egypt and a career devoted to modernizing its infrastructure and education; much of which he expounded on in his writings as well as through his translations of Western works. Two especially significant works of his which would have a great impact on the modernization reform project in Egypt were his *Takhlīs al-ibrīz* (1834) and *Manāhij al-albāb al-Miṣriyyah* (1869).

It is the latter work that is quite revealing in regards to a link to Khayr al-Dīn as well as al-Shāṭibī. Al-Ṭaḥṭāwī pens *Manāhij al-albāb al-Miṣriyyah*, which is first published in Egypt in 1869, shortly after Khayr al-Dīn's 1867 Arabic publication of the *Masālik* in Tunis and its subsequent 1868 French publication in Paris. Fortunately, the original manuscript of al-Ṭaḥṭāwī's *Manāhij* is

Arabic Thought in the Liberal Age 1798-1939. (London, New York, Oxford University Press, 1962); and Ibrahim Abu Lughod. *Arab Rediscovery of Europe*. (Princeton, N.J., Princeton University Press, 1963).

³²³ Among the subjects that al-Ṭaḥṭāwī would study in Paris include political and social theory, ethics, and mathematics. Among his philosophical readings included those by Montesquieu, Rousseau, and Voltaire. See, Vatikiotis, P. J. *The Modern History of Egypt*, p.113.

held by this author's host institution library at the University of Michigan, Ann Arbor.³²⁴ In it, we find some elucidating references to Khayr al-Dīn and his *Masālik* that undoubtedly illustrates the latter's influence on al-Ṭaḥṭāwī's reform ideas. But what is even more intriguing is the striking correspondence we find in both al-Ṭaḥṭāwī's and Khayr al-Dīn's thought to al-Shāṭibī's vernacular on *maqāṣid* and *maṣlaḥah*. The possible link of either of these figures to al-Shāṭibī is being made here for the first time. As we will demonstrate, there is strong evidence through al-Ṭaḥṭāwī to suggest that there was a chain of ideas and thought that was rooted in al-Shāṭibī and which ran down through Khayr al-Dīn, al-Ṭaḥṭāwī, 'Abduh and subsequent reform thinkers of the twentieth century; including 'Abd Allāh Darrāz and Ibn 'Āshūr.

A link between al-Shāṭibī, Khayr al-Dīn, al-Ṭaḥṭāwī, and eventually 'Abduh is strongly suggested in one particular passage of the *Manāhij*.³²⁵ In it, al-Ṭaḥṭāwī gives discussion to what would now be referred to in contemporary Islamic legal parlance as *fiqh al-wāqī'* (practical jurisprudence). *Fiqh al-wāqī'* essentially considers contextual matters such as time and place to be important informing factors in the juridical process. While the term *fiqh al-wāqī'* as a technical

³²⁴ The full bibliographic record for the 1869 publication is Rifā'ah Rāfi' al-Ṭaḥṭāwī, *Manāhij al-albāb al-Miṣriyyah*. Būlāq: al-Maṭba'ah al-Miṣriyyah, 1286 [1869]. A copy of the original manuscript held by the University of Michigan—Ann Arbor is available online through Hathi Trust, Princeton University Arabic collection; cn. 9302384.03; Phase II.

³²⁵ There are other passages in al-Ṭaḥṭāwī's *Manāhij* which convey his advocacy for *maṣlaḥah* and which illustrate Khayr al-Dīn's influence on his thought. For example, in speaking about the wonders of European contributions, and noting their relevance in addressing matters pertinent to Muslim society, al-Ṭaḥṭāwī states: "The inventions of this era, accepted by rulers as well the ruled, are among the noblest fruits of the mind, being inherited from generation to generation. They are purely beneficial for people's happiness as well as the development of a country. . . The discussion of these inventions, together with other marvelous and useful things, is explained in *Aqwām al-masālik fī ma'rifat aḥwāl al-mamālik* by the political expert [*Hākīm as-Siyāsah*] Khayr ad-Din Pasha. . . The things he brings out in his book are also relevant to our Egypt and show the effectiveness of action over mere talking." Al-Ṭaḥṭāwī, *Manāhij*, 442 (Trans. from Hanna, 33); Elsewhere, al-Ṭaḥṭāwī writes: "One of the things which any intelligent person [*yanbaghī lil-'āqil*] should remember is the fact that Muslim rulers, although numerous, should unite as the heart of one man in promoting the greatness of Islam [*ubbahat al-Islām*]. They should also be concerned with developing Muhammadan nations through attention to useful sciences and public welfare in order for the Muslim countries to reach the highest level of perfection. It is preferable [*illā anna al-awlā*], however, to speed up this process through the easy approach presented in *Aqwām al-masālik*." Al-Ṭaḥṭāwī, *Manāhij*, 444 (Trans. from Hanna, 33).

legal concept has only recently been in circulation—in late twentieth century Islamic legal discourse—the reality of its stated meaning is typically considered by contemporary Muslim jurists to go back to the early Islamic period, beginning with the Prophetic era and continuing on into the era of the rightly guided caliphs. The notion of a *fiqh al-wāqī'* is also clearly demonstrated in the legal thought of some medieval thinkers. No more is it explicit than in the thought of al-Shāṭibī, who had arguably been its principal proponent and who had developed the definitive theoretical framework in expounding on its applicability. For al-Shāṭibī, it was absolutely imperative that jurists and specifically those engaged in *ijtihād* possess a thorough understanding of the objectives of the law (*maqāṣid*), and knowledge of the conditions and sensibilities pertaining to time, place and people. These he deemed to be crucial as criteria for *ijtihād*, which 'uṣūlī scholars had generally failed to stipulate in delineating the qualifications of a *mujtahid*. Al-Shāṭibī held that without this knowledge, the consequences or outcomes of legal rulings or *ijtihād* could be severely detrimental. In explicating on the importance of this knowledge in attaining sound rulings, he says:

Heeding the outcomes of actions is consistent with the higher objectives of the Law, whether the actions concerned are in accordance with the Law or in violation thereof. Therefore, the person engaging in *ijtihād* is not to judge a human action, be it one of commission or omission, until after he has given careful thought to the consequences to which the said action will lead.³²⁶

Al-Shāṭibī thus implored the legal community to consider the outcome of their rulings and that they be in accordance with the higher objectives of the law. Part and parcel to the consideration of a ruling's outcome was being acutely aware of how time, place, and people inform that outcome.

³²⁶ Shāṭibī, *al-Muwāfaqāt*, 3:376; Raysuni, 359 (Trans. Nancy Roberts).

This line of thinking was illustrative of al-Shāṭibī's overall philosophy that essentially attempted to inculcate a healthy symbiosis between the human dimension of reflection and thoughtful reasoning on the one hand, and recognition of the divine authority of revelation on the other hand.

Al-Ṭaḥṭāwī's strong endorsement of and appeal for a *fiqh al-wāqī'* is not only markedly demonstrated in several passages of his *Manāḥij*, but one specific passage poignantly captures a distinctly "Shāṭibīan" approach towards the concepts of *maqāṣid* and *maṣlaḥah*; an approach that is ultimately picked up by Khayr al-Dīn. In this passage, al-Ṭaḥṭāwī states:

Contemporary demands and interactions (*mu'āmalāt*) have necessitated (*'iqtāḍat*) the sifting (*tanqīḥ*) of laws and regulations and bringing them into harmony with the mood (*mizāj*) of the time; yet avoiding deviancy. Indeed the present situation demands that laws and regulations should be in harmony with the times (*al-'aṣr*) due to the many divergences in the give and take among the nations of the world, ... Over time the Imams have differed with each other over many things but each one spoke according to the realities of his time (*bi-ḥasab al-wāqī' fī zamānih*). This same principle was applied by the genius of his time (*nādirat 'aṣrih*) Khayr ad-Dīn Pāsha, the Tunisian, who mentioned in his book, *al-Masālik fī ma'rifat aḥwāl al-mamālik*, things not mentioned by others. He advised the people of all Islamic countries concerning matters of which Islam could never deny the value.³²⁷

This passage is quite revealing of several aspects to al-Ṭaḥṭāwī's and by extension Khayr al-Dīn's thought, and their connection to al-Shāṭibī's thought.

³²⁷ Al-Ṭaḥṭāwī, *Manāḥij*, 387-92. I have translated *'iqtāḍat* here as "have necessitated," as opposed to the rendering "require" which Hanna has on p. 33.

To begin with, al-Ṭaḥṭāwī’s statement that there should be a “sifting of laws and regulation,”—which we can reasonably infer to include the tradition of previous scholarly output, including its rulings, fatwās, views, and opinions—is indicative of an approach that in effect does not seek to break away from that tradition but rather attempts to be inclusive of it where it can be, and where circumstances wouldn’t necessitate otherwise. For if the approach was to break away from that tradition, then al-Ṭaḥṭāwī could have simply expressed direct engagement with the Qur’ān and Sunnah without any consideration or “sifting” of that which is existing. In other words, he could have articulated a circumvention of scholarly tradition across generations, of which he doesn’t. Moreover, and as a testament that he sought to find a place for this scholarly tradition in his reformist ideas, we find throughout the *Manāḥij*, as we have already alluded to, referencing of numerous medieval scholars spanning a variety of schools and trends.

Al-Ṭaḥṭāwī’s statement, however, that these laws and regulations should be brought “into harmony with the mood (*mizāj*) of the time,” is also a clear stance affirming that scholarly tradition will not be blindly followed.” Al-Ṭaḥṭāwī is willing to depart from this tradition if need be. To what extent will it not be followed is answered in his saying that “contemporary demands and interactions (*mu’āmalāt*) have necessitated (*‘iqtadāt*)” it, and elsewhere stating that, “indeed the present situation demands that laws and regulations should be in harmony with the times (*al-‘asr*) due to the many divergences in the give and take among the nations of the world.” In other words, existing positions will not be followed as long as contextual circumstances have necessitated an alternative approach, with the key word here being *necessitated* (*‘iqtadāt*). The *maqāṣid* and *maṣlaḥah* informing concepts of necessity and avoiding harm clearly come through here.

But before thinking that al-Ṭaḥṭāwī here is simply handing over the reins to these “contemporary demands,” he qualifies his remarks with a significant matter of exception, one

which affirms an unwavering commitment to preserving orthodoxy. Al-Ṭaḥṭāwī states that whatever the case maybe in terms of “contemporary demands...deviancy should be avoided.” Here he is treading carefully between established authoritative positions and the need for change, and is attempting to put forward what he likely perceives to be the most reasonable and reconciliatory position between tradition and modernity. Put differently, tradition is relevant and a key player, but where we find those aspects of tradition that can be determined to be applicable or specific to a certain time and/or people, then we must be bold enough to reconsider matters for the current time and/or people but without deviating from the overall integrity of tradition including its core beliefs, values, principles, and objectives.

Al-Ṭaḥṭāwī then continues, in anticipation of critics who might lash out at his approach and accuse him of being a deviant dissenter of time honored tradition, to bring to his aid that very same tradition to defend his views. He says: “Over time the Imams have differed with each other over many things but each one spoke according to the realities of his time (*bi-ḥasab al-wāqi‘ fi zamānih*).” In other words, the idea that consideration of time, place, and people can be informing constituents that may necessitate a fresh look into the application of laws and regulations is an idea that is not new in Muslim scholarly tradition, but in fact, scholars throughout this tradition have done likewise. Al-Ṭaḥṭāwī’s narrative of the historical Islamic tradition is one where reason and revelation form a symbiotic relationship, but where ultimately revelation, through its objectives or *maqāṣid*, takes primacy.

What makes this passage distinctly Shāṭibīan is its attempt to walk that tight rope and find that balance between honoring and preserving tradition while at the same time adapting to change where necessary and without comprising the integrity of Islam. Al-Ṭaḥṭāwī’s concern of “avoiding deviancy” is a recognition that there are certain universals which are constant and unalterable. Yet,

his view that scholarly output may be predisposed and partial to the circumstances of time, place, and people is also a recognition that there are particulars in tradition that may need to be reinterpreted with the passing of generations. These ideas are in fact distinctly Shāṭibīan, for al-Shāṭibī became the vanguard for the notion that the *Sharī‘ah* was comprised of universal rulings which were immutable, and particular rulings which could be reinterpreted and readapted out of necessity and according to the changing circumstances of time, place, and people. Al-Shāṭibī, moreover, held that these alterable particulars were legitimately rooted in the *Sharī‘ah* because, and ultimately, their alterability was out of the necessity or need for *maṣlahah*, and *maṣlahah* in return was a universal and fundamental objective (*maqṣid*) of the *Sharī‘ah*.³²⁸ These same ideas, as will be shown later, were picked up by twentieth century thinkers including the notable scholar and *maqāṣid* thinker Ibn ‘Āshūr.

6:5 | Al-Ṭaḥṭāwī Offers Further Evidence to a Khayr al-Dīn—al-Shāṭibī Connection

Al-Ṭaḥṭāwī then tells us at the end of this passage that these ideas were “applied by the genius of his time (*nādirat ‘aṣrih*) Khayr al-Dīn Pāsha, the Tunisian, who mentioned in his book, *Aqwām al-masālik fī ma‘rifat aḥwāl al-mamālik*, things not mentioned by others. He advised the people of all Islamic countries concerning matters of which Islam could never deny the value.” Not only is al-Ṭaḥṭāwī here giving all the credit for these ideas to Khayr al-Dīn, undoubtedly affirming the latter’s influence on him, but, and more significantly, he is claiming for Khayr al-Dīn the novelty of these ideas and of disseminating them to Muslim regions everywhere, of which

³²⁸ The principle of *maṣlahah* for Shāṭibī was especially affective in dealing with such particular matters which the primary sources did not specifically address, or in which a new particular matter seemed to conflict with a previously ruled upon particular matter. Thus, *maṣlahah* itself became a universal objective upon which particular matters were considered and ruled. For more on Shāṭibī’s theory of *maṣlahah* and *maqāṣid*, see Ibrāhīm b. Mūsa al-Shāṭibī, *al-Muwāfaqāt fī uṣūl al-Sharī‘ah*, 4 vols. (Cairo: Dar al-Fikr al-‘Arabi, n. d.), vol. 1, 29-41; vol. 2, 283-6, 297-8, 396, 409-13; vol. 3, 9-18, 56, 64-77, 261-2, 366-8, 406, vol. 4, 20-2, 194-5, 299-302.

none other from that era had done before. If we take al-Ṭaḥṭāwī at his word, then the implications are quite consequential. In short, al-Ṭaḥṭāwī's statement would give us every reason to believe that Khayr al-Dīn was a key link to and the modern world's progenitor of al-Shāṭibī's *maqāṣid* and *maṣlaḥah* thought.

There is every reason to accept al-Ṭaḥṭāwī's remarks here at face value and to not dismiss them as mere rhetoric, especially given what we know of his career. What especially gives weight to his statement that Khayr al-Dīn was singularly responsible for these ideas during that time is that al-Ṭaḥṭāwī himself was both an Azharite of high regard who was well-familiar with the Islamic scholarly tradition, and an *adīb* who was well-read in both Modern and Classical Middle Eastern and Western literature.³²⁹ As such, he would have been well positioned and qualified to make an assessment of Khayr al-Dīn's thought within the broader context of the intellectual milieu of his time as well as the Islamic intellectual heritage as a whole.

That there is no mention of al-Shāṭibī in his work and in his specific discussion on *maṣlaḥah* and *fiqh al-wāqī'*, of which al-Shāṭibī would have certainly been a most relevant voice to offer, is further indicative that al-Shāṭibī's work was obscure and absent from Islamic legal discourse for much of that period and likely several generations preceding it. It would tell us, furthermore, that it was not popular at one of the preeminent Islamic institutions of learning, Azhar, concurring with the fact that it is not identified in the Azharī curriculum until the late modern

³²⁹ We have already mentioned that al-Ṭaḥṭāwī was a standout at Azhar, which led to him being handpicked by the then pāsha Muḥammad 'Alī from among many Azharites to offer religious guidance for students who were sent abroad to Paris. His strong familiarity with the Islamic scholarly tradition is demonstrated in his *Manāḥij*, where he navigates through the works and thought of numerous classical and medieval scholars. Al-Ṭaḥṭāwī's published works include several writings on modern literature, political thought, history of Egypt, Arabic linguistics, a biography of the Prophet Muhammad, and several translations of modern European literature and Western classics. For more on the life, thought and works of al-Ṭaḥṭāwī see Daniel Newman, *An Imam in Paris: Al-Ṭaḥṭāwī's Visit to France (1826–31)*, London: Saqi Books, 2004. See also Newman's forthcoming work *Rifā'ah al-Ṭaḥṭāwī: A Nineteenth-Century Egyptian Educationalist and Reformer*, Edinburgh University Press, 240 pp.

period and well after ‘Abduh’s lifetime. And if it was not relevant at al-Azhar, nor—as we have already mentioned—at the famed Zaytūnah of Tunis, then it was likely not popular anywhere else. All of this lends credence to the thesis that al-Shāṭibī’s work was marginalized and all but forgotten for some five centuries after his death, and that it would not be until well into the modern period that it would begin to become relevant, further supporting the claim that the 1884 publication of *al-Muwāfaqāt* was the first publication and reappearance of his work.

We thus have it that at least some of al-Ṭaḥṭāwī’s ideas on *maṣlaḥah* were taken directly from Khayr al-Dīn. And that these ideas have a particular Shāṭibīan bend to them lends credence to the possibility that Khayr al-Dīn was familiar with and had access to al-Shāṭibī’s thought before the 1884 Tunisian publication of *al-Muwāfaqāt*. There is, however, another piece of evidence found also in al-Ṭaḥṭāwī’s *Manāḥij* that would suggest an additional source to al-Ṭaḥṭāwī’s application of *maqāṣid* and *maṣlaḥah*. This evidence runs across several pages of discussion on matters of *taqlīd*, *tafṭīq*, and the permissibility of taking a fatwā from beyond the four mainstream Sunni schools of law. It is worth examining in more detail here al-Ṭaḥṭāwī’s discussion, as it reveals not only the premodern scholars that may have also influenced his thought, but it additionally illustrates his recognition of the importance of establishing traditional authority in general and in making a case for the idea of a *fiqh al-wāqī‘* in particular.

Al-Ṭaḥṭāwī opens his discussion by stating that the “differences among the ulema is a mercy,” and advocates for unity in diversity.³³⁰ He moreover deems the body of diverse opinions found within previously scholarly tradition to be a vital frame of reference and starting point for the ulema of the present and prior to any engagement with new *ijtihād*, stating that “it is recommended to go back to them,” i.e., the scholarly positions of the past.³³¹ These anchoring

³³⁰ Al-Ṭaḥṭāwī, *Manāḥij*, 388.

³³¹ *Ibid.*

statements to the discussion that al-Ṭaḥṭāwī will proceed to offer decisively reaffirm his stance that there should be a meaningful place for traditional authority in thinking about the modern context; an important pretext to get across lest anyone question his loyalty to tradition, for what he is about to breach will likely ruffle the feathers of certain camps, particularly those who champion rigid *taqlīd*.

Al-Ṭaḥṭāwī goes on to probe the boundaries of *taqlīd*, and puts forth the following inquiries: the permissibility of going outside of one's *madhab* for a fatwā, the permissibility of going outside the four main Sunni schools of law, and the permissibility of adopting a weak fatwā. Al-Ṭaḥṭāwī proceeds to address each of these, relying heavily on the opinions and references of the notable Shāfi'ī scholar Badr al-Dīn Muḥammad al-Zarkashī (d. 1392) and his work *al-Baḥr al-muhīt fī uṣūl al-fīkh*.

Al-Zarkashī's default position on the schools of law in Islam adheres to the common traditional Sunni view, that:

There is a consensus amongst the Muslims that the truth is restricted to these (four) schools. As such, it is not permitted to act upon an opinion from other than them. Nor is it permitted for *ijtihād* to occur except within them (i.e. employing their principles that is the tools of interpretation).³³²

With respect to a follower of a particular school among these main schools going outside their particular school to take an opinion of another of the main schools, al-Zarkashī gives general caution against this. However, he determines that it may be permissible in certain circumstances and within certain conditions. The foremost of these is that the intent of the follower (*muqallid*), in seeking an opinion from the other established schools, be out of a necessity or need for a

³³² Ibid., Al-Ṭaḥṭāwī cites al-Zarkashī, vol.6, p.209.

dispensation (*rukḥṣa*) on a particular matter where the original school has either not addressed, or, and if addressed, poses a hardship for the follower of that original school. Ṭaḥṭāwī goes on to mention one of al-Zarkashī's main concerns in his general cautioning against taking from another school, which is that the follower makes a habit of this and falls into the danger of creating a unique ruling that is devoid of any epistemological and methodological integrity of any of the schools. Al-Zarkashī also cites the Mālikī school position on this matter, which concurs with his own position.³³³

In regards to the matter of going beyond the main four schools for a fatwā, the first specific context that al-Zarkashī refers to is whether it is permissible or not to follow the *ijtihād* of the Companions. Al-Zarkashī tells us that there is disagreement (*iktilāf*) on this matter among the ulema. He cites al-Juwaynī as saying that it is not permitted for commoners to follow the *ijtihād* of the Companions. He then, in citing Ibn Ṣāliḥ³³⁴, expands the context, and tells us that Ibn Ṣāliḥ not only affirmed al-Juwaynī's position, but included the impermissibility of the commoner to follow the *ijtihād* of the generation after the Companions (*tābi'īn*) or anyone else for that matter whose positions are not affirmed within the established schools. The reason for this is due to epistemic concerns. More concretely, Ibn Ṣāliḥ held that the *fatāwā* and *ijtihād* of those not represented within the established schools (i.e., not adhering to their methodologies) are prone to being incomplete and/or contextually specific, making them unreliable as a sound source. Al-Zarkashī then reiterates that *taqlīd* should be limited to the four main schools, but also includes

³³³ Al-Ṭaḥṭāwī, *Manāḥij*, 388-89.

³³⁴ Ibn Ṣāliḥ was an influential scholar of *ḥadīth* and jurist of the Shafī'ī school.

here the *fatāwā* and *ijtihād* of al-Awzā‘ī³³⁵ (d. 157/774), al-Thawrī³³⁶ (d. 161/778), Iṣḥāq³³⁷, and Abū Dawūd³³⁸ (d. 275/889), with there being disagreement on Abū Dawūd.³³⁹

Al-Zarkashī then goes on to mention the other position regarding taking a *fatwā* from other than the four main schools. Referring specifically again to the context of following the *ijtihād* of the Companions, he states that others, including the famous ‘Izz al-Dīn b. ‘Abd al-Salām al-Sulamī (d. 660/1263), permitted it as long as the evidence comprising their *fatāwā* and *ijtihād* was identifiable. It is this position that al-Ṭaḥṭāwī inclines to, saying that “*taqlīd* should not be limited to the four [mainstream Sunni] schools, but God knows best.”³⁴⁰ Al-Ṭaḥṭāwī then brings into the discussion here a point of contention among scholars in regards to taking opinions from the Zāhiriyyah school. Al-Juwaynī is among those who do not permit it, while Tāj al-Dīn al-Subkī (d. 771/1370) holds that the positions of Ibn Ḥazm and others of the Zāhiriyyah school are certainly valid.³⁴¹

Al-Ṭaḥṭāwī closes his discussion by reiterating what he believes to be the *bona fide* position, which is that “seeking *fatāwā* outside the four schools is permissible in cases of necessity

³³⁵ Abū ‘Amr ‘Abd al-Raḥmān b. ‘Amr al-Awzā‘ī was a scholar of *ḥadīth* (*muḥaddith*) and founder of a school of jurisprudence which had followers in Syria and al-Andalus until the 4th/10th century.

³³⁶ Sufyān ibn Sa‘d al-Thawrī was of the generation after the Companions (*tābi‘*), a compiler of *ḥadīth*, and founder of a school of jurisprudence which did not survive (though it has influenced all the major schools of jurisprudence).

³³⁷ It is not clear which “Iṣḥāq” al-Zarkashī is referring to here. He may be referring to Muḥammad ibn Iṣḥāq, a noted author of one of the earliest substantial biographies of the Prophet Muḥammad. He was also a compiler of *ḥadīth*. Controversy, however, surrounds the manner of his *isnāds*. As such, notable jurists such as Aḥmad ibn Ḥanbal rejected his narrations on all matters related to jurisprudence. See J. M. B. Jones (1968). “ibn Iṣḥāq”. *Encyclopaedia of Islam* 3 (2nd ed.). Brill Academic Publishers. pp. 810–11.

³³⁸ Abū Dawūd Sulaymān ibn al-Ash‘ath al-Azdī al-Sijistānī was a noted compiler of one of the six “canonical” Sunni *ḥadīth* collections which is commonly referred to as *Sunan Abū Dawūd*. He was primarily interested in jurisprudence, hence his collection is largely composed of legal *aḥadīth*. He followed the Ḥanbalī school of law, though there is disagreement of whether he was a *mujtahid* in his own right.

³³⁹ Al-Ṭaḥṭāwī, *Manāḥij*, 389.

³⁴⁰ *Ibid.*,

³⁴¹ *Ibid.*, 390. Al-Ṭaḥṭāwī states that al-Subkī here praises Dawūd, calling him “a mountain of knowledge and piety,” and that Shīrāzī mentions him in his *Ṭabaqāt*, while the famed legal jurist al-Qāḍī ibn al-‘Arabī (d. 543/1148) took from him.

(*darūra*) and where the evidence is sound and verifiable,” with the *fatāwā* of the Companions being the obvious starting point where one turns to—assuming that there is no conflict with an explicit statement of the Qur’ān and Sunnah.³⁴² He then goes on to offer ruminations which attempt to put into perspective and explain why certain scholars may have been more inclined than others to offer dispensations, and why there may have been variances in the rulings of scholars historically, where a given issue could produce a whole gamut of opinions, judgments, and rulings, ranging from those that were more stringent or conservative, to those that appeared accommodating or less restrictive. He says:

The ruling on making judgments more strict or lenient depends on the circumstances of the time. The proof is in what al-Suyūṭī says in *Kitāb al-inṣāf fi tamyīz al-awqāf*. He says that if you ponder on the *fatāwā* of al-Nawawī and Ibn Ṣāliḥ, you would find that they are strict when it comes to their rulings. But if you look at the *fatāwā* of al-Subkī and al-Balqīnī, and others who came later, you will find that they gave more legal dispensations and made things easy on people. And this is not that they disagreed with al-Nawawī, but rather, it is that everyone is speaking, acting and ruling according to the realities and context of their time.³⁴³

It is thus the idea of a *fiqh al-wāqi‘* and its operating tools of *maṣlaḥah* and *maqāṣid* that al-Ṭaḥṭāwī in retrospect finds to have prevailed historically and to have induced—to a great extent—a rich and pluralistic legal tradition. It is this same tradition that al-Ṭaḥṭāwī finds essential to carry forward in engaging with modernity.

³⁴² Ibid. Abū Zakaria Muḥī al-Dīn Yaḥya ibn Sharaf al-Nawawī (d. 676/1277), Taqī al-Dīn al-Subkī (d.756/1355) (as well as his son Tāj al-Dīn al-Subkī (d. 771/1370)), Sirāj al-Dīn Abū al-Ḥafs al-Kinānī al-Balqīnī (d. 805/1403), and Ibn Ṣāliḥ were all influential scholars of *ḥadīth* and jurists of the Shafī‘ī school.

³⁴³ Ibid.

Al-Ṭaḥṭāwī had thus relied on established authority, through al-Zarkashī’s work and the opinions of traditional ulema cited therein, to show that necessity could validate the taking of a dispensation from another of the mainstream schools or even—and when obtained through sound *ijtihād*—from beyond the four schools. Conveying this was certainly decisive for al-Ṭaḥṭāwī, as being able to secure traditional evidence for a *fiqh al-wāqi‘* was crucial to rallying the support of the conservative and traditionally minded camps among his contemporaries. It is at this point, following the above referenced passage, that al-Ṭaḥṭāwī then references Khayr al-Dīn with praise for advocating for the notion of a *fiqh al-wāqi‘*. And it is here, as we have already mentioned, that al-Ṭaḥṭāwī credits Khayr al-Dīn with the idea of a *fiqh al-wāqi‘* for their time and for promoting it amongst the Muslim nations.

Is it possible that al-Ṭaḥṭāwī may have picked up ideas on *maqāṣid* and *maṣlaḥah* from two notable figures associated with these concepts, namely al-Juwaynī and ‘Izz al-Dīn b. ‘Abd al-Salām³⁴⁴, whose reference of are included in his extrapolation of al-Zarkashī’s writing on this subject? Both were specialists in the area of *uṣūl al-fiqh*, and both made significant contributions to thought on *maqāṣid* and *maṣlaḥah*, with al-Juwaynī being famous for his tripartite division of necessities (*darūriyyāt*), needs (*ḥājjiyyāt*), and embellishments (*taḥsīniyyāt*), while ‘Izz al-Dīn b. ‘Abd al-Salām having authored his renowned work *al-Qawā‘id al-aḥkām*, which deals extensively with *maqāṣid*, *maṣlaḥah*, and *illah* (effective cause). But that al-Ṭaḥṭāwī only mentions them in passing and through al-Zarkashī’s reference of them would tell us that he may not have been well-familiar with their thought. This thus leaves us to think that al-Ṭaḥṭāwī’s ideas of a *fiqh al-wāqi‘*, including its operating tools of *maqāṣid* and *maṣlaḥah*, was to a great extent an extension of Khayr al-Dīn’s influence on him.

Was al-Shātibī's influence, therefore, on modern-day reformist thinkers earlier than thought? That we can identify thinking—and Shātibian-like thinking—about *maqāṣid* and *maṣlaḥah* among early modern figures like Khayr al-Dīn al-Tūnisī and Rifā'ah al-Ṭaḥṭāwī suggests that the ideas and philosophy behind these concepts had entered into the framework of modernist thinkers' renewal programs much earlier than the late nineteenth and early twentieth centuries; the period commonly deemed (as noted earlier) by contemporary writers on the subject such as Masud, Kamali, Opwis, and Nafi³⁴⁵ as the germinating point for their revival.

More Affirming Evidence for an 'Abduh-Khayr al-Dīn Link

We thus have at least one sure link between Khayr al-Dīn and Muḥammad 'Abduh, through the person and thought of Rifā'ah al-Ṭaḥṭāwī. Yet, there is additional evidence that supports a more direct link between the two. Some of this evidence, of which we have already begun to allude to, is found in the correspondence between their ideas for reform. Their philosophies on educational reform in particular show striking similarities, especially in their earnest drive to push for the inclusion of Western developed knowledge in school curriculums while maintaining a strong presence of traditional religious disciplines.

One distinct item that they shared was their incontrovertible and deep appreciation for Ibn Khaldūn's *Muqaddimah*. Both would have its integration into school curriculums as a high priority on their educational reform agenda. With respect to Khayr al-Dīn's relationship to Ibn Khaldūn's thought and work, we have mentioned already that his *Masālik* gives substantial reference to Ibn Khaldūn's *Muqaddimah*.³⁴⁶ Moreover, his critique of the rise and fall of nations, and the remedies

³⁴⁵ Nafi states: "In the late nineteenth century, Muslim interest in *maqāṣid al-sharī'a* was renewed, especially in Arab-Islamic reformist circles" (Nafi, 16).

³⁴⁶ El-Mesawi in particular draws significant parallels between the writings of Khayr al-Dīn and Ibn Khaldūn. See El-Mesawi, Mohamed El-Tahir. *Muslim Reformist Action in Nineteenth-century Tunisia*. The American Journal of

he offers for the improvement of Muslim societies is in many ways Ibn Khaldūn-like. The literary format and composition of the work itself is modeled after the *Muqaddimah* by the way it is segmented according to two major parts; the first being called “*al-Muqaddimah*,” rendering a comparative portrait of Muslim and European societies, and the second part offering a descriptive presentation of the features of a number of Western nations.

‘Abduh’s reference of Ibn Khaldūn (and moreover, his educational philosophy) mainly comes through and is documented after his visits to Turkey and Tunis, the time of his six-year exile from Egypt which began in 1882. We know that in 1888, ‘Abduh had left Beirut and returned to Cairo where he would take on the prestigious and highly influential post of Grand Muftī of Egypt. Of the more pressing matters on his agenda during this time was the reform of al-Azhar, an undertaking which had consumed him for years and which he believed would have important ramifications for the greater project of reviving the Islamic spirit within modern Muslim society.³⁴⁷

‘Abduh’s opportunity to affect change at al-Azhar coalesced upon his appointment as head of *Majlis Idārat al-Jāmi‘ al-Azhar*, a committee established in 1895 to oversee wide-ranging reforms at al-Azhar. As head of this committee, ‘Abduh would introduce sweeping changes to much of the curriculum. Contrary to the perception that his reforms sought to leave behind all things of the Islamic intellectual past, ‘Abduh in fact requisitioned the inclusion of many of the great classics of Islamic tradition in all fields including law, theology, and spirituality; reading and interpreting them within the context of their time. ‘Abduh further aimed to supplement the traditional religious texts and subject offerings with modern learning, including providing courses

Islamic Social Sciences (2009), 25 (2). pp. 60-1. A tangential debate that El-Mesawi introduces here regards whether Muslim intellectuals and traditional ulema are indebted to European Orientalists for becoming acquainted with Ibn Khaldūn. El-Mesawi opines that “Muslim intellectual circles including “traditional” ulama, at least in nineteenth-century Tunisia, did not wait until European Orientalists “discovered” Ibn Khaldūn to become acquainted with this great Muslim philosopher.” See p. 62, fn. 133.

³⁴⁷ Abdulrazzak Patel, *The Arab Nahḍah* (Edinburgh: Edinburgh University Press, 2013), pp. 192-4.

in the modern sciences, modern history, and the instruction of foreign languages, all of which being part of his greater vision to synthesize and reconcile Islamic tradition and modernity.³⁴⁸

‘Abduh’s extensive proposals to revise and transform Azhar’s curriculum was not met without opposition. All kinds of accusations were hurled at him, with some alleging that he was attempting to take Azhar down the path of heresy, “[accusing] him of wanting to turn al-Azhar into an institution of philosophy and literary education (*adab*) bent on extinguishing the light of Islam.”³⁴⁹ Fierce aversion and resistance to his reforms led him to resign as head of *Majlis Idārat al-Jāmi‘ al-Azhar* in March of 1905, just months before his passing. The defiant circumstances which ‘Abduh encountered, and, moreover, the importance he gave to such classical works as Ibn Khaldūn’s *Muqaddimah*, is poignantly captured in his own words describing the ordeal:

...after my return from exile, I tried to convince Shaykh al-Azhar, Muḥammad al-Anbābī, to accept certain proposals, but he refused. Once I said to him, ‘Would you agree, O Shaykh, to order the teaching of Ibn Khaldūn’s *Muqaddimah* at al-Azhar?’, and I described to him the benefits of this work. He replied, ‘It would be against the tradition of teaching at al-Azhar.’ During our conversation, I began talking to him about some more recent shaykhs, and asked him, ‘How long ago did al-Ashmūnī and al-Ṣabbān die?’ He replied that they had died not so long ago. I then said, ‘They have died only recently and yet their books are being taught and there had been no tradition of teaching them.’ Shaykh al-Anbābī was silent and did not reply.³⁵⁰

³⁴⁸ Ibid.

³⁴⁹ Ibid.

³⁵⁰ Ibid, 194.

Thus, ‘Abduh, like Khayr al-Dīn, gave tremendous value to the teaching of Ibn Khaldūn’s *al-Muqadimmah*, painstakingly lobbying for its inclusion into the Azharī curriculum. The distinct parallel in their specific attitude towards Ibn Khaldūn’s *al-Muqadimmah* brings us to the underlying point to be made here, which is the consequent possibility that ‘Abduh drew influence from Khayr al-Dīn and the *Masālik* for his own interest in and valuation of *al-Muqadimmah*. It is yet additional evidence tying them together.

6:6 | More Conclusive Evidence of a Direct Link between Khayr al-Dīn and ‘Abduh

There is still further and more conclusive evidence suggesting a direct link between Khayr al-Dīn and ‘Abduh. At the heart of this evidence is the famous association and publication *al-Urwa al-Wuthqā* and information concerning Khayr al-Dīn’s relationship to it. The *al-Urwa al-Wuthqā* was of course the enterprise of al-Afghānī and ‘Abduh, who founded it in Paris in 1884 and assumed editorship over it. But what role did Khayr al-Dīn actually have with *al-Urwa al-Wuthqā*? To better understand his relationship to it, we must first consider an important figure in Khayr al-Dīn’s inner circle of colleagues, the Tunisian General Ḥusayn Pāsha al-Tūnisī³⁵¹ (d. 1886).

Ḥusayn, who was about the same age as Khayr al-Dīn and shared with him Circassian Mamluk roots, was a member of the Tunisian upper-class and had a palpable presence in events surrounding nineteenth century reform efforts in Tunisia. He was an important player in Khayr al-Dīn’s reconstruction venture and in his attempts to overhaul the Tunisian political apparatus and institutional establishment, as well as in attempts to stave off French meddling in state affairs.

³⁵¹ For more on the life of Ḥusayn Pāsha see Muḥammad al-Fāḍil ibn ‘Āshūr, *al-Harakah al-fikriyyah wal-adabiyyah fi Tūnis* (Tunis, 1972); See also the translation of Ibn ‘Āshūr’s account of his life by S.A. Hanna, *Tarājim al-‘Alām* (Tunis, 1970, pp. 23-31).

Shortly after and as a result of Khayr al-Dīn's exile from Tunisia, Ḥusayn would also leave Tunisia and end up in Italy for some time. There is record that Ḥusayn and al-Afghānī exchanged letters in 1884 while the former was residing in Italy and the latter in Paris. These letters reveal that Ḥusayn was a major benefactor to al-Afghānī's and 'Abduh's association and journal *al-Urwa al-Wuthqā*. One particular letter of correspondence dated April of 1884 discloses that Ḥusayn was planning an upcoming visit to meet with al-Afghānī and 'Abduh in Paris. A follow-up letter dated May of 1884 mentions that Ḥusayn had sent money to al-Afghānī in Paris. Subsequent to this May letter, regular correspondence between the two discontinued for several months until resuming in December, suggesting that it was sometime during this period, between May and December, that Ḥusayn was in Paris with al-Afghānī and 'Abduh.³⁵² Ḥusayn, as such, proves to be a key link between 'Abduh and Khayr al-Dīn.

The 'Abduh and Khayr al-Dīn link is all but solidified with another piece of evidence that should amount to an incontrovertible direct link between the two. The evidence comes in a letter from a person by the name of Ibrāhīm al-Muwayliḥī³⁵³ (1846-1906). Al-Muwayliḥī was an Egyptian intellectual, litterateur, and journalist who championed reform efforts in his native Egypt. He served in various governmental posts under the Egyptian Khedive Ismā'īl until Ismā'īl was deposed in 1879 and sent into exile to Italy, where al-Muwayliḥī would follow him soon

³⁵² Nikki R. Keddie, *Sayyid Jamal ad-din al-Afghānī* (Berkeley: University of California Press, 1972); Iraj Afshaar and Asghar Mahdavi, *Documents Inédits Concernant Sayyid Jamal al-Dīn Al-Afghānī* (Teheran, 1963); Hanna, 43-44.

³⁵³ For a biographical sketch on Ibrāhīm al-Muwayliḥī, see Jacob M. Landau, "An Insider's View of Istanbul: Ibrāhīm al-Muwayliḥī's Mā Hunālika," *Die Welt des Islams*, New Series, Bd. 27, Nr. 1/3 (1987), pp. 70-81. Published by: BRILL Stable URL: <http://www.jstor.org/stable/1570515> Accessed: 09-03-2015 18:44 UTC; See further, Martin Hartmann, *The Arabic Press of Egypt* (London 1899), p. 79. Obituaries in *al-Mu'ayyad*, 3 February 1906; *al-Muqtataf*, vol. XXXI: March 1906, pp. 264-265; and Jurjī Zaydan, "Ibrahim Bek al-Muwayliḥī," *al-Hilal*, vol. XIV, no. 7: 1 April 1906, pp. 383-387 (*Tardjīm mashdhir al-sharq*, Cairo 1911, vol. II, pp. 113-118).

thereafter.³⁵⁴ Al-Muwayliḥī's career would eventually take him to Istanbul in 1885 upon an invitation from the Ottoman Sultan 'Abdul Ḥamīd II to take up an important post overseeing educational policy in the Ottoman state. Al-Muwayliḥī would also during this time have personal correspondence with al-Afghānī, and would contribute articles to *al-'Urwa al-Wuthqā* for a short period.³⁵⁵ In one letter of correspondence from al-Muwayliḥī in Istanbul to al-Afghānī in Paris dated on September 25, 1885, al-Muwayliḥī tells al-Afghānī that Khayr al-Dīn al-Tūnisī had told him [al-Muwayliḥī] that he had given a large sum of money to Muḥammad 'Abduh, presumably in support of the association and journal of *al-'Urwa al-Wuthqā*. Al-Muwayliḥī writes, moreover, that Khayr al-Dīn further mentions to him that he would try to secure a list of contributors, presumably donors for 'Abduh in Tunis.³⁵⁶ Al-Muwayliḥī's letter here is quite significant and consequential in that it all but affirms a direct relationship between Khayr al-Dīn and 'Abduh.

We know with certainty that 'Abduh was in Paris during the time of Ḥusayn's visit somewhere between May and December of 1884. We also know that it would be subsequent to this visit that 'Abduh would embark on his trip to Ḥusayn's and Khayr al-Dīn's homeland of Tunis, where he would spend approximately a month, from December 6, 1884 to January 4, 1885.³⁵⁷ We further established evidence showing that Khayr al-Dīn as well as his close colleague Ḥusayn had been in direct communication and financially supporting 'Abduh, al-Afghānī, and *al-'Urwa al-Wuthqā*. It is therefore quite conceivable that Khayr al-Dīn and Ḥusayn had much to do with 'Abduh's visit to Tunis, which would make all the more sense since it would have been these two who would have been well-attuned to the Tunisian socio-political and socio-religious scene, and

³⁵⁴ Al-Muwayliḥī would end up serving as an Arabic tutor for the Khedive's son, Prince Fu'ād (later, King Fu'ād of Egypt) while there. (Landau, 72)

³⁵⁵ See A. A. Kudsi-Zadeh, Sayyid Jamāl al-Dīn al-Afghānī: An Annotated Bibliography (Leiden 1970), 185.

³⁵⁶ Keddie, 261; Hanna, 45.

³⁵⁷ Arnold H. Green, *The Tunisian Ulema 1873-1915* (Brill: Leiden, 1978), p. 147.

would have left behind them a network of affiliations and supporters for ‘Abduh to connect with, including many of Khayr al-Dīn’s close circle of ulema. In fact, we learn that many of these ulema were among the list of members of *al-‘Urwa al-Wuthqā*. Some of the evidence for this comes in a letter from ‘Abduh to al-Afghānī while the former was in Tunis. This letter is dated on December 24, 1884, about three weeks after ‘Abduh’s arrival there. ‘Abduh writes:

Today, I am trying speedily to organize the society, so I travel. Most of the society are ulema, among them Shaykh al-Wartatānī and Shaykh Abū Ḥājib. I shall tell you the names of those who take the oath when it is finished, if God wills. Please do not reveal any of their names, for I promised them that the matter is secret, and that the names of the members are known only by the secretary and the president of the society as well as by its propagandists. As for the money, I am utterly in despair, for we knocked on every door with hinting that approached bluntness, but it seems to me that it was in vain.³⁵⁸

‘Abduh thus had the support of two of Khayr al-Dīn’s close circle in Aḥmad al-Wartatānī and Sālim Bū Ḥājib. Besides al-Wartatānī and Bū Ḥājib, other Tunisian members of the ulema class included Muḥammad al-Sanūsī and Muḥammad Bayram V. Most of the Tunisian members were ulema, approximately ten in all, and it was likely that all of them were close associates to Khayr al-Dīn.³⁵⁹

³⁵⁸ The translation here is from Green, 148, and taken from the original Arabic located by Nikki Keddie in the Majlis Library Collection, Tehran. For more on the original letter, see Green, 160, fn. 75.

³⁵⁹ Green remarks: “Given...al-Afghānī’s unflattering opinion of traditionist ulema, it is likely that the other members of the society *al-‘Urwa al-Wuthqā* were drawn from the ranks of reformist ulema who had supported Khayr al-Dīn.” Moreover, he says that: “It is possible that *al-‘Urwa al-Wuthqā* also drew some support from Khayr al-Dīn’s lame duck appointees in the administration.” Green acknowledges, however, that: “... not only is it difficult to reconstruct fully the membership of *al-‘Urwa al-Wuthqā*, but documentation concerning the group’s activities and subsequent influence in Tunis is also lacking.” (Green, 149)

The upshot of all this is that Khayr al-Dīn and ‘Abduh were not only well familiar with each other, but there was also a direct channel between them. Furthermore, Khayr al-Dīn and his colleague General Ḥusayn played a role, and likely a significant one, in paving the way for ‘Abduh’s trip to Tunis to rally support for the association of *al-‘Urwa al-Wuthqā*. The consequence of all this is that it lends further support to this author’s contention that ‘Abduh’s contact with al-Shāṭibī’s *al-Muwāfaqāt* in Tunis is directly linked to Khayr al-Dīn. Al-Shāṭibī’s thought and its entry and rebirth into the modern Muslim world, thus, comes through an chain of arguably the most transformative reform thinkers of the nineteenth century that would include front and center Khayr al-Dīn al-Tūnisī and Muḥammad ‘Abduh. But what more do we know about ‘Abduh’s relationship to al-Shāṭibī’s *al-Muwāfaqāt*?

6:7 | ‘Abduh and the 1884 Edition of al-Shāṭibī’s *al-Muwāfaqāt*

What do we know about the particular details pertaining to ‘Abduh’s contact with and obtainment of the 1884 edition of al-Shāṭibī’s *al-Muwāfaqāt*, considered to be the very first publication of its kind in the modern era, and a work that would leave an indelible mark on modern Islamic thought? To begin with, though we are not absolutely certain as to what precisely transpired that led to the very publication of this 1884 edition, this author’s contention, given our evidence above, is that it came via the large collection of manuscripts belonging to Khayr al-Dīn’s library (which he had donated to Zaytūnah), and wherein which it had been published through the printing press Khayr al-Dīn had revived. Moreover, it is quite plausible, considering our narrative of a Khayr al-Dīn-‘Abduh link, that Khayr al-Dīn himself made ‘Abduh aware of al-Shāṭibī’s *al-Muwāfaqāt* and had directed him to it. Whatever the case may be regarding the precise details of

its publication and how ‘Abduh came across a copy of it, he inevitably had access to it, likely sometime between December 4 of 1884 and January 5 of 1885.

The 1884 edition of *al-Muwāfaqāt* was most probably unknown to anyone outside of Zaytūnah, and it was certainly unknown to ‘Abduh in all his time at the storied al-Azhar, which would have had its own prodigious collection of Islamic texts dating back centuries.³⁶⁰ Al-Shāṭibī’s *al-Muwāfaqāt* made an immediate impression on ‘Abduh. He found in its contents an ingenuity unlike any of the other legal works of the Sunni tradition. One of ‘Abduh’s famous disciples Rashīd Riḍā writes that ‘Abduh considered al-Shāṭibī’s *al-Muwāfaqāt* the best work on legal theory.³⁶¹ We learn from another of ‘Abduh’s disciples, Muḥammad ‘Abdullāh Darrāz (d. 1958), that ‘Abduh found al-Shāṭibī’s *al-Muwāfaqāt* to be so critical and invaluable to the Islamic legal tradition’s engagement with modernity, that he actively encouraged all his students to read it. Darrāz states: “Shaykh Muḥammad ‘Abduh quite often advised his students to understand the meanings of this book.”³⁶²

‘Abduh would eventually take a copy of *al-Muwāfaqāt* from Zaytūnah back with him to Egypt. We are unsure, however, whether this copy was taken during his first Tunis visit of 1884, or upon his return visit in September of 1903. On September 12 of 1903, just a few days after his September 9th arrival, ‘Abduh visited the Zaytūnah library. His intent while there was to copy some of the rare manuscripts to take back with him to al-Azhar.³⁶³ It is therefore possible that one of the

³⁶⁰ One account holds that in his 1884 visit to Tunis, ‘Abduh would learn of a few ulema who had been reading and discussing *al-Muwāfaqāt* at the Zaytūnah mosque-college. Beyond these ulema, however, it is unknown if any other had been familiar with it. See Rashīd Riḍā, *Tarīkh al-Ustādh al-Imām al-Shaykh Muḥammad ‘Abduh* (Cairo: S.N., [1925 or 6-1947 or 8]), p. 516.

³⁶¹ Rashīd Riḍā, *Tarīkh al-Ustādh al-Imām al-Shaykh Muḥammad ‘Abduh* (Cairo: S.N., [1925 or 6-1947 or 8]), p. 516.

³⁶² Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī‘ah*, 12; Nyazee, *The Reconciliation of the Fundamentals*, xxiv.

³⁶³ ‘Abduh was quite impressed with the organization of the Zaytūnah library. (Riḍā, *Tarīkh*, 516; Moncef Chennoufi, "Les Deux Sejours De Muhammad 'Abduh Tunisie." *Les Cahiers De Tunisie* XVI, pp. 76-77. At the time of his visit, it had over 6, 882 works with most of them being manuscripts. (Roy, Tunis, 1900)

manuscripts he was interested in copying was al-Shāṭibī's *al-Muwāfaqāt*. This has strong plausibility given additional information we learn from Darrāz. After telling us that 'Abduh often advised his students to understand the meanings of *al-Muwāfaqāt*, Darrāz goes on to say that he and his fellow students had a difficulty getting a copy of it. Based on this statement, it could have been that 'Abduh had read the work in Tunis in 1884, but left there without a copy. And he may have eventually taken a copy on his second visit nineteen years later. Otherwise, had 'Abduh had a copy, why wouldn't Darrāz and his fellow colleagues have accessed this copy, or at the very least mentioned something about 'Abduh having a copy of it? Rather, Darrāz tells us that it was only after some time, "after persistent efforts," were they able to eventually "borrow a copy of the book in the script of the Maghrib from a student."³⁶⁴ Who this student was or where his copy came from, he does not mention. It may have been another of 'Abduh's students who was able to retrieve a copy through 'Abduh, or perhaps this student had found a way of getting it himself from Tunis.

'Abduh's students, including Darrāz, were quite critical of the existing Azharī curriculum, especially its texts and pedagogy. These students, however, connected well with 'Abduh. He understood their issues and they in turn had a deep admiration for his forward thinking and engagement with matters of the day relevant to their generation. Not only had they studied with 'Abduh at Azhar, but they would further supplement these studies with private sessions with him, often visiting his home where he would share with them or recommend certain works which they didn't have access to at Azhar. Al-Shāṭibī's *al-Muwāfaqāt* was one such work. Another of 'Abduh's disciples, Ṭāha Ḥusayn³⁶⁵ (d. 1973), writes that: "These books, despite their importance, were disdained by the Shaykhs, because they had never read them; perhaps, too, their repugnance

³⁶⁴ Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī'ah*, 12; Nyazee, *The Reconciliation of the Fundamentals*, xxiv.

³⁶⁵ Ḥusayn, who was one of the most influential writers and intellectuals of twentieth century Egypt and viewed as a secular nationalist, took a different direction in his career than other students of 'Abduh including Rashīd Riḍā, who was more conservative in his religious orientation.

was increased by the very fact of the Imam's approval.”³⁶⁶ It would not be surprising if *al-Muwāfaqāt* was one of the works which the Azharī *shuyūkh* disdained, given its controversial history and the criticism it received from al-Shāṭibī's own contemporaries as well as from scholars of later generations, who viewed it as an affront—a tampering with what was already established within the *uṣūl al-fiqh* tradition. ‘Abduh’s endorsement of *al-Muwāfaqāt* would nonetheless be the impulse that would generate greater interest in al-Shāṭibī’s thought. But it would be his disciple Darrāz who would facilitate access of *al-Muwāfaqāt* to the larger reading public.

³⁶⁶ Ṭaha Ḥusayn, *The Stream of Pains: A Student at the Azhar*, Translated by Hilary Wayment (Cairo: Al-Ma‘āref, 1943), p. 70; Keith W. Martin, “The Reformation and Secularization of Zaytūnah University.” PhD diss., University of Utah, 1975. <http://martinexports.blogspot.com/2013/12/Zaytūnah-mosque-and-university-tunisia.html>. Ch. 5.

CHAPTER 7

From ‘Abduh to Darrāz: The Next Stage in the Emergence of al-Shāṭibī’s

Maqāṣid Theory

Despite being instrumental in exposing the modern world to one of the most influential books on modern Islamic thought, Muḥammad ‘Abdullāh Darrāz is somewhat of an obscure figure who has not received the attention commensurate with having made such an important contribution. Nor, similarly, has he received the attention given to other of ‘Abduh’s students, most notably of course Riḍā and Ḥusayn. We have mentioned already that Darrāz was arguably the first to put to question and attempt to explain the perplexing absence of al-Shāṭibī’s work for some five centuries. But what more can we learn about his relationship to *al-Muwāfaqāt* and his role in disseminating it? The relatively minimal consideration given to Darrāz’s life and career makes it worthwhile here to offer a biographical sketch that can shed some light on factors and experiences which may have in time led to Darrāz having devoted a substantial part of his career to editing and bringing attention to *al-Muwāfaqāt*.

Muḥammad ‘Abdullāh Darrāz³⁶⁷ was born in 1894 in the northern Egyptian village of Maḥallat Diyai, located in the county of Kafr Al-Sheikh. Darrāz’s father, a graduate of Azhar and an Islamic scholar in his own right, hoped for a similar career path for his son

³⁶⁷ We are indebted to Adil Salahi for information on Darrāz’s life and career. See his article “Scholar of Renown: Muhammad ‘Abduh Draz,” *Arab News*, December, 2001.

and had him educated throughout his schooling at Azharī affiliated madrasas. Upon completing his religious primary and secondary education, Darrāz pursued the study of French, a means by which he believed would be invaluable in supporting his native Egypt in its bid for independence. Darrāz incorporated French in his writings and used it to rebut what he believed to be spurious claims made against Islam by anti-Islamists. He was moreover active in the grassroots movement aimed to achieve Egyptian independence from Great Britain. During the Egyptian Revolution of 1919, Darrāz had joined other young Egyptians in calling on foreign embassies to pressure Great Britain into complying with the Egyptian peoples demands for an autonomous Egyptian state.³⁶⁸

Darrāz’s career post-revolution would take him into higher education at Azhar, where he would begin teaching in 1928 and later be appointed to the faculty of *Uṣūl al-Dīn* in 1930. In similar fashion to earlier modern Muslim intellectuals and reformers before him (the likes of Khayr al-Dīn, al-Ṭaḥṭāwī, al-Afghānī, ‘Abduh et al., who had an appreciation for European achievements and who found importance in spending time in Europe to study and learn from these achievements), Darrāz would also have his time in Europe. Leading up to his 1936 visit to France, Darrāz’s research interests had evolved over the years while at Azhar. The particular subject matters that most preoccupied his intellectual pursuits were Islamic approaches to morality and comparative ethics. He had especially wanted to demonstrate to broader audiences the Islamic ethical tradition’s preeminence over any

³⁶⁸ For more on the events surrounding the 1919 Egyptian uprising and British occupation of Egypt, see M.W. Daly, (1988). *The British Occupation, 1882–1922*. Cambridge Histories Online: Cambridge University Press; Fahmy, Ziad (2011). *Ordinary Egyptians: Creating the Modern Nation through Popular Culture*. Stanford University Press; Jankowski, James (2000). *Egypt: A Short History*. Oxford: Oneworld Publications; and Valentine, Chirol (1922). *The Egyptian Question*. Journal of the British Institute of International Affairs 1, no. 2.

other. But he also understood quite well that to credibly do so required adequate training in several disciplines which he believed were relevant to informing any such demonstration. It is with this in mind that in his visit to France and the subsequent twelve years he would spend there, Darrāz sought to immerse himself in Western logic, ethics, psychology, philosophy, and sociology. Pursuing these studies at the prestigious Sorbonne University, Darrāz would go through a rigorous and comprehensive program that eventually led to a baccalaureate degree. But more importantly for Darrāz, it had prepared him with the knowledge he felt necessary to begin writing on Islamic and comparative ethics.

Darrāz's methodological approach to a comparative study of Islamic and Western ethics was perhaps innovative for his time, delving into what was arguably uncharted territory. He would go on to extrapolate from a comprehensive reading of the Qur'ān—and with special attention to those verses which were primarily ethical—broader moral concepts that captured the overall Qur'ānic ethical world view. His attempt in doing so was in many ways Shāṭibīan. Al-Shāṭibī's *al-Muwāfaqāt* provided Darrāz the methodological inspiration to approach his own research in a similar fashion; essentially parroting al-Shāṭibī's *maqāṣidic* approach of identifying broader concepts from an amalgamation of particular texts. Darrāz went on to juxtapose moral concepts adopted by Western philosophers and ethicists with the concepts that he had self-extracted from a holistic reading of the Qur'ān. His comparative ethical study was penned in his French thesis titled

La Morale du Koran, which successfully awarded him a doctoral degree from the Sorbonne in 1947.³⁶⁹

Darrāz's edition and subsequent release of al-Shāṭibī's *al-Muwāfaqāt* can arguably be viewed as one of the most impactful and far-reaching contributions to the development of modern Islamic thought. His study of Islamic and comparative ethics would also make a significant contribution. His writings concerning different aspects of the Qur'ān, including its divine origins, inimitability and miraculous nature, were especially popular and inspirational to the Muslim masses. These works attempted to appeal to the rational mind as well as the heart. The most popular of them is entitled *al-Naba' al-'Azīm*, a work attempting to demonstrate with supporting evidence the Qur'ān's undisputed divine authorship and inimitably, while also attempting to convey the cohesive and unifying structure of the Qur'ān's contents. He intended the latter to be a rebuttal of Orientalist critiques that the Qur'ān's structure was disjointed and lacked coherence.³⁷⁰

Upon obtaining his doctorate in 1947, Darrāz would return to Egypt and resume his academic career, fulfilling multiple positions teaching the history of religion at Cairo University, Qur'ānic exegesis at Azhar's Dār al-'Ulūm teachers' college, and Arabic and moral philosophy at Azhar University. Darrāz's teaching and scholarship was well-

³⁶⁹ His thesis was published in French by Al-Azhar in 1950. It would be translated into Arabic in 1973 by 'Abd al-Ṣabūr Shahīn. An English translation was undertaken under the title *The Moral World of the Qur'an* / M.A. Darrāz; translated by Danielle Robinson and Rebecca Masterton. London; New York: I.B. Tauris; New York, Distributed in the USA by Palgrave Macmillan, 2008.

³⁷⁰ For the Arabic publication see, Muḥammad 'Abdullāh Darrāz, *al-Naba' al-'azīm : nazarāt jadīdah fī al-Qur'ān*. Miṣr: Maṭba'at al-Sa'ādah, 1960. For an English translation see, M. A. Salahi. *The Qur'an: An Eternal Challenge: Al-Naba' Al-'Azīm*. Leicester: Islamic Foundation, 2001; *The Qur'an: An Eternal Challenge*. Translated by Adil Salahi. Markfield, UK: The Islamic Foundation, 2007.

recognized amongst his peers and students, as well as among the general Egyptian public. His body of work and repute would eventually earn him membership into an elite society of Senior Islamic Scholars (*Jama‘at Kibār al-‘Ulama’*) in 1949. He would more or less continue with his teaching duties and writing for the next decade until his death in January 1958 while visiting Lahore, Pakistan. Though there has yet to be a serious study of Darrāz’s life and thought, his was an unquestionably accomplished and influential career that would fit the mold of those modern day revivalist thinkers before him who rather than seeing tradition and modernity as mutually exclusive, sought to reconcile them. He, like Khayr al-Dīn and his mentor ‘Abduh, found much good in European advancements, cognizant of their worth to human progress. Yet, he, like them as well, had an utter conviction in the immense value of Islamic norms and principles for the ultimate success—in life and the Hereafter—of any Muslim society.

Darrāz’s worldview was certainly informed by his traditional Islamic education, his study in Europe, and by the many erudite mentors he had, among them ‘Abduh. But it was arguably al-Shāṭibī’s thought that would make the most profound impact on his intellectual career. What more do we know about his relationship to *al-Muwāfaqāt*? Fortunately, Darrāz left behind in the introduction to his edition a relatively substantial account of his work with *al-Muwāfaqāt*, including a review and critique of its contents.

7:2 | Darrāz and al-Shāṭibī's *al-Muwāfaqāt*

As already noted, Darrāz's first exposure to *al-Muwāfaqāt* was through Muḥammad 'Abduh. Nafi suggests—or at least his statement gives the impression—that Darrāz was directly and personally encouraged by 'Abduh to edit al-Shāṭibī's *al-Muwāfaqāt*. He states: “According to 'Abdallah Darrāz (1894-1959), it was Muḥammad 'Abduh who encouraged him to edit and publish al-Shāṭibī's *Muwāfaqāt*, which became a major source for the modern Islamic debate on the *maqāṣid*.”³⁷¹ Nafi's account here, however, should be taken with a grain of salt. Darrāz, who was born in 1894, would have been about eleven years old when 'Abduh dies in 1905. It is hard to imagine that 'Abduh had directly encouraged him to take up such a task at that young age. Further lending doubt to Nafi's account is Darrāz's own characterization of the role and influence that 'Abduh had on him in editing *al-Muwāfaqāt*. Darrāz states: “It was often that we heard the advice of the late Shaykh Muḥammad 'Abduh to his students to understand the meanings of this book, and I have been eager since then to act upon this advice.”³⁷² It is clearly evident here that Darrāz was among a larger following of 'Abduh's students who had heard from 'Abduh the merits of learning al-Shāṭibī's *al-Muwāfaqāt*. 'Abduh's encouragement to work with *al-Muwāfaqāt* should thus be understood to have been a general recommendation to his students rather than what is implied in Nafi's account, which is that it was a direct and explicit recommendation to Darrāz. Nonetheless, Darrāz's statement

³⁷¹ Basheer M. Nafi, “Ibn 'Ashūr: The Career and Thought of a Modern Reformist, with Special Reference to his Work on Tafsīr.” *Journal of Qur'anic Studies*, 2005: 1-32. p. 16.

³⁷² Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī'ah*, 12; Nyazee, *The Reconciliation of the Fundamentals*, xxiv.

here leaves no doubt that his own inspiration to delve further into *al-Muwāfaqāt* should be attributed to ‘Abduh.

We also learn from Darrāz that sometime after ‘Abduh’s recommendation to learn *al-Muwāfaqāt*, he and his fellow colleagues had persisted with considerable difficulty to retrieve a copy of it. When exactly these efforts are made, we are not told. However, it’s hard to imagine that this would have occurred before the passing of ‘Abduh in 1905, namely for the reason already mentioned, which is that Darrāz would have been only eleven years old or younger, likely too early intellectually for him to be engaging in a work that even senior ulema found challenging. Moreover, if it had been during ‘Abduh’s lifetime, it would only make sense that ‘Abduh’s students would want to study or read *al-Muwāfaqāt* with ‘Abduh himself—assuming he had a copy of it. But Darrāz makes no such mention of this. This also brings into question whether ‘Abduh ever had his own copy of *al-Muwāfaqāt*, and if he did, then whatever happened to it? The presumption made earlier is that ‘Abduh’s fascination with *al-Muwāfaqāt* during his first encounter with it in Tunis lead him to take a copy of it back with him to Egypt. If he had not retrieved a copy in his first visit to Tunis in 1884, then we presume that he would have done so in his second visit in 1903, for among his objectives during this second visit was to spend time at the Zaytūnah Mosque library for the purposes of copying works and manuscripts he found valuable, among these most probably being *al-Muwāfaqāt*, which he did not have access to at Azhar or anywhere else for that matter. Thus, the most probable conclusion in regards to Darrāz’s and his fellow students’ attempt to secure a copy of *al-Muwāfaqāt* is that it occurred sometime after ‘Abduh’s passing in 1905.

It is quite evident that *al-Muwāfaqāt* was not only unpopular, but non-extant and virtually unknown to the Egyptian Muslim intellectual milieu at least up to 1905, something astounding considering that Egypt was home to al-Azhar, arguably the most distinguished educational institution in Islamic history with its own sizable collection of Islamic texts. Darrāz and his colleagues would finally gain access to *al-Muwāfaqāt* through a student who had a copy of it. Engaging with this student's copy, however, proved to be the most difficult of challenges. To begin with, the text had been in the *Maghribī* script, which was all but unreadable for Darrāz and the other students. Secondly, the complexity of the topics under discussion was simply overwhelming for them. That Darrāz makes a point to emphasize this and that he does not mention reading it with any teacher is further indicative of the works unfamiliarity to the Azhar community. And lastly, an additional obstacle in engaging with this student's copy was that they didn't have the time they needed to fully engage with it and grasp its contents, for they would only have it on temporary loan, as the student had demanded it back.³⁷³

At this point, and having all but given up on securing a copy of *al-Muwāfaqāt*, Darrāz tells us that by divine intervention he was finally able to obtain a readable copy, one which he could now own and keep solely in his possession. He provides no detail about where or how he managed to get this copy, mentioning only that it had eventually been published in Egypt and that he was immensely grateful that God had granted him the time to examine it.³⁷⁴

³⁷³ Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī'ah*, 12-13; Nyazee, *The Reconciliation of the Fundamentals*, xxiv.

³⁷⁴ Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī'ah*, 13; Nyazee, *The Reconciliation of the Fundamentals*, xxiv.

Darrāz goes on to speak about his initial experience reading through *al-Muwāfaqāt*, describing with great appreciation the profound affect it had on him intellectually, theologically, and spiritually, mentioning in particular how it increased his faith in the Sunnah and how he discovered in it “treasures and troves.”³⁷⁵ He felt so indebted to the immense benefit he gained from it, that it impelled him to embark on providing what he hoped to be a superior edition, one that would facilitate a better understanding of its contents and greater appreciation of its value. For Darrāz, this would be one of the most daunting endeavors of his intellectual career. He became fully occupied with mastering the text and aimed to rigorously examine all its facets. This included familiarizing himself and having recourse to all the sources al-Shāṭibī drew from. He thus devoted himself to “verifying the concepts that arise from it, expounding the concise pointers, and elaborating its difficult statements..., attempting to decipher [al-Shāṭibī’s] aims.”³⁷⁶

As Darrāz set out working on his edition, he was warily cautious through and through not to detract from the integrity of the original, trying his utmost to limit his commentary “unless necessity demanded elaboration in those rare cases when understanding ceases.”³⁷⁷ All the while, Darrāz also tried to remain true to objectivity, believing it his responsibility to be fair to his audience and to the institution of scholarship in general. He says in this regards: “I freed my mind from the constraints imposed by the Author and from being coloured by the assumptions made by him or even from submission to the conclusions required by his objectives.”³⁷⁸ Darrāz thus believed it was an imperative

³⁷⁵ Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī‘ah*, 13; Nyazee, *The Reconciliation of the Fundamentals*, xxiv.

³⁷⁶ Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī‘ah*, 13; Nyazee, *The Reconciliation of the Fundamentals*, xxv.

³⁷⁷ Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī‘ah*, 13; Nyazee, *The Reconciliation of the Fundamentals*, xxv.

³⁷⁸ Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī‘ah*, 13; Nyazee, *The Reconciliation of the Fundamentals*, xxv.

to point out any shortcomings or to offer constructive criticism where need be. But this was not without some awkwardness on his part, especially owing to the high regard in which he held al-Shāṭibī. Being self-aware of his own humble standing as a student and junior scholar in front of what he viewed to be an epic work by an illustrious *‘ālim*, Darrāz felt compelled to justify to not only his audience but to himself the role of critic. And who better to grant him passage to do so than al-Shāṭibī himself. Darrāz informs us that:

He [al-Shāṭibī] himself has declared this method to be appropriate for one who examines what he says, one who seeks the truth from what he has laid down and stated, demanding from him to adopt the method of those who make a choice and not those who reject and doubt. Just as he has recommended verification prior to the seeking of complexities so that a beneficial thing may not be cast aside without consideration.³⁷⁹

For Darrāz, al-Shāṭibī well-understood that in matters of religion, nothing trumps the seeking of truth. No scholar’s pen was above that of evaluation and verification. Just as the eponyms of the great Sunni schools, like Imam Mālik, had recognized the infallibility of their knowledge, so too had al-Shāṭibī. Al-Shāṭibī himself had played the role of renovator of what had previously been established by scholars of *uṣūl al-fiqh*. He would have therefore been understanding and accepting of future scholars revising, adapting, or building-upon what he had contributed. Such is the attitude that is intrinsically part of the scholarly prophetic tradition. As Darrāz states: “This is the distinction of our religion, Islam, to accept what is sound even from the antagonist, unless it has been prohibited by

³⁷⁹ Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī‘ah*, 13; Nyazee, *The Reconciliation of the Fundamentals*, xxv.

the Messenger of Allah (pbuh).”³⁸⁰ Put differently, matters of epistemology and the standard of authentication for the objective of sound and true knowledge was at the essence of the Islamic tradition, and this was properly understood by those pious traditional scholars who were operating within it.

We are not quite certain when exactly Darrāz commenced his work on *al-Muwāfaqāt*, nor are we sure how long it took him to complete it or even when it was published. The most reasonable estimate is that he had begun working on his edition after his secondary and post-secondary schooling at Azhar, and perhaps around the time of his official academic teaching appointment there in 1928, which would put him at the age of 34. It is also probable that he had completed it by 1937. For between 1937 and 1947, he was in France pursuing a second undergraduate as well as a doctoral degree. And we learn from his biographer that upon his return to Egypt and up till his death in 1959, he was preoccupied with his writings on ethics and the Qur’ān. Based on this information, therefore, a reasonable estimated time-frame for his work on *al-Muwāfaqāt* is sometime between the mid-1920s and the mid-1930s.

What we do know is that his edition of *al-Muwāfaqāt* was published in Cairo by al-Maktaba al-Tijārīya al-Kubrā, and comprised in total four volumes in Arabic. For what we are concerned with here in regards to his ruminations and critique of *al-Muwāfaqāt*, Darrāz’s introduction to his edition proves to be invaluable. Broadly speaking, we can characterize this introduction as aiming to achieve two main objectives. Firstly, it is an attempt to justify *al-Muwāfaqāt*’s great value within the Islamic intellectual tradition and particularly its relevance for the modern Muslim world. And secondly, it is a bid to instill

³⁸⁰ Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī‘ah*, 13; Nyazee, *The Reconciliation of the Fundamentals*, xxv.

confidence in *al-Muwāfaqāt*'s accessibility by offering the reader a relatively coherent and simplified overview while expounding on the ways in which he has refined and elaborated on the original topics of discussion. It is worthwhile here to examine how Darrāz exactly does this.

Darrāz's first task is to situate *al-Muwāfaqāt* within the Sunni orthodox tradition, recognizing its controversial repute and historical baggage as an alleged affront to established legal theory. In order to do this though, he must first demonstrate his own credibility as a defender of that tradition and a loyal follower of it. It is as such that he commences his review with an affirmation of the epistemological and hierarchal sanctity of the traditional principle sources of *uṣūl al-fiqh*, being of course the Qur'an, Sunna, *ijmā'*, and *qiyās*. This is followed by paying homage to the contributions made to *uṣūl al-fiqh* by its early pioneers, foremost among them being al-Shāfi'ī through his famous *Risāla*. Among the most essential contributions they made, he acknowledges, was establishing as an indispensable starting point the role of sound linguistic analysis to any approach to the sources and to ultimately deriving authentic and unadulterated law. It is through a sophisticated knowledge of the features, intricacies, and subtleties of the Arabic language that:

...the manifest and apparent is distinguished from the unelaborated, the actual meanings from the figurative, the general from the particular, the governing definitive texts from the ambiguous, the explicit from the implications, and so on...³⁸¹

³⁸¹ Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī'ah*, 3; Nyazee, *The Reconciliation of the Fundamentals*, xvii.

Then as a prelude to his edition of al-Shāṭibī's work, he immediately provides a statement conveying the significance of *maqāṣid* as it relates to people, "in securing their interests both of the religion (*dīn*) and of this world," before going on to elaborate on what the *maqāṣid* are.³⁸² The statement is crafted in such a way that his notion of *maqāṣid* is not seen as a competing methodological tool with that of *uṣūl al-fiqh*, but rather as its complement.

Darrāz then attempts to explain the relationship of *maqāṣid* to *fiqh* and tries to convey not only the essential interconnectedness between them, but, and even more integral, the indispensability of the *maqāṣid* to *fiqh*. *Fiqh* is not merely rules, obligations, commands, or injunctions. It is that, and obedience to the Lawgiver is certainly a fundamental objective in a Muslim's relationship to *fiqh*. But this obedience takes on another dimension, which is that God intends benefit for His creation in this obedience. *Fiqh*, therefore, serves a higher purpose. As Darrāz explains: "There is no chapter among the various chapters of *fiqh*, dealing with worship, transactions, and crimes, that does not attempt to secure these interests or to realize these purposes; the realization of which is the main objective of all the rules."³⁸³

Darrāz goes on to explain what he deems to be the necessary consideration of the *maqāṣid* in the processes involved in deriving *fiqh*, without which would result in discord in man's applicability of the *fiqh*. As Darrāz has it, what one needs to deduce rulings from the primary sources is "proficiency in the language of the Arabs" and "knowledge of the underlying secrets of the *Sharī'ah* and of its purposes" (i.e., the *maqāṣid*).³⁸⁴ While the first

³⁸² Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī'ah*, 3; Nyazee, *The Reconciliation of the Fundamentals*, xvii.

³⁸³ Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī'ah*, 4; Nyazee, *The Reconciliation of the Fundamentals*, xvii.

³⁸⁴ Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī'ah*, 5; Nyazee, *The Reconciliation of the Fundamentals*, xvii.

of these tools (that of language) has historically been a main staple in any of the methodological and systematic approaches to the primary sources, as in *uṣūl al-fiqh*, the second of these (that of *maqāṣid*) has been a later and marginalized development that has received averse criticism at times, despite that its value to the processes of deriving *fiqh* and *ijtihād* being, in Darrāz's view, an indispensable necessity.

For Darrāz, the notion of acquiring the *maqāṣid* is in no way a contravening innovation defying the *Sharī'ah* and normative tradition. On the contrary, it is a means by which to preserve orthodoxy and ultimately the sanctity of the spirit of the sources. He goes on to explain that while the notion of *maqāṣid* and learning how to extract them is a later development, it does not preclude their being unfamiliar to previous generations, including the first generation. In fact, the purposes of legislation were part and parcel and inherent in the understanding of the Prophet Muḥammad and the first generation of Companions. The Companions, he explains, knew the *maqāṣid*:

...through their prolonged companionship with the Messenger of Allah □.

They saw with clear comprehension the Qur'ān being revealed and the *Sunnah* promulgated in phases according to the arising incidents, and they comprehended the interests and grasped the purposes that the Lawgiver was concerned about in legislation.”³⁸⁵

Later generations, however, would have to learn how to deduce these objectives as they did not have direct proximity to the Prophet, and particularly to a live interaction with his knowledge, wisdom, and guidance during the events that transpired surrounding revelation.

³⁸⁵ Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī'ah*, 5; Nyazee, *The Reconciliation of the Fundamentals*, xvii.

Recognizing the critical importance of the first of the two tools (language) to deriving *fiqh*, scholars would in time develop the discipline of *uṣūl al-lughā* (the rules of language) as a fundamental means in the approach of deriving the laws (*aḥkām*) of the *Sharī'ah*. *Uṣūl al-lughā* would eventually become an integrated, fundamental and essential aspect to the science of *uṣūl al-fiqh*.

As significant as language is to *fiqh*, what is just as important and absent in *uṣūl al-fiqh* in Darrāz's view was identifying the purposes and wisdoms behind the primary source content being accessed to derive *fiqh*. Designating *maqāṣid* as the second important element for deriving *fiqh*, next to the first element of *uṣūl al-lughā*, Darrāz holds that the scholars of *uṣūl al-fiqh*:

...neglected, however, the second element, and did not speak about the purposes of the Lawgiver, except by way of brief hints that are found in chapters on analogy with respect to the divisions of the *'illa* (underlying cause) as related to the purposes of the Lawgiver and about having recourse to them. These, with respect to the divisions, they said are of three types: necessities, needs, and complementary values. This they did when it deserved more attention and greater detail as well as exhaustive treatment as compared to many other issues that crept into *uṣūl al-fiqh* from other disciplines.³⁸⁶

It wasn't until al-Shāṭibī's pioneering theoretical exposition on the functionality of *maqāṣid* and *maṣlaḥah* that these concepts drew greater attention from legal theorists and ulema in general. Darrāz characterizes al-Shāṭibī's contribution to the future of legal theory

³⁸⁶ Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī'ah*, 6; Nyazee, *The Reconciliation of the Fundamentals*, xvii.

and *Sharī‘ah* as epic. Regarding in particular the absence of *maqāṣid* in the discipline of *uṣūl al-fīqh*, Darrāz remarks that al-Shāṭibī was able “to take care of this deficiency and to erect this great edifice to fill the huge void in this exalted discipline.”³⁸⁷ Darrāz goes on to describe the structure of *al-Muwāfaqāt*, before offering a crucial yet relatively concise explanation of how its main subject matter concerning *maqāṣid* and *maṣlahah* are employed to harmonize the perceived antinomy of preserving orthodoxy while adapting the law when necessary and due to the change of context (i.e., time, place, people, circumstances). Contrary to those who would consider these (i.e., preserving orthodoxy and adapting the law) to be mutually exclusive, Darrāz asserts that they are rather complementary, explaining:

...the *Sharī‘ah* is based on the securing of interests (*maṣāliḥ*), and it is an eternal system meant for all mankind, assuming that the world will continue till eternity. The reason is that it is concerned with the application of prevalent practices. The changing of rules with a change in practices does not mean the alteration of the obligating communication itself. In fact, with a change in practice, each practice is referred to a principle of law (*aṣl shar‘ī*) that gives a ruling on it. Further, the distinguishing feature of this *Sharī‘ah* is its generosity and compassion, by virtue of which it guides all—whether infirm or strong and whether intelligent or obtuse.³⁸⁸

What Darrāz is essentially saying here is that the *Sharī‘ah* is framed by universals that are constant throughout time. Certain particulars, however, may change depending on necessitating circumstances and as long as the adapted particular complies with one or

³⁸⁷ Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī‘ah*, 6; Nyazee, *The Reconciliation of the Fundamentals*, xix.

³⁸⁸ Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī‘ah*, 6; Nyazee, *The Reconciliation of the Fundamentals*, xix-xx.

more of the constant universals, and while also procuring some greater necessary benefit or avoiding some greater harm or evil. Thus, the need to adapt a particular when necessary and in order to uphold a broader universal is in fact an act of obedience to the Lawmaker. Ultimately, as Darrāz maintains, the underlying purpose of the *Sharī‘ah* is benefit, and that benefit is as a mercy from the Creator.

7:3 | Darrāz’s Critique of other Matters Discussed in *al-Muwāfaqāt*

Though some commentators see *maqāṣid* thought as a discipline within its own right, distinct from the *uṣūl al-fiqh* tradition, Darrāz clearly attempts to place it within that tradition, and as a revisionist extension of it, referring to it as a “renewal and reconstruction of this discipline [of *uṣūl al-fiqh*].”³⁸⁹ There are certainly informing and overlapping features, “intrinsic connections,” between *maqāṣid* and *uṣūl al-fiqh*; but the same can be said to be true about *uṣūl al-fiqh* and other Islamic disciplines (*‘ulūm*). For instance, those of *‘ilm al-kalām*, *‘ilm al-ḥadīth*, and *‘ilm al-tafsīr* all inform and are informed by *uṣūl al-fiqh*. Yet, they are also recognized within the Islamic intellectual tradition as distinct disciplines within their own right. That Darrāz situates *maqāṣid* philosophy within *uṣūl al-fiqh* is a direct attempt at promoting the renewal and reconstruction of it. But the relevant question to be raised here is whether or not situating *maqāṣid* philosophy within *uṣūl al-fiqh* as opposed to designating it as distinctly separate has any implications or ramifications? Some such as Ibn ‘Āshūr and al-Ḥasanī believe that it should be viewed as an autonomous science because it has its own set of methodologies, aims, and subject

³⁸⁹ Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī‘ah*, 7; Nyazee, *The Reconciliation of the Fundamentals*, xx.

matter distinct from those of *uṣūl al-fiqh*.³⁹⁰ Darrāz maintained, however, that doing so might give the impression that it's competing with rather than complementing the science of *uṣūl al-fiqh*, and as such would inhibit its purpose to affect and guide both *uṣūl al-fiqh* and *fiqh*. Attia shares a similar position, stating that doing so “would be harmful to both sciences [*maqāṣid al-Sharī‘ah* and *uṣūl al-fiqh*], since it would, in effect, freeze *uṣūl al-fiqh* in its present state and deprive it of the spirit of *maqāṣid*; in addition, it would exclude *maqāṣid* from the practical role which they perform at present, a role which we must do our utmost to support, sustain and develop.”³⁹¹ Whether *maqāṣid al-Sharī‘ah* philosophy should be designated as an independent science or fall within *uṣūl al-fiqh* is a moot point for al-Raysūnī, who sees the debate as purely semantical. Al-Raysūnī thus takes a middle-of-the-road position and views *maqāṣid al-Sharī‘ah* philosophy to be both a science and a component of *uṣūl al-fiqh*. The issue at hand for him should be the function that *maqāṣid al-Sharī‘ah* serves to achieve rather than how it is characterized or designated.³⁹²

Darrāz goes on to offer a critical descriptive account of al-Shāṭibī’s work; an account which generally gravitates towards commendation, but not without particular points of slight criticism. He begins by noting that more than just articulating the *maqāṣid* of the *Sharī‘ah*, al-Shāṭibī had executed the great feat of capturing the “spirit of the *Sharī‘ah*”³⁹³ In then commenting on the introductory portion of *al-Muwāfaqāt*, Darrāz deems the thirteen rules delineated by al-Shāṭibī as foundational to understanding the issues that lay in the remainder of his work.³⁹⁴ Following these rules is al-Shāṭibī’s treatment of

³⁹⁰ Al-Ḥasanī, 437-440.

³⁹¹ Attia, 244.

³⁹² Al-Raysūnī, 315.

³⁹³ Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī‘ah*, 7; Nyazee, *The Reconciliation of the Fundamentals*, xx.

³⁹⁴ Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī‘ah*, 7; Nyazee, *The Reconciliation of the Fundamentals*, xx.

the well-established five *aḥkām*, which Darrāz characterizes as adopting “an approach that is different from the usual approach in the books of *uṣūl al-fīqh*.”³⁹⁵ Darrāz notes that al-Shāṭibī’s discussion of this, which takes up about one-fourth of *al-Muwāfaqāt*, is invaluable to understanding the religion as a whole, and serves as a foundational precursor to deciphering those parts in *al-Muwāfaqāt* which deal with evidences and the principles in which they are founded upon. That certain parts of *al-Muwāfaqāt* explain other parts is—in Darrāz’s view—one of the main reasons why it had not received the attention he believes it deserved. In other words, not being able to make the necessary connections between the different sections of the book was a major factor in exacerbating the complexity of an already challenging material. Therefore, this along with the sheer provocativeness of attempting to reshape well established legal theory was what inevitably led to *al-Muwāfaqāt*’s marginalization.

Darrāz then describes several other specific topics that *al-Muwāfaqāt* addresses, marveling at al-Shāṭibī’s unparalleled ability to comprehensively treat them. For Darrāz, al-Shāṭibī’s achievement with his work is nothing short of genius. Darrāz’s reverential characterization of al-Shāṭibī and the contents of *al-Muwāfaqāt* is particularly pronounced in describing al-Shāṭibī’s methodological approach. Here he projects a virtually saintly and gnostic depiction of al-Shāṭibī, portraying his insight into the work’s subject matters as having been “revealed to him” in an attempt to “remove the veils” (*hādhīhī al-mabāḥith allatī fataḥa Allāhu ‘alayhī bihā lam taslas lahu qiyādahā wa takashafa lahu qinā ‘ahā*).³⁹⁶ Such lofty and divinely bestowed perception was an outgrowth of a profound pietistic

³⁹⁵ Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī‘ah*, 7; Nyazee, *The Reconciliation of the Fundamentals*, xx.

³⁹⁶ Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī‘ah*, 7; Nyazee, *The Reconciliation of the Fundamentals*, xx.

devotion to and reflection upon the Qur'ān. Moreover, al-Shāṭibī's acute ability to integrate and utilize the Prophetic traditions as well as the output of scholarly tradition further aided his overall knowledge into these matters. But ultimately for Darrāz, it was God who was behind al-Shāṭibī's intellectual discovery and gnostic musings. He explicates this in the following passage:

The knowledge of these issues was revealed to him for he followed the guidance in the sources and tried to remove the veils. And this because he took the Qur'ān as his associate, partner and companion for the days and years of his life. Furthermore, he was aided in this by research into the meanings of the *Sunnah*, by the examination of the works of the earlier scholars,...and finally, by the employment of the powerful vision granted to him by God.³⁹⁷

For Darrāz, the extraordinarily peerless depth that al-Shāṭibī had attained in discerning the *Sharī'ah* was exceptionally marked by his holistic capturing and harmonizing of the contents of its sources, a feat which no other had achieved prior to nor after him. Continuing with his laudatory and at times flowery description of al-Shāṭibī's unprecedented methodology, he says:

You will feel, as you read the book, that you can see him standing atop a tall mountain peak surveying from there the fountain-heads and sources of the *Sharī'ah* viewing all the paths winding through them, and these he describes with his senses, building the foundations as he experiences them,

³⁹⁷ Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī'ah*, 7; Nyazee, *The Reconciliation of the Fundamentals*, xx.

and lays down universal principles through the enumeration of evidences from the *Sharī‘ah*. Thus, he links a verse, tradition, or report with another verse, tradition or report by supporting this with rational proofs and theoretical bases till such time that all doubt is removed and suspicion eliminated. The truth is, thus, discovered through this method till it reaches the level of the *mutawātir ma‘nawī* (definitive in meaning). He follows this method in his discussions and his arguments so thoroughly that he says - in truth - that this method is a significant feature of the book.³⁹⁸

Darrāz then delves into more detail concerning the particular topics which al-Shāṭibī imparts, offering for the first time a relatively succinct yet informative and easy to grasp summary of its major features. That he does this, and that he provides an introductory commentary on *al-Muwāfaqāt*, is significant in terms of generating the positive and wide appeal that al-Shāṭibī’s work had otherwise lacked prior to this edition. It should be noted that though the 1884 Tunisian edition of *al-Muwāfaqāt* had been the first to emerge in the modern world, its editor offered no introductory material, having only included the contents of al-Shāṭibī’s original. The purport of this is that Darrāz’s edition, and relative to the 1884 Tunisian edition, offered for the first time a substantial and compelling argument for *al-Muwāfaqāt*’s value potential and relevance to the modern world. ‘Abduh and the 1884 Tunisian edition may have sparked initial interest, but it was Darrāz’s edition that facilitated and spawned a much larger readership, and his introduction in particular provided a much needed crutch to approach an otherwise formidable work.

³⁹⁸ Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī‘ah*, 8; Nyazee, *The Reconciliation of the Fundamentals*, xx-xxi.

Darrāz goes on to highlight *al-Muwāfaqāt's* main features and to capture in a relatively coherent style their general import. He delivers this, moreover, in a pyramidal top to bottom and simple to complex fashion. Beginning with the Qur'ān, it is of course the absolute essential and foundational source for all other sources, giving expression to rulings which may need further elaboration through other sources, foremost of them being the Sunnah. The next topic that transitions from this is the actual approach to understanding the meanings of the Qur'ān. He tells us that al-Shāṭibī “elaborates the disciplines that are associated with the Qur'ān and are, or are not, needed for interpreting it.”³⁹⁹ Building on this, al-Shāṭibī then illuminates those Qur'ānic passages which are apparent in meaning and those which are concealed or multivalent, while identifying in these latter those which may or may not be used for interpretation. In other words, certain passages of what al-Shāṭibī identifies as concealed in meaning may be further probed to discover the possible meanings by those qualified with the requisite knowledge.

Darrāz then explains particular insights that al-Shāṭibī extracts from his holistic survey of the Qur'ān including establishing that “the verses revealed in Mecca cover most of the universal rules, whereas those revealed at Medina are an elaboration and affirmation of such principles...by virtue of which he explains that the revelation of the Medani verses was necessary after those revealed at Mecca.”⁴⁰⁰ These universals which al-Shāṭibī identifies are unchanging and therefore unaffected by abrogation or factors such as time, place and people. It is only after having delineated these universals does al-Shāṭibī then prescribe the methodology in which to interpret the Qur'ān and consequently derive rulings from it. Darrāz says: “Thereafter, he lays down the rule for the balanced and mean path for

³⁹⁹ Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī'ah*, 8; Nyazee, *The Reconciliation of the Fundamentals*, xxi.

⁴⁰⁰ Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī'ah*, 8; Nyazee, *The Reconciliation of the Fundamentals*, xxi.

the interpretation of the Qur'ān upon which the derivation of the *aḥkām* can be structured.”⁴⁰¹ These universals are also essential in approaching, interpreting, and deriving rulings from the Sunnah, such that any understanding of the Sunnah must comply with the universals.⁴⁰² Darrāz makes it a point to emphasize here that the universals are indisputable, lest anyone question their legitimacy in overseeing the particulars of the Qur'ān and the Sunnah.⁴⁰³

Darrāz's critique finally reaches the conclusion of *al-Muwāfaqāt*, which concerns the all-important subject matter of *ijtihād*. He tells us that al-Shāṭibī elaborates on the different types of *ijtihād* including “those that are terminated and those that will go on forever.”⁴⁰⁴ Darrāz explains that the types of *ijtihād* which terminate do so as a consequence of the two informing disciplines which, as has been mentioned, are key to any process of deriving *fiqh*, these being the Arabic language and the *maqāṣid al-Sharī'ah*; both of which, he adds, require an exceptional level of understanding. What we would understand from Darrāz's explanation here is that a certain *ijtihād* may terminate if it had been entirely dependent upon a particular understanding of the language or a particular *maqāṣid* that applied solely for the specific issues or circumstances surrounding that *ijtihād* at a given time, whereby the *ijtihād* would no longer be meaningful and therefore could change had these issues or circumstances not existed. Ultimately, Darrāz explains, “the *Sharī'ah* reverts to a single principle in all that is a matter of disagreement among the jurists

⁴⁰¹ Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī'ah*, 8; Nyazee, *The Reconciliation of the Fundamentals*, xxi.

⁴⁰² Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī'ah*, 8; Nyazee, *The Reconciliation of the Fundamentals*, xxi. Darrāz says: “The status of the *Sunnah* in relation to the Qur'ān is then elaborated with the explanation that it does not go beyond the universal principles during legislation.”

⁴⁰³ Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī'ah*, 8; Nyazee, *The Reconciliation of the Fundamentals*, xxi.

⁴⁰⁴ Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī'ah*, 8; Nyazee, *The Reconciliation of the Fundamentals*, xxi. Darrāz says: “He elaborates all the points in a manner that leaves little room for doubt about these principles.”

in the comprehension of the purposes of the Lawgiver with respect to the *aḥkām*.⁴⁰⁵ Darrāz does not explicitly spell out this principle, but one would gather from the context and from al-Shāṭibī’s own discussion that this principle is the avoidance of harm and the securing of benefit, or even more narrowly, the securing of benefit, since the avoidance of harm can in itself be said to be securing a benefit

Darrāz closes his critique by reminding the reader that there is much to be mentioned between the lines, for he has only touched upon “a mere drop on the shores of *al-Muwāfaqāt*.”⁴⁰⁶ As we can attest to from his overview, he must sacrifice detail and elaboration for simplicity and clarity, and ultimately for the sake of what he perhaps thought was most conducive in convincing his audience to give *al-Muwāfaqāt* a chance. This we say knowing that Darrāz was well-cognizant of the controversies and what he thought to be the issues surrounding *al-Muwāfaqāt*, which he believed had led to its marginalization.

For Darrāz, where *al-Muwāfaqāt* can be especially meaningful and game-changing is in serving as a guide and corrective for disorderly *ijtihād*. Darrāz here provides an elaborated discussion on the notion of *ijtihād* as viewed through a Shāṭibīan lense. In Darrāz’s view, the directive that *al-Muwāfaqāt* offers for the institution of *ijtihād* and for deriving sound, meaningful yet authentic *fiqh* is one of the underlying reasons that makes the work indispensable for the future of *Sharī’ah* and Muslim societies. It is also here that he plunges into a biting critique of certain practitioners of *ijtihād*. In calling on these folks to mend their ways and to implement the Shāṭibīan approach, he says:

⁴⁰⁵ Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī’ah*, 8-9; Nyazee, *The Reconciliation of the Fundamentals*, xxi.

⁴⁰⁶ Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī’ah*, 9; Nyazee, *The Reconciliation of the Fundamentals*, xxi.

If it is taken as a guidepost for Muslims through its acceptance among the scholars and employment by the specialists, the book can become a defense against those claimants of *ijtihād* who feed on the crumbs of the pure *Sharī'ah*. They make tall claims that they are eligible for undertaking *ijtihād* when in reality they are devoid of the basic means and qualifying attributes. All that they have is mere claims and reliance on whim, for they have given up the affairs of the *Dīn* and believe in unbridled anarchy.⁴⁰⁷

He then submits with some detail two ways in which these practitioners, whom he refers to as “illiterate in matters of the *Sharī'ah*,” stray in their process of making *ijtihād*. The first of these are those who derive *fiqh* from the particulars while oblivious to the universal *maqāṣid*, whereby they tend towards a gross misrepresentation of the spirit of the *Sharī'ah*. Darrāz says that they adopt “some of the particulars in a manner that leads to the demolition of the universals, and they follow what appears obvious to them for they do not have the knowledge of the *maqāṣid* that can serve as a criterion for dealing with such particulars.”⁴⁰⁸ As for the second kind of misguided *ijtihād*, its deviance stems from a whimsical intent on the part of the practitioner to manipulate the source evidences for ulterior motives other than that which would comply with the fundamental values and principles of the *Sharī'ah*. These folks, as with the preceding ones, are grossly heedless of the *maqāṣid al-Sharī'ah*, having been blinded by their desire to attain some vain self-interested outcome. In Darrāz’s own words, they:

...employ the evidences of the *Sharī'ah* to serve their own ends in the incident facing him. They let their whims govern the evidences till such

⁴⁰⁷ Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī'ah*, 9; Nyazee, *The Reconciliation of the Fundamentals*, xxi-xxii.

⁴⁰⁸ Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī'ah*, 9; Nyazee, *The Reconciliation of the Fundamentals*, xxi-xxii.

time that the evidences start serving their interests. In doing so they do not have knowledge of the *maqāṣid al-Sharī‘ah*, nor do they have recourse to them in submission nor acknowledge what was transmitted to them from reliable ancestors about their understanding of the purposes, nor do they have the vision for undertaking *ijtihād* based on such understanding. All this is due to the pursuit of whims that please the self and that lead to the giving up of guidance based upon evidences, the rejection of justice, the absence of humility, added to which is a lack of knowledge of the *maqāṣid al-Sharī‘ah* as well as the illusion of having reached the status of *ijtihād*. This invokes the hazard of falling into destruction; may Allah protect us from it.⁴⁰⁹

It is evident here that Darrāz sees *al-Muwāfaqāt* as serving the preservation of tradition or the spirit of that tradition, contrary to the views of its detractors who held that it leads to a pernicious diversion from it. Notions, moreover, that *al-Muwāfaqāt* was merely a tool for change, coopted especially by “reformist-minded” Muslims, is a simplistic mischaracterization of its reception, and, furthermore, ignores and belies the intents of its author. Like any work, *al-Muwāfaqāt* is at the mercy of its interpreter. There are certainly those who will seek to wield it towards some agenda that grossly strays from normativity. But this is the case with any work. As the author himself had intended, *al-Muwāfaqāt* was an attempt to redirect misguided *fiqh* back to the underlying purposes of the *Sharī‘ah*, as was the practice of *fiqh* during the early Muslim generations going back to the Prophet Muḥammad.

⁴⁰⁹ Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī‘ah*, 9; Nyazee, *The Reconciliation of the Fundamentals*, xxi-xxii.

In any case, Darrāz returns to the very issue that commenced his review of *al-Muwāfaqāt*, and that is the matter of its relationship to *uṣūl al-fiqh*. As if compelled to broach the topic again, Darrāz this time, and in more explicit terms, reassures the reader that *al-Muwāfaqāt*'s content is entirely within the *uṣūl al-fiqh* tradition. He says: “[al-Shāṭibī] is not going beyond the discussions of *uṣūl [al-fiqh]* for you will find him saying in many of his discussions that if this discussion is appended to what is established in *uṣūl [al-fiqh]* the purpose will be attained.”⁴¹⁰ In other words, *al-Muwāfaqāt* is essentially an elaboration and refinement of what had evolved in legal theory such that it should simply be thought of as an addendum. He attempts to further qualify the complementariness and need for *al-Muwāfaqāt* to the *uṣūl al-fiqh* tradition by adding that its primary objective coincides with that of *uṣūl al-fiqh*, which is establishing sound methodology in the derivation of rulings from the evidences. However, in the absence of *al-Muwāfaqāt*, *uṣūl al-fiqh* and its various sub-disciplines fail to provide an unequivocal path to producing *fiqh* that aligns with the ultimate purposes of the *Sharī‘ah*. Darrāz states:

...all that is mentioned in the books of *uṣūl [al-fiqh]*, as well as what is stated in *al-Muwāfaqāt*, is deemed a means towards the derivation of the *aḥkām* from the evidences of the *Sharī‘ah*. However, the numerous disciplines that are found in *uṣūl [al-fiqh]*, with the lengthy supporting arguments for their issues, limit its benefit as a means towards an end.⁴¹¹

That Darrāz has to revisit *al-Muwāfaqāt*'s relationship to *uṣūl al-fiqh* is quite telling of how its acceptance within the mainstream scholarly tradition was a matter of serious contestation.

⁴¹⁰ Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī‘ah*, 9-10; Nyazee, *The Reconciliation of the Fundamentals*, xxi-xxii.

⁴¹¹ Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī‘ah*, 10; Nyazee, *The Reconciliation of the Fundamentals*, xxi-xxii.

Darrāz further addresses another critical grievance that he often finds charged against *al-Muwāfaqāt* and its proponents, which is that it primarily serves to benefit the *mujtahid*, being of no value to anyone else. He says: “An objection is often raised against those who are occupied with it that such knowledge has no use except for one who has reached the status of *ijtihād*.”⁴¹² But Darrāz sees *al-Muwāfaqāt*'s relevance to extend beyond not only the purview of specialized *ijtihād*, but of law in general. He says:

Even if we do not reach the level of *ijtihād* through it, or acquire the ability of deriving the rules, we do attain through it a knowledge of the *maqāṣid al-Sharī'ah* and the secrets underlying the *aḥkām*. It provides satisfying guidance and illuminates the four corners of the believer's heart driving away doubt and hesitation and gathering together in clear comprehension what was missing. The service provided by this Imam, God be pleased with him, is only for the sake of Allah.⁴¹³

For Darrāz, *al-Muwāfaqāt*, and namely in its attempt to link rulings to higher purposes, has immense theological and spiritual value. Knowing that rulings are not for naught and are tied to greater wisdoms which can be deciphered with God's unveiling, is a value that extends beyond the *mujtahid*, and even to the lay, for it can generally increase one's faith and procure a greater spiritual state, instilling not only confidence but certainty in the *Sharī'ah*'s divine truth. Darrāz would not argue against the notion that for the believer obedience to God's *Sharī'ah* is necessary with or without knowing the wisdoms or reasons behind God's injunctions and commands. But this should not preclude discovery of such wisdoms or reasons, which Darrāz holds as essential. What Darrāz's creative assessment

⁴¹² Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī'ah*, 10; Nyazee, *The Reconciliation of the Fundamentals*, xxi-xxii.

⁴¹³ Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī'ah*, 10; Nyazee, *The Reconciliation of the Fundamentals*, xxiii.

of *al-Muwāfaqāt*'s utilitarian benefit and appeal to the intellect reveals, moreover, is an Ash'arī slant, wherein reason can decipher the purport of revelation, but where the believer is also duty-bound to submit to revelation even when that purport is not obviously manifest.

Darrāz eventually gets around to pointing out some of the shortcomings he finds in *al-Muwāfaqāt*. The first of these is al-Shāṭibī's work with *aḥādīth*. Specifically, he mentions that of the nearly one-thousand *aḥādīth* referenced by al-Shāṭibī, "he has not traced the chain to the narrator" for the vast portion of them.⁴¹⁴ Here, rather than offering any reproach, Darrāz is quite apologetic, explaining that it was part of al-Shāṭibī's justifiable methodology to just offer the reader what was necessary and relevant from a *ḥadīth* to support a certain point he was making, "[desiring] from such methods the attainment of his goals without prolonging the text beyond limits."⁴¹⁵ But Darrāz also acknowledges that the reader has a right to know the evidence, including the strength and weakness of a tradition along with its context, all of which inform for the reader proper judgment as to a particular point or matter that al-Shāṭibī is attempting to convey. He says: "The need of the reader is also obvious for he requires the complete tradition along with its status with respect to its strength and weakness, so that the purpose in quoting the tradition becomes evident, help is provided in evaluating the underlying reasoning, and the resulting satisfaction or the lack of it is attained with respect to the context."⁴¹⁶ Believing in the importance of *al-Muwāfaqāt*, while also recognizing its imperfections and weaknesses (as in the area of *aḥādīth*), Darrāz takes it upon himself to preempt its critics and detractors by providing a thorough substantiation and authentication of all the *aḥādīth*

⁴¹⁴ Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī'ah*, 14; Nyazee, *The Reconciliation of the Fundamentals*, xxv.

⁴¹⁵ Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī'ah*, 14; Nyazee, *The Reconciliation of the Fundamentals*, xxv.

⁴¹⁶ Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī'ah*, 14; Nyazee, *The Reconciliation of the Fundamentals*, xxv.

that al-Shāṭibī references. Darrāz speaks of the painstaking challenge this posed for him, and the need to bring in experts to aid him in the undertaking. But the value of the work was well worth the struggle. The exhaustive task “involved hardship and tiring research through the widely spread volumes of traditions with their numerous sources and their multiplicity of references.”⁴¹⁷ He was indebted namely to one of the foremost scholars of prophetic traditions of his time, one by the name of Muḥammad Amīn ‘Abd al-Razzāq, for carrying the burden of sifting through thirty-three books of traditions. Describing his exceptional devotion and effort in this undertaking, he tells us:

[‘Abd al-Razzāq] continuously spent long months referring to these sources for deriving the records of a tradition, its various versions, numerous chains, varying texts, so as to arrive at the tradition that was quoted by the author, and on most occasions the version that he had recorded, and this for ease of access and of identifying its version and status.⁴¹⁸

But making matters most difficult for the editing process was the relatively poor condition of the original manuscript being worked from, which he describes as corrupted with numerous mistakes in the text. At times, Darrāz and two senior ulema who were assisting him in the editing process had to simply omit certain sentences or words that would have otherwise procured some lack of clarity or incomprehension in the text. Exacerbating matters further was the time constraints that the project had been confined to per the agreement made with the publisher. Darrāz in the end—given the circumstances—felt content with the overall quality of the work, and that it was an authentic representation of the original, in both its purpose and in the meanings it aimed to convey. Darrāz’s edition

⁴¹⁷ Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī‘ah*, 14; Nyazee, *The Reconciliation of the Fundamentals*, xxvi.

⁴¹⁸ Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī‘ah*, 14; Nyazee, *The Reconciliation of the Fundamentals*, xxvi.

apparently received rave reviews among his peers and the general readership. He himself, however, humbly believed that it was but a good first step in attempting to truly depict what it offered, and that there was much room for improvement, encouraging others well-qualified to put forward their own efforts to surpass the quality of his edition.⁴¹⁹

It would be no overstatement to say that Darrāz's edition including his introductory overview and critique had singlehandedly resuscitated *al-Muwāfaqāt* in the modern period. He was able to address those matters that had historically plagued the work in the eyes of its detractors, and went further to preempt future critics ready to find fault with other aspects concerning it. While 'Abduh and his popularity had initially sparked interest in *al-Muwāfaqāt*, it was Darrāz who had facilitated its accessibility to a broader readership. Darrāz paved the way for further exploration into al-Shāṭibī's thought, and his edition of *al-Muwāfaqāt* would set the standard by which future editions would be compared to.

⁴¹⁹ Darrāz, *Muwāfaqāt fī Uṣūl al-Sharī'ah*, 14; Nyazee, *The Reconciliation of the Fundamentals*, xxvi.

PART III

The Evolution of *Maqāṣid* Thought: Ibn ʿĀshūr and the Contemporary *Maqāṣid* Movement

INTRODUCTION TO PART III

In Part Two of this work, we affirmed that theoretical *maqāṣid* and al-Shāṭibī's *maqāṣid* theory in particular was by every indication inactive and dormant for some five centuries, wherein we offered the likely reasons for this. We contended that practical *maqāṣid*, or the application of *maqāṣidic* thought to real world matters, was alive and active, contrary to theoretical *maqāṣid* à la al-Shāṭibī's *maqāṣid* theory. We then attempted to trace and explain the reemergence of al-Shāṭibī's *maqāṣid* theory within the modern era, providing the socio-political, economic and religious context within which the *maqāṣid* thought of later thinkers such as Ibn 'Āshūr would emerge, and establishing at least one important *maqāṣidic* genealogical strain of influential and transformative thinkers who played a crucial role—consciously or not—in the reemergence of al-Shāṭibī's thought. While modern reformists including Khayr al-Dīn al-Tūnisī, Rifā'ah Rāfi Ṭaḥṭāwī, Muḥammad 'Abduh, and Muḥammad Darrāz had importantly paved the way for the introduction of al-Shāṭibī's *maqāṣid* theory to the modern world, they did not engage in shaping and informing the intellectual discourse pertaining to *maqāṣid* theory; their roles mainly confined to that of endorsing, promulgating and disseminating it through their own *iṣlāḥī* initiatives.

It would not be until the prominent Tunisian Shaykh Muḥammad Ibn 'Āshūr (d. 1973) that anyone would critically engage with al-Shāṭibī's thought and substantially inform the *maqāṣid* discipline. Ibn 'Āshūr singlehandedly brought forth the intellectual

revival of *maqāṣid* philosophy. His contribution to the discipline marked a pivotal moment for the place of Islamic law moving forward, setting the stage for an entire generation of Muslim scholars and thinkers of the late twentieth and twenty-first centuries who would follow in his footsteps and revisit what had been an innovative medieval development that could redefine how Islamic tradition negotiated with the world around it.

The contemporary *maqāṣid* movement which was anchored by Ibn ‘Āshūr would pick up steam in the mid-1970s, shortly after his passing in 1973. A watershed moment in this movement came in 1976, when Muslim scholars from the Muslim world, Europe and the United States convened at a major conference in Lugano, Switzerland to address the state of the Muslim world and the general dearth of academic and scientific activities among contemporary Muslims. Given what was deemed as an intellectual crisis (*al-azmah al-fikriyyah*) in the global Muslim community—an assessment that Ibn ‘Āshūr had earlier made—the conference concluded that Muslim intellectual thought needed to be first and foremost purposeful and goal-oriented. A recommendation was thus made to setup a specialized institution which would focus on treating this intellectual crisis by developing a viable goal-oriented plan to revive Muslim academic and scientific contribution to civilization.

Led by Palestinian-American scholar Ismail al-Faruqi (d. 1986) along with members of the Association of Muslim Social Scientists of North America (AMSS), a Muslim educational and research institute called The International Institute of Islamic Thought (IIIT) was founded in Pennsylvania and later established in 1981 in Herndon, Virginia.⁴²⁰ The institute was assigned the task of leading a forward thinking campaign to

⁴²⁰ For more on the conference, its findings, and the establishment of The International Institute of Islamic Thought, see Juliane Hammer, “International Institute of Islamic Thought,” in *Encyclopedia of Muslim*

critically engage with the discipline of *maqāṣid al-Sharī‘ah* such that it would serve as the basis by which to reignite academic and scientific activities among contemporary Muslims. The campaign was commonly referred to as the “Islamization of Knowledge,” and the institute became the hub through which Muslim scholars from around the world were commissioned to produce and disseminate various research pertaining to the discipline of *maqāṣid*.

Among the foremost priorities of this campaign was to acquire an in-depth understanding into the thought of arguably two of the most important writers on *maqāṣid*, al-Shāṭibī and Ibn ‘Āshūr. The study of al-Shāṭibī was commissioned to Aḥmad al-Raysūnī. Ibn ‘Āshūr’s work on *maqāṣid* did not go beyond the commissioning of a translation of his work to Mohamed el-Mesawi.⁴²¹ IIIT invited others to contribute to the study of *maqāṣid* including Gamal Eldin Attia and Jasser Auda.⁴²² Several other leading thinkers of the late twentieth and twenty first centuries, including Muslim academics unaffiliated with IIIT, also joined the conversation on *maqāṣid*. Scholars such as Professor Mohammad Hashim Kamali and Professor Sherman Jackson creatively offered practical ways in which *maqāṣid* thought could be meaningful to Muslims in the present and responsive to the realities of the modern world.

Ibn ‘Āshūr and the contemporary *maqāṣid* movement he ushered in is the subject of Part Three of this work. Part Three will explore the orientation that *maqāṣid* theory takes in the modern era, focusing in particular on the *maqāṣid* thought of Ibn ‘Āshūr, while also

American History, 269. Also see Mohammad Hashim Kamali, “Issues in Islamic Jurisprudence,” Brill, Arab Law Quarterly, Vol. 11, No. 1 (1996).

⁴²¹Mohamed El-Mesawi is a professor at the International Islamic University Malaysia (IIUM), and specializes in epistemology, logic, and metaphysics. El-Mesawi’s translation was characterized by IIIT as “a breakthrough in the studies on Islamic law in the English language.”

⁴²² For their biographies, see further below.

weaving in the thought of important *maqāṣid* thinkers of the twentieth and twenty-first centuries. Much of Ibn ‘Āshūr’s *maqāṣid* thought will be examined in juxtaposition to al-Shāṭibī’s *maqāṣid* theory, allowing us to better determine any kind of evolution taking place between their philosophies, including factors or reasons which may be attributed to any differences, and the implications that these differences have on the balance of the *maqāṣid* discipline. This comparative analysis will also allow us to vet the assertion made by some contemporary commentators, including Professor Sherman Jackson, that Ibn ‘Āshūr’s engagement with the *maqāṣid* discipline resulted in a mere replication of al-Shāṭibī’s theory. More concretely, we consider Professor Sherman Jackson’s contention that Ibn ‘Āshūr’s approach to the *maqāṣid* falls in line with “juridical empiricism,” and that he was unable “to move beyond the pre-modern jurists’ abstractions of the *maqāṣid al-Sharī‘ah* to practical concretions that are responsive to the realities of the modern world.”⁴²³ To the contrary, Part Three will argue that Ibn ‘Āshūr’s engagement with *maqāṣid* largely reflects Professor Jackson’s neoteric notion of “juristic induction,” and, moreover, that Ibn ‘Āshūr presented a *maqāṣid* philosophy which attempted to be meaningful and relevant for Muslims in the contemporary world. We demonstrate that he does this through both preservation and adaptation of certain elements within Islamic tradition. We make the case, moreover, that Ibn ‘Āshūr’s *maqāṣid* philosophy as well as that of other contemporary *maqāṣid* thinkers reflects an attempt to not simply be adaptive to the time, but transformative; both integrating and challenging certain modern sensibilities.

⁴²³ Jackson, *Literalism, Empiricism, and Induction: Apprehending and Concretizing Islamic Law's Maqasid Al-Shari'ah in the Modern World*, 1470. For his association of Ibn ‘Āshūr with “juristic empiricism,” see p. 1478.

Part Three will attempt to achieve the aforementioned through several chapters and sections. Chapter Eight introduces the life and career of Ibn ‘Āshūr along with relatively brief biographies of important *maqāṣid* thinkers of the twentieth and twenty-first centuries who were influenced by Ibn ‘Āshūr’s *maqāṣid* thought and/or are conversant with it. As mentioned, the *maqāṣid* thought of these post-Ibn ‘Āshūr thinkers will be weaved into the various chapters and sections, helping us better understand the orientation and trajectory that the *maqāṣid* discipline takes in the contemporary world. Chapter Nine examines the motives behind Ibn ‘Āshūr’s *maqāṣid* work in juxtaposition to that of al-Shāṭibī’s. What, if anything, do the reasons behind why they composed their *maqāṣid* work, including the audience they were addressing, tell us about the evolution of *maqāṣid*? Chapters Ten through Thirteen will further help us understand the evolution of *maqāṣid* thought between the premodern and modern eras by offering a comparative analysis between al-Shāṭibī and Ibn ‘Āshūr and more recent *maqāṣid* thinkers on central topics pertaining to the *maqāṣid* discipline. These topics include the methodology to ascertaining *maqāṣid* (Chapter Ten), the role of *maṣlahah* (Chapter Eleven), negotiating between competing *maqāṣid* (Chapter Twelve), and interpreting the classical essential *maqāṣid* (Chapter Thirteen). Finally, Chapter Fourteen will explore new contributions made to the *maqāṣid* discipline by Ibn ‘Āshūr and other contemporary *maqāṣid* thinkers.

CHAPTER 8

Ibn ‘Āshūr and Figures from the Contemporary *Maqāṣid* Movement

Part Two of this work provided us with the world in which Ibn ‘Āshūr came into—particularly the socio-political, economic and religious context of nineteenth and early twentieth century Tunisia. To briefly rehash, Ibn ‘Āshūr was born into a turbulent period of modern Tunisian history, a period marked by colonialism and modernization. Tunisian society was undergoing vast social changes and the restructuring of its political, economic, and educational institutions. Reflecting on his environment, Ibn ‘Āshūr tells us: “Colonialism was firmly fixed and established [in Tunisia], and the colonialists took hold over all the institutions of government and administration. The Tunisian people were under complete colonial domination, having no control over any of their own affairs. French settlement in Tunisia increased and swelled in numbers. French dominance spread and manifested in every aspect of society to the extent to which Tunisia was simply considered a French state.”⁴²⁴ Most of Ibn ‘Āshūr’s life would be under this French occupation (lasting until 1956); and the struggle to build an independent Tunisian nation would continue up to his passing in 1973.

⁴²⁴ Muḥammad al-Fāḍil Ibn ‘Āshūr, *Al-Ḥarakah al-adabiyah wa-l-fikriyyah fī Tūnis* (Tūnis: al-Dār al-Tūnisīyah li-l-Nashr, 1972), 57-58.

As we also learned in Part Two of this work, the eighteenth and nineteenth century saw Tunisia and much of the Arab world witness an Islamic revival. Modern Muslim reformists such as Khayr al-Dīn al-Tūnisī, Rifā‘ah Rāfi Ṭaḥṭāwī, Muḥammad ‘Abduh, and Muḥammad Darrāz searched out ways to reconcile Islamic tradition with modernity. Their ideas would greatly influence Ibn ‘Āshūr. But what had an even greater impact on Ibn ‘Āshūr thought was his introduction to al-Shāṭibī’s *al-Muwāfaqāt*. Al-Shāṭibī’s *maqāṣid* theory would propel his own attempt at securing a meaningful voice for Islamic tradition in the face of ongoing developments and rapid changes in his time.

Ibn ‘Āshūr’s late eighteenth and nineteenth century colonial Tunisia paralleled in many ways al-Shāṭibī’s environment. As was discussed in Part One of this work, al-Shāṭibī’s fourteenth-century Granada had similarly undergone unprecedented developments within all facets of its society—political, economic, legal, religious, and social—presenting serious challenges to the place of Islamic tradition and the application of Islamic law within that society. Al-Shāṭibī believed that the platform to meet these challenges had to begin with a critical reengagement of Islamic legal theory (*uṣūl al-fiqh*), assessing the prevalent *fiqh* of his time as inadequate to addressing new changes and developments affecting fourteenth-century Granada. Six centuries later, in the midst of parallel drastic changes affecting Tunisia, Ibn ‘Āshūr would also turn to Islamic legal theory, but with him was the precedent of al-Shāṭibī’s *maqāṣid* theory.

Ibn ‘Āshūr’s Family Lineage

Born in Tunis in 1879, Muḥammad al-Ṭāhir ibn Muḥammad ibn ‘Āshūr came from a notable family of ulema and statesmen.⁴²⁵ The history of his paternal family, the ‘Āshūrs, can be traced back to Idrisid North Africa and Al-Andalus, having settled in the latter until religious persecution and the fall of Muslim Spain forced them to emigrate towards eastern Muslim lands. After some time in the Hijaz, the ‘Āshūrs returned west and finally settled in the city of Tunis. Ibn ‘Āshūr’s paternal grandfather Muḥammad ibn ‘Āshūr (d. 1284/1868) along with his two brothers Aḥmad (d. 1255/1839) and Ḥamāda (d. 1265/1849) studied the traditional Islamic sciences at the storied Zaytūnah mosque. Muḥammad ibn ‘Āshūr excelled there and in time became recognized as one of the foremost scholars of Tunis, rising to the posts of chief Mālikī judge and Mufti.⁴²⁶ Ibn ‘Āshūr’s maternal grandfather Muḥammad al-‘Azīz Bū ‘Attūr (1825-1907) was an influential political figure and a high minister in the government of ‘Alī Bey III (reg. 1882-1902).⁴²⁷ This distinguished line of descent and presence in Tunisian society would afford Ibn ‘Āshūr engagement with the aristocracy, while his religious career, beginning with his early

⁴²⁵ The most extensive biography of Ibn ‘Āshūr to date is Jamāl Maḥmūd Aḥmad Abū Ḥassān’s Arabic biographical sketch titled “Al-Imām Muḥammad al-Ṭāhir ibn Muḥammad ibn ‘Āshūr” in *Al-Majallah Al-Urduniyyah fī al-Dirasāt al-Islāmiyyah* (Vol. 5, Issue: A/2, 2009), and Basheer M. Nafi’s “Ibn ‘Āshūr: The Career and Thought of a Modern Reformist, with Special Reference to his Work on Tafsīr.” (*Journal of Qur’anic Studies*, 2005: 1-32). There are also several short biographical sketches including the ones found in Ismā‘īl Ḥasanī’s *Naẓariyat al-maqāṣid ‘inda al-Imām Muḥammad al-Ṭāhir ibn ‘Āshūr* (Herndon, Va: al-Ma‘had al-‘Ālamī lil-Fikr al-Islāmī, 1995) and another edition (Qum: Ṣaḥīfah-‘i Khirad, 2004); ‘Abd al-Mājid ‘Umar al-Najjār’s *Fuṣūl fī’l-fikr al-Islāmī bi’l-Maghrib* (Beirut: Dār al-Gharb al-Islāmī, 1992), 139-62; M. Talbi’s “Ibn ‘Āshūr” in *Encyclopedia of Islam* (2nd ed. vol. 3), 720; Muḥammad Maḥfūz, *Tarājim al-mu’allifīn al-Tūnisīyyīn* (Beirut: Dar al-Gharb al-Islāmī, 1985), vol. 3, pp. 304-9; al-Ṣādiq al-Zammarlī, *A‘lām Tūnisīyyūn*, tr. Ḥamādī al-Sāhilī (Beirut: Dār al-Gharb al-Islāmī, 1986), 361-7.

⁴²⁶ Nafi, 2; Maḥfūz, *Tarājim*, 300-304.

⁴²⁷ Nafi, 2; Maḥfūz, *Tarājim*, 355-358.

education at the Zaytūnah mosque, kept him well-connected to the commoners and the challenges they were facing.

Ibn ‘Āshūr’s Education & Career

Ibn ‘Āshūr began his formal elementary education in a traditional Tunisian *kuttāb* studying Arabic and French, and learning the art of Qur’ānic recitation (*tajwīd*) and memorization (*hifẓ*). He was admitted to Zaytūnah at the age of twelve (1892), with special arrangements being made to provide him the best teachers. Among the eminent and classically trained scholars he studied with were his maternal grandfather Bū ‘Attūr, Ṣāliḥ al-Sharīf (1869-1920), Sālim Bū Ḥājib (1828-1924), ‘Umar ibn al-Shaykh (1822-1911), Muḥammad al-Nakhlī (1860-1924), Maḥmūd ibn al-Khūja (1854-1911), Ibrahīm al-Mirghānī (1863-1930) and Muḥammad ibn Yūsuf (1863-1939).⁴²⁸ All of them were Mālikī trained, with the exception of the Ḥanafī Maḥmūd ibn al-Khūja, who had served in the prominent post of Ḥanafī Shaykh al-Islām between 1900 and 1911.⁴²⁹

The Zaytūnah that Ibn ‘Āshūr entered was ten years into the French occupation of Tunisia and immersed in a contentious debate—one which began even before the occupation—over education reform. His teachers were on opposite sides of the spectrum, split between those wanting to preserve and maintain focus on traditional Islamic education, and those calling for a restructuring of the curriculum with inclusion of

⁴²⁸ Nafi, 8; Maḥfūz, *Tarājim*, vol. 3, 304; Muḥammad ibn ‘Āshūr, *A-laysa al-ṣubḥ bi qarīb* (Tunis: al-Dār al-Tūnisīyah li’l-Nashr, 1967), 9ff.

⁴²⁹ Nafi, 8; Muḥammad al-Nayfar, *Unwān al-arīb ‘ammā nasha’a bi-l-mamālik al-Tūnisīyya min ‘alim adīb* (Tūnis: al-Matba‘a al-Tūnisīyah, 1932), vol. 2, 187-91.

knowledge that reflected the best of modern scientific developments and Western thought. Ibn ‘Āshūr’s own views on the issue can be said to have been sympathetic to both sides. He undoubtedly had great reverence for traditional Islamic education and the link it provided him to generations of Islamic scholarship. But he also recognized that the developments and challenges of modernity as well as French influence necessitated a judicious adjustment to engaging with and interpreting certain aspects of tradition. The cultural and political currents of his time and the debate over reform would occupy Ibn ‘Āshūr’s thought as he advanced in the Zaytūnah curriculum.

Like his paternal grandfather, Ibn ‘Āshūr excelled at Zaytūnah and immediately became a teaching assistant upon completing his studies in 1896. He accepted a lectureship position at the modern Ṣādiqiyah College in 1900; an institution which Khayr al-Dīn had attempted to mold into his vision of combining both sound Islamic tradition and modern thought before being secularized by French administrators who took control over it well before Ibn ‘Āshūr had arrived.⁴³⁰ Ibn ‘Āshūr returned to Zaytūnah in 1903 to take on full professor duties. A year later, at the young age of 25, he accepted a senior administrative role at Zaytūnah, a position which granted him greater input in institutional matters and allowed him to pursue his ambition of revamping the curriculum.

A momentous occasion in Ibn ‘Āshūr’s budding career came in his encounters with Muḥammad ‘Abduh in September 1903. Already a popular though controversial figure in the Muslim world, ‘Abduh was appreciatively received by Ibn ‘Āshūr and many of his

⁴³⁰ The Ṣādiqiyah College and al-Jam‘īyah al-Khaldūniyyah were initially conceived to supplement the Zaytūnah education by offering modern sciences and pedagogy. Several of Ibn ‘Āshūr’s teachers at Zaytūnah played a central role in the founding and development of al-Jam‘īyah al-Khaldūniyyah. Ibn ‘Āshūr’s maternal grandfather Bū ‘Attūr provided support for these new institutions.

reform minded colleagues.⁴³¹ Ibn ‘Āshūr had several occasions during this visit to listen to ‘Abduh and engage with him on a host of topics. ‘Abduh spoke passionately about the need for educational reform including remedying pedagogical methods and overhauling some of what he deemed to be anachronistic traditional manuals. He also advocated for *ijtihād*, highlighting in particular the important role it played in the careers of transformative figures like Ibn Taymiyyah. For ‘Abduh, Ibn Taymiyyah’s legacy with *ijtihād* and his courageously maverick approach to several issues served as an example for modern ulema to follow.

Some of the conservative Tunisian ulema, however, rebuffed ‘Abduh’s laudation of the famed medieval scholar and pejoratively labeled him a Wahhābī. They were especially infuriated by several of ‘Abduh’s *fatāwā*, including one which permitted adherents of a particular school of law to pray behind an imam of another school. While some of these conservative ulema believed ‘Abduh was misguided in his *fatāwā*, Ibn ‘Āshūr came to his defense, publishing an anonymous rebuttal to ‘Abduh’s detractors in the popular *al-Manār* magazine.⁴³² The anonymous fashion in which Ibn ‘Āshūr responded may have been, as Arnold Green intimates, an indication of the imposing presence of the conservative trend;⁴³³ it may also have been, as Nafi suggests, “a reflection of his own non-confrontational nature.” We would also add that given Ibn ‘Āshūr was writing this rebuttal at the relatively young age of 25, and that it was challenging the views of many senior ulema including some of his own teachers who he had tremendous respect for, his motive

⁴³¹ Green, *The Tunisian Ulama*, 183-85.

⁴³² Ibn ‘Āshūr, *A-laysa al-ṣubḥ bi qarīb*, 249; Nafi, 9. Founded by Riḍā and based in Cairo, *al-Manār* was an Islamic magazine published between 1898 until his death in 1935. The magazine provided a platform for reformist ideas, and it featured Qur’ānic commentary as well as political discussion.

⁴³³ Green, *The Tunisian Ulama*, 185.

to write anonymously may have simply been to avoid any awkward and personal breach of *adab* (etiquette) towards these senior ulema and mentors, not wanting to jeopardize his relationship with them.

Whatever the case, Ibn 'Āshūr's under the radar approach appears to have been characteristic in many instances throughout his career. He especially appeared to walk a tightrope when it came to confrontations between the people and government. For example, he tacitly supported the nationalist attitudes of the Young Tunisians and the Destour Party, to only then lay low as they advanced in their contestations with the government.⁴³⁴ Similarly, though he was a strong advocate for educational reforms at Zaytūnah, he disavowed the 1907 disruptive protestation actions of the student led reform society *al-Jam'iyyah al-Zaytūniyyah*, which was calling for change in the curriculum.⁴³⁵ Ibn 'Āshūr eventually took leadership over the society, but when Prime Minister Maḥmūd Jallūlī decided to outlaw it on the grounds that it did not meet state approval, Ibn 'Āshūr acquiesced without a fight. Likewise, Ibn 'Āshūr remained neutral during the April 1910 pro-reform uprising wherein students were being arrested for preventing staff and faculty from entering the Zaytūnah mosque.⁴³⁶ The networks and good relations Ibn 'Āshūr had with the different spheres of Tunisian society including with the state and aristocracy perhaps made him into the politically cautious and silent reformer he was for much of his

⁴³⁴ For more on Ibn 'Āshūr's relationship to these movements, see Ibn 'Āshūr, *al-Haraka al-adabiyyah*, 88-90. On these movements, see Leon Carl Brown, 'Stages in the Process of Change', in Charles A. Macaud, L.C. Brown and C.H. Moore, *Tunisia: The Politics of Modernization* (London: Pall Mall Press, 1963), 22-37; Nicola Ziadeh, *Origins of Nationalism in Tunisia* (Beirut: American University of Beirut, 1962), 73-83.

⁴³⁵ Ibn 'Āshūr, *A-laysa al-ṣubḥ bi qarīb*, 249-53; Green, *The Tunisian Ulama*, 211-17; Nafi, 10.

⁴³⁶ *Ibid.*

career. He takes this same middleman approach, as we'll see, in his attempt to revive *maqāṣid* philosophy, walking the tightrope between tradition and renovation.

Ibn 'Āshūr's quietism led many to suspect that he was at best ambivalent towards educational reform at Zaytūnah. But he had his own way of doing things. Much like a centrist trying to navigate through partisan politics, Ibn 'Āshūr took a balanced and gradualist approach to negotiating change at Zaytūnah. He was able to join the official commission tasked to review proposals for educational reform at all levels and became instrumental in mediating between opposing perspectives, eventually securing several compromises between 1908 and 1912.⁴³⁷ His mild demeanor and willingness to listen gained him the trust of both sides of the aisle. By 1913, Ibn 'Āshūr had become a Mālikī judge and was appointed to the Academic Supervisory Bureau of Zaytūnah, the highest administrative office at the mosque-college. Though he took on more responsibilities with his administrative duties, Ibn 'Āshūr continued to teach at Zaytūnah as well as the Ṣādiqiyyah College. He also continued to climb the hierarchal ladder of religious posts, holding the position of Deputy Mufti in the 1920s and later in 1932 that of Mālikī Shaykh al-Islām, becoming the first Mālikī appointed to this most senior religious position. He was Shaykh of Zaytūnah up until around the mid-1930s and then again between 1944 and 1951, all the while maintaining the position of Mālikī Grand Mufti during this time and for much of the remainder of his life.⁴³⁸

⁴³⁷ Ibn 'Āshūr, *al-Ḥaraka al-adabiyyah*, 98; Green, *The Tunisian Ulama*, 217-18; Ziadeh, *Origins of Nationalism in Tunisia*, 78; Nafi, 10.

⁴³⁸ Ibn 'Āshūr, *al-Ḥaraka al-adabiyyah*, 98; Green, *The Tunisian Ulama*, 217-18; Ziadeh, *Origins of Nationalism in Tunisia*, 78; Nafi, 10.

While Ibn ‘Āshūr was generally popular with the Tunisian people and had a respectable rapport with the pro-French government, many Tunisian nationalists saw him as nothing more than a puppet for the colonialist administration. His custom to maintain distance from the political activism of the nationalist movement only fueled such sentiments. He especially drew the ire of the nationalists as well as that of other ulema including the Ḥanafī Shaykh al-Islām Aḥmad Bayram for what they perceived to be his inaction and apathetic attitude towards French colonialists’ attempts to quash the Arab-Islamic identity of Tunisia. Case in point for them was Ibn ‘Āshūr’s handling of the French Law of Naturalization. Most Tunisians saw it as a contrivance to gradually rid the nation of its Arab-Islamic character. Ibn ‘Āshūr took a middle-of-the-road approach, not supporting the law, but also not aggressively resisting it.⁴³⁹

Ibn ‘Āshūr’s handling of the French Law of Naturalization only increased his disfavor with the more conservative ulema, whose support was needed to accomplish some of the reforms he believed were necessary in the Zaytūnah curriculum. Despite this less than ideal climate, Ibn ‘Āshūr moved forward—ever so gingerly—to pursue his reform initiative during the period of his longest tenure, between 1944 and 1955, as Shaykh of Zaytūnah. Of the more controversial changes he implemented were introducing modern sciences to the core curriculum and decreasing certain material being taught from traditional manuals, which Ibn ‘Āshūr held as irrelevant for the modern world. This drew great acrimony from the conservative ulema, and spurred an open revolt against him just prior to the examination period at Zaytūnah in 1951. For the conservative ulema, these

⁴³⁹ For more on the events surrounding the Tunisian ulema and the French Law of Naturalization, see al-Ṭāhir ‘Abd Allāh, *al-Ḥaraka al-waṭaniyya al-Tūnisīyya: ru’ya sha’biyya qawmīyya, 1830-1956* (Sussa: Dar al-Ma’ārif, 1990), 57-58; Nafi, 11.

changes coming off of Ibn ‘Āshūr’s perceived mishandling of the French Law of Naturalization legitimized a challenge to his authority.⁴⁴⁰

Notwithstanding all the sociopolitical challenges and allegations that Ibn ‘Āshūr encountered throughout his career, he was able to maintain overall favorability with the Tunisian people. Well aware of Ibn ‘Āshūr’s influence in society was the rising leader of the newly independent Kingdom of Tunisia (1956) and the first president of the Tunisian Republic (1957) Habib Ben Ali Bourguiba (1903-2000). Bourguiba was quick to extend his hand to Ibn ‘Āshūr and showcase to the nation his good rapport with the esteemed Grand Mufti, reappointing him to the leadership of Zaytūnah and appearing with him at public ceremonies including the signing of the much debated Code of Personal Status (CPS), which afforded women several rights such as protection against forced marriage and judicial procedure for divorce.⁴⁴¹

Though Ibn ‘Āshūr generally accepted the CPS, which he defended in front of conservative circles by arguing that it upheld valid Islamic interpretations, he had a harder time justifying Bourguiba’s other reforms. Ibn ‘Āshūr did his best to put up with Bourguiba’s politicking of religion for political gain, but he drew the line when it came to the latter’s radical Kemal-like secularizing initiatives that threatened Islamic identity. Such was the case in Ibn ‘Āshūr’s firm public rebuke of Bourguiba in 1961 for his call to the Tunisian people to abandon the fast of Ramadan because—according to Bourguiba—it

⁴⁴⁰ Nafi, 12.

⁴⁴¹ For the Code of Personal Status, see Charles A. Micaud, *Tunisia: The Politics of Modernization* (London, Pall Mall Press, 1964); For more on Bourguiba’s relationship with the Tunisian ulema, Nafi cites, ‘Abd al-Razzāq al-Hamāmī, “*Jadaliyyāt al-taqlīdiyyīn wa’l-taḥdīthiyyīn ḥawla majālat al- aḥwāl al-shakhṣiyya*” in ‘Abd al-Jalīl al-Tamīmī (ed.), *al-Ḥabīb Bourguiba wa-inshaā’ al dawla al-waṭaniyya: qirā’a ‘ilmiyya lil-Bourguibiyya* (Zaghwan: Mu’assasat al-Tamīmī li’l Baḥth al-‘Ilmī, 2000), 75-86.

diminished productivity. Ibn ‘Āshūr went on public radio to affirm the obligatory fast of Ramadan and proclaimed Bourguiba a liar in issuing such a call.

Ibn ‘Āshūr nonetheless recognized that certain reforms were needed in Tunisian society, especially in the educational system, which he continued to focus on for much of his career. Traditional Islamic education and the interpretive output of medieval scholars alone would not suffice to deal with new developments and the challenges posed by modernity. Ibn ‘Āshūr saw it fatal to allow teachers to freely choose their material and instructional lessons without a process of review and accountability. He thus developed a system of oversight managed by qualified ulema who understood the knowledge needed to engage with the issues and context of the time, a way to keep a check on the functioning of the curriculum.

Ibn ‘Āshūr believed that quality education should be universally accessible to males and females of all socioeconomic backgrounds. He was especially concerned with pedagogical methodology. He strongly advocated for rote learning and memorization at the primary stages of education, while analytical and critical thinking skills be promoted at the higher levels. Ibn ‘Āshūr also put forward an elaborate critique of each of the major fields of traditional Islamic knowledge, weeding out anything he deemed ill-suited for the time.⁴⁴² He offered a theorization as to what historically went wrong to have led to what he perceived as a crisis in Islamic culture. Here, he pinpoints five particular reasons for this crisis: (1) intra-Islamic sociopolitical strife which led to the disintegration of the Abbasid Empire and consequently affected Islamic institutions of learning; (2) excessive attention

⁴⁴² For Ibn ‘Āshūr’s discussion of these matters, see Ibn ‘Āshūr, *A-laysa al-ṣubḥ bi qarīb*, 117-127.

to nonessential areas of knowledge at the expense of neglecting essential areas; (3) a vacuum in specialized learning; (4) the waning of *ijtihād*; and (5) dissension and antagonism between various Islamic schools (i.e., legal, theological, spiritual).⁴⁴³

Matters pertaining to the teaching of Islamic theology (*‘ilm al-Kalām*) appeared to have a particular concern for Ibn ‘Āshūr. He was not pleased with the traditional method of teaching theology through a comparative doctrine and issue oriented approach of the various Islamic theological schools. He held that such an approach only created confusion and discord, whereas theology should be taught in a systematically holistic and unified way. Ibn ‘Āshūr was especially disillusioned by what he regarded as abstruse articles of faith and excessive attention to trivial rhetorical points which characterized *kalām* material and discussions. He thus set out to reconstruct and simplify the teaching of theology such that it would promote more unity while strengthening one’s faith and spirituality.⁴⁴⁴ Despite that Ibn ‘Āshūr was critical of certain teachings of the theological schools, including the Ash‘arī school followed by most Mālikīs, “he could hardly free himself from Ash‘arī theological positions” in his exegesis of the Qur’ān.⁴⁴⁵

Ibn ‘Āshūr approved the teaching of philosophy and logic, and believed that if taught right, including improving the translations of Greek philosophical works, it would serve valuable to the study of the Islamic sciences.⁴⁴⁶ He also believed that the study of history was essential, but he was dissatisfied with some of the historical narratives being propounded in Islamic culture. As such, Ibn ‘Āshūr called for a “reexamination of the

⁴⁴³ Ibn ‘Āshūr, *A-laysa al-ṣubḥ bi qarīb*, 177.

⁴⁴⁴ *Ibid.*, 205.

⁴⁴⁵ Nafi, 14.

⁴⁴⁶ Nafi, 14; Ibn ‘Āshūr, *A-laysa al-ṣubḥ bi qarīb*, 225-27.

Islamic historical legacy in order to salvage the real from the mythological,” and introduced rules and methods to the study of history.⁴⁴⁷ He placed a particular emphasis on properly understanding political history such that it would better inform modern Islamic political thought.

Ibn ‘Āshūr’s Works

In addition to his administrative work, teaching duties, and public service, Ibn ‘Āshūr was also an active writer, composing over forty books and treatises, as well as numerous articles and religious edicts (*fatāwā*).⁴⁴⁸ His work covered various Islamic and Arabic disciplines including Islamic legal theory, jurisprudence, Qur’ānic exegesis, linguistics, literature, and poetry. Perhaps his most famous and influential works are *Uṣūl al-niẓām al-ijtimā’ī fī al-Islām*, *Tafsīr al-tahrīr wa-l-tanwīr*, and *Maqāṣid al-Sharī‘ah al-Islāmiyyah*.

In the introduction to *Uṣūl al-niẓām al-ijtimā’ī fī al-Islām*, Ibn ‘Āshūr tells us that his objective is to convey to young generations of Muslims that Islam is not confined to beliefs and legal rulings for the private realm, but also offers a comprehensive and holistic way of engaging with the surrounding environment, wherein religion and civil life can harmoniously intersect.⁴⁴⁹ First published in 1976, three years after his death in 1973, *Uṣūl al-niẓām* represented Ibn ‘Āshūr’s focus in the latter stages of his life on reenergizing the

⁴⁴⁷ Nafī, 14; Ibn ‘Āshūr, *A-laysa al-ṣubḥ bi qarīb*, 225-27.

⁴⁴⁸ Ibn ‘Āshūr was recognized for his prolific work by being bestowed the honor of membership to the Arab Academy of Cairo (1951) and the Arab Academy of Damascus (1955).

⁴⁴⁹ Muḥammad al-Tāhir ibn ‘Āshūr, *Uṣūl al-niẓām al-ijtimā’ī fī al-Islām*, (Tunis: al-Sharikah al-Tūnisiyyah li’l-Tawzī’, 1976), 1-2.

concept of umma and the value of preserving Islamic tradition in society, perhaps in particular response to the secularizing reforms being imposed by Bourguiba.⁴⁵⁰

Ibn ‘Āshūr attempted to achieve his objective by discussing and connecting three broad themes: Islam as a religious system, Islam as an agent for individual transformation, and the bulk of his book concerning Islam as an agent for social reform. With respect to his characterization of Islam as a religious system, Ibn ‘Āshūr held that Islamic tradition extends beyond individual piety and liturgy to encompass the entire spectrum of existence and human activity, be it social, political, economic, or institutional. This system, which he further characterizes as moderate and compassionate, ultimately seeks to procure benefit for both the individual and society. Individual and social transformation, moreover, are not mutually exclusive, but rather are interconnected and run parallel to each other. For Ibn ‘Āshūr as such, a successful Muslim majority state and society cannot be fashioned in isolation of Islamic principles and values.⁴⁵¹ These principles and values should serve as the basis for a sociopolitical system which engenders morality, social and economic justice, cooperation, equality, freedom, security, intellectual activity, interfaith dialogue, and friendly diplomatic relations with other nations.⁴⁵² As we will observe later on, these outcomes are also central to Ibn ‘Āshūr’s *maqāṣid* theory.

Ibn ‘Āshūr’s magnum opus is perhaps his epic thirty-volume *Tafsīr al-tahrīr wa-al-tanwīr* (roughly “The Verification and Enlightenment”). It stands as one of the most extensive Qur’ānic exegesis of the modern era. A serious study of Ibn ‘Āshūr’s *tafsīr*, the

⁴⁵⁰ Ibid.

⁴⁵¹ Ibid., 22.

⁴⁵² Ibid., 122.

only one to date, has been contributed by Basheer M. Nafi.⁴⁵³ In describing his *tafsīr*, Nafi states:

If the *Tafsīr al-manār* of Muḥammad ‘Abduh and Rashīd Riḍā, published early in the twentieth century, was the first significant work of *tafsīr* to reflect the impact of modernity on Muslim comprehension of the Qur’ān, *al-Tahrīr wa’l-tanwīr* represents the persistence of classicism, but is at the same time both an internalization of, and response to, modernity.⁴⁵⁴

Nafi’s article offers meaningful insight into Ibn ‘Āshūr’s approach to the Qur’ān. He presents Ibn ‘Āshūr as a sort of maverick among Qur’anic exegetes who, while giving due respect to his forerunners in the *tafsīr* tradition, would not allow himself to be bound by their thought or approach to the sacred text. Ibn ‘Āshūr, in fact, was “critical of the way in which many Qur’anic exegetes became captive to preceding works of *tafsīr*.”⁴⁵⁵ Among the distinguishing features of Ibn ‘Āshūr’s *tafsīr* work is his approval of a conditionally enforced *tafsīr bi-l ra’y* that steers clear of mere conjecture while also not being limited to narrations attributed to the early community. The conditions that Ibn ‘Āshūr would set for employing reasoned opinion in understanding Qur’anic text include: being well versed in the various Arabic linguistic and *Sharī‘ah* disciplines, giving full consideration to textual context, abandoning ideological or political motives, and accepting that there can be

⁴⁵³ Basheer M. Nafi is a historian, former faculty member at the University of London, and more recently a Senior Research Fellow at Al Jazeera Centre for Studies, an Al Jazeera Network think-tank. His article is titled “Tāhir ibn ‘Āshūr: The Career and Thought of a Modern Reformist ‘*ālim*, with Special Reference to His Work of *tafsīr*,” *Journal of Qur’anic Studies*, 2005: 1-32.

⁴⁵⁴ Nafi, 1.

⁴⁵⁵ *Ibid*, 18.

multivalent meanings to the Qur'anic text.⁴⁵⁶ For Nafi, Ibn 'Āshūr's overall approach to the Qur'ān makes *al-Tahrīr wa'l-tanwīr* "one of the least ideologically constructed works of *tafsīr* in the twentieth century."⁴⁵⁷

Ibn 'Āshūr's seminal work *Maqāṣid al-Sharī'ah* (first published in 1946), the subject of much of Part Three of this work, is the first serious critical encounter with *maqāṣid* philosophy since al-Shāṭibī's fourteenth century pioneering work. Beyond a mere reproduction of what his predecessors contributed, Ibn 'Āshūr's work presents a revisionist and at times controversial engagement with the concept of *maqāṣid*. Despite its tremendous importance to and impact on *maqāṣid* discourse and contemporary Islamic thought, Ibn 'Āshūr's work has yet to receive the critical attention it deserves in Islamic studies. Even Khaled Masud's pioneering work on al-Shāṭibī and his *maqāṣid* thought glaringly overlooks Ibn 'Āshūr. Masud would make mention of eight Muslim thinkers to have referred to al-Shāṭibī's *maqāṣid* doctrine, none of which include Ibn 'Āshūr. Ibn 'Āshūr passed away the same year that Masud would complete his dissertation (1973), but Ibn 'Āshūr's work on *maqāṣid* was published much earlier, in 1946 and in Tunis to be exact. Certainly, Ibn 'Āshūr was a well-known figure by the time of Masud's thesis, so it is somewhat perplexing why Masud had overlooked what should have been an important and noteworthy reference for his study?

Considering that Masud was outside the territorial Muslim world and across the ocean, and considering that he was working out of the late 60s and early 70s, before the

⁴⁵⁶ Ibid, p. 19. In regards to the last of these, Nafi remarks: "In contrast to Ibn Ḥazm and Ibn Taymiyyah, Ibn 'Āshūr asserts that the Arabic language is inherently rich with an abundance of meanings; hence, the exegete should approach the Qur'anic narrative with the assumption that it is conducive to multiple meanings, each of which is relatively true."

⁴⁵⁷ Ibid.

advent of the many technologies that would facilitate academic research and exchange, the reason could simply have been that Masud was unaware of and/or didn't have access to Ibn 'Āshūr's work on *maqāṣid*. Though this may be plausible, one is still inclined to think that information about Ibn 'Āshūr's thought and work would have somehow made its way to North America, whether in literature or oral exchanges. Nevertheless Masud's dissertation would go on to reach completion without any trace of Ibn 'Āshūr. Four decades removed from Masud's dissertation and the passing of Ibn 'Āshūr, we also would have expected the latter's thought on *maqāṣid* to have made its way into Islamic studies. Surprisingly, however, and as Basheer M. Nafi notes, "no single work in English has been dedicated to the study of Ibn 'Āshūr; neither to his biography nor his contribution to modern Islamic thought."⁴⁵⁸ Even the reliably comprehensive *Encyclopedia of Islam*, a standard academic reference on all things Islam, makes only brief mention of Ibn 'Āshūr, referencing him in a short article covering generations of the 'Āshūr family.

Figures of the Contemporary *Maqāṣid* Movement

As we mentioned earlier, Ibn 'Āshūr ushered in a *maqāṣid* movement that actively continues to explore the discipline. It is worthwhile here to introduce some of those he has influenced and/or who have been conversant with his *maqāṣid* thought. Their thought will also be brought into the conversation of this work.

⁴⁵⁸ Nafi, Basheer M. "Ibn 'Āshūr: The Career and Thought of a Modern Reformist, with Special Reference to his Work on Tafsīr." *Journal of Qur'anic Studies*, 2005: 1-32. See p. 1.

Among those who have followed Ibn ‘Āshūr’s mindset of bringing a critical and creative approach to the study of *maqāṣid* is Gamal Eldin Attia. A native of Egypt and a scholar of Islamic law and legal theory, Attia is recognized as an active proponent of utilizing *maqāṣid* philosophy in addressing contemporary issues. The International Institute of Islamic Thought (IIIT) considers Attia among the leading specialists in the field. They have published an Arabic edition of his work entitled *Naḥwah Taf‘īl Maqāṣid al-Sharī‘ah* (London, International Institute of Islamic Thought, 2001), followed by an English translation entitled *Towards Realization of the Higher Intentions of Islamic Law* (London, International Institute of Islamic Thought, 2007).

Attia offers a novel expansion of the *maqāṣid* under four distinct categories, which we will touch upon later in Part Three. His second and third chapters, entitled “A New Conceptualization of *Maqāṣid*” and “Realization of the *Maqāṣid*” respectively, are especially avant-garde. In them, he attempts to shift the traditional discourse on *maqāṣid* into a new discourse that brings innovation, planning, and programs of action. Attia tells us that one of the objectives of his work is “the realization of *maqāṣid* in our lives, both in the field of Islamic jurisprudence and on the level of our practical experience.”⁴⁵⁹ This notion of the practicality of *maqāṣid* has been a central theme in his writings. He asserts that the *maqāṣid* are not only applicable to the field of law, but are crucially relevant to several other disciplines and aspects of life. It is as such that one of the more important themes of his work is a discussion on the use of *maqāṣid* for the Islamization of the human,

⁴⁵⁹ See his introduction in Gamal Eldin Attia, *Naḥwah taf‘īl maqāṣid al-Sharī‘ah* (London, International Institute of Islamic Thought, 2001); and *Towards Realization of the Higher Intentions of Islamic Law* (London, International Institute of Islamic Thought, 2007).

social, and physical sciences. Attia goes on to propose *maqāṣid* theories for such fields as education, economics, sociology, and the natural sciences.

Also influenced by the thought of Ibn ‘Āshūr is Aḥmad al-Raysūnī (b. 1953), a professor of *Uṣūl al-Fiqh and Maqāṣid al-Sharī‘ah* at the College of Arts and Humanities, University of Muhammad al-Khamis, Morocco. The International Institute of Islamic Thought considers al-Raysūnī among the foremost specialists in the field of *maqāṣid*. IIIT sponsored a *maqāṣid* research project in its early years and commissioned al-Raysūnī to pen a study on the *maqāṣid* thought of al-Shāṭibī. Al-Raysūnī’s stated goal with his work on *maqāṣid* is: (1) to reform Muslims’ ways of thinking by reordering and reformulating their priorities, and (2) to rebuild the Islamic cultural scheme, presenting modern humanistic and social knowledge from an Islamic perspective.⁴⁶⁰ His work is entitled *Nazarīyat al-maqāṣid ‘inda ‘l-imām al-Shāṭibī* (Ṭab‘a 1. ed. Beirut: Al-Mu’assasa al-Gāmi‘iyyah, 1992). For the English translation of this work, see *Imam Al-Shatibi's Theory of the Higher Objectives and Intents of Islamic Law* (London: International Institute of Islamic Thought, 2005).

Jasser Auda is among the more active researchers and writers on *maqāṣid* philosophy today. A native of Egypt, Auda is the Al-Shatibi Chair of Maqasid Studies at the International Peace College South Africa, the Executive Director of the Maqasid Institute, a global think tank based in London, and a Visiting Professor of Islamic Law at Carleton University in Canada. Auda’s study of Islam includes both traditional studies at Al-Azhar (Qur’ān, *fiqh*, *uṣūl al-fiqh*, and *ḥadīth*), and formal Western academic studies,

⁴⁶⁰ For more on al-Raysūnī’s study of al-Shāṭibī, see Part One of this work.

completing a PhD in the philosophy of Islamic law from University of Wales in the UK, and a PhD in systems analysis from University of Waterloo in Canada. Through his interdisciplinary knowledge of Islamic law and systems analysis, Auda introduces an innovative approach to engaging with and utilizing the *maqāṣid*. He incorporates into his *maqāṣid* theory features from systems theory and proposes a new methodology which he refers to as a ‘systems philosophical approach’. According to Auda: “A systems philosophical approach views the creation and functionality of nature and all its components in terms of a large holistic system that is composed of an infinite number of interacting, opened, hierarchical, and purposeful sub-systems.”⁴⁶¹ IIIT calls his novel method for analysis and critique, as found in his *Maqasid Al-Shariah as Philosophy of Islamic Law: A Systems Approach* (Herndon, Va: International Institute of Islamic Thought, 2007), “path-breaking.”

Often referencing the *maqāṣid* thought of Ibn ‘Āshūr in his legal writings is the notable academic and expert on Islamic law Mohammad Hashim Kamali (b. 1944). Kamali was among several Muslim scholars and academics to convene at a major conference sponsored by the International Institute of Islamic Thought (IIIT) in 1976 aimed to address what was deemed to be *inter alia* the poor state of Islamic intellectual thought, which was neither goal-oriented nor purposeful. What followed from the conference was a serious campaign to engage with the discipline of *maqāṣid al-Sharī‘ah*. Among Kamali’s several works on *maqāṣid* include *Maqasid Al-Shariah Made Simple* (London: International Institute of Islamic Thought, 2009). Kamali is a native of Afghanistan, former Professor at the Institute of Islamic Studies, McGill University, and former Professor of Law at the

⁴⁶¹ Auda, 26.

International Islamic University of Malaysia. He studied law at Kabul University, and holds an LL.M. in comparative law and a PhD in Islamic and Middle Eastern law from the University of London. Kamali's many book and article publications on Islamic law are commonly used as reference works in courses on Islamic law at English speaking academic institutions worldwide.

Finally, we should mention here USC and former University of Michigan Professor Sherman Jackson, an important thinker and expert on Islamic law today whose writings are, for this author, especially relevant to the contemporary discourse on *maqāṣid*. Two of Professor Jackson's articles are importantly meaningful to our discussion on the evolution of *maqāṣid* thought. These articles not only offer a thought provoking engagement with the *maqāṣid*, but they critically deploy ways in which the *maqāṣid* can have a practical and transformative impact on real-world issues. As we'll see later in Part Three, Professor Jackson takes thinking about *maqāṣid* to a new and creative level, doing so within the context of addressing issues of race in America.

CHAPTER 9

Ibn ‘Āshūr’s and al-Shāṭibī’s Motives behind their *Maqāṣid* Works in Comparison

Ibn ‘Āshūr makes it very explicit and clear at the outset of his work who his intended audience is, why he penned his work, and the objectives he seeks to accomplish with it. The gist of what he mentions undoubtedly parallels that which is offered by al-Shāṭibī regarding the intended audience for *al-Muwāfaqāt*, the reasons he wrote it, and the benefits he hoped to procure with it. Interestingly, and for whatever reason, Ibn ‘Āshūr does not acknowledge these parallels. Where they parallel specifically is that: they both include the jurists as their primary audience; they both cite the differences among the jurists and the limitations within *uṣūl al-fiqh* as the primary reason behind the need for their work; and they both have as the ultimate goal for their work the benefit of the masses, and protecting them from any rancor that would result from diverging juristic opinions, while also offering these masses solutions to problems and issues which have arisen as a result of the change in time. But whereas al-Shāṭibī expresses all this in general terms, Ibn ‘Āshūr provides more structure and depth in his articulation. In fact, and though Ibn ‘Āshūr acknowledges his indebtedness to al-Shāṭibī for his work on *maqāṣid al-Sharī‘ah*, referring to him as “the genius who applied himself to systematizing this discipline,” it is because of several perceived deficiencies in al-Shāṭibī’s writing that Ibn ‘Āshūr feels compelled to

devote his efforts to this most important subject.⁴⁶² In characterizing these deficiencies, Ibn ‘Āshūr states: “he fell into the trap of longwinded and confused analysis. He also omitted some crucial aspects of the *Sharī‘ah*’s higher objectives and thus failed to reach the target that he had set himself.”⁴⁶³ Ibn ‘Āshūr goes on to state that while he intends to follow in al-Shāṭibī’s footsteps, his own work will not be a mere replica of *al-Muwāfaqāt*, but rather will offer both greater clarity and new insight into the field of *maqāṣid*.⁴⁶⁴

With respect to Ibn ‘Āshūr’s intended audience, he designates at least two specific groups, and perhaps even a third. Two of these groups include practicing jurists and aspiring jurists, including students of Islam in general, a distinction that al-Shāṭibī does not make, having only mentioned jurists in general. His aim for the former is to minimize disagreement between them. He states: “My awareness of the difficulties confronting the contending jurists in their argumentation and reasoning concerning *Sharī‘ah* related matters prompted me to devote my attention to this subject.”⁴⁶⁵ Like al-Shāṭibī, disputation among the jurists is a matter that Ibn ‘Āshūr well-identifies with and which he finds most disconcerting. Ibn ‘Āshūr, however, is apologetic and sympathetic when it comes to the juristic community, refraining from holding them accountable for their disputes, whereas al-Shāṭibī is more critical, especially with those partaking in *ijtihād*. In their defense, Ibn ‘Āshūr absolves the legal community from any wrongdoing for their disagreements, explaining the complex challenges they inherited—especially relative to those encountered

⁴⁶² Ibn ‘Āshūr, *Maqāṣid*, xxiii. Ibn ‘Āshūr also acknowledges the contributions to *maqāṣid* thought made by ‘Izz al-Dīn ‘Abd al-Salām and al-Qarāfī. But for him, it is al-Shāṭibī who made the greatest contribution to this subject.

⁴⁶³ Ibid.

⁴⁶⁴ Ibid.

⁴⁶⁵ Ibid., xvi-xvii.

by scholars of other Islamic disciplines—along with the inadequate tools in *uṣūl al-fiqh* that they have had at their disposal. Ibn ‘Āshūr asserts:

The case of the jurists is unlike that of the scholars of the rational sciences. The latter base their logical and philosophical reasoning on necessary evidence, or on established observation or taken-for-granted postulates that force all contestants to stop arguing, thus resolving all points of dispute between them.⁴⁶⁶

Thus, contrary to the more concretized knowledge and proofs that scholars engage in with respect to scientific and mathematical disciplines, Ibn ‘Āshūr points out—in apologizing for the disputations among the jurists—that juristic practice, with its host of variables and contextualizing factors, has not had the convenience to address all its matters with categorical evidence. As such, he deems the legal community to be in dire need of some referential system that can consistently provide it with “compelling reasoning” when engaging in juristic matters.⁴⁶⁷ For Ibn ‘Āshūr, this system is to be found in the discipline of *maqāṣid al-Sharī‘ah*.

With respect to aspiring jurists and students of Islam in general, Ibn ‘Āshūr addresses them specifically, something again which al-Shāṭibī does not do. Ibn ‘Āshūr likely does this recognizing that to change the existing legal culture and status quo, and for *maqāṣid* thinking to really take effect, education and training must begin with this next generation of Muslim leadership. His hope is that his work will be “a guide and frame of

⁴⁶⁶ Ibid.

⁴⁶⁷ Ibid., xvii. Ibn ‘Āshūr states: “In contrast, the jurists do not in their juridical reasoning draw on necessary and categorical (*ḍarūriyya*) evidence or on evidence bordering need, that the obstinate is forced to yield and the confused is guided. In my opinion, the scholars of the Sharī‘ah have a stronger right to such compelling reasoning, and the Hereafter is better than this worldly life.”

reference when faced with differences of opinion and change in time.”⁴⁶⁸ Ibn ‘Āshūr then goes on to refer to what perhaps is the third intended readership for his work. He says: “My purpose is, moreover, to train the jurists’ followers, when facing such a situation, to be just in preferring one opinion over another, so that fanaticism is rejected and truth accepted.”⁴⁶⁹ In other words, when conflicting views do arise, these “jurists’ followers” will resort to the discipline of *maqāṣid al-Sharī‘ah* such that it steers them away from undue biases and arbitrariness. But it is unclear whether the “jurists’ followers” he is referring to here is the same aforementioned group of aspiring jurists and students of Islam, or whether he intends a third group, the masses, to also be readers of his work? There is similar ambiguity in another statement of his, wherein he says:

Likewise, the aim of this book is twofold. It consists of assisting Muslims with a healing legislation for their contingent interests when new cases (*nawāzil*) emerge and matters become complicated, and of providing them with a decisive opinion in the face of conflicting arguments by different juristic schools (*madhāhib*) and the competing views of their respective scholars.⁴⁷⁰

Though it is clear that Ibn ‘Āshūr refers to the masses here in stating “Muslims,” what is ambiguous, again, is whether he intends these Muslim masses to be indirect beneficiaries of his work through the medium of jurists and scholars, or whether he also intends for them to read his book? Similarly, and elsewhere in his work, he alludes to the importance of Muslims knowing the *maqāṣid*, but without necessarily implying that they delve into his

⁴⁶⁸ Ibid., xvi.

⁴⁶⁹ Ibid.

⁴⁷⁰ Ibid.

work such that they acquire an in-depth training in the discipline. However, there is one place in his work where Ibn ‘Āshūr appears to be more disclosing and definitive with respect to the kind of relationship and the level of engagement that the masses should have with the discipline of *maqāṣid*. He says:

It should be mentioned that not every *mukallaḥ* (legally competent and responsible person) is required to know *Maqāṣid al-Sharī‘ah*, for this is a subtle kind of knowledge. The duty of lay people is to learn the ordinances of *Sharī‘ah* and accept them without being required to know their purposes (*maqāṣid*), for they do not possess the capacity and skill to identify and apply them accurately in their proper context. Ordinary people should be introduced to the knowledge of the *maqāṣid* gradually in tandem with the increase of their studies of the various Islamic disciplines. This is to avoid their incorrect application of the *maqāṣid* that they are taught, with undesirable results, thus defeating the true purpose of this knowledge. It is the duty of the learned to comprehend these *maqāṣid*; as we have already mentioned, scholars vary in this according to their intelligence and interest.⁴⁷¹

Ibn ‘Āshūr here is the first to affirm that the study of the science of *maqāṣid al-Sharī‘ah* is a communal obligation (*ḥard kifāyah*), wherein he deems it imperative to be pursued by a select among the community, otherwise the scholars of *Sharī‘ah*. And though he does not require nor encourage the masses to pursue the study of the science of *maqāṣid*, finding its level of specialization rather unattainable for one who has not devoted their career to

⁴⁷¹ Ibid., 12.

Islamic scholarship, he does encourage them to at least learn its important features, namely the actual *maqāṣid*, seeing of course great benefit in them. But this should only be done at a pace that is manageable relative to the capacity of the individual to understand them and their applicability. For Ibn ‘Āshūr, the general public’s engagement with *maqāṣid* can be a double-edged sword, for while there is much benefit in them, their misrepresentation and misapplication can surely have deleterious consequences. In any case, Ibn ‘Āshūr holds that the public is not held responsible for having to know the ultimate wisdom behind a given command or ruling they fulfill, though, again, it is more beneficial for them if they do know.

Needless to say, and like al-Shāṭibī, it is the matter of disputation among jurists both within and across the mainstream Sunni schools of law that has largely inspired Ibn ‘Āshūr’s writing on the subject. Ibn ‘Āshūr goes on to explain what he believes to be the causes of these disputations. Like al-Shāṭibī, Ibn ‘Āshūr identifies the primary culprit of juristic differences to be the methodological approaches within *uṣūl al-fiqh*. However, Ibn ‘Āshūr’s critique of *uṣūl al-fiqh* is considerably more organized, focused and substantive relative to al-Shāṭibī’s more scattered assessment, wherein al-Shāṭibī merely mentions at various points in his work how scholars of *uṣūl al-fiqh* get bogged down in details and trivial matters at the expense of losing sight of the universals and the larger scope of the *Sharī‘ah*.

Ibn ‘Āshūr begins his critique of *uṣūl al-fiqh* by considering what he deems to be the root cause of many of the problems that lie within it. This root cause relates to the post factum nature in which it developed, wherein the theoretical material and principles that constituted *uṣūl al-fiqh* were largely derived from *furū‘ al-fiqh* (branches of

jurisprudence)—the actual applied legal rulings or positive law that scholars began to develop in the early Islamic generations. In essence, because *uṣūl al-fiqh* was largely an outgrowth of *furū‘ al-fiqh*, the implications were that the differences within *furū‘ al-fiqh* encroached upon *uṣūl al-fiqh*. In other words, *uṣūl al-fiqh* inherited the disputations in the applied legal rulings of *furū‘ al-fiqh*, and hence, scholars within *uṣūl al-fiqh* disputed over basic principles of *uṣūl al-fiqh*. As Ibn ‘Āshūr explains: “When one masters *uṣūl al-fiqh*, one will certainly realize that most of its propositions are contested among scholars, whose differences over the basic principles (*uṣūl*) continue owing to their disagreement on applied legal rulings (*furū‘*).”⁴⁷² For Ibn ‘Āshūr, *maqāṣid* philosophy, if adopted as the standard approach, would resolve all this by at the very least reducing and restricting the differences, wherein *maqāṣid al-Sharī‘ah*, including its comprehensive and universal objectives along with its main operative tool of *maṣlahah*, is granted oversight in the legal process.

Ibn ‘Āshūr goes on to argue that these problems were further exacerbated by the weak level of competence among jurists engaging with the material in *uṣūl al-fiqh*, particularly in applying whatever general rules and universal principles were already in place. As such, *uṣūl al-fiqh* and its practitioners were never able to bring the legal community to agree or at least to reduce their differences, a prospect which he characterizes as having been virtually impossible.⁴⁷³ Ibn ‘Āshūr then attempts to explain the factors contributing to this reality by delving into and deconstructing the actual material comprising *uṣūl al-fiqh*. He maintains that among the primary issues is that this material

⁴⁷² Ibid., xvii. As for dating the development of *uṣūl al-fiqh* vis-à-vis *furū‘ al-fiqh*, Ibn ‘Āshūr tells us that “the systematic compilation (*tadwīn*) of the science of *uṣūl al-fiqh* was completed nearly two centuries after the codification of *fiqh*.”

⁴⁷³ Ibid.

“hardly serve the purpose of expounding the underlying wisdom (*ḥikmah*) and establishing the goals of the *Sharī‘ah*.”⁴⁷⁴ Instead, the material in *uṣūl al-fiqh* is largely deduced rulings and certain extracted qualities and attributes that are derived from the literal expressions of the text (i.e., the words of the Lawgiver). Included in this are the methodological procedures of how to derive these rulings or qualities and attributes from the words of the Lawgiver. These in turn would serve the basis from which other legislation could be developed, mainly through the procedure of *qiyās* (analogical reasoning), wherein the existing derived rulings, qualities and attributes would be linked to new cases through a common denominator, otherwise called the *‘illah* (*ratio legis*).⁴⁷⁵

Ibn ‘Āshūr goes on to explain that these methods were actually developed by jurists before *uṣūl al-fiqh* had been established as a science, and that they were eventually adopted by their followers and subsequent generations of jurists, who in time had consolidated them into the theories (*uṣūl*) of the different legal schools. Though Ibn ‘Āshūr does not entirely dismiss the value of these methods, he certainly finds in them limitations for how legal theory should operate. He says:

In brief, the most important purpose those methods can serve is to explicate the meanings of the texts of the *Sharī‘ah* under their different conditions of isolation (*infirād*), association (*ijtimā‘*), or separation (*iftirāq*), so as to allow the person skilled in them to reach almost the same understanding as that of a native Arabic speaker.⁴⁷⁶

⁴⁷⁴ Ibid., xviii.

⁴⁷⁵ Ibid.

⁴⁷⁶ Ibid., Ibn ‘Āshūr provides a further breakdown of the methods within *uṣūl al-fiqh*, saying: “Those methods include issues concerning the requisites and different connotations of words such as being general (*‘umūm*), absolute and unrestricted (*ītlāq*), explicit (*naṣṣ*), apparent (*zuhūr*), real meaning (*ḥaqīqah*), and the opposites of all these. They also include questions of the conflict of legal proofs (*ta‘āruḍ al-‘adillah*), such as

Put differently, the status quo in *uṣūl al-fiqh* offers you but pieces to the puzzle, disconnected from the “spirit” of the *Sharī‘ah*. For Ibn ‘Āshūr, legal theory should be purpose-centered, such that anything applied from its theoretical framework directly coincide with the overarching objectives that define the *Sharī‘ah*.

Ibn ‘Āshūr closes out his critique of *uṣūl al-fiqh* by offering a way forward. The first step is a thorough reexamination of the entire corpus of *uṣūl al-fiqh* with the intent to overhaul any of it ineffectual, inoperative, or restrictive parts. Speaking of its contents he says: “We should critically evaluate them, rid them of the alien elements that crept into them, and supplement them with the results of thorough comprehension and careful thought.”⁴⁷⁷ Once this bold initiative has been achieved, Ibn ‘Āshūr’s next recommendation is perhaps just as audacious. It calls on first identifying and extracting that in *uṣūl al-fiqh* which can serve matters pertaining to *maqāṣid al-Sharī‘ah*. These would then be brought into and consolidated with the new science of *maqāṣid al-Sharī‘ah*. Ibn ‘Āshūr is thus leaving intact a reformulated *uṣūl al-fiqh*, one which can still be, as he says, “a source from which the methods of formulating legal argumentation could be derived.”⁴⁷⁸ But he is also appending to it what he refers to as “this noble discipline of *‘ilm maqāṣid al-Sharī‘ah*,” wherein this discipline will be afforded guiding oversight for all affairs within the juridical process. With his overhaul and reformulation of *uṣūl al-fiqh*, and his new classification of *maqāṣid al-Sharī‘ah* as an independent science within itself, Ibn ‘Āshūr radically set forth

specification (*takhṣīṣ*), qualification (*taqyīd*), interpretation (*ta’wīl*), reconciliation (*jam‘*), preponderance (*tarjīh*), etc. All this deals with the *Sharī‘ah* dispositions (*taṣārīf*) in isolation from any consideration of its universal wisdom (*ḥikmah*) and the general and particular goals of its commands and rulings. Scholars of *uṣūl al-fiqh* have thus confined their inquiries to the external and literal aspects of the *Sharī‘ah* and to the meanings readily conveyed by its letter, that is, the underlying causes (*‘ilal*) of analogy-based rules.”

⁴⁷⁷ Ibid., xxii.

⁴⁷⁸ Ibid.

a new vision for and reorientation of a longstanding institution within Islamic tradition that none before, not even al-Shāṭibī, had ever proposed. Paradoxically, Ibn ʿĀshūr, like al-Shāṭibī, believe that what they were doing in putting forth *maqāṣid al-Sharīʿah* was not a turn away from tradition, but a return to it—to the way things were early on and the way things ought to be.

CHAPTER 10

Ibn ‘Āshūr, al-Shāṭibī and Ascertaining the *Maqāṣid*

Fundamental to the discipline of *maqāṣid al-Sharī‘ah*, and before it can ever be operable and adequately functioning, is the matter of how the *maqāṣid* are actually determined. For the discipline to competently produce outcomes that are honest to the very objective it aims to serve, that being the authentic preservation of the intent of the *Sharī‘ah*, each and every objective—the parts which make up the core of the discipline—must also be arrived at through some sound epistemology. Moreover, because there is a great degree of interconnectivity and interdependence that the individual objectives have with each other, if the integrity of one objective is compromised, then the system as a whole can be affected. This happens especially where there is deliberation over issues involving multiple and competing objectives. The primary aim of this chapter, thus, is to examine how modern *maqāṣid* thinkers like Ibn ‘Āshūr proceeded to identify the *maqāṣid*, comparing and contrasting this with al-Shāṭibī’s methodological approach (the pith of which has already been presented in Part One of this work). This section will focus in particular on determining the extent of their similarities and differences, the factors or reasons that may be attributed to any differences, and the implications that any differences have on the balance of *maqāṣid* philosophy.

Comparative Examination of their Methodologies for Identifying the *Maqāṣid*

As already noted, one of the motivating factors for Ibn ‘Āshūr’s in-depth engagement with *maqāṣid al-Sharī‘ah*, aside from the subject’s profound importance to Islamic tradition and Muslims in the modern world in particular, was that he felt compelled to clarify and expound upon matters of which he believed al-Shāṭibī fell short in. Among these is al-Shāṭibī’s articulation of how the *maqāṣid* are identified. Ibn ‘Āshūr says: “He [al-Shāṭibī] fell into the trap of longwinded and confused analysis. He also omitted some crucial aspects of the *Sharī‘ah*’s higher objectives and thus failed to reach the target that he had set himself.”⁴⁷⁹ Included in the things that Ibn ‘Āshūr is speaking to here is the haphazard way in which al-Shāṭibī treats the topic of deriving the *maqāṣid*. The fact of the matter is that al-Shāṭibī’s discussion of this topic lacks organization, for though he makes statements throughout *al-Muwāfaqāt* and *al-I‘tiṣām* to address how the *maqāṣid* are identified, these statements are rather scattered. Ibn ‘Āshūr, however, attempts to treat the topic in a more structured and systematic way. In fact, Ibn ‘Āshūr devotes a considerable portion of the beginning of his work to explicating how the *maqāṣid* are ascertained.

Among the more apparent difference between the methodologies of Ibn ‘Āshūr and al-Shāṭibī on the topic of identifying *maqāṣid* regards their designation and sequencing of the procedural components to be applied. And of the more glaring differences here is how they each present the role of induction (*istiqrār*). For al-Shāṭibī, though it is obvious from a reading of *al-Muwāfaqāt* that induction is at the center of his methodology in determining the *maqāṣid*, he neglects, for whatever reason, to mention induction in the one place of his work where he explicitly lists his approach to identifying *maqāṣid*, that being in the

⁴⁷⁹ Ibn ‘Āshūr, *Maqāṣid*, xxiii.

concluding section of *Kitāb al-Maqāṣid* in *al-Muwāfaqāt*. Commenting on this with great bewilderment, Aḥmad al-Raysūnī remarks: “I have been at a loss to explain his failure to mention induction as one of the avenues leading to knowledge of the objectives of the Law.”⁴⁸⁰ Al-Raysūnī goes on to say that in his exhaustive reading of *al-Muwāfaqāt*, al-Shāṭibī provides at least one hundred references to the practice of induction, making it all the more enigmatic why he would fail to include it in his list. Al-Raysūnī attempts to offer some possible explanations for this. One explanation is that al-Shāṭibī thought it so obvious that induction was part of his methodology that he determined it was rather unnecessary to make mention of it. Another explanation is that al-Shāṭibī simply overlooked to list it. For al-Raysūnī, whatever the case may be, there is no explanation that could justify al-Shāṭibī not having included induction in his list.

There is, however, another possible explanation that al-Raysūnī does not mention. If we consider al-Shāṭibī’s list, it includes the following: (1) Primary, explicit commands and prohibitions; (2) Consideration of the bases for commands and prohibitions; (3) Consideration of secondary objectives; and (4) Silence on the part of the Lawgiver in situations which would appear to call for declaration and legislation. What we can observe in this list, aside from it being relatively general and superficial, is that it largely pertains to content rather than procedure. In other words, al-Shāṭibī appears to be listing “from where” the *maqāṣid* are derived rather than the process by which they are derived. If we interpret his list in this light, then we can perhaps understand why induction is not mentioned, and that is because induction is more about procedure than location.

⁴⁸⁰ Al-Raysūnī, 280.

Each of the four in al-Shāṭibī's list obviously have some procedural approach behind them. And it is likely that the method of induction serves numbers two, three, and four. As al-Raysūnī has already acknowledged, it is undeniable that induction is a mainstay in al-Shāṭibī's general approach to ascertaining the *maqāṣid*. This is substantiated by numerous instances in al-Shāṭibī's work wherein in discussing how he arrived at some objective, he states for example, "What we have induced from the Law...",⁴⁸¹ and similar phrases throughout *al-Muwāfaqāt*. Given, therefore, that al-Shāṭibī's list is in the context of where to locate the *maqāṣid* as opposed to how to process them, and well-knowing that organization, structure, systemization, et cetera, are not the forte of al-Shāṭibī's writing, al-Raysūnī should not be surprised, as he appears to be, by al-Shāṭibī's neglect to explicitly mention induction in his list.

As already discussed, this lack of coherence and organization in al-Shāṭibī's writing is in fact one of the primary reasons why Ibn 'Āshūr penned his own work on *maqāṣid al-Sharī'ah*. With Ibn 'Āshūr, who again is distinctly structured and systematic in articulating his methodology, induction is undoubtedly at the fore of his approach and the most important of his three methods to ascertain the *maqāṣid*. In laying out his methodology, he says: "The first method, which is also the most important, consists of the induction (*istiqrā'*) of *maqāṣid al-Sharī'ah* that lie behind its various dispositions and measures."⁴⁸² Ibn 'Āshūr goes on to classify induction into two types. The first type, which he holds to be the more operable and common of the two, includes an exhaustive examination of all commands and injunctions in the primary sources whose different causes (rational or *ratio legis*) are already known because they are clear and easily identifiable. Having identified

⁴⁸¹ Al-Shāṭibī, *Al-Muwāfaqāt*, 2:6.

⁴⁸² Ibn 'Āshūr, 14-15.

these, the next step is identifying the common link(s) among these causes. Lastly, after having identified the common link(s), a broader objective is determined that ties the common link(s) together.⁴⁸³ In short, Ibn ‘Āshūr’s first type of induction is to infer a common objective from different causes that are evidently known.

Ibn ‘Āshūr’s second type of induction is perhaps the easier of the two to process. In the second type, you identify injunctions and rulings whose causes are both shared and evident, and then you identify the common objective.⁴⁸⁴ The difference between the two types therefore is that whereas in the first type the attempt was to link different causes and then infer the objective, in the second type, you link similar causes and then infer the objective. An example that Ibn ‘Āshūr provides demonstrating this method regards the repeated commands in the primary sources to free slaves. Ibn ‘Āshūr gathers from this a universal meaning, which is that “realizing and promoting freedom is one of the higher objectives of the *Sharī‘ah*.”⁴⁸⁵ To note here, the notion of freedom is among the new *maqāṣid* developed by Ibn ‘Āshūr which al-Shāṭibī had not included. (The new *maqāṣid* developed by Ibn ‘Āshūr’s will be discussed later in this work.)

Though al-Shāṭibī does not present his application of induction in the same organized fashion as Ibn ‘Āshūr, there are noticeable parallels between their overall philosophies on induction. Most notably, they both consider induction of a series of particulars to be a reliable and authoritative means by which definitiveness can be attained. In speaking of objectives arrived at through the induction of a number of particulars, al-Shāṭibī says that such objectives are: “gathered from a constellation of speculative evidence

⁴⁸³ Ibid., 15-16. Ibn ‘Āshūr goes on to offer two examples demonstrating this procedure. The first example is in the area of commercial transactions (*bay‘*) and the second example concerns cases in marriage.

⁴⁸⁴ Ibid., 16-17.

⁴⁸⁵ Ibid.

which is linked in such a way that it yields a single, definitive meaning.”⁴⁸⁶ And elsewhere, in reference to human interests (including essentials, exigencies and embellishments) being a fundamental objective of the *Sharī‘ah*, he says:

Proof of this may be found through an inductive reading of the Law which involves an examination of those texts which are both universal and particular in import. Such an inductive reading, since it looks to the overall, inner spirit of the Law rather than just its outward details or particulars, cannot be carried out on the basis of a single text or piece of evidence; rather, it requires the marshalling of numerous texts which embody a variety of objectives and which, when added one to another, yield a single conclusion upon which they [scholars] all agree.⁴⁸⁷

Thus, for al-Shāṭibī, induction from particulars—and whether it be from an absolute consensus of a group of particulars, or from a majority of them—can bring about definitive conclusions in the form of higher objectives of the *Sharī‘ah*.

Ibn ‘Āshūr likewise maintains the definitive nature of sound induction. As a preamble to his discussion on the importance and reliability of induction in the process of identifying the *maqāṣid*, he states:

In respect of this kind of knowledge (that is, *maqāṣid*), the jurist should avoid imitating a student of Ibn ‘Arafah, who said about his teacher: “I never disagreed with him in his life, and I will not differ with him now that he is dead.” Therefore, when evidence has been established concerning a

⁴⁸⁶ *Al-Muwāfaqāt*, 1:36-37.

⁴⁸⁷ *Al-Muwāfaqāt*, 2:51; *Al-Raysūnī*, 284.

Sharī'ah objective, all contenders must show fairness and discard all weak possibilities of opinion.⁴⁸⁸

In other words, for Ibn 'Āshūr —and the point to be made here—objectives ascertained through the inductive process can attain such a high degree of certainty and authority that they should override any competing claim, including past *ijtihād* or the opinions and rulings of reputable and authoritative jurists.

Beyond induction, there are other approaches to ascertaining the *maqāṣid* that both Ibn 'Āshūr and al-Shāṭibī share in their methodologies. Ibn 'Āshūr's second method is actually al-Shāṭibī's first on his list. It is to identify the *maqāṣid* through clear Qur'anic text. In other words, a single text of the Qur'an is explicit or self-evident in conveying an objective. Ibn 'Āshūr goes on to expound on the linguistic and procedural elements necessary for the derivation of these *maqāṣid*. In regards to what is meant by a text's clarity, he explains that: “according to Arabic usage, it is very unlikely that their meaning is something other than what is apparent (*ẓāhir*).”⁴⁸⁹ This explanation for what is a clear text appears to suffice for Ibn 'Āshūr, as he does not seem interested here in delving into some

⁴⁸⁸ Ibn 'Āshūr, 14. Ibn 'Āshūr tells us that: “This is a reference to 'Īsā al-Ghubrīnī, one of the students of Shaikh Muhammad ibn 'Arafah. He said this on the occasion of an incident in which a brother cashed, on behalf of his sister, the value of a jointly owned property and then declared that he had given her her share of it.” (Trans. Mohamed El-Mesawi). Mohamed El-Mesawi provides the following about Ibn 'Arafah and al-Ghubrīnī: Ibn 'Ārafah is Abū 'Abd Allāh Muhammad ibn 'Arafah al-Wirghimī, the descendant of a family from the town of Wirghimah in Southern Tunisia. He was born in Tunis in 716 AH and died in Jumada II, 803 AH. He was buried in al-Jallāz cemetery in the city of Tunis. He was known for his mastery of all the branches of sciences known in his time and became an established authority. He wrote many works on Qur'anic exegesis, jurisprudence, legal theory, theology and logic. He led the prayers and was the deliverer of the Friday sermon in the Zaytūnah-Grand Mosque for fifty years. It also seems that there was some rivalry and competition as well as enmity between him and his contemporary and countryman, Ibn Khaldūn. As for al-Ghubrīnī, his full name is Abū Mahdī 'Īsā ibn Aḥmad ibn Muḥammad al-Ghubrīnī al-Tūnisī. He studied under Ibn 'Arafah and was appointed to the office of chief judge in Tunis, in addition to being the deliverer of the Friday sermon at the Zaytūnah mosque. He died in either 813 or 815ah. (See f.n. 3.,p. 353).

⁴⁸⁹ Ibn 'Āshūr, 17.

of the deeper linguistic and nuanced discussions associated with understanding when a text is clear in meaning vis-à-vis when it is not.⁴⁹⁰ Nevertheless, Ibn ‘Āshūr goes on to say that only “those who easily give way to insignificant doubt” fail to accept those verses that should be self-evident in meaning.⁴⁹¹ As an example of those who would challenge the meaning of a clear text, he refers to the Qur’anic verse which reads: “Fasting is prescribed (*kutiba*) for you (2:183).” Ibn ‘Āshūr argues that unless one is imaginatively creative, irrational or compulsively inclined to doubt, such as those who would take the word *kutiba* to merely mean that fasting is to be written down in the literal sense (i.e., written on paper), the verse means according to the standards of common usage and reason that God has made fasting (the month of Ramadan) an obligatory practice for those who are physically able. Ibn ‘Āshūr’s point is that the meaning of such a text is absolutely clear (*qaṭ’ī*) and precludes the existence of any other meaning. But his example here in the verse on fasting is only in regards to demonstrating a straightforward text and the irrational yet possible gross misrepresentation of it. As for clear Qur’anic texts which also convey objectives, he provides several examples. These include the following verses:

God does not love corruption” (2:205); O you who believe! Do not devour one another’s possessions wrongfully (4:29); No bearer of burdens shall be made to bear another’s burden” (6:164); By means of intoxicants and gambling, Satan seeks only to sow enmity and hatred among you (5:91),
 God wills that you should have ease, and does not will you to suffer hardship

⁴⁹⁰ We are referring here specifically to discussions pertaining to *muḥkamāt* and *mutashābihāt* verses, which are at the fore of Qur’an 3:7. Muslim scholars such as Fakhr al-Dīn al-Rāzī provided relatively extensive elaborations on the criteria used to determine between the *muḥkamāt* and *mutashābihāt* verses.

⁴⁹¹ Ibid.

(2:185); And has laid no hardship on you in [anything that pertains to] religion (22:78).

According to Ibn ʿĀshūr, a distinct universal objective can be identified in each of these verses. The verse either explicitly indicates the objective, or it alludes to it. In either case, there is a one-to-one direct relationship between verse and objective. The distinguishing feature between this process of arriving at the *maqāṣid* and the inductive process is that this process conveys a one-to-one direct relationship between a clear verse and an objective. Though both al-Shāṭibī and Ibn ʿĀshūr recognize this one-to-one relationship between verse and objective, for al-Shāṭibī, these types of objectives are typically particular objectives as opposed to universal ones. To note, the vast majority of the objectives that al-Shāṭibī derives are largely through the method of induction and are universal. As al-Raysūnī observes: “Rarely does he [al-Shāṭibī] deal with specific objectives having to do with particular legal rulings and obligations, and when he does do so, he does so incidentally.”⁴⁹² Therefore, though al-Shāṭibī holds in theory that an objective can be derived from a single text, these objectives for him are usually specific in nature and account for but a few of the overall objectives he has derived; the majority of them, again, being universal and arrived at through induction. Universal objectives for al-Shāṭibī include the five essentials (*al-darūrīyāt*), namely life, religion, faculty of reason, progeny, and material wealth, while particular or secondary objectives for him largely correspond to the areas of exigencies (*al-ḥājīyāt*) and enhancements or embellishments (*al-taḥsīnīyāt*). Ibn ʿĀshūr on the other hand, and as we will discuss later, attaches certain universal objectives with these latter two areas.

⁴⁹² Al-Raysūnī, 286.

Ibn ʿĀshūr’s third method of identifying the *maqāṣid* is through the collection of mass-transmitted and unimpeachably veracious *aḥādīth*, otherwise known as *Sunnah mutawātirah*. He designates these as two types, thematically recurrent reports (*mutawātir maʿnawī*) and thematically recurrent practice (*mutawātir ʿamalī*). Ibn ʿĀshūr goes on to expound on each of these, which we will attempt to summarize here. The primary distinction between the *mutawātir maʿnawī* and the *mutawātir ʿamalī* is that the former’s reference is to mass reports wherein the Companions attribute something to the Prophet, while the latter’s reference is to mass reports that depict the practice of the Companions (who in turn base their practice on observing the Prophet).

An example of *mutawātir maʿnawī* are the mass reports which convey that the Companions observed the Prophet offer the Eid sermon following the performance of the Eid prayer. An example of the *mutawātir ʿamalī* is best illustrated by the following account, paraphrased here. The account describes how a Companion named Abū Barzah had stopped to pray during the events of a battle. He was performing his prayer while struggling to hold onto the reign of his horse, with the horse causing Abū Barzah to frequently move about and away from his standstill prayer position. There had been a man from the *khawārij* who in witnessing this condemned Abū Barzah, calling for God’s punishment to befall him. Upon completing his prayer, Abū Barzah responded to this man’s condemnation by making him aware that he had been in similar circumstances on several occasions in the Prophet’s presence, and not once had the Prophet offered any condemnation, noting rather the Prophet’s leniency with each of these occurrences. Abū Barzah concludes to the man that letting the horses reign loose would have brought him great trouble, and therefore that his actions were correct and justified.

Ibn ‘Āshūr goes on to conclude that this tradition is an instance of *mutawātir ‘amalī*, and that this Companion had himself derived from several experiences with the same situation in front of the Prophet that ease and leniency in the face of hardship are objectives of the *Sharī‘ah*.⁴⁹³ And with this account, Ibn ‘Āshūr closes his presentation of the main features in his approach to identifying *maqāṣid*. However, and in a later chapter of Ibn ‘Āshūr’s work, which we will discuss further below, he provides additional dimensions to these features which are just as crucial to ascertaining to the *maqāṣid*.

To rehash, Ibn ‘Āshūr’s methodology for ascertaining the *maqāṣid* comes by way of the following avenues: (1) Induction (through Qur’an and Ḥadīth), (2) Clear individual Qur’anic text, and (3) Sunnah *mutawātirah*. Following the presentation of his tripartite methodology, Ibn ‘Āshūr then makes relatively brief mention of al-Shāṭibī’s approach to ascertaining the *maqāṣid*. Ibn ‘Āshūr’s characterization of the avenues by which al-Shāṭibī pursues the *maqāṣid* somewhat differs from what al-Raysūnī provided us with, specifically in reference to al-Shāṭibī’s list. To recall, al-Raysūnī cites the following four components comprising al-Shāṭibī’s list: (1) Primary, explicit commands and prohibitions; (2) Consideration of the bases for commands and prohibitions; (3) Consideration of secondary objectives; and (4) Silence on the part of the Lawgiver in situations which would appear to call for declaration and legislation. Al-Raysūnī then takes issue with al-Shāṭibī’s omission of induction in his list (which we attempted to address above by offering an alternative interpretation of what the context of al-Shāṭibī’s list was), especially that it is obviously a main feature in al-Shāṭibī’s methodology. Ibn ‘Āshūr, interestingly, gives no attention to

⁴⁹³ Ibn ‘Āshūr, 19. This tradition involving Abū Barzah is found in Ṣaḥīḥ Bukhārī, *al-‘Amal fī al-Ṣalāh, ḥadīth* 1211. The notion of hardship according to al-Shāṭibī was treated in Part One of this work. Ibn ‘Āshūr’s views on hardship largely correspond to al-Shāṭibī’s, as we will discuss later in this work.

this omission, perhaps seeing it as trivial, or perhaps interpreting it as we have above. Needless to say, Ibn ‘Āshūr is quite clear in expressing that induction is central to al-Shāṭibī’s methodology. But as for the four that are included in al-Shāṭibī’s list, Ibn ‘Āshūr cites only the first three of them and entirely ignores the fourth. Ibn ‘Āshūr, however, does not offer to juxtapose his three with al-Shāṭibī’s first three, even though there is a clear contrast in how he has structured his vis-à-vis al-Shāṭibī’s’.

In juxtaposing al-Shāṭibī’s four to Ibn ‘Āshūr’s three, we can say the following. Al-Shāṭibī’s categories one and two are essentially Ibn ‘Āshūr’s category two. More concretely, whereas al-Shāṭibī separates and individually categorizes an explicit text (commands and prohibitions) and the bases or *‘illah* of an explicit text (commands and prohibitions), Ibn ‘Āshūr combines these under his category two, clear individual Qur’anic text. Hence, under Ibn ‘Āshūr’s category two, the clear Qur’anic text either explicitly conveys a *maqṣid*, or the *maqṣid* needs to be sought out after determining the *‘illah*. The most typical and oft cited example of the latter is in the texts which convey the prohibition of alcohol. The *‘illah* for the prohibition of alcohol is the quality of intoxication, wherein intoxication generally decreases discernment in the human mind. From this is inferred a fundamental universal objective, which is that the *Sharī‘ah* aims to preserve the intellect (*ḥifẓ al-‘aql*). Such texts convey an objective after knowing a clear *‘illah*. Ibn ‘Āshūr notes that these universal *maqāṣid* such as *ḥifẓ al-‘aql* and the other essentials can be grouped under the broader distinction of benefit (*maṣlahah*). For Ibn ‘Āshūr, *maṣlahah* is also then referred to as a *maqṣid*, but an umbrella *maqṣid*. He labels it as being of the *maqāṣid ‘ulīyyah* (lit. higher objectives), while those universals such as the essentials, which fall

under it, he labels as *maqāṣid qarībah* (lit. near objectives).⁴⁹⁴ Ibn ‘Āshūr’s terminology here may create some confusion, as the five essentials are typically also referred to as being of the higher objectives. The distinction that Ibn ‘Āshūr is trying to make is that there are higher objectives of the *Sharī‘ah* (i.e., the five or six essentials), and there is an umbrella or ultimate higher objective (*maṣlahah*). (We will provide a discussion on interpreting the *maqāṣid* later in this work, including certain twists in interpretation among modern Muslim thinkers such as Professor Sherman Jackson’s novel interpretation of *hiḏ al-‘aql*.)

Continuing with our juxtaposition, as for al-Shāṭibī’s category three, consideration of secondary objectives, though Ibn ‘Āshūr alludes to al-Shāṭibī as having this among his methodological categories, Ibn ‘Āshūr himself does not distinguish this as a separate category. Ibn ‘Āshūr explains that secondary objectives are *‘ilal* (sing. *‘illah*)⁴⁹⁵ (which we have just described above with regards to the *‘illah* of the prohibition of alcohol verses being intoxication). These *‘ilal* are relevant to and central in the process of all three of Ibn ‘Āshūr’s tripartite methodology. Thus, al-Shāṭibī’s category three is subsumed under and part and parcel to all of Ibn ‘Āshūr’s categories.

There is one method that al-Shāṭibī discusses which Ibn ‘Āshūr completely ignores. This method concerns *maqāṣid* being informed by the consideration of silence on the part of the primary sources. What is meant by silence here is when the primary sources do not provide a ruling or legislation on a matter that could otherwise have a ruling or legislation. Al-Shāṭibī’s discussion of this method is within the context of ritual worship. For instance, the primary sources have a number of established rulings pertaining to ritual worship, along

⁴⁹⁴ Ibn ‘Āshūr, 174-175.

⁴⁹⁵ Ibid., For al-Shāṭibī’s discussion of secondary objectives see for instance *al-Muwāfaqāt*, vol. 1/2, pp.666–673.

with dispensations (*rukhas*) that apply in certain circumstances and that are based on particular principles and the consideration of benefit and harm. For al-Shāṭibī, beyond this (i.e., beyond what the primary sources have already established pertaining to matters of ritual worship), there is nothing that should be added or subtracted. Put differently, that the primary sources are silent on anything pertaining to ritual worship which has not already been addressed in some way is an indication that “...the Lawgiver’s intention is for there to be neither increase nor decrease.”⁴⁹⁶ Al-Shāṭibī asserts: “We may understand the divine intention to be that we stop at the presently existing limits just as they are.”⁴⁹⁷ In short, by considering this method of silence, al-Shāṭibī aims to preserve the integrity of ritual worship, safeguarding it from innovation and tampering. The innovations that al-Shāṭibī is particularly addressing here are those introduced by certain Sufis, whose perceived innovative practices in the realm of worship had been—as discussed elsewhere in Part One concerning the socio-religious dynamics in al-Shāṭibī’s environment—among the motivating factors in informing al-Shāṭibī’s *maqāṣid* thought.

There is no definitive answer, however, as to why Ibn ‘Āshūr completely neglects to make mention of this last method. The contemporary commentator on *maqāṣid* ‘Abd al-Mājid al-Najjār and al-Raysūnī each offer their own guess as to why this is so. Al-Najjār opines that Ibn ‘Āshūr simply did not read fully the whole of al-Shāṭibī’s work and had therefore missed this last method.⁴⁹⁸ Aside from al-Najjār’s view lacking any evidence, and considering that it would only make sense for Ibn ‘Āshūr to have thoroughly examined

⁴⁹⁶ *Al-Muwāfaqāt*, 2: 410; Al-Raysūnī, 278.

⁴⁹⁷ *Al-Muwāfaqāt*, 2: 410; Al-Raysūnī, 278.

⁴⁹⁸ ‘Abd al-Mājid al-Najjār, “*Masālik al-kashf ‘an maqāṣid al-Sharī‘ah bayn al-Shāṭibī wa Ibn ‘Āshūr*,” *Al-‘Ulūm al-Islāmiyyah Magazine* (Qasantinah, Algeria: Amir Abd al-Qadir Islamic University, 1996), No. 2, pp. 139-162.

al-Shāṭibī's work in preparing for his own substantial work on the subject, it is quite ironic that al-Najjār would even offer this opinion given his own deficient reading of *al-Muwāfaqāt*. We refer here to al-Najjār's odd suggestion in his article that induction was not a feature of al-Shāṭibī's methodology to ascertain the *maqāṣid*.⁴⁹⁹ This view is simply off the mark for reasons we have already discussed concerning the undoubtable and prevalent use of induction in al-Shāṭibī's theory. The irony is that al-Najjār himself likely based his view on a narrow reading which only focused on the list of four methods al-Shāṭibī provides at the end of *Kitāb al-maqāṣid*, not giving any consideration to the rest of *al-Muwāfaqāt* wherein he would have found numerous references demonstrating the important role that induction plays in al-Shāṭibī's methodology. How else can al-Najjār's view here be explained, unless—and assuming that he did fully examine al-Shāṭibī's work—he simply could not reconcile al-Shāṭibī's list neglecting induction with the many clear and explicit references to induction.

As for al-Raysūnī's opinion regarding why Ibn 'Āshūr fails to mention al-Shāṭibī's method of silence, he believes that Ibn 'Āshūr had “omitted it deliberately, not deeming it of sufficient importance to discuss.”⁵⁰⁰ Al-Raysūnī adds elsewhere on the same point that: “this approach is more restricted in scope than other approaches and is, therefore, the one of least importance.”⁵⁰¹ By “restricted in scope,” we presume that al-Raysūnī is referring to the limited context in which al-Shāṭibī is applying this method, namely to the area of worship. Therefore, and to restate al-Raysūnī's opinion, Ibn 'Āshūr deliberately excluded al-Shāṭibī's method pertaining to silence because it was specific to matters of worship

⁴⁹⁹ Ibid.

⁵⁰⁰ Al-Raysūnī, 280.

⁵⁰¹ Ibid., 279.

(*ta'abbud*), and, as such, he deemed it to be least important because it did not address other matters; whereas, the other methods that Ibn 'Āshūr lists have wide application in areas beyond worship (e.g., commercial law, family law, etc.). Though al-Raysūnī's assessment regarding the method's narrow scope is certainly valid, it is curious why exactly he suggests that Ibn 'Āshūr held it to be of least importance? That this method was aimed at preserving the integrity of *ta'abbud* from innovations is certainly a matter of great significance. So what exactly does al-Raysūnī mean by it being of least importance?

We should note that al-Shāṭibī himself did not explicitly restrict the use of this method to the area of worship. It happens to be that he only discusses it in that context. Assuming that al-Shāṭibī did not specify a particular area for the method's application, we could imagine all sorts of questions and issues that could arise in its broader application beyond worship. The most fundamental of these is whether the method would even be approached in the same manner in those areas outside of worship? And along the same lines, if applied to areas outside of worship, what would be the implications to the institution of *ijtihād*? Would it not virtually end *ijtihād*? Perhaps some of what we mention here are the uncertainties with this method that caused Ibn 'Āshūr to simply ignore it, deeming this method not so much as being least important as it is deleteriously unpredictable and complex in its application. Given what we know in Ibn 'Āshūr's intent with his work to clarify the many ambiguities and simplify the complexities he found in al-Shāṭibī's *maqāṣid* theory, this could very well have been the reason why he decided to ignore it. Finally, we should also note that the issue of *maqāṣid* and *maṣlaḥah* in relation to matters of worship comes up elsewhere in Ibn 'Āshūr's work. The point being that Ibn

‘Āshūr didn’t entirely ignore this method, but rather treated it in his own way elsewhere, namely in his section on *ta‘abbud*.

10: 2 | The Role of the Sunnah in Ascertaining the *Maqāṣid*

One of the outcomes of mass literacy as well as mass publication in both its hard and soft—digital—form is that virtually everyone and anyone has direct access to reading and independently interpreting endless amounts of material. While this access to knowledge is a great feature of our time, it also has consequences. The vast Islamic textual material available, from ḥadīth collections to medieval works on *fiqh* and *fatāwā*, has posed uneasy consequences for understanding religion. Many Muslim scholars of more recent time have been vociferously outspoken about gross misinterpretation of Islamic texts as a result of poor and misguided reading. The popular Muslim American scholar Hamza Yusuf, for instance, has been actively educating Muslim audiences, both in the US and abroad, about the critical subtleties and nuances of language in general and the language of Islamic texts in particular, and how critical it is for those attempting to interpret these texts to have proper training in doing so. Yusuf points out the ambiguous nature of language, even in its most simple usage, and reminds his audiences that in Islamic tradition one had to have attained several prerequisites before interpreting texts, beginning with mastery of grammar, rhetoric, and logic, not to mention other prerequisites relevant to the texts subject or genre. He maintains, moreover, that the loss of *adab* or respectful adherence towards traditional Islamic methods of study has further exacerbated the problem of misguided reading and understanding. In this regard, Yusuf informs that in Islamic tradition:

...a long-standing convention of glosses exists whereby scholars would shed light on the abstruse language used by their predecessors. The Mālikī scholars, in particular, preferred to write in such abstruse language in order to prevent ill-equipped readers from venturing into their books. (In the West, legal books often use a similar tactic so that only jurists can comprehend the text with ease.) Sometimes, glosses were written on previous glosses, and some works contain marginalia that involve three or four books in one. All of the above were ways in which highly capable scholars removed ambiguity from previous texts in order to enable educated but less capable scholars to understand the texts.⁵⁰²

This traditional approach of reading Islamic texts within a system of mastery guidance has largely been lost. Instead, mass literacy and the ease of access to such texts has enabled an “every reader for themselves” approach, whereby what you think goes, goes.

About a half century before Yusuf, Ibn ‘Āshūr brought focus on this issue of misreading Islamic texts. Especially alarming to him was the misinterpretation and misapplication of the primary source texts, and the ḥadīth in particular, which he felt scholars had not adequately safeguarded from misreading. In fact, he held that *uṣūlī* scholars themselves were at times confused in understanding the ḥadīth. Ibn ‘Āshūr therefore saw an urgent need to address the matter, and would devote in his *Maqāṣid al-Sharī‘ah* a relatively lengthy discussion on the subject of interpreting the Sunnah.

For Ibn ‘Āshūr, imperative to the skillset of aspiring specialists in the science of *maqāṣid* was the ability to distinguish the different intents of the words and actions of the

⁵⁰² Hamza Yusuf, "The Sin Tax of Ignoring Syntax," Sandalaproductions, Accessed November 29, 2016, <http://www.sandalaproductions.com/Blog/26-the-sin-tax-of-ignoring-syntax.aspx>.

Prophet.⁵⁰³ He thus deemed it essential to formulate criteria to differentiate between these different intents. Ibn ‘Āshūr had very little precedent to construct his proposed criteria, and acknowledges only al-Qārāfi with having been aware of this distinction between Prophetic traditions and putting this distinction into practice.⁵⁰⁴

Al-Qarāfi had introduced a threefold categorization of Prophetic traditions, holding that what the Prophet said or did (beyond purely theological, ritual, spiritual, and ethical expressions, which were universal) generally reflected his role as a judge (*qāḍī*), or as a deliverer of legal edicts (*mufī*), or as a head of state (*imāmah*). Al-Qarāfi thus believed that before applying any ḥadīth, one had to first understand which role the ḥadīth was an extension of. If it was determined that a ḥadīth reflected the Prophet’s capacity as judge, then the application of that ḥadīth should be reserved to the recognized judiciary of society. Similarly, if it was determined that a ḥadīth reflected the Prophet’s capacity as head of state, then that ḥadīth’s application should be reserved only for a head of state, not for the general lay to enforce. Therefore, such things as declaring war, dispatching armies, and the allocation and spending of wealth from the Treasury to various government departments was in the purview of the head of state.

Ibn ‘Āshūr would pick up on al-Qarāfi’s categorizations and develop it further. Ibn ‘Āshūr first offers an authoritative basis for doing so, mentioning that “the Companions

⁵⁰³ Ibn ‘Āshūr, *Maqāṣid al-Sharī‘ah*, 30.

⁵⁰⁴ Ibid. Al-Qarāfi’s discussion of the intents of the Sunnah is in his *Anwār al-burūq fī anwā‘ al-furūq*. El-Mesawi notes that Ibn Qutaybah (d. 276/889) deals with this issue in his *Ta’wīl mukhtalif al-ḥadīth*, ed. Muḥammad ‘Abd al-Raḥīm (Beirut: Dār al-Fikr, 1415/1995), 180–183. El-Mesawi further notes that after al-Qarāfi, this issue was treated by Ibn Qayyim al-Jawziyyah in his *Zād al-ma‘ād fī ḥadīthi khayr al-‘ibād*, ed. Shuayb al-‘Arna’ut et al. (Beirut: Mu’assasat al-Risālah, 1405/1985), vol. 3, 489–490, as well as by the Indian scholar Shāh Walī Allāh al-Dahlawī in his seminal work *Hujjat Allāh al-balīghah* [Shāh Walī Allāh of Delhi, *The Conclusive Argument from God*, trans. Marcia K. Hermansen (Leiden: E.J. Brill, 1996), vol. 1, 373–375.]. As El-Mesawi remarks, this issue is still being explored and debated by contemporary Muslim scholars. See further Fn.1 in Ibn ‘Āshūr, *Maqāṣid al-Sharī‘ah*, 357.

used to make a clear distinction between the commands of God's Messenger that ensued from his position as legislator (*maqām al-tashrīʿ*) and those that did not.⁵⁰⁵ Having already adopted al-Qarāfī's three categories, that of judge (*qāḍī*), deliverer of legal edicts (*mufīṭī*), and head of state (*imāmah*), he then puts forward an additional nine different categories or roles which he deems to reflect statements or actions of the Prophet. These include legislation (*tashrīʿ*), guidance (*hady*), conciliation (*ṣulḥ*), advice to those seeking his opinion (*ishārah*), counselling (*naṣīḥah*), spiritual uplifting of people (*takmīl al-nufūs*), teaching high and lofty truths (*taʿlīm al-ḥaqāʾiq al-ʿālīyah*), disciplining (*taʿdīb*) and non-instructive ordinary statements (*tajarrud ʿan al-irshād*).⁵⁰⁶

With respect to legislation (*tashrīʿ*), the first of his categories, he asserts that the Prophet's capacity as a legislator is the most predominant of all the capacities in which the Prophet spoke or acted upon. Pertaining to this category are such things as the Prophet's performance of rituals (e.g., prayer and pilgrimage), which he instructed to those around him and which he instructed to be passed on to those not around him. The category of guidance (*hady*) pertains to certain good deeds which the Prophet instructed and which, though not necessarily legislative, are encouraged to perform as they procure some worldly or spiritual benefit. Ibn ʿĀshūr states: "what I particularly mean by guidance and instruction here is those directives inviting people to hold on to good morality, manners of good company, and right belief."⁵⁰⁷ An example he provides is helping someone with a difficult chore. Hence, though one is not obligated to do this, doing reaps benefit.

⁵⁰⁵ Ibn ʿĀshūr, *Maqāṣid al-Sharīʿah*, 33.

⁵⁰⁶ Ibid, 34. For his discussion of these, see pp. 34-51.

⁵⁰⁷ Ibid., 38.

Ibn ʿĀshūr goes on to expound upon the remainder of his categories, explaining the obvious or sometimes subtle distinction each has. He acknowledges, however, that distinguishing which capacity the Prophet spoke or acted in is not always clear, and has resulted in differences between the scholars. For instance, it may not be clear whether an action of the Prophet reflects his capacity as legislator or his capacity as head of state. To illustrate, he provides the case of the Prophet’s prohibition of eating donkey meat during the Battle of Khaybar. Hence, it is not clear if the prohibition was an absolute legislative (*sharʿī*) prohibition of consuming donkey meat, or whether it was an isolated temporary prohibition, in an act as head of state, having to do with the donkeys being needed for reasons pertaining to the battle.⁵⁰⁸

⁵⁰⁸ Ibid., 37.

CHAPTER 11

Ibn ‘Āshūr, al-Shāṭibī, and the Role of *Maṣlahah* in *Maqāṣid* Theory

As we have already discussed in Part One, the concepts of *maqāṣid* and *maṣlahah* form a close and symbiotic relationship. This relationship has been captured by both pre-modern and modern writers on *maqāṣid*. Al-Qarāfī stated that: “A purpose (*maqṣid*) is not valid unless it leads to the fulfilment of some good (*maṣlahah*) or the avoidance of some mischief (*mafsadah*).”⁵⁰⁹ Ibn al-Qayyim saw the *maqāṣid* as serving “the best interests [*maṣlahah*] of God’s servants both in this world and the next.”⁵¹⁰ Ibn ‘Āshūr held that all the *maqāṣid* can be grouped under the broader distinction of benefit (*maṣlahah*). Kamali states that: “*maṣlahah* has generally been regarded as the summa of the *maqāṣid*,” and therefore why the ulema use them interchangeably.⁵¹¹ And al-Raysūnī adds that in attempting to understand primary source texts, and in the process of drawing conclusions from them (i.e., deriving law), one must keep in mind throughout this process the principle of achieving benefit and preventing harm. Thus, the *maqāṣid* are ultimately for creations *maṣlahah*, and what is truly a *maṣlahah* for creation aligns with the *maqāṣid*. Moreover, the relationship between *maqāṣid* and the notion of *maṣlahah*, is a demonstration within Islamic tradition of the interaction between revelation and reason, where revelation and

⁵⁰⁹ Shihāb al-Dīn al-Qarāfī, *al-Dhakhīrah* (Beirut: Dār al-‘Arab, 1994), vol. 5, p. 478; Auda, 2.

⁵¹⁰ Ibn al-Qayyim, *I‘lām al-muwaqqi‘īn* (Cairo: Maktabah al-Kulliyāt al-Azhariyyah, 1968), 3:3.

⁵¹¹ Kamali, “Higher Objectives,” 3.

reason symbiotically cooperate. How these two concepts of *maqāṣid* and *maṣlaḥah* were to complement each other is the subject of this chapter. We comparatively examine in particular how al-Shāṭibī and Ibn ‘Āshūr incorporate *maṣlaḥah* in their *maqāṣid* theories.

Commonalities and Differences between Ibn ‘Āshūr’s and al-Shāṭibī’s Approach to *Maṣlaḥah*.

At the outset of his chapter introducing the concept of *maṣlaḥah*, Ibn ‘Āshūr provides us with a relatively short discussion of his understanding of the term’s connotations. Based on his linguistic analysis of the terms morphological form, he derives a binary definition, telling us that *maṣlaḥah* expresses both *ṣalāḥ* (utmost righteousness and goodness) and *naḥ* (utility and benefit).⁵¹² Ibn ‘Āshūr then considers the definitions given to *maṣlaḥah* by premodern scholars including al-Shāṭibī. He highlights al-Shāṭibī’s definition in particular, paraphrasing it as: “that which produces a benefit for people at the collective or individual level and is acceptable to human beings because of its importance for their lives.”⁵¹³ Though Ibn ‘Āshūr acknowledges the similarities between his definition and al-Shāṭibī’s, he deems al-Shāṭibī’s overall definition to be flawed. He says: “This definition is inaccurate, though it is the closest to ours.”⁵¹⁴ Perplexingly, however, Ibn ‘Āshūr neglects to explain here exactly what he finds wrong with al-Shāṭibī’s definition.

In comparing their definitions, we can observe at least one apparent difference. Al-Shāṭibī does not deconstruct the word *maṣlaḥah* so as to arrive at two shared yet distinct meanings as Ibn ‘Āshūr does, not conveying in particular the notion of righteousness and

⁵¹² Ibn ‘Āshūr, 96.

⁵¹³ Ibid. Ibn ‘Āshūr’s citation of al-Shāṭibī’s discussion of the meaning and categories of *maṣlaḥah* is *al-Muwāfaqāt*, Vol. 1/2, pp. 339–365.

⁵¹⁴ Ibn ‘Āshūr, 96.

goodness found in the related verbal-noun *ṣalāh*. Al-Shāṭibī, rather, appears to isolate the meaning of *naḥ* (benefit), presenting it as the primary denotation for *maṣlaḥah*. Though al-Shāṭibī does not explicitly offer this two-fold distinction, he could have very-well thought that the notion of righteousness and goodness was implicit and obviously associated with *maṣlaḥah*. And while this particular difference between their two definitions appears purely semantical and trivial, Ibn ‘Āshūr may have felt that noting this distinction, namely highlighting the notion of righteousness and goodness, was especially important to preserving the moral-ethical dimension attached to *maṣlaḥah*. This perhaps lest it be misconstrued that what is of benefit for the individual and the public, and what human beings find acceptable and important to their lives—what al-Shāṭibī is outwardly conveying in his definition of *maṣlaḥah*—is solely grounded in arbitrary human reasoning that is devoid of any moral-ethical consideration and that ignores revelation.

Ibn ‘Āshūr goes on to affirm al-Shāṭibī’s designation that *maṣlaḥah* is of two kinds, public interest (*maṣlaḥah ‘āmmah*) and private interest (*maṣlaḥah khāṣṣah*). The meanings of each of these is self-evident, with public interest pertaining to what is beneficial or useful to all or the majority of the community, while private interest pertaining to what is beneficial or useful primarily to an individual. Ibn ‘Āshūr attempts to further clarify the distinction by offering a concrete example of each. A matter of public interest would be providing security for a nation against outside aggressors, or safeguarding infrastructure and areas of economic value from such things as natural disasters. An example of private interest is “the protection of the private property of mentally incompetent people (*safīh*) from squandering by placing them under interdiction (*ḥajr*) during the period of their

incompetence.”⁵¹⁵ Benefit in this latter example is specifically for the mentally incompetent person, such that either their property will be retained for their use upon a possible recovery from their condition, or, and in the case they don’t recover, their property is passed down to their rightful inheritors. This latter example is therefore considered a private interest because it has no direct bearing or collective benefit for the general public. Ibn ‘Āshūr adds that most Qur’ānic legislation and matters pertaining to collective obligations concern public interest, while much of the Sunnah and some Qur’ānic legislation pertain to private interest.⁵¹⁶

In addition to Ibn ‘Āshūr taking issue with al-Shāṭibī’s definition of *maṣlaḥah* is his criticism of al-Shāṭibī for not—in his estimate—establishing a clear and decisive criteria for the determination of what actually constitutes a *maṣlaḥah* or *mafsada*.⁵¹⁷ For Ibn ‘Āshūr, establishing a sound criteria for determining how to arrive at what may be considered beneficial and what may be considered harmful is at the crux of *maqāṣid* philosophy and gravely important for Islam’s relevance to time and change. He says:

Comprehending the idea of *maṣāliḥ* is the clearest and most straightforward way for the jurists in dealing with the affairs of the community and solving its difficulties when there is confusion over which line to follow. It also shows them that if they do not follow this clear path, they might prevent Islam from being a universal and eternal religion, thus travelling in a most dreadful valley where only God can save him [or them].⁵¹⁸

⁵¹⁵ Ibid., 97.

⁵¹⁶ Ibid.

⁵¹⁷ Ibid., 99-100.

⁵¹⁸ Ibid., 132.

Ibn ‘Āshūr undoubtedly recognizes that there are challenges in establishing a criteria to determine benefit and harm. The foremost of these challenges concern matters wherein clear benefit or clear harm are not so obvious. The nature of many matters in fact is that they include both benefit and harm. Making it further challenging is having to navigate through the contextual elements which inform these matters, wherein the degree of benefit or harm of a given matter may alter depending on these contextual elements. Notwithstanding these challenges, Ibn ‘Āshūr maintains that provided there is “careful thought and sound observation,” a criteria can and should be developed to determine the benefit and harm in a given matter, and to weigh between them such that one arrives at a sound course of action.⁵¹⁹

Ibn ‘Āshūr proposes five essential criteria that can be used to help determine whether a thing or matter has an overall benefit such that that thing or matter should be sought, or whether a thing or matter has an overall harm such that that thing or matter should be avoided. The first criterion is that if the thing or matter consistently and definitively results in an overall benefit and not harm, then it should be sought. Conversely, if the thing or matter consistently and definitively results in an overall harm and not benefit, then it should be avoided.⁵²⁰ Examples of this criterion are numerous. For instance, the taking in of fresh air, or the quenching of one’s thirst with pure water are consistent and definitive benefits. While an example of a consistent and definitive harm is—and to use a controversial current affairs issue associated with the sport of American football—helmet-to-helmet collision with a high degree of force; the harmful consequences of course being both immediate and long-term head or bodily injury.

⁵¹⁹ Ibid., 99.

⁵²⁰ Ibid., 100-101.

Ibn ‘Āshūr’s second criterion is that “the harm or benefit must be so prevalent and evident that rational and wise people would readily acknowledge it, so that they are not challenged by its opposite when subjected to careful consideration.”⁵²¹ The aforementioned examples in the first criterion can be used to demonstrate this criterion, wherein the resulting benefit and harm are overwhelmingly clear and obvious to most observers. We should note, however, that in the case example of helmet-to-helmet collision in American football, certain observers (i.e., team owners, television networks with contractual ties to the sport, corporate investors, etc.) fail to acknowledge or underplay the consequential harm. This perhaps due to their own self-interest in collecting the great revenue drawn from the sport, particularly from the entertaining value generated by gladiatorial-like combat. Put differently, their own *maṣlahah*, the revenue, outweighs the impacting *mafsadah* on those participating in the sport, viewing the participants’ sacrifice as every bit worth the revenue, while persuading them—namely through offering a share in the revenue—that the risk they’re undertaking is also every bit worth it for them.

Ibn ‘Āshūr’s third criteria is to evaluate whether a clearly permissible and beneficial alternative can be found to replace that which contains both benefit and harm. In other words, it is to determine whether the benefit in that which contains both benefit and harm can be found elsewhere in something that has no harm or that clearly and ordinarily manifests a lesser degree of harm that is negligible. Ibn ‘Āshūr uses the case of intoxicants to illustrate this criterion, essentially presenting what is the Qur’ānic argument to avoid alcohol, that the harm in it outweighs its benefit. In the case of alcohol, he deems the harms to include “the corruption of minds, disputes, and waste of property,” while the benefits

⁵²¹ Ibid.

are such things as “loss of fear and causing a distress to be forgotten.”⁵²² The benefits, he asserts, can be acquired elsewhere in things that are permissible and not deleterious, such as from inspiring or motivational words (e.g., a talk, a book, etc.), or from the performance of righteous actions (e.g., offering charity or services to a needy cause), which can result in what is called the “helper’s high” (a state of euphoria wherein, according to scientists, good deeds such as giving produce endorphins in the brain that induce a mild version of a morphine high),⁵²³ or from engaging in a permissible kind of recreation or entertainment (e.g., exercise, poetry, etc.).⁵²⁴ If such is the case, where the harm in something is determined to be damaging, while any benefit comprising that same thing can be appropriately sought in something else, then that thing which has a likely probability of procuring damage is identified as an overall *mafsadah* that should be avoided.

As for Ibn ‘Āshūr’s fourth criterion, it regards the benefit and harm being equal in themselves, but when contextualized, informing factors weigh in to tip the scale towards a preponderant *maṣlahah* or *mafsadah*. This criterion is perhaps best understood through the following example he provides:

...fining a vandal the value of the property that he has intentionally destroyed produces both benefit for the owner of that property and harm for the vandal, and thus there is equivalence between them. However, the aspect of benefit is further supported by the notion of justice and equity, whose priority is acknowledged by every person of wisdom and sound reason.

⁵²² Ibid.

⁵²³ According to a study by Harvard University researchers, “those who gave contributions of time or money were 42 percent more likely to be happy than those who didn’t give.” Baraz, James. “The Helper’s High.” Berkely.edu. http://greatergood.berkeley.edu/article/item/the_helpers_high (accessed June 4, 2016).

⁵²⁴ Ibn ‘Āshūr, 100-101.

The *maṣlahah* and *mafsadah* here is thus being governed by consideration of higher objectives, namely the notions of justice and equity. Ibn ‘Āshūr sees it fundamentally necessary to resort to such higher objectives in attempting to resolve moral dilemmas such as this, wherein though there is a harm being imposed on the vandal (the monetary penalty), it is justified by the greater goal of achieving justice and equity. These notions, as we will discuss later, become new objectives that Ibn ‘Āshūr develops in his *maqāṣid* theory and which are not visible—for reasons we will consider later—in al-Shāṭibī’s theory.

Ibn ‘Āshūr’s fifth criterion is—in this reader’s estimate—rather ambiguous in meaning and abstruse in application. His discussion of this criterion begins with the following postulate: “One of the two aspects of benefit and harm must be definite and certain, whereas the other is indefinite and uncertain.”⁵²⁵ However, he does not offer to explain the operability and consequential outcomes behind this postulate, and the examples he provides only exacerbate the challenge in understanding just how it is used to determine *maṣlahah* and *mafsadah*. From the outward appearance of this postulate, we can identify the following two case scenarios: (a) a case in which something has a definite and certain benefit, and an indefinite and uncertain harm, or (b) a case in which something has a definite and certain harm, and an indefinite and uncertain benefit. It is not clear from this alone, however, which—if any—of either benefit or harm is understood to have

⁵²⁵ Ibid., Ibn ‘Āshūr bases this understanding of the *ḥadīth* on the following commentary from Imām Mālik: “The explanation of the statement of the Messenger of God according to what we think – and God knows best – is that when a man has asked for the hand of a woman in marriage, she is attracted to him, they have agreed on a dowry and are mutually satisfied (with the arrangement), and she has made any conditions for herself, it is forbidden for another man to ask for that woman in marriage. It does not mean that when a man has asked for a woman in marriage and his suit is not acceptable to her and she is not attracted to him, no one else can ask her for marriage. That is a door to misery for people.” Mālik ibn Anas, *Muwatta’*, *Nikāḥ*, hadiths 1100–1101, p.355.

preponderance in each of these scenarios. If Ibn ‘Āshūr intends that what is definite and certain to have preponderance over what is indefinite and uncertain, then the obvious question becomes how can a conclusive judgement that something is a *maṣlahah* or *mafsadah* be arrived at from inconclusive informing factors? On the other hand, if judgement is suspended here due to the presence of inconclusive informing factors, then one is also suspending the procurement of a definite and certain benefit or the avoidance of a definite and certain harm, an outcome either way which may result in procuring a greater harm. Needless to say, Ibn ‘Āshūr’s postulate leaves us with more questions than answers.

As already mentioned, Ibn ‘Āshūr does offer examples which might better illustrate what he intends with this postulate, but these examples draw more questions than clarity. One such example concerns the case of a man who offers a marriage proposal to a woman already in the midst of a marriage proposal from another man. Ibn ‘Āshūr tells us that there is an indefinite and uncertain harm in this new marriage proposal. He goes on to reference a *ḥadīth* in which the Prophet Muḥammad forbade such a new proposal during an existing one. Ibn ‘Āshūr attempts to clarify that this forbiddance is within the context of there being agreement between the woman and the first suitor to marry each other, with all that is remaining being the marriage contract. In other words, it is not within the context of the woman not being interested in the first suitor.⁵²⁶ The harm, therefore, in the second proposal is an indefinite and uncertain harm because it may or may not result in tribulation (*fitna*) affecting all parties involved. Thus, and reconsidering Ibn ‘Āshūr’s postulate in light of this example, Ibn ‘Āshūr is essentially saying that if there is an uncertain and

indefinite harm—presumably with this harm being greater than the definitive and certain benefit—then the matter is weighed a *mafsadah* and should be avoided all together. This fifth criterion appears to resemble his fourth, wherein, again, objectives come into play to give preponderance to what would otherwise appear to be equal and competing matters. What is unclear however in Ibn ‘Āshūr’s example here, and in light of his postulate, is what exactly he considers to be the definite and certain benefit in the second marriage proposal. Though he does not state this, it is presumably the opportunity in itself for the second suitor to propose marriage. His example would thus tell us that that the indefinite and uncertain tribulation that might arise as a result of the second suitor’s marriage proposal is a concern to be avoided and which far outweighs the certain benefit to be gained for the second suitor in the opportunity to propose marriage.

Ibn ‘Āshūr’s quintuple criteria clearly shows that it is largely built on the notion that reason absent of explicit textual reference can be used to navigate through, identify, and weigh *maṣlahah* and *mafsadah* such that it leads to some course of action or ruling. Whether the outcome is what God truly intends is another matter, and Ibn ‘Āshūr would acknowledge—per his frequent statement “and God knows best” (*wa-Allāhu a‘lam*)—that arriving at such an outcome which conforms with certainty to what God intends is ultimately a reality known only to God. For Ibn ‘Āshūr, however, this reality should not deter the effort, as with his criteria, to use reason—God-given reason—to fill in that which has not been made explicitly manifest; this, under the absolute necessary condition that one stays true to the objectives of the *Sharī‘ah*.

Aside from the obvious difference in presentation of Ibn ‘Āshūr’s and al-Shāṭibī’s thought on *maṣlahah* and *mafasadah*, namely in Ibn ‘Āshūr’s more organized and

structured articulation, it is here that we perhaps find the most significant contrast between Ibn ‘Āshūr’s and al-Shāṭibī’s approach to the notion of *maṣlaḥah*. More concretely, they differ in the way they express the degree of utility assigned to reason in navigating through, identifying, and weighing *maṣlaḥah* and *mafsadah* such that it leads to some course of action or ruling. Whereas Ibn ‘Āshūr assigns a great role for reason in engaging with *maṣlaḥah* and *mafsadah*, al-Shāṭibī appears much more restrictive.

That al-Shāṭibī does not establish a clear and definitive criteria for determining how to arrive at a *maṣlaḥah* or a *mafsadah* may be attributed to the challenges that Ibn ‘Āshūr alludes to, namely concerning those matters where clear benefit and harm are not so obvious or which contain a mixture of both benefit and harm. His not establishing a criteria is perhaps also more so a reflection of his indefinite and uncertain position regarding the extent to which reason alone absent of explicit scriptural reference can play a role in identifying benefit and harm.

Al-Shāṭibī’s position on the role of reason in identifying *maṣlaḥah* and *mafsadah* is somewhat difficult to pinpoint due to what appears to be conflicting remarks in *al-Muwāfaqāt*. In one discussion pertaining to this issue, al-Shāṭibī’s treatment of it draws on the related and well-known debate in scholastic theology (*‘ilm al-kalām*) referred to as *al-taḥsīn wa al-taqbīḥ*, that is, whether reason alone (absent of explicit scriptural reference) can determine if a given act is good or evil (otherwise, beneficial or harmful). Al-Shāṭibī is quite direct in stating what is essentially the Ash‘arī perspective, which is that “reason does not judge things to be either good or bad.”⁵²⁷ In more elaborate terms, he states:

⁵²⁷ *Al-Muwāfaqāt*, 1:87; *Al-Raysūnī*, 232.

The fact that a benefit is a benefit or that a source of harm is a source of harm is determined based on the ruling of the Law. Given the negation of *al-tahsīn wa al-taqbīh*, this is a matter which concerns the Lawgiver alone, and human reason has no role to play in it. If the Lawgiver has issued a ruling concerning a given benefit, it is He who has established it as a benefit; otherwise, it would be possible, logically speaking, for the same entity not to be a benefit...⁵²⁸

But then elsewhere, al-Shāṭibī appears to qualify his position further, recognizing that there are certainly some things which God-given reason alone can determine to be good or bad. With this qualification, it therefore appears that al-Shāṭibī's and Ibn 'Āshūr's positions are more or less similar.

⁵²⁸ *Al-Muwāfaqāt*, 2:315; al-Raysūnī, 232.

CHAPTER 12

Competing *Maqāṣid*

We discussed earlier how al-Shāṭibī and Ibn ‘Āshūr weighed between *maṣlaḥah* and *mafsadah*, where central to the criteria they both applied in determining a preponderance of one over the other was the consideration of higher objectives. These higher objectives were also used to weigh and prioritize between different types of benefits as well as different types of harms. *Maqāṣid al-Sharī‘ah* thus steers the course of action when having to choose among competing preponderant benefits to pursue (the greater good), or among competing preponderant harms to avoid (the lesser evil). Approaching such dilemmas through the lens of *maqāṣid* appears relatively straightforward and provides the necessary guidance and facilitation for the decision making process. But what happens when there are competing *maqāṣid*? Put differently, is there an order of prioritization when considering for instance between the six universal *maqāṣid* that are of the essentials (*al-darūrīyāt*), namely life, religion, reason, progeny, material wealth, and dignity?

There was certainly no consensus among premodern writers on *maqāṣid* as to a definitive sequencing and prioritization of the universal *maqāṣid*.⁵²⁹ In fact, even in their individual lists of the universal *maqāṣid*, none of these *maqāṣid* thinkers definitively indicate whether their lists as sequenced are intended to reflect an absolute order of

⁵²⁹ See Attia’s survey of several premodern and modern thinkers on *maqāṣid*, wherein he provides a detailed description of how each of them sequenced the universal *maqāṣid* (Attia, 16-37).

prioritization.⁵³⁰ One relative consistency that we can observe across most but not all their lists is that they typically begin with either religion then life, or life then religion (followed by a variety of sequences for the remaining three or four *maqāṣid*).⁵³¹ But even this does not necessarily mean that the author intended either one of these (religion or life) to have absolute prioritization over all other *maqāṣid*. Take for example al-Ghazālī and his list. Al-Ghazālī’s sequencing—which is adopted by several others—has religion first, then life, followed by reason, progeny, and material wealth.⁵³² This sequencing, however, does not represent for al-Ghazālī an absolute order of prioritization as illustrated by the fact that he does not conform to it in considering their application to certain circumstances. Al-Ghazālī speaks of such circumstances in the following passage:

We have stated definitively that if someone is under duress [that is to say, if someone is threatened with death for failing to comply], this renders it permissible for him or her, [in order to save one’s life], to utter a word of apostasy, partake of alcoholic beverages, consume others’ wealth unjustly, or neglect fasting and prayer, since the proscription against the shedding of blood is more serious than any of these things.⁵³³

Thus, despite that al-Ghazālī’s list sequences religion before life, it is clear that there are certain exceptional cases for him wherein the preservation of life takes priority over all else, including certain matters of religion.

⁵³⁰ Though al-Āmidī (d. 631/1233) does give his reasoning to one sequence he has, he is not consistent with this sequence. His work shows that he followed al-Ghazālī’s order in some instances, but offered a different sequence in other instances (See Attia, 17, fn. 41-42).

⁵³¹ Not all the authors include “dignity” in their list.

⁵³² *Al-Mustaṣfā*, 1:258; Attia, 17.

⁵³³ *Al-Mustaṣfā*, 1:265; Attia, 17 (Trans. by Nancy Roberts).

The recognition of different informing contexts and variables is perhaps largely the reason why the majority of writers on *maqāṣid*, including al-Rāzī, al-‘Izz ibn ‘Abd al-Salām, al-Shāṭibī, and later Ibn ‘Āshūr, never did designate any definitive and absolute ordering or prioritization of the universal *maqāṣid*. In the case of al-Shāṭibī, that we can observe at least three different sequences of the five universal *maqāṣid* in different places of his *al-Muwāfaqāt*, and that he does not disclose any particular explanation for these sequences, indicates that he did not consider there to be a definitive or absolute order to the *maqāṣid*.⁵³⁴ Al-Shāṭibī does remark in one place that religion is the most important of them all; however, even this should not be understood in an absolute sense, for there are certain cases—as al-Shāṭibī would acknowledge—which are explicitly conveyed in the Qur’ān, and wherein life is given precedence over all else including the fulfillment of certain religious duties.⁵³⁵ An example of this is in the Qur’ānic dispensation to leave the obligatory fast in the case of illness, hence giving foremost prioritization to one’s health. Darrāz touches upon this matter further in his commentary on al-Shāṭibī’s *al-Muwāfaqāt*, stating:

When preservation of religion is given precedence over the preservation of human life, this is only in order to preserve the fundamentals of the religion. However, in relation to its branches, we find that the Lawgiver often exempts human beings from religious obligations for the sake of preserving human life, as in the case of illness. In cases such as this, religious

⁵³⁴ *Al-Muwāfaqāt*, 1:38, 2:10, 3:10, 4:27-32, 3:47, 2:299; *Al-I’tisām*, 2:179; Attia, 19.

⁵³⁵ *Al-Muwāfaqāt*, 2:299; Attia, 19.

considerations are not given priority over human life, nor even over material wealth in all situations.⁵³⁶

Based on his reading of al-Shāṭibī's *maqāṣid* theory, Darrāz here attempts to clarify and provide an axiom for when either religion or life would have precedent over the other. Where religion is given priority over life, this is in order to preserve some fundamental aspect of religion whose abandonment would otherwise greatly undermine religion. Darrāz does not state exactly what he deems to comprise the fundamentals of religion (*uṣūl al-dīn*), but we presume that it generally and at the very least includes core theological beliefs and ethics. As for what he means by the branches of religion (*furū' al-dīn*), he references the example of not fasting due to illness. Hence, what he perhaps means by the branches of religion are those matters such as aspects of *fiqh* which do not have a direct bearing on the core theological or moral dimensions of Islam. Thus for Darrāz, when it pertains to the branches of religion, other *maqāṣid* such as life can very well override these branches, as doing so would not have a direct and significant theological or moral bearing such that it would violate the integrity of the religion.

While some *maqāṣid* thinkers shared in the kind of reasoning put forward by Darrāz, others presented different or counter arguments. In addressing this issue, some like al-Āmidī focused on explaining when and why the preservation of life would take precedent over fulfilling some aspect of religion. Al-Āmidī reasons that since life is clearly inviolable according to Islamic tradition, and since harm could never be brought upon God by someone not espousing for instance an article of faith, then prioritization should be given to preserving life. He asserts: “murder is more of a grievous sin than rejecting the

⁵³⁶ See the marginal gloss in Darrāz's edition of *al-Muwāfaqāt*, 2:153:154.

faith—according to scholars—since murder is jeopardizing a human’s life while disbelief is jeopardizing a personal value.”⁵³⁷ Al-Āmidī goes on to provide several orthodox and clear examples within Islamic tradition that demonstrate when the consideration of life has precedent over all other matters. These include the Qur’anic injunctions permitting the modification of prayers or forgoing the fast for those on a journey or who are ill in order to alleviate any hardship or harm that may arise. Similarly, it includes well-established juristic positions such as permitting prayers to be interrupted in the face of some immediate danger, for instance rescuing someone from drowning or guarding a child from harm. For al-Āmidī, a most excellent example—and one which he deems to have strong evidence—illustrating life being prioritized over religion (interpreting the *maqṣid* of religion (*hiḏ al-dīn*) as referring specifically to Islam, a common interpretation among many premodern *maqāṣid* thinkers, though some contemporary Muslim commentators as we will discuss later offer a broader interpretation) is the duty for Muslims in a Muslim land to protect non-Muslim minorities living within, or non-Muslim refugees seeking to enter for safety, even though these minorities may pose particular challenges to certain Islamic cultural and institutional sensibilities. Al-Āmidī goes on to argue that giving life priority over all else in these cases should in no way be viewed as subordinating religion, but rather is in essence preserving religion, especially that it is religion itself which is informing and enabling this prioritization.⁵³⁸ Therefore, rather than viewing it as sacrificing one *maqṣid* for another, the two are mutually inclusive.

Al-Āmidī’s position on this issue is largely shared by other *maqāṣid* thinkers including al-‘Izz ibn ‘Abd al-Salām. The latter held that outward manifestations of religion

⁵³⁷ Al-Āmidī, *al-Aḥkām*, 4:243-245; Attia, 22-24.

⁵³⁸ Al-Āmidī, *al-Aḥkām*, 4:243-245; Attia, 22-24.

such as ritual practice and testimonies of faith can be compromised in the face of danger to one's life.⁵³⁹ Those adopting a similar position viewed the issue within the context of the rights of humans and the rights of God. As such, they contended that "essential interests relating to earthly needs should be given precedence over those related to spiritual or religious needs, since human beings' rights are based on deprivation and affliction, while God Almighty's rights are based on forbearance and compassion."⁵⁴⁰ The idea here again is similar to al-Āmidī's reasoning that neglect of the duties owed to God in no way harms God nor diminishes anything of God's attributes and essence. As such, and that God does not intend humanity to seek harm, where there is conflict between fulfilling a certain matter of religion and preservation of life, the latter is sought. This, again, is seen as keeping with the essential values of religion. Practically speaking, this position would therefore hold that the sin of not paying *zakah*, an obligation by religion, is a lesser evil than the sin of theft, which is considered more grievous because it has a tangible and immediate harm on the rights of humans.

Other premodern scholars commentating on this issue offered a different perspective. Al-Zarkashī argued for the prioritization of religion over anything else because it had the greatest implications for one's hereafter, which he held to be the greatest concern.⁵⁴¹ Similarly, Tāj al-Dīn al-Subkī, who reflects on the different sides of the argument, appears to support the view that "spiritual interest should be given priority over the material interest, since the former results in eternal happiness, while the latter results in a happiness which is fleeting and evanescent."⁵⁴² Neither of these scholars, however,

⁵³⁹ *Al-Fawā'id*, 58-64, 100; al-*Alim*, 317-319; Attia, 24.

⁵⁴⁰ *Al-Ibhāj*, 3:164; Attia, 25.

⁵⁴¹ Al-Zarkashī, 6:188-189; Attia, 21.

⁵⁴² *Al-Ibhāj*, 3:164; Attia, 25.

offer to illustrate practical cases in which these two *maqāṣid* would be competing. And we should note that their general and theoretical statements, as well as those general and theoretical statements made on the other side of the argument, should be taken with a grain of salt and not necessarily be understood as representing for these thinkers an absolute approach that they apply to every case. We say this in light of what has already been discussed with respect to al-Ghazālī, wherein it can be observed that his prioritization of religion over life did not reflect certain practical cases he deliberated over and in which prioritization was altered.

We would be remiss not to mention here an important premodern real world issue that involved practical deliberation over competing *maqāṣid*, and whose controversial ruling still reverberates today, having made a crucial impact on Muslim political and revolutionary discourses. The issue involves Ibn Taymiyyah and his application of the *maqāṣid* within the political context of fourteenth century Mamluk society. More concretely, Ibn Taymiyyah took the controversial position to advocate for patience with and support for the oppressive Mamluk despots, reasoning that despite their brutality—which he himself had directly experienced and suffered from—they were able to provide security against the existential threat to the Ummah posed by the Mongols and Crusaders.⁵⁴³ In other words, Ibn Taymiyyah gave greater priority to the preservation of the Ummah, including its unity and the lives of its members, over certain other human essentials such as freedom, political rights and social justice.

As attested to by the lack of consensus for their prioritization, the weighing of the *maqāṣid* was undoubtedly a complex matter for premodern scholars. While *maqāṣid*

⁵⁴³ See Attia, 35 for the full account.

philosophy was certainly able to reduce the differences among the ulama, as al-Shāṭibī had intended, it never achieved nor was it meant to achieve an absolute ridding of all differences. That virtually all premodern writers on *maqāṣid* avoided a definitive ordering of them is justifiable, especially given their interrelatedness. The absence of one *maqṣid* can have a futile effect on another. For instance, if the preservation of reason/intellect (*hifẓ al-aql*) ceased to exist (whether in its traditional premodern interpretation concerning physical aspects of the intellect, or the more abstract contemporary interpretation pertaining to the right to learn and to think freely), then what would this mean for living, or for family and progeny, or for religion? Would it not undermine them, and to the extent that they also cease to exist? Al-Shāṭibī himself well understood that the *maqāṣid* mutually influence one another, and it is as such that he refrained from giving them a definitive ordering.⁵⁴⁴

The apparent premodern divide on this issue of prioritizing the *maqāṣid* led some contemporary Muslim scholars to offer more nuanced considerations that would try to further reduce any ambiguities in deciding between the *maqāṣid* in those instances which made it necessary to choose between them. Ibn ʿĀshūr arrived at a certain distinction that might make it easier in navigating within the *maqāṣid* individually as well as between them. More specifically, he held that the *maqṣid* of religion and all other *maqāṣid* should have a distinction between the *maqṣid* as it relates to the individual and the *maqṣid* as it relates to the community or Ummah.⁵⁴⁵ For example, and concerning the *maqṣid* of religion, Ibn ʿĀshūr held that where it pertains to the individual, the preservation of religion concerns

⁵⁴⁴ *Al-Muwāfaqāt*, 2:17.

⁵⁴⁵ *Maqāṣid al-Sharīʿah*, 80-81, 139.

personal piety, whereas where it pertains to the community, the preservation of religion concerns the prevention of anything which might undermine the definitive principles of the religion. Ibn ʿĀshūr, in addition, expanded the number of *maqāṣid* beyond the longstanding five or six that had been common with premodern scholars. (This expansion of the *maqāṣid* will be discussed in a later chapter.) However, and as already mentioned, he followed al-Shāṭibī in not setting a definitive ordering of the *maqāṣid*. These specific contributions, nonetheless, were significant in that it would influence later thinkers on *maqāṣid*.

The former Mufti of Egypt ʿAlī Jumʿah, for instance, in reflecting on what it exactly means to preserve religion (*hiḏ al-dīn*), makes a point to distinguish between preserving religion as a religion and the religiosity of an individual who follows the religion. Jumah thus holds that when we are speaking of the latter, an individual’s personal piety, it does not take priority over the preservation of life.⁵⁴⁶ As with Ibn ʿĀshūr, however, Jumah does not provide a rank of prioritization for either preserving religion as a religion or for the *maqāṣid* altogether.

Aḥmad al-Rifāʿī builds off of Ibn ʿĀshūr in defining a distinction when considering the preservation of religion as well as in considering each of the *maqāṣid*. Thus, each *maqāṣid* includes that which pertains to the level of the individual and that which pertains to the level of the Ummah. Regarding the issue of prioritizing between religion and life, he held that where preservation of religion concerns the individual, a higher priority should be given to the preservation of life; and where preservation of religion concerns the Ummah, the priority should be given to religion.⁵⁴⁷

⁵⁴⁶ *Al-Madkhal*, 126-131. Presumably, the notion of preserving religion as a religion means to uphold the fundamental and normative creedal and ethical components of the religion.

⁵⁴⁷ See Aḥmad Muḥammad al-Rifāʿī’s dissertation titled *Aḥammīyyah maqāṣid al-Sharīʿah fī al-ijtihād* (Amman: University of Jordan, 1992), 16.

Also building off of Ibn ‘Āshūr’s “individual” and “Ummah” distinction is Attia. Attia develops the concept further and includes additional categorical distinctions which he deems necessary in assessing any of the *maqāṣid*. He provides a relatively substantial treatment and novel approach especially in his ordering, expansion, and interpretation of the *maqāṣid*.⁵⁴⁸ According to Attia’s schema, the departing point when considering the *maqāṣid* should be with the four overarching categories of: the individual, the family, the Ummah, and all of humanity. He then identifies the *maqāṣid* for each of these categories, and lists them in sequence of prioritization. Of note is that Attia adds several new *maqāṣid*, namely to the categories of family, Ummah, and humanity. The five or six universal *maqāṣid* do not apply to each category, and where they do apply, they are modified accordingly.

Under the category of the “individual,” he defines *ḥifẓ al-dīn* as pertaining specifically to preserving individual religious piety. He also includes the preservation of honor and omits the preservation of lineage (reserving lineage for the category of “family,” while redefining it for the categories of “Ummah” and “humanity”). Thus, the *maqāṣid* and their prioritization for the category of the “individual” are as follows: (1) preservation of human life, (2) consideration of the mind, (3) preservation of personal piety, (4) preservation of honor, and (5) preservation of material wealth. For the category of “family,” he includes: (1) ordering relations between the sexes, (2) preservation of progeny, (3) achieving harmony, affection, and compassion, (4) preservation of family lineage, (5) preservation of personal piety within the family, (6) ordering the institutional aspect of the family, and (7) ordering the financial aspect of the family. For the category of “Ummah,”

⁵⁴⁸ See Attia’s Chapter Two, “A New Conceptualization of *Maqāṣid*,” under the subchapter theme, “From the Five Universals to the Four Realms,” 116-149.

he lists: (1) institutional organization of the Ummah, (2) maintenance of security, (3) establishment of justice, (4) preservation of religion and morals, (5) cooperation, solidarity and shared responsibility, (6) dissemination of knowledge and preservation of reason in the Ummah, and (7) populating and developing the earth and preserving the Ummah's wealth. And finally, for the category of "humanity," he includes: (1) mutual understanding, cooperation and integration, (2) realizing human vicegerency on earth, (3) achieving world peace based on justice, (4) international protection for human rights, and lastly (5) dissemination of the Islamic message. We will have an opportunity to further examine the content behind Attia's *maqāṣid* in later parts of this work.

One of the takeaways from Attia's presentation here as well as from what we have briefly showed thus far to be presented by other contemporary *maqāṣid* thinkers is the commencement of a critical reengagement with *maqāṣid* philosophy that is undoubtedly shaped and informed by the context of the modern world. This was certainly initiated and largely influenced by Ibn 'Āshūr. Ibn 'Āshūr's critical examination of *maqāṣid* philosophy and al-Shāṭibī's theory in particular spurred a *maqāṣid* movement that was eager to explore new thought in the field. That premodern thinkers never reached a consensus on the order of prioritization for the *maqāṣid*, and that they never definitively limited them to the commonly accepted five or six, was perhaps one less obstacle for contemporary thinkers to hurdle in reengaging with the *maqāṣid*. Premodern *maqāṣid* thinkers left the door open—consciously or not—for future thought into the application and interpretation of the *maqāṣid*; providing a further motive and incentive for contemporary Muslim thinkers to critically pursue its study.

CHAPTER 13

A Critical Reengagement with the Classical *Maqāṣid*

As we have already alluded to, Ibn ‘Āshūr ushered in a new era in *maqāṣid* thought; an era which would critically reengage with the theoretical output of premodern *maqāṣid* thinkers while creatively redefining the place and function of *maqāṣid* philosophy within the modern context. Ibn ‘Āshūr’s momentous work on *maqāṣid al-Sharī‘ah* and his critical examination of al-Shāṭibī’s *maqāṣid* theory in particular spurred a *maqāṣid* movement that was eager to both revive the discipline and contribute new thought to it such that it could be enlisted to provide effective and practical ways for Islamic tradition to better respond to the challenges and issues confronting Muslims. It is to this we now turn. More concretely, this chapter examines just how Ibn ‘Āshūr and other contemporary *maqāṣid* thinkers interpreted, defined or understood the role of the classical *maqāṣid* for the twentieth century and beyond, and what new developments they introduced to the discipline, paying close attention to influencing factors informing their interpretations and new contributions.

Ḥifẓ al-Dīn

The six longstanding essential *maqāṣid* (namely the preservation of religion, life, faculty of reason, progeny, material wealth, and honor) which were largely adopted by premodern *maqāṣid* thinkers including al-Shāṭibī and going back to al-Ghazālī and his teacher al-Juwaynī (as discussed earlier, some including the aforementioned formally

referred to five, while others included all six) have undoubtedly been reinterpreted and redefined by contemporary *maqāṣid* thinkers. Consider first the preservation of religion (*hiḏz al-dīn*).⁵⁴⁹ In premodern discussions on *maqāṣid al-Sharī‘ah*, the notion of *hiḏz al-dīn* was generally in the context of Islamic tradition. In other words, *hiḏz al-dīn* almost always referred to preserving Islam as a religion. What exactly this entailed was not clearly expounded upon in these discussions. Some including al-Ghazālī and al-Shāṭibī alluded to what they meant by *hiḏz al-dīn*. The notion of *hiḏz al-dīn* in their writings primarily concerned maintaining the integrity of normative Islamic beliefs and practices. This ordinarily included safeguarding Islam as a religion against perceived deleterious innovations arising from within the Muslim community or existential threats posed to the Muslim community by external enemies. Concerning the former, we have already mentioned the great attention thinkers like al-Shāṭibī gave to innovation in religion (e.g., in extreme Sufī practices or in excessively rigid attitudes and practices of certain traditionalist and conservative trends), addressing it within his discussions on *maqāṣid al-Sharī‘ah* and deeming his *maqāṣid* philosophy as an antidote to such innovations. With respect to the latter (external opposition), we need be mindful that the medieval world in which many of these early *maqāṣid* thinkers wrote and operated in was especially embroiled in interreligious strife, religious persecution, and the constant perceived and real threat to land and sovereignty, including Muslim land and sovereignty (e.g., the unstable

⁵⁴⁹ We should note that the Arabic terminology used in referring to the classical *maqāṣid* (namely *hiḏz al-dīn*, *hiḏz al-naḏs*, *hiḏz al-‘aql*, *hiḏz al-māl*, *hiḏz al-nasl*, and *hiḏz al-‘ird*) was the nomenclature commonly adopted in premodern writings on *maqāṣid* including in the works of al-Ghazālī and al-Shāṭibī. Al-Juwaynī had used the term *al-‘iṣmah* (protection) instead of the synonymous term ‘*hiḏz*’ which al-Ghazālī later applied. Ibn ‘Āshūr adopts the same terminology used by al-Ghazālī and al-Shāṭibī in referring to the classical *maqāṣid*. See al-Ghazālī, *al-Mustasfā*, 258; al-Juwaynī, *al-Burhān*, 4th ed, vol. 2, 621-22; and Ibn ‘Āshūr, *maqāṣid*, xx.

political dynamics in al-Andalus during al-Shāṭibī's time discussed in Part One; or the Crusader and Mongol threats to the eastern Muslim world). It is within this context—the same context which is spoken to in several Qur'ānic verses pertaining to the notion of *fitnah* that is encapsulated in Qur'ānic narratives about injustices towards and persecution of the faith communities of many a prophet including Moses, Jesus, and Muḥammad—that conceivably focused these *maqāṣid* thinkers' attention on preserving and prioritizing religion and, for their own immediate concern, Islam in particular. It is not to say that premodern *maqāṣid* thinkers and Islamic tradition in general had not been concerned with or did not speak to the religious rights or freedom of belief of non-Muslims. The point here rather is that because of the challenges confronting the Muslim community both internally and externally, these *maqāṣid* thinkers arguably had reason to prioritize their discussion of *ḥifẓ al-dīn* within the context of Islam.

Lest one think that early Islamic tradition and medieval Muslim thinkers turned a blind eye to the religious rights and freedom of belief for non-Muslims, it behooves us to briefly highlight what is the contrary. One can in fact find a generous amount of clear references from the Qur'ān and *ḥadīth*, numerous anecdotes from early Muslim generations, and a host of opinions, expressions and rulings from early and medieval authoritative Muslim scholars and *maqāṣid* thinkers that convey a very deep sense of appreciation for the religious rights and freedom of belief of non-Muslims. Much of this is first and foremost founded upon two oft cited Qur'ānic texts. The first of these is of course the famous decree in Qur'ān 2:256 that “there shall be no compulsion in religion” (*lā iqrāḥah fi-l-dīn*), making it unlawful in Islamic law to compel anyone to espouse a religion. An overwhelming majority of Muslim exegetes and legal scholars have held this decree to

be absolute and universal for all times, peoples, and places. Moreover, these scholars assert that its revelation occurred in the Medinan period, a period of political and military ascendance for the nascent Muslim community, and as such, maintain that it is non-abrogated. Among the many medieval authoritative Muslim figures who adopted the universality of Q2:256 include al-Ṭabarī,⁵⁵⁰ Ibn Taymiyyah,⁵⁵¹ Ibn al-Qayyim,⁵⁵² and al-Suyūṭī⁵⁵³ (as we will discuss further below, Ibn ‘Āshūr affirms and expounds upon this interpretation). As for the second Qur’ānic text which is frequently cited in support of religious rights and freedom of belief, it reads: “Had thy Lord willed, everyone on the face of the earth would have professed the faith. Are you then forcing people to become believers?”⁵⁵⁴ Similar to Q2:256, this verse is clear in admonishing against the use of coercion to propagate religion, and hence, that proper faith only arises when it is a personal conviction of the heart. It is a view upheld by a majority of scholars including medieval *maqāṣid* thinkers such as al-Ghazālī and al-Shāṭibī.⁵⁵⁵

There is then the historical narrative of the Prophet Muḥammad’s mission that emerges through the Qur’ān, *aḥādīth* and the biographical literature (*sīra*), which further affirms the universality in meaning of the aforementioned passages (i.e., freedom of belief)

⁵⁵⁰ Muḥammad ibn Jarīr al-Ṭabarī. *Jāmi‘ al-bayān ‘an ta’wīl āy al-Qur’ān*. Vol. 4 (Bayrūt: Dar Hajar, 2001), 553.

⁵⁵¹ See reference in Ṭahā Jābir al-‘Alwānī. *Lā ikrāh fī al-dīn: ishkālīyat al-riddah wa-al-murtaddīn min ṣadr al-Islām ḥatta al-yawm* (al-Qāhirah: Maktabat al-Shurūq al-Dawliyyah, 2003), 92-93.

⁵⁵² Ibn Qayyim al-Jawziyyah. *Aḥkām ahl al-dhimmah* (al-Dammām: Ramādī lil-Nashr; Bayrūt: Dār Ibn Ḥazm, 1997), 21-22.

⁵⁵³ Jalāl al-Dīn al-Khuḍayrī al-Suyūṭī. *Al-Itqān fī ‘ulūm al-Qur’ān*. Vol. 2 (Bayrūt: al-Maktabah al-Thaqāfiyyah, 1973), 22-24.

⁵⁵⁴ Qur’ān, 10:99.

⁵⁵⁵ A majority of scholars in fact held that Q, 2:256 is an affirmation of this second passage, which was revealed in the early Meccan period. Other verses supporting these two verses include Qur’ān 16:93 and 18:29. See further, Kamali, *Freedom of Religion in Islamic Law*, 67; A. Al-Dawoody, *The Islamic Law of War: Justifications and Regulations* (New York: Palgrave, 2011), 78.

and wherein it depicts the propagation of Islam being carried out not through coercion, but rather through tact, invitation, rational persuasion, and with an approach that is mindful of having genuine humility and of abandoning self-righteousness and tedious or excessive moralizing (‘preachiness’). This narrative can be summed up in the following verse: “Call people to the way of your Lord with wisdom and best advice, and reason with them, if you have to, in the most courteous manner, for your Lord knows best who strays from His way and He knows best who is rightly guided.”⁵⁵⁶ This narrative is also encapsulated in two cardinal appellations attached to the Prophet Muḥammad and conveyed throughout Islamic primary sources—appellations which are theologically pertinent and integral to having sound Islamic belief—that of the Prophet Muḥammad as a messenger (*rasūl*) and as a mercy (*raḥma*) to all peoples. Compulsion or coercion in religion would therefore be entirely antithetical to the spirit or meaning embodied in these appellations—appellations of which define and epitomize the Prophet Muḥammad’s prophetic mission in Islamic tradition—and thus a grave sin.

Numerous *ḥadīth* further uphold notions of religious rights and freedom of belief for all. Many of these are ethical sayings of the Prophet Muḥammad which largely concern attitudes, interactions or behavior towards humanity at large, regardless of identity, including one’s religious persuasion. Representative of these include the Prophet Muḥammad’s saying: “Beware! Whoever oppresses or wrongs the one [i.e., a non-Muslim minority] with whom one has an agreement, or curtails their rights, or burdens them with more than they can bear, or takes anything from them against their free will; I (Muḥammad) will complain against the person on the Day of Judgment.”⁵⁵⁷ According

⁵⁵⁶ Qur’ān, 16:125.

⁵⁵⁷ Narrated in Sunan Abū Dawūd.

to commentators, “the one with whom one has an agreement” contextually pertains to non-Muslims in particular, while its application is universal to all.⁵⁵⁸

There is also the pluralistically rich material found in the Prophet Muḥammad’s covenants with non-Muslim peoples in the surrounding region. Among the more famous of these is his covenant with the Christians of Najran. Its content is largely comprised of responsibilities that Muslims have towards Christians. In sum, these include: protection of churches and monasteries, exemption of all ecclesiastical property from any tax, ensuring that Muslims would never force ecclesiastical authorities to abandon their post, prohibiting the forced conversion of Christians to Islam, and permitting a Christian woman who married a Muslim man the freedom to practice her religion. Serious studies attempting to authenticate this and several other of the Prophet Muḥammad’s covenants have been recently contributed by John A. Morrow⁵⁵⁹ and most recently by Ahmed El-Wakil.⁵⁶⁰ Morrow was able to gather many of the Prophet Muḥammad’s covenants with Christians from “obscure monasteries, collections and out of print books, arguing against the accepted understanding that these are forgeries.”⁵⁶¹ And in following Morrow’s study, El-Wakil offers a groundbreaking comparative study between historical Christian and Muslim documents of the Najran covenant, arguing that the “categorical dismissal of the covenants as forgeries is no longer tenable.”⁵⁶² Both Morrow and El-Wakil view these covenants as

⁵⁵⁸ Many contemporary Muslim scholars such as the popular American Muslim figure Hamza Yusuf typically quote this *ḥadīth* with reference to non-Muslims as the subject referred to in regards to those being oppressed or wronged.

⁵⁵⁹ John A. Morrow, *The Covenants of the Prophet Muhammad with the Christians of the World* (Tacoma, WA: Angelico Press, Sophia Perennis, 2013).

⁵⁶⁰ Ahmed El-Wakil, “The Prophet’s Treaty with the Christians of Najran: An Analytical Study to Determine the Authenticity of the Covenants,” *Journal of Islamic Studies* (Oxford: Oxford University Press, July 20, 2016).

⁵⁶¹ *Ibid.*, 83.

⁵⁶² *Ibid.*

an important foundational source in Islam, and their message of peaceful coexistence among different peoples as binding and timeless.

Covenants such as this,⁵⁶³ along with the *ḥadīth*⁵⁶⁴ and Qur’ānic verses already cited, are—in their pluralistic undertone—consistent and commensurate with later anecdotes from early Muslim generations that illustrate respectful and magnanimous attitudes and behavior towards non-Muslims by the Prophet Muḥammad’s early followers. One such representative anecdote concerns an incident involving the famous Companion ‘Umar b. al-Khaṭṭāb and an elderly Christian woman. During the course of ‘Umar’s interaction with this woman, he invited her to embrace Islam. The woman however refused. ‘Umar is reported to have been guilt-ridden upon hearing her response, worried that he may have been forceful in his invitation and over proselytizing. The earnestness of his remorse caused him to utter the following invocation: “Oh my Lord, I did not intend to compel her, as I know that there must be no compulsion in religion...”⁵⁶⁵ In another anecdote, not only is freedom of belief upheld, but (and in following the content of earlier covenants established by the Prophet Muḥammad, including the Covenant of Najran) also granted to non-Muslims by the Prophet Muḥammad’s followers is the public expression of their faith, including the right to maintain places of worship and to display religious symbols and

⁵⁶³ For instance, the *sīra* literature documents Muḥammad’s many letters to his ambassadors wherein he guarantees that religious practices and institutions of people of other faiths are not to be harmed, such as the letter addressed to the religious leaders of Saint Catherine in Mount Sinai. There is also episode reported in the *sīra* literature wherein Muḥammad received a delegation of sixty Christians from the region of Najran (in southwestern Arabia) at his mosque. Muḥammad hosted them at his own mosque, and when the time for their prayer came, he accommodated their prayer, enjoining those present including his followers that they not be harmed or disturbed.

⁵⁶⁴ Another example is the *ḥadīth* reported in Bukhārī, wherein Muḥammad said: “Whoever kills a person with whom we have a treaty, will not come close enough to Paradise to smell its scent, and its scent can be found as far as forty years of travel [away].”

⁵⁶⁵ Muḥammad Abū Zahrah. *Tanzīm al-Islām lī al-mujtama‘* (Cairo: Matba‘ah Mukhaymar, 1953), 199; Kamali, *Freedom of Religion*, 70.

practices. Such was stipulated in the covenant established by the Prophet Muḥammad's Companion and General Khālīd ibn al-Walīd with the Christians of Damascus. Upon overtaking Damascus, Khālīd assured its Christian inhabitants that the Muslims would provide safety and protection for their lives, their property, their places of worship, and the general infrastructure of the area. Khālīd specifically mentions in the covenant that they would be allowed to observe their religious symbols in public, including the ringing of church bells and the bearing of their crosses.⁵⁶⁶

Support for the religious rights and freedom of belief of non-Muslims is also well-documented across the four mainstream Sunni legal schools. Within the context of non-Muslims living in Muslim societies, a number of medieval authoritative figures from within these schools have emphatically affirmed the right of non-Muslims in Muslim societies to lead peaceful lives and to be protected from any oppression or aggression, whether it be from within or external to a Muslim state. In his work *al-Furūq*, the Mālikī scholar and *maqāṣid* commentator Shihāb al-Dīn al-Qarāfī (d. 684/1285) held it imperative for Muslims to protect non-Muslims against any oppression or injustice; failure to do so being tantamount to treason.⁵⁶⁷ Ibn 'Abidīn (d. 1252/1836), a prominent authority on the *fiqh* of the Ḥanafī school, stated that the sin of oppressing non-Muslims was even worse than oppressing Muslims, and that Muslims owe non-Muslims the right of protecting their honor, including protection against any slander, gossip and the like.⁵⁶⁸ A ruling within the

⁵⁶⁶ Muḥammad Abū Zahrah. *Tanzīm al-Islām lī al-mujtama'* (Cairo: Matba'ah Mukhaymar, 1953), 199; Kamali, *Freedom of Religion*, 70.

⁵⁶⁷ Shihāb al-Dīn Aḥmad ibn Idrīs al-Qarāfī, *Anwār al-burūq fī anwā' al-furūq*. 4vol. (Bayrūt: Dār al-Kutub al-'Ilmiyyah, 1998) Vol. 2, p. 14; Vol. 3, p. 15. Al-Qarāfī cites *Marātib al-Ijmā'* by Ibn Ḥazm in support of this view.

⁵⁶⁸ Muḥammad Amīn Ibn 'Abidīn, *Al-radd al-mukhtār 'ala al-durr al-mukhtār sharḥ tanwīr al-abṣār* (Cairo: al-Maktabah al-'Uthmaniyyah, 1908), Vol. 3, p. 244.

Hanbālī school stipulates that: “The leadership of the Muslim community is bound to protect non-Muslims and to save them from any aggression. Should non-Muslims fall into captivity, the leadership must marshal all the resources to secure their release and punish the transgressors against their lives and properties, even if they were the sole non-Muslims living in a remote village.”⁵⁶⁹ In bearing the responsibility of protecting non-Muslims, the Ḥanbalī Ibn Taymiyyah along with a group of scholars pleaded for the release of non-Muslims who were under the captivity of Tartar invaders of Damascus (and were successful in doing so).⁵⁷⁰ The Ḥanbalī Ibn Qudāmah asserts the categorical prohibition of compelling a non-Muslim to convert.⁵⁷¹ Yet in another Ḥanbalī ruling, it is emphatically prohibited to compel a Jew or Christian to work on their holiday.⁵⁷² Finally, in one of the primary reference works for *fatāwā* in the Shāfi‘ī school, the *Nihāyat al-muḥtāj ila sharḥ al-minhāj fī al-fiqh ‘ala madhhab al-Imām al-Shāfi‘ī* composed by the Grand Mufti of Egypt Shams al-Dīn al-Ramlī (d. 1596), there is a stipulation that the protection of non-Muslims from suffering is an obligation upon an Islamic society.⁵⁷³ Al-Ramlī further specifies in his commentary that this includes ensuring non-Muslims have suitable clothing and food for different seasons, sufficient services, and medical treatment and medicine (as we will discuss later, for contemporary *maqāsid* thinkers this translates into additional types of services and provisions relevant to this day of age). Moreover, in the event that

⁵⁶⁹ Taqī al-Dīn Muḥammad Ibn Aḥmad Ibn al-Najjār. *Ma‘ūnat ‘ūlī al-nuḥa* (Makkah al-Mukarramah: Maktabat wa-Maṭba‘at al-Nahḍah al-Ḥadīthah, 1998), Vol. 2, pp. 602-603.

⁵⁷⁰ Aḥmad Ibn ‘Abd al-Ḥalīm Ibn Taymiyyah. *Majmū‘at al-fatāwa* (al-Riyād: Maktabat al-‘Ubaykān, 1998), Vol. 28, pp. 617-618.

⁵⁷¹ Muwaffaq al-Dīn Ibn Qudāmah al-Maqdisī. *Al-Mughnī* (Riyād: Maktabah al-Riyād al-Ḥadīthah, 1981), 144.

⁵⁷² Mar‘ī Ibn Yūsuf Karmī. *Al-muntaha fī al-jam‘ bayna al-iqnā’ wa al-muntaha* (Damascus: Mu’assasat Dār al-Salām, 1959).

⁵⁷³ Shams al-Dīn Muḥammad b. Aḥmad b. Ḥamzah al-Ramlī. *Nihāyat al-muḥtāj ila sharḥ al-minhāj fī al-fiqh ‘ala madhhab al-Imām al-Shāfi‘ī* (Miṣr : Muṣṭafá al-Bābī al-Ḥalabī, 1938).

non-Muslims are taken hostage by transgressors, Muslims are duty-bound to struggle for their freedom.⁵⁷⁴

Referring to the *Shari‘ah*, the Islamic schools of jurisprudence, and the ulema who contributed to the development of Islamic law, British jurist and historian Count Leon Ostrorog (1867-1932) said: “Those Eastern thinkers of the ninth century expounded a doctrine of toleration of non-Muslim creeds so liberal that our West had to wait a thousand years before seeing equivalent principles adopted.”⁵⁷⁵ Ostrorog, who himself had serviced Ottoman officials, had a deep admiration for the principles and judgments he found in his studies of Islamic law. He asserted that Muslims, on the basis of their theology, had laid out magnanimous principles for the rights of man, including the rights of individual liberty and the inviolability of person and property. He also saw how the caliphate was held accountable to the people and how Muslims “elaborated a Law of War of which the humane, chivalrous prescriptions would have put to the blush certain belligerents in the Great War.”⁵⁷⁶

It is beyond the scope of this work to adequately treat the subject of religious freedom in Islam, of which there are several works that the reader can refer to. The point to be made here again is that while *hifz al-dīn* in premodern discussions was largely spoken to in the context of Islam (for reasons we have already mentioned), it does not preclude—as we have demonstrated—that premodern *maqāṣid* thinkers or premodern Islamic tradition in general did not support the religious rights and freedom of belief for all.

⁵⁷⁴ Ibid. Al-Ramlī’s commentary here is an elaboration of al-Nawawī’s related statement in his work *al-Minhāj* that non-Muslims living in a Muslim state should be sufficiently provided for in food and clothing.

⁵⁷⁵ Leon Ostrorog. *The Angora Reform* (London: University of London Press, 1927), 30. Delivered in a lecture at the University of London in June of 1927.

⁵⁷⁶ Ibid.

Contemporary *maqāṣid* commentators, nonetheless, would make clear and front and center what they believed Islamic tradition had already possessed; offering a more universal and inclusive articulation of *ḥifẓ al-dīn* in their discussions of the classical *maqāṣid*. Among those leading the way was Ibn ‘Āshūr, whose interpretation and expansion of *ḥifẓ al-dīn* becomes a standard by which subsequent contemporary *maqāṣid* thinkers would follow.

Among the more fundamental and consequential revisions that Ibn ‘Āshūr makes to the notion of *ḥifẓ al-dīn*—as well as all the classical *maqāṣid*—is in introducing categorizations for distinct contexts. With respect to *ḥifẓ al-dīn*, whereas al-Shāṭibī’s reference to it was largely within the singular context of preserving Islam as a religion (by establishing and strengthening it (e.g., promoting religious education), and/or by averting harm to it (e.g., fending off heretical innovation or religious persecution)), Ibn ‘Āshūr approaches *ḥifẓ al-dīn* with a more nuanced understanding, distinguishing contextual categories for it. Thus, for Ibn ‘Āshūr, *ḥifẓ al-dīn* can refer to the context of individual Muslims, it can refer to the context of Muslims collectively, or it can refer to the context of non-Muslims. In other words, depending on the contextual subject, *ḥifẓ al-dīn* can have different meanings and applications.

For the category of individual Muslims, Ibn ‘Āshūr states that *ḥifẓ al-dīn* “means to salvage the faith of every individual Muslim from being affected by anything that might undermine and confuse his or her beliefs and distort his or her behavior based on them.”⁵⁷⁷ The focus of *ḥifẓ al-dīn* here is therefore personal and individually goal-oriented, and wherein the objective is that each and every Muslim is free to attain to and develop their

⁵⁷⁷ Ibn ‘Āshūr, *Maqāṣid*, 120.

Islamic faith. In this sense, to prevent compulsion in religion—or in matters of religion—even with those identifying as Muslims, is to preserve religion.

Where it concerns Muslims collectively, he says that *ḥifẓ al-dīn* “means to prevent anything that might violate and destroy the fundamentals of Islam, which includes defending Muslim land and sovereignty and preserving the means of Islamic learning and education among the present and future generations of the Muslim community.”⁵⁷⁸ Ibn ‘Āshūr’s context here relates to an already existing Muslim nation whose cultural environment and state apparatus manifests or is informed by (in various degrees) Islamic values and principles. Concerning such an entity, *ḥifẓ al-dīn* pertains to the survival and continuity of normative Islamic tradition (again, by averting heretical innovation or religious persecution). If the integrity of normative Islamic tradition is compromised, the implications are the deterioration of or even the demise of the religious practice and general Islamic morality of society—otherwise, Muslims without Islam.

What most sets apart Ibn ‘Āshūr’s rendering of *ḥifẓ al-dīn* with the classical rendering is in giving it a more inclusive scope; a third category that concerns non-Muslims, wherein he designates *ḥifẓ al-dīn* to include freedom of faiths or religions.⁵⁷⁹ In other words, *ḥifẓ al-dīn* supports the protection and co-existence of a diversity of religious belief systems in society. Ibn ‘Āshūr’s rendering here is largely arrived at through his interpretation of those Qur’ānic texts often raised in discussions and debates on the subject matter of religious freedom in Islam. Ibn ‘Āshūr asserts that Q 2:256—“let there be no compulsion in religion”—is absolute and decisive (*maṭlūq wa muḥkam*) in meaning, and

⁵⁷⁸ Ibid.

⁵⁷⁹ Ibn ‘Āshūr, *Maqāṣid al-Sharī‘ah*, 292.

therefore cannot be abrogated by any other text.⁵⁸⁰ As for those texts which appear to conflict with Q 2:256, such as Q 9:73 and Q 2:193 (along with the *ḥadīth* of similar purport), Ibn ‘Āshūr asserts that these are specific to the historical struggle with the aggressive Arab pagans during the time of the Prophet, and are thus in the context of eliminating religious persecution.⁵⁸¹

Several contemporary *maqāṣid* thinkers including Attia and al-Raysūnī followed Ibn ‘Āshūr’s dramatically reinterpreted and expanded version of *ḥifẓ al-dīn* with an even broader rendering. Beyond Ibn ‘Āshūr’s notion of freedom of faiths, these thinkers adopted the expression “freedom of belief,” making plain that no one is to be forced to adopt any faith tradition; people have the right to choose to believe or not to believe.⁵⁸² Some such as Jasser Auda add that the passage *lā ikrāha fī al-dīn* “means that there is no compulsion in any matter of the religion, rather than merely ‘in religion’.”⁵⁸³ The significance of this rendering—especially as it relates to Muslims by identity only, or Muslims who fall short in their observance of Islam—is that it includes the prohibition of compulsion in distinct components of religion, whether they be theological or liturgical. (Of course this does not pertain to those matters of religion wherein there is a moral duty—when reasonably and lawfully possible, and when it is determined that the benefit outweighs the harm—to prevent the occurrence of harm or transgression upon another. This matter falls under the subject and well-known Qur’ānic principle of “commanding good and forbidding evil,” a

⁵⁸⁰ For his full interpretation of Q 2:256, see his exegesis of the Qur’ān *al-Tahrīr wa al-tanwīr*.

⁵⁸¹ Ibn ‘Āshūr, *al-Tahrīr wa al-tanwīr*.

⁵⁸² Such is the phrasing used by Gamal Eldin Attia, *Naḥwa tafīl maqāṣid al-Sharī‘ah* (Amman: al-Ma‘had al-‘Ālamī li al-Fikr al-Islāmī, 2001), 171; See also Aḥmad al-Raysūnī, Muhammad al-Zuhayli, Muhammad al-Shubayr, *Huqūq al-insān miḥwar maqāṣid al-sharī‘ah* (al-Dawḥah: Wizārat al-Awqāf wa-al-Shu‘ūn al-Islāmiyyah, 2002).

⁵⁸³ Auda, *Maqāṣid al-Sharī‘ah*, 24.

principle whose application comes with several conditions, guidelines, and contextual considerations of which we have touched upon in Part Two of this work.)

Attia builds off Ibn ‘Āshūr’s non-Muslim categorization further and within a new category that he designates as: “The *maqāṣid* as they pertain to all of humanity.”⁵⁸⁴ In it, he expounds upon five “intents” that essentially address *inter alia* the six classical *maqāṣid* (across these five intents) as they relate to Muslims and non-Muslims together. In short, these five intents, which pertain to responsibilities and cooperation between Muslims and non-Muslims, are: (1) Mutual Understanding, Cooperation and Integration, (2) Realizing Human Vicegerency on Earth, (3) Achieving World Peace Based on Justice, (4) International Protection for Human Rights, and (5) Dissemination of the Islamic Message (the last of these, which we will touch upon below, speaks more so to a Muslim audience.) Attia prefaces his discussion of these five intents by advocating for the disregard of such expressions as “the abode of disbelief” (*dār al-kufr*).” This is a position taken by many contemporary Muslim scholars including Khaled Abou El Fadl, who notes that designations such as these (i.e., *dār al-kufr*, *dār al-Islām* and *dār al-ḥarb*), which represent geographical divisions along religious lines, are nowhere to be found in the *Qur’ān* or *Ḥadīth*, and hence, do not have authoritative grounding.⁵⁸⁵ Such terms were only later coined in succeeding generations by certain Muslim figures who were operating within and arguably influenced by the general hostile environment of the premodern world. The aforementioned terms (esp., *dār al-Islām* and *dār al-ḥarb*), moreover, were not the only ones in circulation among premodern Muslim legal scholars. Indeed, these legal scholars

⁵⁸⁴ Attia, *Towards the Realization of Higher Intentions*, 141.

⁵⁸⁵ Khaled Abou El Fadl, *The Great Theft: Wrestling Islam from the Extremists*. (New York: Harper One, 2007), 227.

had coined at least thirty-four various conceptual divisions with the word *dār* (e.g., *dār al-ṣulh*, *dār al-‘ahd*, *dār al-muwada‘ah*; the abode of peace, the abode of covenant, the abode of reconciliation, respectively), signifying that premodern Islamic legal tradition had recognized the complex nature and nuanced composition of the world—contrary to the myth perpetuated by some that Islamic legal tradition invariably dictated a bipolar division of the world into two abodes.⁵⁸⁶

Nonetheless, Attia’s category of five intents pertaining to responsibilities and cooperation for Muslims and non-Muslims together is informed by his reading of what he characterizes as “universal addresses” in the Qur’ān; passages which employ the address “People” (*yā ayyuha al-nāss*) or “Man” (*yā ayyuha al-insān*). A good example is in the famous verse which reads: “People, We created you all from a single man and a single woman, and made you into races and tribes so that you should recognize one another. In God’s eyes, the most honored of you are the ones most mindful of Him: God is all knowing, all aware.”⁵⁸⁷ Attia’s view is that “such discourse is advocating universal principles, one’s response to which does not depend on prior faith but, rather, on reason and logic.”⁵⁸⁸ In other words, the Qur’ān in these instances is calling on humanity at large, irrespective of religion or any conceivable identity, and appealing to their God-given, innate understanding and perception to embrace common good and universal human interests. With reference to this Qur’ānic universal address—and in making the case for an Islamic worldview oriented towards cooperation and collaboration with all peoples—Attia

⁵⁸⁶ See Ahmed Al-Dawoody. *The Islamic Law of War: Justifications and Regulations*. (New York, NY: Palgrave Macmillan, 2011), 93-96.

⁵⁸⁷ Qur’ān 49:13. Translation taken from M.A.S. Abdel Haleem, *The Qur’an: A New Translation* (Oxford, Oxford University Press, 2004), 339.

⁵⁸⁸ Attia, *Towards the Realization of Higher Intentions*, 142.

proceeds to layout a platform of several indispensable causes wherein Muslims and non-Muslims can work together. He defines these across his five intents. They include addressing local and global issues concerning *inter alia* social welfare (e.g., poverty, healthcare, and unemployment), peace and security (e.g., combating violence and extremism, criminal justice, and international cooperation and treaties), the environment (e.g., the ecosystem, global warming, and the protection and sharing of natural resources), and human rights (e.g., freedom of thought and religious belief, political rights). Attia provides Islamic primary source evidence supporting all of these causes.⁵⁸⁹

Matters related to *ḥifẓ al-dīn* in particular are also treated throughout Attia's five intents. For instance, under the third intent, "Achieving World Peace Based on Justice," he addresses what he deems to be grossly misinterpreted texts in the primary sources such as those relating to armed conflict against non-Muslims. Attia contends that any such text is specific to the context of self-defense against aggression, while those texts which call to peace, tolerance, freedom of belief, and cooperation are general and therefore universal; all of which support the principle that the fundamental relationship between Muslims and non-Muslims is one of peace.⁵⁹⁰ Under the fourth intent, "International Protection for Human Rights," Attia demonstrates the Islamic tradition's concern and call to action for ideals and values which he holds to have only recently been given formal attention, namely through twentieth century international and human rights laws. He argues that many of the premodern Muslim ventures and conquests were in fact in defense of these ideals and

⁵⁸⁹ Ibid., 141-149.

⁵⁹⁰ Ibid., 145. In support of the latter (i.e., texts pertaining to peace, tolerance, freedom of belief, and cooperation) he cites Qur'an 88:21-22; 10:99; 2:256; 8:61; and 57:25.

values—to liberate the oppressed or to protect freedoms and rights, particularly freedom of belief and religion.⁵⁹¹

Attia does not ignore the missionary nature of Islam. He in fact speaks to it in the fifth and final intent under the heading “Dissemination of the Islamic Message.” For Attia, dissemination of the Islamic message “is the most significant of all intents of Islamic law...”⁵⁹² He acknowledges to have intentionally left it last in order that the first four intents provide proper contextualization and a better understanding of what this dissemination actually means and entails. In other words, before expounding on the importance of disseminating the Islamic message, Attia wants to make it absolutely clear that Islam rejects coercion in religion, that it advocates for respect and cooperation among diverse peoples, and that it deems it a right for every person to have the freedom to believe as they please. Hoping that these points have been adequately conveyed with the first four intents, Attia goes on to discuss what it means to disseminate the Islamic message, offering first a justification for it. He reasons that for a religion to be beneficial and universal, or to claim universality, it must logically call on its followers to disseminate its doctrine and worldview.

Within the Islamic ethos, the principal concept associated with such dissemination is found in the notion of *da‘wā*; a term and concept that—as with many Arabic-Islamic terms and concepts possessing certain religious connotations—is difficult to capture within any singular equivalent in other languages. For Attia, the notion of *da‘wā* has been often misunderstood and misrepresented by both Muslims and non-Muslims. As already

⁵⁹¹ Ibid., 147.

⁵⁹² Ibid.

mentioned, there are certain conditions and considerations that come with *da'wā*, including—but not limited to—tact, rational enlightenment, genuine sincerity and humility, and abandoning self-righteousness and tedious or excessive moralizing ('preachiness'). *Da'wā*, again, is perhaps best summarized in this Qur'ānic text: "Call people to the way of your Lord with wisdom and best advice, and reason with them, if you have to, in the most courteous manner, for your Lord knows best who strays from His way and He knows best who is rightly guided."⁵⁹³ More than just a concept, *da'wā* is a science unto itself comprising of methodologies that require proper study and training. These methodologies are also shaped by the change in time, place, and people. For instance, the development of certain technologies (e.g., the internet and social media) has meant new communicative ways for the application of *da'wā*. And considerations such as the lingo, psychology, social class, and education level of the person also inform the approach to *da'wa*.

What we see with Attia and other contemporary Muslim thinkers, and what we began to see with Ibn 'Āshūr, is the attempt to convey and harmonize Islamic thought on certain issues—through *maqāṣid* philosophy—within the discourse and nomenclature of modern sensibilities, international law and human rights. In the case of *ḥifẓ al-dīn*, these thinkers have dramatically reinterpreted and expanded its scope to include a more inclusive and universalistic rendering of it. It would be rather easy to conclude that they have conveniently done this out of the influence of modernity; having become submissive to the liberal attitudes of the day while trying to escape (for Islam) the identity of the primitive other vis-à-vis the more civilized liberal West. But this would be far from being honest,

⁵⁹³ Qur'ān, 16:125.

for—and as we have demonstrated above—the interpretations which these contemporary figures have deployed to arrive at a softer and more accommodating notion of *ḥifẓ al-dīn* did not arise in a vacuum. Quite the contrary, they have strong evidential support within authoritative texts and voices of early, classical and medieval Islam.

In the case of Ibn ‘Āshūr, given especially the political and socio-religious dynamics of late nineteenth and early twentieth century Tunisia—amidst the onslaught of colonialism and its threat to Islamic tradition—he would have good reason to offer a more confined rendering of *ḥifẓ al-dīn*, one in line with those put forward by his premodern *maqāṣid* predecessors. Nay, notwithstanding this context, Ibn ‘Āshūr held firm to his more congenial and, for many, more radical notion of *ḥifẓ al-dīn*. Lest one think that Ibn ‘Āshūr had done this out of acquiescence to the secularizing state or foreign elite, we need be reminded of the famous episode wherein he denounced Habib Bourguiba’s (president of Tunisia) request for a *fatwā* to justify abandoning the fast of Ramadan under the pretext (Bourguiba’s pretext) that it hindered productivity. In direct defiance of Bourguiba, Ibn ‘Āshūr went on public radio to affirm the Qur’ānic injunction, “Fasting is prescribed for you,” and in audacious style added to his remarks, “God has spoken the truth and Bourguiba has uttered a lie.” Ibn ‘Āshūr had thus refused to compromise his principles, despite being well-aware of the potential repercussions. He would be inevitably dismissed from his post for these provocative remarks. But the larger point here is that Ibn ‘Āshūr’s more universal notion of *ḥifẓ al-dīn* is arrived at through both tradition and his own interpretive reasoning (otherwise, juristic induction—which we will touch upon shortly); not sacrificing what he believed to be true on the altar of expediency.

A final point to be made here is that Ibn ‘Āshūr’s dramatic revision of *ḥifẓ al-dīn* challenges Professor Sherman Jackson’s assertion that Ibn ‘Āshūr’s approach to the *maqāṣid* falls in line with “juridical empiricism,” or what Professor Jackson characterizes as “the inability to move beyond the pre-modern jurists’ abstractions of the *maqāṣid al-Sharī‘ah* to practical concretions that are responsive to the realities of the modern world.”⁵⁹⁴ To the contrary, and at least with *ḥifẓ al-dīn*, Ibn ‘Āshūr’s revised rendering of it better reflects Professor Jackson’s neoteric introduction of the notion of “juristic induction,” wherein a reasoned conclusion is reached from piecing together an aggregate of primary source texts; an approach Professor Jackson himself applies in attempting to revise *ḥifẓ al-‘aql* for our time. Professor Jackson’s “juristic empiricism” labeling of Ibn ‘Āshūr is therefore, and at the very least, overgeneralized. He perhaps came to this in his isolated reading of Ibn ‘Āshūr’s rendering of *ḥifẓ al-‘aql*, which we will now discuss in what follows.

Ḥifẓ al-‘Aql

Arguably the most revisited and discoursed of all the classical *maqāṣid* among contemporary *maqāṣid* thinkers is that of *ḥifẓ al-‘aql*, commonly translated as preservation of reason (Jackson) or intellect (Kamali) or mind (Auda). The construct of *ḥifẓ al-‘aql* advanced by pre-modern jurists, including al-Ghazālī⁵⁹⁵ and al-Shāṭibī,⁵⁹⁶ was largely restricted to the context of the Islamic prohibition against alcohol due to its inhibiting

⁵⁹⁴ Jackson, *Literalism, Empiricism, and Induction: Apprehending and Concretizing Islamic Law's Maqasid Al-Shari'ah in the Modern World*, 1470. For his association of Ibn ‘Āshūr with “juristic empiricism,” see p. 1478.

⁵⁹⁵ *Shifā’ al-Ghalīl*, 164; *al-Mustaṣfā*, Vol. 1, 287-88.

⁵⁹⁶ *Al-Muwāfaqāt*, 4:27-32.

qualities and deleterious effects on the mind (i.e., believed to generally decrease discernment between good and evil). Ibn ‘Āshūr undoubtedly follows this same construct in his section on the classical *maqāṣid*, the only difference being that in addition to alcohol—and based on the underlying *ratio legis* (‘illah) of alcohol’s prohibition—he specifies through analogical reasoning (*qiyās*) additional intoxicating substances common in his time that should also be prohibited, including hashish,⁵⁹⁷ opium, morphine, cocaine, heroin and similar drugs.⁵⁹⁸

Given Ibn ‘Āshūr’s apparent replica here of the premodern construct of *ḥifẓ al-‘aql*, it is understandable why Professor Jackson makes his “juristic empiricism” characterization in speaking of Ibn ‘Āshūr’s approach to the *maqāṣid*. However, this only holds up in an isolated reading of Ibn ‘Āshūr’s section on the classical *maqāṣid*. In examining the entirety of his work, we not only find that he demonstrates a creative departure from the premodern construction of *ḥifẓ al-dīn* (as already discussed above), but we also find a newfangled abstraction of *ḥifẓ al-‘aql*. The evidence for this comes under a chapter that introduces a new *maqṣid*, one which he calls “freedom” (*ḥurriyyah*). His discussion of freedom includes ideas which tie into *ḥifẓ al-‘aql* but which are radically different from its premodern conception. In essence, Ibn ‘Āshūr spins off from *ḥifẓ al-‘aql* a new construct that he integrates into his newly formed *maqṣid* of freedom, leaving its premodern conception intact under his section discussing the classical *maqāṣid*. The upshot here is that Professor Jackson’s characterization of Ibn ‘Āshūr’s approach to the *maqāṣid* as “juristic empiricism” only holds-up in an isolated reading of Ibn ‘Āshūr’s

⁵⁹⁷ Hashish is from the cannabis plant. It contains the same active ingredients as marijuana, but often in higher concentrations.

⁵⁹⁸ Ibn ‘Āshūr, *Maqāṣid*, 121.

section on the classical *maqāṣid* and the *maqṣid* of *ḥifẓ al-‘aql* in particular. Moreover, and as we will demonstrate in what follows, Ibn ‘Āshūr’s creative adaptation of *ḥifẓ al-‘aql* parallels in many ways Professor Jackson’s neoteric construct of it, showing Ibn ‘Āshūr to have been rather avant-garde in his thinking on the classical *maqāṣid*.

The parallels between Professor Jackson’s innovative rendering of *ḥifẓ al-‘aql* and Ibn ‘Āshūr’s newfangled spin off of *ḥifẓ al-‘aql* that is integrated into his *maqṣid* of freedom lie mainly in their extension of its scope beyond its more limited premodern construct pertaining to inebriation and its resulting deleterious physiological and cognitive effects. This extension includes external abstract matters that concern such things as thought control and propaganda. In defining a contemporary *ḥifẓ al-‘aql*, Professor Jackson states: “rather than restrict it to potential internal, self-induced corrupters such as drugs or alcohol, I consider the possibility that external, that is, socio-political and or cultural factors may be equally or perhaps even more corruptive.”⁵⁹⁹ Thus, such external matters include the construction of certain inhibiting thought paradigms or worldviews through socio-political and cultural mediums.

In a not so dissimilar fashion, Ibn ‘Āshūr addresses the *Sharī‘ah*’s opposition to the suppression—whether through socio-political or cultural mediums—of thought and reason and the pursuit of knowledge and intellectual endeavors.⁶⁰⁰ For Ibn ‘Āshūr, freedom of thought and reason, and the freedom to pursue knowledge and intellectual endeavors are in fact part and parcel to the *Sharī‘ah*’s objectives—otherwise, and essentially, the contemporary notion of *ḥifẓ al-‘aql* formulated by Professor Jackson.⁶⁰¹ What’s also

⁵⁹⁹ Jackson, *Literalism, Empiricism, and Induction*, 1482.

⁶⁰⁰ Ibn ‘Āshūr, *Maqāṣid*, 155-63.

⁶⁰¹ As we have stated elsewhere, Ibn ‘Āshūr’s notion of freedom of thought, belief, and speech is not absolute but includes certain boundaries which are meant to prevent transgressing upon the rights of others. Thus, he,

relatively shared between Ibn ‘Āshūr’s discussion of his new *maqṣid* of freedom and Professor Jackson’s contemporary construction of *ḥifẓ al-‘aql* is the contextual reference they each employ, with both referring to—broadly speaking—matters concerning the domination or oppression of humans by other humans. Ibn ‘Āshūr’s reference is to both literal and metaphorical slavery, while Professor Jackson’s reference relates more to the latter, and is punctuated on the issue of race and the socio-political experiences of black Americans in particular.⁶⁰² The greater point to be made again is that Ibn ‘Āshūr, like Professor Jackson, has gone beyond the premodern construct of *ḥifẓ al-‘aql* to develop it in terms of more abstract matters. But whereas Professor Jackson retains the classical term *ḥifẓ al-‘aql* for his modified contemporary construct, Ibn ‘Āshūr has spun off his modification of it under a term and concept—“freedom”—more relevant to contemporary discourses.

Ḥifẓ al-‘Ird

The last of the six classical *maqāṣid* to have acquired normative—or at least semi-normative—status among the essential objectives of the *Sharī‘ah* is that of preservation of honor (*ḥifẓ al-‘ird*). Though early *maqāṣid* thinkers including al-Juwaynī and al-Ghazālī made mention of it in their discussions of the *maqāṣid*, with al-Ghazālī giving it in certain contextual instances priority over other essential *maqāṣid*, it does not appear to have been formally recognized as an essential *maqṣid* in itself until the thirteenth century, when we

like Kamali later on, accepts certain restraints to freedom, especially where it would pose some serious threat to public welfare and when it would conflict with the *maqāṣid*. For Ibn ‘Āshūr, the consideration of context, the weighing of benefit and harm, and knowing the *maqāṣid*, are all key elements in thinking about freedom and its boundaries.

⁶⁰² For Ibn ‘Āshūr’s reference to slavery see pp. 154-59. For Professor Jackson’s reference to the experience of black Americans, see pp. 1482-86.

begin to see it listed among the essential *maqāṣid* in the works of some scholars. In his *sharḥ tanqīḥ al-fuṣūl*, al-Qarāfī (d. 684/1285) notes that some scholars (though he does not mention which scholars nor their time period) include honor among the essential *maqāṣid*.⁶⁰³ Several more scholars in the fourteenth century include *ḥifẓ al-‘ird* in their lists of essential *maqāṣid*, among them Ibn Taymiyyah (728/1327), al-Subkī (d. 771/1369), and Ibn Farḥūn (d. 799/1396).⁶⁰⁴ For the most part, however, medieval commentators on *maqāṣid* did not formally list *ḥifẓ al-‘ird* as a *maqāṣid* in itself alongside the other five classical essential *maqāṣid*, even though many of them gave it consideration in their discussions of certain contexts. Those who only listed five formally include al-Ghazālī,⁶⁰⁵ al-Rāzī,⁶⁰⁶ al-Āmidī⁶⁰⁷ (d. 631/1233), Ibn al-Ḥājjib (d. 646/1248), al-‘Izz ibn ‘Abd al-Salām, al-Bayḍāwī⁶⁰⁸ (d. 685/1286), al-Isnawī⁶⁰⁹ (d. 772/1370), al-Shāṭibī,⁶¹⁰ al-Zarkashī,⁶¹¹ and al-Badakhshī⁶¹² (d. 921-22/1516-17).⁶¹³

Again, that these scholars didn’t list it formally does not preclude them having weighed it against the other essential *maqāṣid*. For instance, both al-Ghazālī and al-Shāṭibī

⁶⁰³ Shihāb al-Dīn al-Qarāfī, *Sharḥ tanqīḥ al-fuṣūl* (Cairo: Maktabah al-Kulliyyāt al-Azhariyyah), 391.

⁶⁰⁴ See respectively: Aḥmad ‘Abd al-Ḥalīm Ibn Taymiyyah, *Fatāwā al-kubrā* (Al-Riyād: Maṭābi‘ al-Riyād, 1961-66), 1:343; Tāj al-Dīn al-Subkī, *Jam‘ al-jawāmi‘ bi ḥashiyah al-banānī* (Beirut: Dār al-Fikr), 2:281; and Ibrahīm ibn ‘Alī ibn Farḥūn, *Tabṣirah al-aḥkām ‘alā hāmish fath al-‘Alī al-Mālik* (Cairo: Al-Bābī al-Ḥalabī, 1958), 2:133-134.

⁶⁰⁵ *Al-Mustaāfā*, 1:258.

⁶⁰⁶ *Al-Maḥṣūl*, 2:220.

⁶⁰⁷ Sayf al-Dīn al-Āmidī, *Al-Iḥkām fī uṣūl al-aḥkām* (Cairo: Muḥammad ‘Alī Ṣubayḥ, 1968), 3:71.

⁶⁰⁸ ‘Abd Allāh ibn ‘Umar al-Bayḍāwī, *Minḥāj al-wuṣūl ilā ‘ilm al-uṣūl* (Dimashq: Dār al-Bayrūtī, 2009).

⁶⁰⁹ ‘Abd al-Raḥīm ibn al-Ḥasan al-Isnawī, *Nihāyah al-sūl fī sharḥ minḥāj al-uṣūl* (Al-Qāhirah: Maktabat Jumhūriyyat Miṣr, 1976) 4:82-84.

⁶¹⁰ Al-Shāṭibī, *Al-Muwāfaqāt*, 1:38, 2:10, 2:299, 3:10, 3:47, 4:27-32.

⁶¹¹ Muḥammad ibn Bahādur al-Zarkashī, *al-Baḥr al-muḥīt fī uṣūl al-fiqh* (Kuwait: Wizārat al-Awqāf, 1992), 5:208-213.

⁶¹² Muḥammad ibn al-Ḥasan al-Badakhshī. See his commentary on al-Bayḍāwī’s *Minḥāj al-wuṣūl*, known as *Manāhij al-‘uqūl* (Bayrut: Dar al-Fikr, Maṭba‘at Muḥammad ‘Alī Ṣabīḥ, 2001), 3:223-225.

⁶¹³ For more on their formal lists, see Attia, 16-20.

gave strong consideration to *al-ʿird* as an objective to fulfill and protect; differing, however regarding the priority it should be given vis-à-vis the other essential *maqāṣid* when having to choose between them. For instance, when having to choose between life and committing adultery, with the latter pertaining to both religion and honor, al-Ghazālī held that religion and honor would take priority. Al-Shāṭibī on the other hand took the opposite position and granted priority to life over religion and honor in such a case. The notion of honor certainly carried weight in the ethical and juridical deliberations of medieval scholars. Within the Mālikī school, for instance, despite that eating certain insects is permissible, some Mālikī scholars ruled it to be disliked to do so if was culturally unacceptable. Issues like these wherein culture intersects the *maqāṣid* to produce competing *maqāṣid* are numerous, especially in Muslim minority societies.

Ḥifẓ al-ʿird would in time gain wider recognition as an objective of the *Sharīʿah*. The great value afforded to honor within Islamic tradition is foremost evidenced by unequivocal texts from the Qurʾān and Ḥadīth, several texts of which also denounce in the strongest terms the compromising of one’s honor through such things as false accusation, slander, backbiting, self-degradation, and the like. Given the primary sources’ great regard for honor, and given both pre-Islamic Arab and Islamic culture’s strong sentiment towards it, why then had several premodern Muslim writers on *maqāṣid* not included it among the essentials (*al-ḍarūriyyāt*)?

Ibn ʿĀshūr is perhaps the first to address this question in expounding on his own position as to why honor is not at the level of essentials. He undoubtedly deems honor to be among the important *maqāṣid* of the *Sharīʿah*. However, he does not consider it to be among the essentials, but rather maintains that it should belong to the category of

exigencies or needs (*al-ḥājīyāt*); a level below the essentials but which ultimately and importantly supports it. In explicating on the role of *al-ḥājīyāt* in relation to *al-ḍarūrīyāt*, Ibn ‘Āshūr likens it to blocking the means to evil practices, or appointing judges and establishing a police force for the implementation of law and order. In other words, avoiding evil practices or establishing law and order are overarching goals which are served by the lesser goals of blocking the means (to evil practices) or establishing a police force. Put differently, the former in itself is more essential than the latter in itself, even though the latter in itself is important and serves to fulfill the former. It is as such that Ibn ‘Āshūr states “it is not correct to consider the preservation of honor (*‘ird*) as indispensable. The truth is that it belongs to the *ḥājī* category.”⁶¹⁴ The reasoning here is that despite the great significance that the notion of honor carries, its omission—while detrimental—would not lead to the same cataclysmic or destructive outcome that would occur with the omission of the other classical *maqāṣid*. Ibn ‘Āshūr asserts that those scholars who classified honor at the level of *al-ḍarūrīyāt* simply overlooked this point, having been myopically focused on and overly influenced by those texts which meted out severe punitive measures for compromising one’s honor. He states: “What led some scholars, like Tāj al-Dīn al-Subkī in his *Jam‘ al-Jawāmi‘* to include it [*‘ird*] in the category of *ḍarūrī* is their consideration of the severity of the *ḥadd* punishment prescribed by the *Sharī‘ah* for slander.”⁶¹⁵ For Ibn ‘Āshūr, the *ḥadd* punishment for slander does not necessarily correlate to the indispensability of honor (i.e., of honor being at the level of *al-ḍarūrīyāt*), and contends

⁶¹⁴ Ibn ‘Āshūr, *Maqāṣid*, 123.

⁶¹⁵ *Ibid.*

therefore that it was likely this line of reasoning which prevented al-Ghazālī, Ibn al-Ḥājjib and others from classifying *ḥifẓ al-‘ird* in the category of *al-darūrīyāt*.⁶¹⁶

Where Ibn ‘Āshūr goes beyond his premodern predecessors in treating *ḥifẓ al-‘ird* is in emphasizing its applicability to all of humanity, regardless of race, ethnicity or religious orientation. Ibn ‘Āshūr’s universal take on the notion *‘ird*, however, is not new. As already mentioned, it is founded on a number of expressions from the primary sources as well as from prominent figures of early Muslim generations. What Ibn ‘Āshūr does is simply take an inductive reading of these expressions to produce a sum meaning which he attaches to *ḥifẓ al-‘ird*. Ibn ‘Āshūr was not alone in doing this, as earlier modern Muslim scholars had also emphasized this universality of *ḥifẓ al-‘ird*. For instance, Ibn ‘Abidīn (d. 1252/1836), a prominent authority on the *fiqh* of the Ḥanafī school, stated that the sin of oppressing non-Muslims was even worse than oppressing Muslims, and that Muslims owe non-Muslims the right of protecting their honor including protection against any slander, gossip and the like.⁶¹⁷ Ibn ‘Āshūr similarly articulates in unequivocal terms that the *Sharī‘ah* sanctifies the protection of honor for every human being, stating: “In the case of honor, any verbal abuse, false accusations, or slander, whether pertaining to a physical or non-physical quality, is prohibited towards *any* [emphasis added].”⁶¹⁸

The universal sanctity of *‘ird* highlighted by Ibn ‘Āshūr has more recently been adapted by contemporary Muslim scholars who frame it within the nomenclature of modern-day discourses on human rights and freedom. Thus, in the legal discourses of Muslim scholars such as al-Raysūnī, Attia, Muḥammad al-‘Awa, Muḥammad al-Zuhailī,

⁶¹⁶ Ibid.

⁶¹⁷ Muḥammad Amīn Ibn ‘Abidīn, *al-Radd al-mukhtār ‘ala al-durr al-mukhtār sharḥ tanwīr al-abṣār* (Cairo: al-Maktabah al-‘Uthmaniyyah, 1908), Vol. 3, 244.

⁶¹⁸ Ibn ‘Āshūr, *Maqāṣid*, 123-24.

and Yūsuf al-Qaraḏāwī, *ḥifẓ al-‘ird* has been modified and rendered into the “preservation of human dignity” or the “protection of human rights.”⁶¹⁹ The former expression closely resembles the Arabic *ḥifẓ al-‘ird*, while the latter expression—protection of human rights—is a reflection of all six classical *maqāṣid*. (As we will discuss in the next chapter, the notion of human rights becomes a main feature in contemporary *maqāṣid* discourses.) The Islamic universal notion of *ḥifẓ al-‘ird* has also been referenced in international politics, including by US President Barack Obama in his public address to the Muslim world at Cairo University in 2009. Obama spoke of the common principles which America and Islam share—“principles of justice and progress; tolerance and the *dignity* [emphasis added] of human beings.”⁶²⁰

Ḥifẓ al-Nafs

Ḥifẓ al-nafs, or the preservation of life, is among those *maqāṣid* whose evidence is quite evident in specific individual primary source texts as well as in an inductive reading of a sum aggregate of these texts. Moreover, there is an indisputable consensus among both premodern and modern writers on *maqāṣid* that *ḥifẓ al-nafs* pertains to all human life, regardless of religion, race, ethnicity or any other type of identity construct. The sanctity of all human life is therefore a default departure point in the *Sharī‘ah*.

As noted in our earlier section on competing *maqāṣid*, *ḥifẓ al-nafs* was along with *ḥifẓ al-dīn* the most prioritized of all the classical essential *maqāṣid*. Some *maqāṣid* thinkers including al-Shāṭibī generally weighed *ḥifẓ al-nafs* as having distinct priority over

⁶¹⁹ See, al-Raysūnī, *Ḥuqūq al-īnsān*, 87; Attia, *Maqāṣid*, 170; Muḥammad al-‘Awa, *al-Fiqh al-Islāmī fī Tarīq al-Tajdīd* (Cairo: al-Maktab al-Islāmī, 1998), 195; Yūsuf al-Qaraḏāwī, *Madkhal li-dirāsah al-Sharī‘ah al-Islāmiyyah* (Cairo: Wahba, 1997), 101; Auda, 22-23.

⁶²⁰ Obama 2009 speech at Cairo University.

any other objective, reasoning simply that all other objectives are irrelevant without *ḥifẓ al-nafs*.⁶²¹ Al-Shāṭibī further asserts that because the evidence for *ḥifẓ al-nafs* can also be found in the Qur’ānic Meccan period (as with the clear text which reads: “...and do not take any human being’s life; [the life] which God has declared to be sacred” (Q 6:151)), it is therefore a definitive absolute universal.⁶²²

For Ibn ‘Āshūr, there was no need to modify al-Shāṭibī’s rendering of *ḥifẓ al-nafs*. What Ibn ‘Āshūr does do, however, is elaborate on the ways in which the preservation of human life can be realized. Ibn ‘Āshūr notes that in the case of just retribution, while it ultimately serves to protect life, it is “the weakest means for protecting human souls, because it consists of only a partial remedy for the loss.”⁶²³ In other words, while just retribution prevents a murderer from taking more life, or deters others from taking life, it does not address underlying root causes of such transgressions. Moreover, it is but one of many other threats to human life. Rather, Ibn ‘Āshūr holds that the most effective way to realize *ḥifẓ al-nafs* is to take a preemptive against any destructive threat—to nip it in the bud. He states: “Thus, the most important way to protect human life is to prevent harm and ruin before they happen, such as combating and eradicating epidemics.”⁶²⁴ For Ibn ‘Āshūr, this includes the imperative for Muslims to be concerned with issues threatening the lives of non-Muslims. Muslims should be proactive, for example, in coming to the assistance of

⁶²² *Al-Muwāfaqāt*, 1:30-38. Al-Shāṭibī holds that universals in the Meccan period are overarching and definitive compared to universal texts in the Medinan period, which he holds to be an extension of the universal Meccan texts.

⁶²³ Ibn ‘Āshūr, *Maqāṣid*, 120.

⁶²⁴ *Ibid.* Ibn ‘Āshūr here provides the example of ‘Umar Ibn al-Khaṭṭāb who held back the Muslim army from entering Syria upon becoming aware that a plague had struck the Syrian city of Amuas.

a non-Muslim nation stricken by a natural disaster, or helping in any way—including through research and funding—to address epidemics particular to a non-Muslim region.

Attia picks up on Ibn ‘Āshūr’s elaboration of *ḥifẓ al-nafs* to expound further on how it should be realized in the contemporary world. Following Ibn ‘Āshūr’s prodding of Muslims to be global citizens, Attia lays out an agenda delineating ways—political, socio-economic, and religious—in which Muslims can fulfill *ḥifẓ al-nafs* and foster peaceful coexistence. These include ensuring that proper policies and security measures are instituted by the state apparatus (through the legislative and judicial branches of government) for the purpose of deterring criminal activity and preventing assault, murder, terrorism, suicide and the like; that mechanisms are set up (whether through the state or private sector) to address such matters as poverty, hunger, safety hazards, inadequate healthcare, and poor infrastructure; and that such things as freedom of worship, public health, and civil and human rights are safeguarded. Attia as well as Ibn ‘Āshūr hold that *ḥifẓ al-nafs* is not simply about literally saving a physical life but includes ensuring that all those things which make life manageable and which remove hardship are provided for. They understand that though many of these things appear secondary—not having a direct, explicit and immediate impact on saving a physical life; otherwise classified under the levels of exigencies (*al-ḥājīyāt*) or enhancements (*al-taḥsīnīyāt*)—they are nonetheless part and parcel to *ḥifẓ al-nafs* such that neglecting them would be tantamount to a metaphorical death.

For many contemporary Muslim scholars, an expansive and compassionate scope of *ḥifẓ al-nafs* represents normative Islamic tradition and provides the religious and spiritual urging necessary for contemporary Muslims to counter extremist voices

perverting Islamic teachings with exclusivist and xenophobic rhetoric. Primary source texts such as the following anecdotal *ḥadīth* are often referenced to capture the spirit of this expansive and universal notion of *ḥifẓ al-nafs*. Addressing those around him, the Prophet Muḥammad is reported to have said, “You will never believe until you show mercy to one another.” His companions responded by saying, “All of us are merciful, O Messenger of God!” At which point, the Prophet Muḥammad offered further explanation, telling them: “I’m not talking about one of you showing mercy to his friend; I’m talking about universal mercy—mercy towards *everyone* [emphasis added].”⁶²⁵

This notion of a universal mercy is a common theme frequently propounded by mainstream Muslim scholars around the world today and particularly in the West, especially in light of the ongoing and volatile global political environment. In recent decades, a number of Muslim scholarly bodies, councils and committees have convened to put to the fore this message in the form of a serious peace initiative and through various political, socio-economic, and religious campaigns, all of which is largely guided by a universally compassionate *maqāṣid* philosophy. Representative of such an initiative is The Royal Aal al-Bayt Institute for Islamic Thought, an international Islamic non-governmental, independent institute whose objectives include “...to serve humanity at large..., rectifying unsound ideas and misconceptions about Islam..., deepening the dialogue and fostering cooperation..., [and] calling for middle ground, moderation and tolerance.”⁶²⁶ Institutes such as this take on a two-front battle, attempting to de-radicalize

⁶²⁵ This *ḥadīth* is reported by Aḥmad and al-Ṭabarānī and deemed sound (translation of ḥadīth by Hamza Yusuf).

⁶²⁶ See <http://www.aalalbayt.org>. Headquartered in Amman, Jordan, the institute has several particular initiatives serving these objectives, including: *A Common Word*, which brings together Muslim and Christian scholars working towards common ground and understanding between Muslims and Christians (<http://www.acommonword.com/>); the *Amman Message*, a detailed proclamation from a number of the most

the radicalized by undermining the theological authenticity of their ideology, while also attempting to counter what they maintain are distorted narratives of Islam presented by anti-Muslim zealots. They are doing this, moreover, not through some newfangled reformed overhaul of Islam, but rather based on traditionally recognized interpretations of classical Islamic sources coupled with reasoned reengagement with these sources in light of the modern context.

The expansive universal notion of *ḥifẓ al-naḥs* can be seen informing the work of many Western Muslim organizations today. An example is Islamic Relief, a major non-profit humanitarian agency which focuses a great portion of their work on alleviating the suffering and hardship of peoples anywhere around the world. Their mission is simple and clear, “[to] provide relief and development in a dignified manner regardless of gender, race, or religion, and...to empower individuals in their communities and give them a voice in the world.”⁶²⁷ The organization takes to heart the mantra of “putting faith to action” and sponsors several domestic and international projects including emergency disaster responses, assisting the American homeless population, supporting those who cannot afford basic healthcare, and providing solutions to water and sanitation issues. Organizations such as Islamic Relief and the Muslim advocacy group Council on American-Islamic Relations (CAIR) are also actively calling on Muslims to align with or support non-Muslim organizations and movements that are similarly working on

senior Muslim scholars around the world representing all the branches and schools of Islam and declaring what Islam is and what it is not, and what actions represent it and what actions do not (addressing three questions in particular: (1) *Who is a Muslim?* (2) *Is it permissible to declare someone an apostate (takfīr)?* (3) *Who has the right to undertake issuing fatwās (legal rulings)?* (<http://ammanmessage.com/>); and *The Royal Islamic Strategic Studies Centre*, whose primary goals include, “to protect, preserve and propagate traditional, orthodox, ‘moderate’ Islam as defined by the international Islamic Consensus on the ‘Three Points of the Amman Message’.”

⁶²⁷ See <http://irusa.org/mission-vision-and-values>.

humanitarian and socio-economic issues. Quite visible in the US today for instance are coalition groups of Muslims and non-Muslims collaborating on a host of pressing contemporary issues pertaining to civil and human rights, and such things as income inequality, minority and racial discrimination, the environment, and domestic and international security. The humanistic and universal values that emanate from modern day *maqāṣid* philosophy call on Muslims, moreover, to engage in such activity with sincerity (*ikhhlās*) and excellence (*iḥsān*); not expecting any material gain or anything in return, but ultimately doing it for the love of God and His creation.

CHAPTER 14

Developing New *Maqāṣid*

Though Ibn ‘Āshūr did not entirely reinvent the classical *maqāṣid*, he undoubtedly revamped them for the modern context. His critical engagement with premodern *maqāṣid* thought from within the purview of his time also led him to formulate new *maqāṣid* whose foundational evidence attempted to remain epistemically rooted in the Islamic primary sources. His pivotal revival of *maqāṣid* thought, moreover, inspired a new generation of Muslims thinkers who would also offer innovative approaches by which the *maqāṣid* discipline could be meaningful to the contemporary world. This chapter thus explores the construction of new independent *maqāṣid* by Ibn ‘Āshūr and other modern day Muslim thinkers, considering in particular their basis and scope.

What is perhaps most innovative and pioneering about Ibn ‘Āshūr’s *maqāṣid* work is his fusion of *maqāṣid* thought with popular modern and Western concepts. Thus, such concepts as ‘freedom,’ ‘rights,’ and ‘equality’ became common themes in his writings and discourses, and would inevitably enter into the larger frame of Islamic literature and legal discourses. The implications were far reaching, as it gave Islamic law and ethics a new voice that could better be appreciated globally by those who took great value in the substance of such concepts and who would otherwise believe that the *Shari‘ah* was wholly detached from humanistic and enlightened universal values. Ibn ‘Āshūr in no way sought to compromise normative Islamic teachings to please those within and outside of Islamic

tradition calling for some kind of Islamic reformation. Rather, he found within such concepts as freedom, rights, and equality—as generally and universally understood—substantial areas of overlap with normative Islamic values and principles. As we shall see in what follows, Ibn ‘Āshūr attempts to demonstrate where this overlap is, while attempting to clarify where it is not.

Equality

Among the new *maqāṣid* that Ibn ‘Āshūr develops, treating it in an isolated section of his work, is equality (*musāwāh*). Having already devoted the entire previous section to issuing proof texts signifying the universality of the *Sharī‘ah*, Ibn ‘Āshūr tells us that among its consequences is equality. His overall discussion of the notion of equality, however, appears somewhat convoluted, as it lacks structure while weaving in various topics and issues he finds relevant to the subject matter. Nonetheless, his treatment of the subject, which of course is from an Islamic perspective, is rather sophisticated; giving significant attention to complex nuances and contexts that necessarily factor in to inform any understanding of the notion of equality. To provide some structure for our own discussion, we can categorize Ibn ‘Āshūr’s presentation of equality according to three primary discussion points: (1) equality as it pertains to the context of Muslims (i.e., equality among Muslims); (2) equality as it pertains to the context of humanity; and finally, what is the bulk of his discussion, (3) matters which shape and inform the notion of equality.

Ibn ‘Āshūr’s first (and relatively brief) discussion point concerns equality as it pertains to the context of Muslims. His goal here is simply to establish primary source evidence that speak to the Islamic imperative for an egalitarian Muslim community. The

most obvious of proof texts for this is God's decree: "all believers are brethren" (Q, 49:10). For Ibn 'Āshūr, the term 'brethern' (*ikhwa*) metaphorically and powerfully connotes universal equality among Muslims, entailing the "same rights accorded them by the *Sharī'ah* without any discrimination in all matters that do not allow for variation between Muslims."⁶²⁸ Thus, while the *Sharī'ah* affords equal rights, regardless of class, race, gender, etc., it also recognizes that it is not absolute. In other words, equality is upheld where it is natural, just, and not harmful. And it is done so even when "it be against your own selves or your parents and kinsfolk" (Q, 4:135). Having a reasoned and nuanced understanding of equality is of great import for Ibn 'Āshūr; and as we will see further below, he will devote much of his discussion on equality explicating just what these nuances are.

But before doing so, Ibn 'Āshūr addresses the notion of equality as it pertains to humanity. He asserts again that the *Sharī'ah*'s universality undeniably requires that there be equality among humanity, particularly where it be natural, just and not harmful. Ibn 'Āshūr explains that what that equality is should be recognized by both God-given human nature (the central Islamic concept of *fiṭrah*) as well as the *Sharī'ah*. God-given human nature itself can recognize matters wherein there should be equality between human beings. The *Sharī'ah* in turn gives credence to what human nature recognizes as equality and provides guidance in accordance with this. Conversely, where human nature and reason recognizes a need to depart from absolute equality, the *Sharī'ah* also recognized this and provides guidance accordingly. In other words, the *Sharī'ah* generally calls for equality where it is inherently recognized and natural for human beings, and it does not impose

⁶²⁸ Ibn 'Āshūr, *Maqāṣid*, 146.

equality where human nature and reason calls for some sort of variation. In the latter case, the *Sharī‘ah* leaves it for reasoned and sound minds to use discretion, but within the boundaries of the values and principles of the *Sharī‘ah*, in determining where absolute equality would be unfit for human nature, or procure a harm, or an injustice; at which point it should be avoided.⁶²⁹

Ibn ‘Āshūr will later explain more concretely what he means by these variations and the use of discretion. But before doing so, he sees it imperative to clarify where the *Sharī‘ah* calls for equality among all human beings, regardless of race, religion, gender, etc., and this pertains fundamentally to the essential classical *maqāṣid*. At a minimum, all human beings are entitled to and are equal with respect to the preservation of life, the preservation of religion (freedom to worship or not worship), the preservation of intellect or reason (freedom of thought), the preservation of honor or dignity, the preservation of lineage, and the preservation of property or wealth.⁶³⁰ Thus, the six classical *darūrīyāt* are indispensable and equal for all human beings. Ibn ‘Āshūr similarly states that this holds true for those matters belonging to the needs or exigencies, the *hājīyāt*, which are also indispensable and equal for all human beings—though there may rarely be certain cases in this category (discussed below) where it is more just to have variation than absolute equality. Ibn ‘Āshūr does not specifically give reference to the category of enhancements or embellishments (the *taḥsīnīyāt*), but what he does offer—in perhaps being inclusive of all of the categories including the *taḥsīnīyāt*—is a rule of thumb, which is that the *Sharī‘ah* stipulates equality in all things by default and unfailingly, “except in situations where there

⁶²⁹ Ibid.

⁶³⁰ Ibid, 147.

are valid *mawāni* ‘.’⁶³¹ By *mawāni* ‘, Ibn ‘Āshūr is referring to impediments which alter the default state of equality to that of variation in order to align with *fiṭrah*, justice, or to avoid some kind of harm.

The *mawāni* ‘ or impediments to absolute equality which Ibn ‘Āshūr speaks of forms the greater part of his discussion on this new *maqṣid*. He explains in definitive terms that by impediments he means when there is a necessity to suspend or abolish equality in order to procure a critical *maṣlahah* (good) that would otherwise be lost, or to avoid a harmful *mafsadah* (evil) that would otherwise occur. What is a *maṣlahah* or *mafsadah*, moreover, is arrived at in correspondence with the other established *maqāṣid* including the essential classical *maqāṣid*. Furthermore, the occurrence of the *maṣlahah* or *mafsadah* may be temporary, frequent, or permanent.⁶³² In other words, there are instances or contexts where equality may be temporarily suspended, or frequently suspended, or even permanently suspended. But the norm or default of the *Sharī‘ah* is equality.

Ibn ‘Āshūr then provides a vital condition in the case that equality is suspended, and that is that the suspension is confined to the particular area informing the suspension, not encroaching on other areas where there should be equality.⁶³³ For instance, in meritocratic higher educational systems like that in the US, the variation in the credentials of a graduate student lecturer and a full professor is a cause for suspension of equality in certain areas such as salary, benefits package, and personal office space. This suspension of equality, however, does not—or at least should not—encroach on areas that are not reasonably pertinent to the cause (credentials) of suspension of equality, for example (and

⁶³¹ Ibid, 148.

⁶³² Ibid, 148-149.

⁶³³ Ibid.

the examples are numerous), freedom of speech. Moreover, the suspension of equality in these areas is not necessarily permanent between the graduate student lecturer and the full professor, as the graduate student lecturer may climb the ladder of merit and even surpass the full professor in merit, thus tipping the scale of inequality.

Ibn ‘Āshūr goes on to consider impediments to absolute equality as a consequence of human nature. He provides as an illustration inherent differences between men and women which result in variation in certain roles, for example, in the kind of nurture and care they provide children, or in the performance of certain physical activities. For Ibn ‘Āshūr, rather than trying to impose upon the genders absolute parity in all things, such differences should be honored and celebrated. The Islamic ethos, moreover, shuns any type of claim to superiority of one over another due to some natural, physical, or material advantage. And what is of greatest value is spiritual excellence, of which there is absolute equality of opportunity for any to attain.

Ibn ‘Āshūr speaks, furthermore, of impediments to equality as a result of a combination of inherent human nature and personal endeavor. This, he says, “is manifested in the differences in people’s minds and talents concerning their capacity to comprehend hidden truths and subtle meanings.”⁶³⁴ Though what Ibn ‘Āshūr exactly means by this is somewhat vague, we would presume he believes that there are some who have inherent advantages in intellectual and physical abilities, and that when those possessing these natural advantages capitalize on them with effort, it sets them apart from others who either have the former (natural advantages) but lack in the latter (effort), or conversely, have the latter but are not advantaged in the former. Put differently, a person who does not have

⁶³⁴ Ibid., 151.

certain inherently “gifted” abilities would have to work harder to possibly arrive at the level of the one who does possess such abilities. But given the same effort from both the gifted and non-gifted, the gifted will have an advantage, and thus the two cannot be said to be equal in the area(s) where the advantage occurs. The example which Ibn ‘Āshūr provides to illustrate all this is in the context of understanding the *Sharī‘ah*. He states:

Examples of this inequality include the capacity to interpret the *Sharī‘ah* and to comprehend those aspects of it that are the subject of subtle derivation and reasoning. They also include the capacity to understand the *Sharī‘ah* injunctions concerning different situations and apply them properly to their relevant subjects, such as distinguishing between complicated cases, detecting the tricks used by litigants in court cases, and determining the integrity (‘*adālah*) of court witnesses.⁶³⁵

Thus, for Ibn ‘Āshūr, such persons who manifest keen perception and wisdom, along with strong analytic and reasoning skills, have arrived there through God-given natural abilities and a personal work ethic. He points out that such people can be found among those who have attained the level of *ijtihād*, and who have climbed its higher ranks.⁶³⁶ Ibn ‘Āshūr also makes an impassioned plea here calling on the best of minds and personal qualities to serve in religious leadership roles; an appeal that still echoes today in light of what is commonly thought to be a rather feeble state of the Muslim scholarly class and Islamic intellectual output. As we have already made mention of, and as we will discuss further below, Ibn ‘Āshūr’s plea would be picked up by contemporary thinkers and spark a *maqāṣid* movement that continues to be active into the twenty-first century.

⁶³⁵ Ibid.

⁶³⁶ Ibid.

Finally, concerning other impediments to equality, Ibn ‘Āshūr discusses certain rationally justifiable impediments designated by religion, social context, or political context. An obvious impediment set by religion is the requirement for the religious leadership of a particular religious tradition to be from that tradition (e.g., a non-Muslim should not lead a Muslim congregation in Islamic services just as a Muslim should not lead the religious services of non-Muslim religions).⁶³⁷ Interfaith dialogue, however, is permissible and encouraged, whether in a mosque, church, synagogue, etc. There are also cases involving transactions (*mu‘āmalāt*) wherein the religion of a person may impinge on matters. Ibn ‘Āshūr notes that several variables may come into play in such cases, and that they should be handled by qualified jurists.

In most matters, however, especially those that don’t have direct religious bearing such as in secular transactions (*mu‘āmalāt*), Ibn ‘Āshūr holds that full equality is the *Sharī‘ah* norm, citing in support of this the Prophet’s statement stipulating equality between Muslims and non-Muslims: “They [non-Muslims] are entitled to the same rights as we [Muslims] are, and they shoulder the same responsibilities as we do.”⁶³⁸ Ibn ‘Āshūr adds that such rights and responsibilities extend to the context of modern Muslim states, wherein equality should be established for all its citizens, Muslim and non-Muslim. As for impediments to equality arising from social or political contexts, these are guided namely by the notion of public good (*maṣlaḥah*), which is determined furthermore with the guidance of experts and scholars, including religious scholars at the level of *ijtihād*.⁶³⁹

⁶³⁷ Ibid., 149.

⁶³⁸ Ibid.

⁶³⁹ Ibid., 152.

Ibn ‘Āshūr does not offer much in providing examples of impediments to equality as a consequence of social or political considerations. A helpful demonstration of such impediments, however, may be found in Professor Sherman Jackson’s case for affirmative action. We find in fact strong parallels between Ibn ‘Āshūr’s thought on equality and Professor Jackson’s presentation of equality in the context of his argument supporting affirmative action from an Islamic perspective. The parallels lie namely in the consideration of informing factors—historical ones in the case of Professor Jackson’s argument—that call for the suspension or at least a temporary cessation of a certain equality through socio-political mediums and in the name of justice and public good. The suspended equality essentially aims to overcome the effects of past discrimination by increasing the proportion of African-Americans and other minorities in educational institutions and jobs traditionally dominated by white males. Professor Jackson acknowledges his appreciation for the position of critics who dismiss affirmative action as reverse discrimination in that it denies opportunities to qualified white males. However, he challenges their thinking about the notion of equality, asserting that they have misappropriated it in treating affirmative action within the context of historical dynamics concerning blacks in America. Challenging their assumptions, he says:

...the entire enterprise of invoking equality as an absolute, first-order principle is far more seductive than it is substantively right or practical. In fact, those who invoke equality both for and against Affirmative Action invariably proceed on the basis of the erroneous assumption that by treating humans equally we realize all (or even most) that is to be realized in human relations. In reality, however, equality rarely if ever enjoys this proud

preeminence among human beings. Human beings want first and foremost to be treated not equally but as humans, whereby the human self can be actualized without having to seek validation or permission from universalizing subjectivities that set themselves up as objective criteria.⁶⁴⁰

Like Ibn ‘Āshūr, Professor Jackson does not espouse an absolutist, first-order notion of equality, recognizing that such things as human nature and social realities can create rightful impediments. Both, moreover, recognize that invoking absolute equality in all things without the consideration of informing contexts and nuances can actually lead to more harm than good. In the case of invoking equality as an objection to affirmative action, it only perpetuates rather than reverses the historical inequalities—the *fitna* Professor Jackson speaks of—which have endured for generations of African Americans. For Professor Jackson, a temporary suspension of inequality is therefore a fair and just means to redress historically institutionalized discriminatory practices. A final point to be made here on the notion of equality is how both Ibn ‘Āshūr and Professor Jackson are able to renegotiate and bring into the Islamic fold a universally adopted modern principle with liberal sensibilities to produce a uniquely Islamic rendering of it; a rendering that seeks to be transformative rather than simply adaptive, challenging its modern liberal interpretation to be rethought.

Freedom

Another new *maqṣid* that Ibn ‘Āshūr introduces and treats in an isolated section of his work, having not been formally treated by premodern *maqāṣid* thinkers, is the principle

⁶⁴⁰ Jackson, *Islam and Affirmative Action*, 423.

of freedom (*hurriyyah*). It is not to say that notions of freedom were not articulated in premodern Islamic tradition. As Mohammad Hashim Kamali has clearly demonstrated in his work *Freedom of Expression in Islam*, they in fact were articulated through discourses in ethical and legal works on central principles and concepts that were rooted in the Qur’ān and Sunnah such as *naṣiḥah* (sincere advice), *shūrā* (consultation), *ḥisbah* (commanding good and forbidding evil), *ḥaqq al-mu’āraḍah* (the right to constructive criticism), and *ijtihād*.⁶⁴¹ Medieval thinkers like Ibn Qayyim al-Jawziyyah, for instance, discussed how freedom, and more specifically freedom of expression (*ḥurrīyat al-ra’y*), should serve to procure benefit (*maṣlahah*) or to prevent evil (*mafsadah*), and that its neglect could well lead to harm and evil.⁶⁴² The notion of freedom as gathered and understood from these principles and concepts can therefore be defined as “the ability of the individual to say or do what he or she wishes, or to avoid doing so, without violating the right of others, or the limits that are set by the law.”⁶⁴³ Thus, the ideas and expressions which inform freedom, including those which affirm as well as restrain it, can be found in Islamic tradition and genealogically traced back to the primary sources. Moreover, a substantial part of these ideas and expressions overlap with conceptions of it as articulated in modern and human rights laws. However, neither non-Muslims nor Muslims in the premodern world treated freedom in the same manner and as a formal categorical concept in itself as we find today in constitutional and human rights laws. Among Muslim thinkers, Ibn ‘Āshūr would arguably be the first to articulate the principle of freedom as both a formal categorical

⁶⁴¹ Kamali, *Freedom of Expression*, 2.

⁶⁴² Ibn Qayyim, *I’lām al-muwaqqi’in ‘an Rabb al-‘Ālamīn*, vol. 3, 147.

⁶⁴³ Kamali, 7; Mahmassānī, *Arkān*, 72.

concept and a *maqṣid* of the *Sharī‘ah*. How he understood and articulated it is what we now turn to.

Ibn ‘Āshūr opens his section on freedom by establishing its link to the notion of equality. He notes that having established equality as a *maqṣid* of the *Sharī‘ah*, it necessarily follows that every member of the community should have the same opportunities and rights to freely conduct their personal affairs, with this freedom being itself a *maqṣid* of the *Sharī‘ah*. Freedom, however, is not without constraints; constraints informed by—as he will go on to discuss in the remainder of his section—certain contexts and obligations upon individuals which are guided by *maṣlahah* and the overarching objectives of the *Sharī‘ah*.

Ibn ‘Āshūr then commences to make his case for freedom as a *maqṣid* of the *Sharī‘ah* and, moreover, why the kind of freedom he outlines is the most humane, just and natural conception of freedom conducive to achieving a stable and fruitful society. His case for this is going to be framed within two broad types of freedom which he contends the *Sharī‘ah* aims to attain, freedom from physical bondage and a more abstract or metaphorical freedom which relates to people’s beliefs, opinions, speech and behavior, and which calls on being free from such things as mental or psychological bondage. Ibn ‘Āshūr goes on to devote an equal portion of the remainder of his section to expound on each of these.

In introducing the former, freedom from physical bondage, Ibn ‘Āshūr appears compelled to address and understand the historical practice and institution of slavery among ancient peoples. This he does namely to provide the backdrop which Islam encountered, setting the stage for him to contextualize the way in which Islamic tradition

would engage with the issue of slavery. Having defined slavery as “the inability of people to act by themselves except with the permission of their masters,” he tells us that the genesis of slavery in the ancient world emerges as a result of an ignorant (*jāhili*) mindset wherein force, hegemony, and domination acted as primary arbiters in human affairs.⁶⁴⁴ The manifestation of slavery, moreover, was most prominent during or in the aftermath of war or invasion, wherein captives were enslaved and subject to forced labor or sold as servants. Inevitably, the institution of slavery became central to the family and socio-economic systems of premodern times, constituting an essential part of these societies. Ibn ‘Āshūr argues that this existing reality which Islam had encountered, coupled with the *Sharī‘ah*’s diligence in preserving social order, was the reason why the Islamic abolition of slavery proceeded at a gradual pace rather than all at once. He states: “Had Islam sought to transform that order in a radical way, this would have led to the breakdown of human civilization in such a manner that it would have been difficult to restore it. This was the main reason why the *Sharī‘ah* refrained from any abrupt abolition of the existing slavery system.”⁶⁴⁵ For Ibn ‘Āshūr thus, the Qur’ān and the Prophet Muhammad’s teachings necessarily proceeded cautiously and wisely to undermine the institution of slavery.

Parallels to this can be seen in the historical narratives of Lincoln and the question of slavery. In essence, Lincoln could not and did not pursue an immediate abolition of slavery, as the socio-political dynamics of his time essentially forced him—with caution and by strategy—to take a gradualist approach to abolition. Similarly, even though Catholic bishops in pre-civil war America opposed slavery, few if any spoke for abolition, despite

⁶⁴⁴ Ibn ‘Āshūr, *Maqāṣid*, 154-155.

⁶⁴⁵ *Ibid.*, 156.

that Pope Gregory XVI had condemned the slave trade in 1840. The bishops' silence was not an endorsement of slavery but rather a practical political judgement which they believed had to be made given their circumstances as a religious minority of mostly immigrants despised by much of the population. Believing that pressing the issue would have led to greater harm, they concluded that a measured approach was the lesser evil given the political realities.

Nonetheless, and in regards to Islam's encounter with slavery, the intermittently revealed various legal provisions and ethical expressions of the Qur'ān and Sunnah would provide the framework by which there would formulate an unequivocal Islamic directive for the uprooting of slavery and the establishment of freedom. Ibn 'Āshūr underscores several of these Qur'ānic and Sunnaic expressions that are particular or have specific contexts which when taken collectively signify an unquestionable aim and clear imperative to eradicate slavery. These include allocating a certain portion of the *zakah* to purchasing the freedom of slaves; the manumission of slaves as compensation for the intentional breaking of the Ramadan fast, manslaughter, injurious comparison or *ẓihār* (i.e., the common *jāhili* Arab practice of declaring one's wife to be as unlawful to one as one's mother), or the breaking of an oath; directing slave owners to write out deeds of freedom for those in their possession who sought freedom; granting freedom to any female slave who gives birth as a result of a sexual relationship with her master; the manumission of slaves upon the slave owner's death; the obligation upon slave owners to treat their slaves with kindness ("as your brethren"), and to provide them with the best of clothing, shelter, and food that they (the slave owners) would have for themselves; the prohibition of beating or torturing slaves (wherein they are freed as a result of such acts); the Prophet's command

not to refer to slaves as slaves, but in terms that are endearing; and explicit expressions from the Qur’ān and Sunnah encouraging the freeing of a human being from bondage (e.g., Qur’ān 90:11–13, and the ḥadīth in which the Prophet said: “He who has a slave-girl and educates and treats her nicely and then manumits and marries her, will gain a double reward.”).⁶⁴⁶ Ibn ‘Āshūr thus contends that these and numerous other expressions, when read inductively, undeniably lead to the conclusion that the *Sharī‘ah* is attempting to purge the institution of slavery.

Having covered the *Sharī‘ah*’s objective to attain freedom from physical bondage, Ibn ‘Āshūr then goes on to address the second type of freedom which the *Sharī‘ah* aims to achieve, a more metaphorical or abstract notion of freedom that relates to people’s beliefs, opinions, speech, and behavior, and includes freedom from such things as mental or psychological bondage. For Ibn ‘Āshūr, the basis informing this second type of freedom is the understanding that God has left a great majority of matters on the earth to be permissible to pursue, and that the far fewer matters of constraints which God has designated are there to achieve benefit or deter harm and evil.⁶⁴⁷ Any added constraints, any limits to what has been made permissible, is a grave offense and serious affront to God.

With respect to freedom as it relates to one’s beliefs, Ibn ‘Āshūr reiterates what he has already discussed elsewhere, which is that the *Sharī‘ah* affirms freedom of beliefs. This entails the right for individuals to choose their beliefs and the right not to have beliefs imposed on them, citing again the famous decree in Qur’ān 2:256 that “there shall be no compulsion in religion” (*lā iqrāha fī al-dīn*). As for disseminating Islam, this should be done where appropriate and with tact, invitation, rational persuasion, genuine humility, and

⁶⁴⁶ Ibid., 158-159.

⁶⁴⁷ Ibn ‘Āshūr refers to Qur’ān 7:32–33 as evidence capturing this point here.

without tedious or excessive moralizing (‘preachiness’); otherwise, in diligent accordance with the Qur’ānic verse, “Call people to the way of your Lord with wisdom and best advice, and reason with them, if you have to, in the most courteous manner, for your Lord knows best who strays from His way and He knows best who is rightly guided.”⁶⁴⁸ His discussion of freedom of belief here is short, as it has already been hashed out in his treatment of *ḥifẓ al-dīn* (see our previous chapter) in his work *Maqāṣid al-Sharī‘ah* and elsewhere in his work *Uṣūl al-Niẓām al-Ijtimā‘ī fī al-Islām*.⁶⁴⁹

Ibn ‘Āshūr then touches upon freedom of expression (*ḥurrīyat al-aqwāl*). His discussion of this is entirely in the context of the pursuit and dissemination of knowledge, and Islamic knowledge in particular. He extollingly points out that the early centuries of Islam manifested rigorous intellectual curiosity, healthy debate and the accommodation of diverse views. This, he asserts, can be attributed to the inspiration of revelation and Prophetic guidance which infused a sincere motive for truth and love for knowledge coupled with a mature understanding and observance of the proper protocols and etiquette of communicative exchange. Scholars of these early centuries were at ease in expressing their opinions and challenging those of others, without much concern that it would lead to vitriolic backlash or animosity. As an illustration of this spirit of intellectual pluralism, Ibn ‘Āshūr narrates a popular story wherein Imām Mālik is said to have rejected the Caliph’s request that his juristic-ḥadīth work *al-Muwatta’* be adopted as the official law of the land,

⁶⁴⁸ Qur’ān, 16:125.

⁶⁴⁹ Ibn ‘Āshūr, *Uṣūl al-niẓām al-ijtimā‘ī fī al-Islām*, ed. Mohamed El-Tahir El-Mesawi (Amman: Dār al-Nafā’is, 2001), 159-178.

with Imām Mālik respecting that other such works were just as valid and perhaps more relevant to members of the community.⁶⁵⁰

Finally, Ibn ‘Āshūr discusses freedom of action (*ḥurrīyat al-a‘māl*) from an Islamic perspective. He divides his treatment of this subject according to how it relates to oneself, and how it relates to others. Central to Ibn ‘Āshūr in addressing freedom of action as it relates to oneself is understanding the boundaries of the Islamic legal valuation of permissibility (*ibāḥa*). He reiterates again that God’s compassion and generosity has rendered the vast majority of matters in the world as permissible to pursue, and no one carries the authority to overturn what God has made permissible. The notion of freedom as such departs from this premise. Ibn ‘Āshūr provides general examples of permissibility, which include:

...the pursuit of any kind of lawful profession, settling in any permitted places, and benefiting from all natural resources such as water and pasture, disposing of one’s property and earnings in any lawful way, choosing any type of food, dress, or accommodation one likes, and fulfilling any lawful desires.⁶⁵¹

Ibn ‘Āshūr qualifies the notion of permissibility further, stating that all that which has been made permissible is outlined in the *Sharī‘ah*, and includes even that which falls into the category of *makrūh* (discouraged but acceptable where necessary and where it does not lead to harm or evil; an example would be divorce).⁶⁵² As for freedom of action as it relates

⁶⁵⁰ Ibn ‘Āshūr, *Maqāṣid*, 161-162. Ibn ‘Āshūr provides the full episode of this story as narrated in al-Ṭabarī, *Dhuyūl tārikh al-Ṭabarī* (volume 11 of his *Tārikh al-rusul wa al-mulūk*, ed. Muḥammad Abū al-Faḍl Ibrahīm (Cairo: Dār al-Ma‘ārif, n. d.), pp.659–660.

⁶⁵¹ Ibn ‘Āshūr, *Maqāṣid*, 162.

⁶⁵² Ibid.

to others, Ibn ‘Āshūr states that the general rule is that the action cannot cause harm nor infringe one one’s rights. Any act that does so is simply a form of injustice that calls for accountability and rectification to the extent that is possible (e.g., legal action, settlement).⁶⁵³

Ibn ‘Āshūr is rather general in his discussion of the notion of freedom, and does not delve into more particular and complex issues concerning the subject. Nonetheless, he arguably provided the first substantive scholarly treatment of freedom from an Islamic perspective. Though relatively modest in its content, it offered important precedent for later Muslim thinkers to build upon. Among those who would do so is the contemporary Muslim academic Mohammad Hashim Kamali.

Kamali, who is one of the foremost proponents of *maqāṣid* philosophy today, and whose writings on *maqāṣid* are recognizably influenced by Ibn ‘Āshūr, pens what is perhaps the most thorough treatment yet of the subject of freedom from an Islamic perspective. In his pioneering work *Freedom of Expression in Islam*, Kamali in fact claims that no such exclusive study exists in either Arabic or English. He tells us moreover that the concept of Freedom of Expression (*ḥurrīyat al-ta‘bīr*) as it is dealt with in modern Western writings on this topic—typically framed within the broader scope of human rights and within the discourse on constitutional law—is not found exclusively treated in the same manner in Islamic primary sources or the classical/pre-modern works of Muslim scholars. His work goes on to provide Islamic tradition a seat at the table in modern discourses on freedom.

⁶⁵³ Ibid., 162-163.

Kamali's attempt to present an exclusively Islamic construct of the concept of freedom that is both authoritatively grounded within the Islamic tradition and reasonable to modern sensibilities is his work's overriding goal, but also its greatest challenge. The challenge of course lies in the fact that tradition does not always meet the consent of modernity and vis-à-vis. And here is where Kamali has taken up the burden of acting as a broker between tradition and modernity; attempting to convince certain provincial Muslim skeptics on the one hand that this concept of freedom does not have to be antithetical nor troublesome to Islam, while on the other hand trying to persuade those of a more liberal or secular bent, Muslim as well as non-Muslim, that the Islamic tradition not only shares similar values on notions of freedom adopted today in human rights laws, but also offers a unique and reasonable perspective that may contribute to justifiably transforming its understanding.

To achieve his aforementioned goals, Kamali sets out to “[reassess] certain issues and to highlight the need for a fresh review of the source materials of the *Sharī‘ah*, whenever this was deemed to be necessary and desirable...” with the intention “to interpret the *Sharī‘ah* in light of contemporary developments, and to seek to relate its directives to modern issues.”⁶⁵⁴ The result is a work which vacillates between presenting existing authoritative views within tradition (from the primary sources and authoritative figures), to offering fresh views—*ijtihād*—from himself or from modern-day Muslim scholars and thinkers. As Professor Sherman Jackson has adequately remarked, the reader finds his work to “[take] on the dual appearance of being both primary and secondary...”⁶⁵⁵ For Jackson,

⁶⁵⁴ Mohammad Hashim Kamali, *Freedom of Expression in Islam*, (Cambridge: Islamic Texts Society, 1994) p. 1.

⁶⁵⁵ Sherman Jackson, *Int. J. Middle East Stud.* 31 (1999): 450-452.

this reflects a larger dilemma confronting modern Muslims, which is the “the crisis of authority.” The fundamental disconnect between tradition and modernity on modern concepts like freedom of expression that ulama have struggled to bridge are thus left to contemporary Muslim thinkers like Kamali to resolve, having to play the dual role of academic and *mujtahid*, all the while drawing the ire of those who either refuse to move beyond certain anachronistic medieval views, or cynics and reductionists who distrust the Islamic authenticity of this kind of renewed thought.

In attempting to produce an “Islamic” definition of the concept of freedom of expression, Kamali deems it appropriate to adopt certain definitions used in Western sources, finding them universal and compatible with Islamic values and principles. He finds Baily’s definition in particular to be suitable, rendering freedom of expression as “the absence of restraints upon the ability of individuals or groups to communicate their ideas to others, subject to the understanding that they do not in turn coerce others into paying attention or that they do not invade other rights essential to the dignity of the individual.”⁶⁵⁶ Kamali as well as several other contemporary Muslim scholars and thinkers such as Muḥammad Salīm al-‘Awwa, Yūsuf al-Qaraḍawī, and Muḥammad ‘Imārah emphasize that an Islamic conception of freedom of expression—like in other religious and legal traditions—is not absolute but rather recognizes certain necessary moral and legal restraints, especially where it infringes on particular Islamic values and principles and the rights of individuals. Kamali further qualifies this perspective by stating that it “imposes one major restriction on free speech and that is when it is evil, obscene, immoral or hurtful

⁶⁵⁶ Kamali, 7. For Baily citation, see Fn. 10.

to others.”⁶⁵⁷ But even these considerations may be neglected, “if doing so would mean that the victims of injustice can make their voices heard.”⁶⁵⁸ But still, there are nuances in which justice may not be deployed as a superseding agent, as when it cannot at times supersede particular rights of individuals, such as privacy and dignity. Kamali judiciously discusses these nuances and introduces the reader to some of the intricacies and ramifications that need be considered in properly conceiving an Islamic conception of freedom of expression.

As the notion of freedom of expression falls under the broader purview of ‘rights,’ many contemporary Muslim thinkers have addressed this topic within the context of rights or *ḥuqūq al-insān*. The Arabic literature on this subject has become quite rich in fact, with several lengthy works having been published in recent years. These works often address the notion of human rights and freedom of expression in Islam within the context of non-Muslim minorities in a Muslim state. For instance, Dundul Jābr devotes a serious study to making the case for an Islamic conception of freedom of expression that is more liberal than other traditions including Judaism and Christianity.⁶⁵⁹ Jābr attempts to construct a traditionally rooted Islamized conception of freedom of expression through association with several traditional concepts found in the primary sources as well as in the writings of medieval Muslim figures. These relate to the *maqāṣidic* concepts of human dignity, the right to life, security, freedom of belief and worship, freedom of thought and opinion, justice and equality, the right to knowledge and the dissemination of knowledge, and the

⁶⁵⁷ Ibid., 9.

⁶⁵⁸ Ibid.

⁶⁵⁹ Dundul Jābr, *Ghair al-muslimah fī al-mujtama‘ al-Islāmī*, (‘Ammān: Dār ‘Ammār lil-Nashr wa-al-Tawzī‘, 2003).

right to assemble and work; all of which require—in some direct or indirect way—freedom of expression for their fulfillment. Though Jābr acknowledges that there should be certain restraints to freedom of expression, especially where it would pose some serious threat to public welfare or when it would conflict with the principle aims (*maqāsid*) of the *Sharī‘ah*, he does not offer any meaningful discussion regarding such restraints.⁶⁶⁰

Kamali finds it useful to offer a discussion on the notion of ‘rights’ in Islam, elucidating its place as well as addressing certain distortions he finds in the writings of some Western commentators, identifying Schacht and Gibb in particular. The most blatant of these distortions is that Islam does not recognize the idea of inherent rights and liberties for individuals, but rather, only sanctions obligations or duties, whether of ritual, legal, or moral import.⁶⁶¹ Kamali goes on to demonstrate that both duties and rights have their origin in the Qur’ān and Sunnah. ‘Imārah argues that there are significant parallels between the notion of “fundamental rights” found in modern constitutional law and *al-maṣāliḥ al-darūriyyah* or essential interests of Islamic law.⁶⁶² While true that generations of Muslim jurists have consistently elaborated on duties and obligations, “they have, in spite of this, never hesitated to speak of the rights of individuals, and of the safety and sanctity of their lives and properties.”⁶⁶³ Moreover, among the functions of the state is to uphold the rights

⁶⁶⁰ Jābr says: “Freedom of speech and expression in Islam is not absolute, but rather, Islam lays down critical restrictive conditions to freedom of speech of which concern the interest of the Islamic society. [As such], the opinion of a single person or a group of people must not [harmfully] affect public order and lead to massive instability in society.” Jaber, 33.

⁶⁶¹ Kamali, *Freedom of Expression in Islam*, 16-24.

⁶⁶² See Muḥammad ‘Imārah *al-Islām wa-ḥuqūq al-insān: ḍarūrāt la ḥuqūq* (Islam and Human Rights: Necessities not Rights).

⁶⁶³ Kamali, 18.

of its citizens through its duty of implementing the *aḥkām* of the *Sharī‘ah*, and the *Sharī‘ah*’s ultimate objective is the interest and benefit of people.⁶⁶⁴

Among the methods that contemporary Muslim scholars and thinkers such as Jābr, Kamali, Qaraḍawī, and al-‘Awwa employ in their attempt to dispel certain myths and to give proper perspective to those who would mock Islam’s record on rights and liberties is to refer to what they present as a less than impressive modern history and record of Western law on rights. For instance, Jābr devotes two substantive sections of part one of his work *Ghayr al-muslimah fī al-mujtama‘ al-Islāmī* to a discussion on *al-ḥurriyyah al-dīniyyah fī al-dīānah al-yahūdiyyah wa ‘ind al-masīḥīn* (freedom of religion in the Judaic and Christian traditions) and *al-masāwah fī al-dīānatayn al-yahūdiyyah wa-l masīḥiyyah* (equality in the Judaic and Christian traditions). And Kamali cites Dicey’s classic study of the constitution as acknowledging “that English law took little notice of such concepts as ‘freedom of speech’ and ‘liberty of the press’.”⁶⁶⁵

Another method that Muslim scholars and thinkers use is to identify positive commonalities found among rights as developed in Western legal systems and those found in the *Sharī‘ah*. Here they point out that both are founded upon principles of morality, with many of these moral principles overlapping (there being a distinction, however, that in the case of the *Sharī‘ah*, it is divine revelation that is the authoritative determinant of these moral principles). Contemporary Western Muslim scholars who are at the forefront of promoting the discourse of shared values between the Islamic tradition and Western

⁶⁶⁴ Ibid.

⁶⁶⁵ Ibid, 19-20. Kamali cites Dicey, A.V., *Introduction to the Study of the Law of the Constitution*, 10th ed., (London: Macmillan, 1964).

democratic and liberal values include Hamza Yusuf, Tariq Ramadan, and Khaled Abou El-Fadl. Yusuf, founder of the first accredited Islamic liberal arts college in the US and whose discourse has primarily been through public speaking engagements, can often be heard dropping curious tidbits on Western audiences such as that of the influence of Islamic political theory and ethics on John Locke. Ramadan and El-Fadl too have been avidly engaged with Western audiences in their campaign to dispel myths and misconceptions about *Sharī'ah* law, while also challenging Western Muslims to critically reexamine their intellectual past and to be courageous enough to break away from it when necessary, and as long as doing so would remain within the overall spirit of core Islamic teachings.

The bulk of Kamali's work on freedom is devoted to demonstrating a rational Islamic conception of freedom of expression that both authoritatively affirms a variety of facets pertaining to this freedom, while rationally justifying necessary moral and legal restraints. He demonstrates the former in Part Two of his work, while the latter he treats in Parts Three and Four. In Part Two, Kamali identifies and expounds upon key Islamic principles from Islamic primary sources and the normative teachings of Islam which he goes on to argue affirm the notion of freedom of expression. These include *ḥisbah* (commanding good and forbidding evil), *naṣīḥah* (sincere advice), *shūrā* (consultation), and *ijtihād* (independent juristic reasoning). Kamali further deconstructs the notion of freedom of expression into a larger scope of freedoms which the *Sharī'ah* upholds, and these include freedom to criticize (*ḥurrīyat al-mu'āraḍah*), freedom to express an opinion (*ḥurrīyat al-ra'y*), freedom of association (which he provides no Arabic equivalent), and freedom of religion (*al-ḥurriyyah al-dīniyyah*). Of the principles that Kamali identifies, the

one that is perhaps most often used by contemporary Muslim scholars in affirming freedom of expression in Islam is *ḥisbah*.

The principle of *ḥisbah*, or otherwise, *al-‘amr bi’l-ma‘rūf wa’l-nahy ‘an al-munkar* (commanding good and forbidding evil), is a fundamental Islamic principle at the heart of the Qur’ānic and Sunnaic ethical teachings. Though somewhat of a broad concept, contemporary Muslim scholars and thinkers commonly refer to this principle in affirming the notion of freedom of expression in Islam. In short, their argument is that the divinely commanded dutiful act of commanding good and forbidding evil can only occur—logically—if one has the freedom to express oneself, i.e., to speak or act *for* what is good, and to speak or act *against* what is evil. They argue, furthermore, that the obligatory command for *ḥisbah* applies to the private, social, and political realm. And though it is best for all to observe it, the duty of fulfilling it is a *fard kifāyah* such that it fulfills divine accountability if at least some portion of the community is observing it. Muṣṭafā al-Sibā‘ī asserts that *ḥisbah* “confers upon those who are capable to form an opinion, the liberty to express that opinion or even to criticize others on an issue of social concern.”⁶⁶⁶ The application of *ḥisbah* should serve a noble and worthy purpose, and that purpose or overriding objective is to nourish well-being in society. Thus, according to al-Sibā‘ī, “if anyone witnesses an evil action which violates the *Sharī‘ah*, or the standards of decent conduct and approved custom, it is up to that individual to prevent or denounce it to the

⁶⁶⁶ Al-Sibā‘ī, *Ishṭirākīyyat al-Islām*, 52 (as cited in Kamali, *Freedom of Expression in Islam*, 30). Kamali further cites authoritative medieval figures like Ibn Qayyim al-Jawziyyah as saying: “*ḥisbah* constitutes the basic objective of all governmental authority (*jami‘ al-wilayāt*) in Islam. He also notes that the Universal Islamic Declaration of Human Rights “refers to *ḥisbah* as simultaneously constituting ‘the right and duty of every person’ to speak for and defend the rights of others and those of the community when these are threatened or violated” (Kamali, *Freedom of Expression*, 27).

extent of his or her capability.”⁶⁶⁷ But good and evil may seem to be relative or overly general notions. These notions have long been defined by medieval Muslim jurists as pertaining to the five essential *maqāṣid* of life, faith, intellect, property, and lineage.

But how viable and practicable can the implementation of *ḥisbah* be in contemporary Muslim societies, many of which only symbolically recognize *Sharī‘ah* in their constitutions? Perhaps the process may be more tenable in the up and coming Muslim democracies, but such notions as *ḥisbah* likely do not stand a realistic chance in the current autocracies or monarchies of today. Furthermore, to what extent could the diversity of thought within the Islamic tradition be accommodated; for while there may be a substantial amount of broad consensus on many issues involving *ḥisbah*, there will certainly be controversial or grey areas that will need to be ironed out. And what would *ḥisbah* mean to the existing non-Muslim minorities of these societies? True, there is much commonality in the moral and ethical teachings of the Abrahamic traditions, but how much accommodating will there be for the differences, not to mention the differences with minorities of non-Abrahamic traditions. These are perhaps just a few of the challenges that need be tackled in trying to implement or institutionalize long neglected Islamic principles.

For many contemporary Muslim scholars and thinkers, the task of implementing the moral and religious teachings of Islam into positive law is not that far-fetched. Kamali, for one, has been a strong advocate for enforcing some of the moral and religious teachings of Islam into the positive law of Muslim countries, and believes that these teachings could support the basis for legal reforms on issues such as freedom of expression. He further

⁶⁶⁷ Al-Sibā‘ī, *Ishṭirākīyyat al-Islām*, 52 (as cited in Kamali, *Freedom of Expression in Islam*, 30).

asserts that “a substantial part of the *Sharī‘ah*, especially those of its teachings which fall within the categories of recommendable, permissible and reprehensible (*mandūb, mubāh, makrūh*), consists of moral guidance which may be turned into legal provisions if this would benefit the people.”⁶⁶⁸ Kamali thus urges students of Islamic law to rigorously work at confronting and addressing issues in modernity like freedom of speech whose resolution has not been adequately met by Islamic thought of the past; this for the purpose of presenting Muslim polities and societies with viable laws and policies adequate for the present conditions while genuinely authentic to the Islamic tradition. Kamali’s views are certainly bold, but the potential of his call will only go as far as perhaps two of the more pressing needs of the time for Muslim societies, viable Islamic educational institutions whose curriculum and training puts issues of modernity at the forefront, and the best minds and talents to be trained in these institutions and to then be able to persuasively convey enlightened values found within Islamic tradition.

Just as Ibn ‘Āshūr had been able to move beyond his premodern predecessor’s construction of the classical *maqāṣid* by expanding them and by developing new *maqāṣid* responsive to his time, contemporary *maqāṣid* thinkers like Kamali have attempted to redefine the *maqāṣid* for their own time. Taking their cue from Ibn ‘Āshūr, these thinkers have critically engaged with *maqāṣid* philosophy and resorted to it in further developing Islamic responses to various hot-button issues (political, social, economic, environmental, etc.). Perhaps the most difficult challenge for these thinkers is not so dissimilar to that faced by al-Shāṭibī and Ibn ‘Āshūr. It is to produce responses that are both authentically

⁶⁶⁸ Kamali, 27.

Islamic⁶⁶⁹—rooted in the primary sources—and rationally persuasive to existing popular sensibilities on such issues. The challenge is all the more difficult when you have opposing Muslim voices who will be dissatisfied with what they will deem to be either insufficiently progressive and still overly conservative responses, or what they will deem to be excessively liberal responses that can no longer be tenably identifiable as authentically Islamic.

Responses to the modern concepts discussed above, such as in Kamali’s articulation of Islamic affirmations and restraints to freedom, as well as in Professor Jackson’s nuanced articulation of equality and his creative and more abstract rendering of *ḥifẓ al-‘aql*, are attempts to strike that balance between being authentically Islamic and rationally appealing to modern sensibilities. These of course don’t have to be mutually exclusive. But there will be instances, such as in Kamali’s restraints to certain aspects of freedom, when what’s popularly accepted (e.g., the boundaries of censorship concerning communication and visual media) may not conform to what is Islamically acceptable. When such is the case, and where persuasion fails, those who have failed to persuade need to learn to live with what the Prophet Muḥammad articulated to be the minimum alternative when principled change fails, that being internally holding on to—in the spiritual heart—one’s values and principles.

⁶⁶⁹ In regards to what it means to be ‘authentically Islamic’, we refer to Professor Jackson’s explanation. He states: “What renders a view Islamic--at least in terms that the Muslim community can recognize and validate as such--is the fact that it can trace a genetic relationship back to the sources of Islam, a relationship that is most easily recognized when mediated through the tradition of Muslim exegetical and jurisprudential discourse. This does not mean that the only views that can make the claim to be Islamic are those that are consistent with the established teachings of the four Sunni or one Shiite schools of thought. What it does mean is that the burden of proving that one is not prostituting religion to whim and self-interest is most effectively met by speaking through tradition.” Jackson, *Islam and Affirmative Action*, 406.

Former Harvard University president Derek Bok, in his critical work *Higher Education in America* (2013), assesses that one of the shortcomings of higher education, including in professional schools of law, medicine, and business, is that they fail to meet greater ethical purposes and responsibilities. When fields as these lack ethical purpose, the consequences can be detrimental for society. For Muslims, also neglecting to approach such fields through the lens of *maqāṣid*, otherwise an ethical and purpose oriented approach, will only make it more difficult for them to meet the ongoing challenges and changes in society. Thus, for *maqāṣid* philosophy to be meaningfully effective in addressing issues of the day for Muslims, it must not only be linked to religious disciplines such as *uṣūl al-fiqh*, but it must also help guide non-religious disciplines and specializations. Were this to happen, *maqāṣid* philosophy would serve as a powerful tool for Muslims to both preserve the immutable core of their tradition while being adaptive and transformative where need be.

CONCLUSION

This dissertation engaged in a conversation on *maqāṣid* philosophy that intersected premodern and modern Islamic intellectual history. It set out to examine *inter alia* three broad areas of inquiry that would help us better understand the evolution of *maqāṣid* thought, and namely its development between al-Shāṭibī and Ibn ‘Āshūr. These inquiries concerned: (1) the marginalization and virtual absence of al-Shāṭibī’s *maqāṣid* theory for some five centuries; (2) the reemergence of al-Shāṭibī’s *maqāṣid* philosophy in the modern era; and lastly, the most central issue of this work, (3) the orientation that *maqāṣid* philosophy takes in the modern era, focusing in particular on a comparative analysis between aspects of al-Shāṭibī’s theory and the theories developed by modern *maqāṣid* thinkers, with special attention given to the *maqāṣid* thought of the prominent Tunisian scholar Muḥammad Ibn ‘Āshūr.

Before offering here the conclusions we drew from these inquiries (provided further below), we should begin first by summarizing other findings we acquired along the way; findings which, though not directly concerned with the central issues and questions posed in this dissertation, are nonetheless important to understanding the broader subject of *maqāṣid al-Sharī‘ah*. In Part One, Chapter One, concerning the early origins of the concept of *maqāṣid*, we learned that though the designation “*maqāṣid al-Sharī‘ah*” was not yet in circulation during the early Islamic period, essential features of *maqāṣid* philosophy—such as determining particular and overarching objectives and wisdoms behind the moral-legal content of the Qur’ān and Sunnah, and applying these objectives

and wisdoms to issues—can be identified in the early Islamic period. Moreover, we found that contemporary writers on *maqāṣid* have neglected to elucidate the roots or at least the idea of *maqāṣid* in the Qur’ān and Sunnah. We thus went on to demonstrate both the linguistic and practical manifestation of the concept of *maqāṣid* in the primary sources. We then discussed opposition to *maqāṣid* philosophy in Chapter Two, wherein we identified at least two main reasons behind it. The first reason was due to the element of speculation involved in ascertaining the *maqāṣid*, especially those attained through processes of induction. As for the second reason, the idea that Muslims need an extra-textual method to arrive at knowledge of the wisdoms and aims of the content contained within the primary sources is perceived by critics of *maqāṣid* as an abandonment of the notion of *sami ‘nā wa ‘aṭa ‘nā*. In other words, these critics hold that one should obey the injunctions in the primary sources without reflecting on the wisdom or purpose behind them. Proponents of *maqāṣid*, however, maintained that these two positions were not mutually exclusive.

We also established in Chapter Two at least two main aspects of our presentation of al-Shāṭibī’s thought that somewhat departed from Masud’s thesis. The first of these concerned the epistemological foundations of al-Shāṭibī’s *maqāṣid* and *maṣlaḥah* theory. Whereas Masud offered a more narrow narrative explaining the genesis of al-Shāṭibī’s reason-based approach, arguing that it largely arose out of his environment, we emphasized that it was not only his environment that gave birth to this philosophy, but rather that it was just as much an inherited philosophy arrived at through a genealogy that extended back to the early Islamic period via the Mālikī school, whereby al-Shāṭibī had then developed and advanced it. As for the second aspect of departure, it mainly concerned the contextualization of al-Shāṭibī’s *maqāṣid* theory. Whereas Masud’s thesis is primarily

framed within the context of al-Shāṭibī as an agent for the adaptability of Islamic law, our analysis emphasized al-Shāṭibī as an equal proponent of preserving tradition while accommodating adaption where necessary. More concretely, we demonstrated how al-Shāṭibī was a preservationist of what he deemed to be the core of Islam, this being its creedal tenets, its body of ritual, and its universal principles; while we also highlighted al-Shāṭibī as a selective revisionist when it came to the positive law of the scholars—laws which he held to have been relevant for a certain context (people, time, and place), and thus unfixed and capable of being modified or discarded.

Elsewhere in Chapter Two, we disputed the veracity of Masud’s argument that fourteenth-century Sufism and rationalism—especially al-Rāzī’s rationalism—played a significant role in informing Mālikī *uṣūl al-fiqh* and contributed to the rise of al-Shāṭibī’s *maqāṣid* thought. We found his argument to be at the very least flawed in light of al-Raysūnī’s study on the development of both Mālikī *uṣūl al-fiqh* and al-Shāṭibī’s *maqāṣid* philosophy, as well as our demonstration of *maqāṣid* tendencies in the primary scriptural sources. Thus, we contended that Mālikī *uṣūl* and al-Shāṭibī’s *maqāṣid* philosophy already had the foundational mechanisms from within to inform what it ended up producing in fourteenth-century Granada. Masud therefore overstates the influence that fourteenth century Sufism and al-Rāzī’s rationalism had on Mālikī *uṣūl al-fiqh* and al-Shāṭibī’s *maqāṣid* philosophy. It would be more fair to say that al-Shāṭibī’s *maqāṣid* philosophy was a reaction to these emerging trends; not necessarily drawing from them, but rather serving as a ‘checks and balances’ in preventing them (i.e., certain Sufī and rationalistic approaches and ideas) from misappropriating tradition.

We further noted in Chapter Two that the main factor which did give rise to al-Shāṭibī's *maqāṣid* philosophy was the diverging legal positions among and within the Islamic legal schools, both in Granada and historically in Islamic legal tradition. The underlying mission of al-Shāṭibī's *maqāṣid* philosophy, however, was not only to redress the perceived dysfunctional state of Islamic law at his time and the divisions within it. He was ultimately motivated by a devotional and ethical impulse that sought, through the elucidation of the objectives of the *Sharī'ah*, to instill within Muslims a deeper sense of appreciation for the *Sharī'ah*, and, moreover, to inspire within them self-motivation to adhere to and navigate through its teachings.

Chapter Two also captured the innovative contributions that al-Shāṭibī made with his *maqāṣid* theory. His *maqāṣid* philosophy would have its most significant and far-reaching impact in the area of *ijtihād*. Al-Shāṭibī revolutionized the epistemological underpinnings of *ijtihād*. He bound the process of *ijtihād* to thinking about *maqāṣid* and *maṣlaḥah*; a shift from the status quo that had generally occupied the *ijtihādī* scene prior to and up to his time—invariably constrained by legal formalism and a lack of purposefulness. Al-Shāṭibī therefore attempted to redefine the qualifications of a *mujtahid*, and proposed that the first and foremost qualification should be to understand the *maqāṣid* along with their application within a given context. By reassessing the longstanding qualifications of the *mujtahid*, shortening the list of requirements and putting at the fore one fundamentally important requisite of knowing the *maqāṣid* and their application, he had in effect opened wide the gate of *ijtihād*, streamlining the process of becoming a *mujtahid* and of producing *ijtihād*.

Al-Shāṭibī also spoke to what we could describe as ‘differentiated *ijtihād*’, wherein each individual is recognized as possessing their own unique and distinct circumstances, and wherein the *mujtahid* takes on a holistic approach to address their particular situation, avoiding a ‘one size fits all’ approach. This type of *ijtihād* included *inter alia* consideration of *maqāṣid* as well as such matters as an individual’s environmental, emotional, psychological, social, and spiritual state. Al-Shāṭibī had thus pioneered the central role of *maqāṣid* in the realm of *ijtihād*, and had altered the course of Islamic law for future generations. His *maqāṣid* philosophy was undoubtedly a pioneering and transformative achievement that inevitably reoriented Islamic thought and shaped the way future generations of Muslim scholars and thinkers engaged with the duality of Islamic primary sources and lived reality.

In turning to our first inquiry, regarding the marginalization and virtual absence of al-Shāṭibī’s *maqāṣid* theory for some five centuries, we affirmed in Chapter Three that theoretical *maqāṣid* and al-Shāṭibī’s *maqāṣid* philosophy in particular was by every indication inactive and dormant for some five centuries. Among the more compelling clues supporting this is the vacuum in commentaries on *al-Muwāfaqāt* during this period. Moreover, we are hard-pressed to identify either the text or its teaching in the curriculums of two of the most preeminent and storied Islamic educational institutions of that time, al-Azhar and Zaytūnah, the latter of which was heavily Mālikī and virtually in al-Shāṭibī’s ‘backyard.’

We then attempted to offer reasons for the marginalization and virtual absence of al-Shāṭibī’s *maqāṣid* theory for some five centuries. One reason we suggested was that because there was already a well-established discipline in *uṣūl al-fiqh*, the ulema—

especially conservative ulema—were cautious not to tamper with it; al-Shāṭibī’s *maqāṣid* theory was thought to be doing just that. In other words, because there was already in place a methodological system in *uṣūl al-fiqh* which had secured its trust within the legal community, having firmly gained authoritative recognition as an authenticating approach to deriving and engaging with the law, the ulema were simply dissuaded from embracing an untried and what may have been perceived to be a competing alternative. There is strong plausibility for this reason given the general *taqlīdī* medieval Muslim legal culture post-formation and consolidation of the legal schools. Another possible reason for why al-Shāṭibī’s *maqāṣid* theory was all but forgotten for some five centuries concerns the complex and highly advanced style of his writing on the subject. This, along with ambiguities in the language, structure and organization of *al-Muwāfaqāt*, simply made it difficult to access or navigate through. It would be because of such perceived deficiencies in al-Shāṭibī’s writing that Ibn ‘Āshūr felt compelled to resubmit a work on the subject. Still, another possible reason for the marginalization of al-Shāṭibī’s *maqāṣid* theory regards its controversial content. More than just that the material was new or that it was difficult to grasp, *al-Muwāfaqāt* was thought to be so highly and deleteriously innovative—a *bid‘a*—that it simply had to be avoided. This is attested to by the criticism al-Shāṭibī’s *maqāṣid* thought received from many of his contemporaries including his own *shuyukh*, virtually isolating him in his treatment of *maqāṣid*. It is therefore plausible that the lack of reception for al-Shāṭibī’s *maqāṣid* theory during his lifetime as a result of its controversial content, along with the other two aforementioned reasons (ulema averseness to tampering with established *uṣūl al-fiqh*, and the complexity of his work) had carried over posthumously,

leading to its marginalization for some five centuries. Any or all of the aforementioned reasons may be true.

Related also to our first inquiry is the matter of whether *maqāṣid* thought in practice was active before and/or during the five century neglect of al-Shāṭibī's *maqāṣid* theory. The importance of this matter is *inter alia* to determine whether the absence or marginalization of al-Shāṭibī's *maqāṣid* work meant that *maqāṣid* philosophy in general and in practice was also absent or marginalized. What we found was that central features of al-Shāṭibī's *maqāṣid* theory can be identified in practical application at least in the writings of Ibn al-Jawzī and Muḥammad Mawlūd, the former before al-Shāṭibī and the later after al-Shāṭibī but before the reemergence of al-Shāṭibī's *al-Muwāfaqāt*. Though not conclusive, this opens the door to suggest that *maqāṣid* philosophy in practice may have been prevalent before al-Shāṭibī, as well as after him, despite the marginalization of his theory for some five centuries.

With respect to our second inquiry, which took up Chapters Five, Six, and Seven, we attempted to trace and explain the reemergence of al-Shāṭibī's *maqāṣid* philosophy within the modern era. We established at least one important genealogical strain of influential and transformative thinkers who played a crucial role in the reemergence of al-Shāṭibī's thought. They included Khayr al-Dīn al-Tūnisī, Rifā'ah Rāfi Ṭaḥṭāwī, Muḥammad 'Abduh, and Muḥammad Darrāz. While these reformist thinkers had importantly paved the way for the introduction of al-Shāṭibī's *maqāṣid* philosophy to the modern world, they did not engage in shaping and informing the intellectual discourse pertaining to *maqāṣid* theory; their roles were mainly confined to that of endorsing, promulgating and disseminating it through their own *iṣlāḥī* initiatives. It would not be till

the prominent Tunisian Shaykh Muḥammad Ibn ‘Āshūr that anyone would critically engage with al-Shāṭibī’s thought and substantially inform the *maqāṣid* discipline.

Chapters Five through Seven also attempted to provide the socio-political, economic and religious context within which the *maqāṣid* thought of later thinkers such as Ibn ‘Āshūr would emerge. Ibn ‘Āshūr’s late nineteenth and early twentieth century Tunisia was an unstable period of modern Tunisian history, a period marked by colonialism and modernization. Tunisian society was experiencing considerable social changes and the restructuring of its political, economic, and educational institutions. We determined that Ibn ‘Āshūr’s Tunisia paralleled in many ways al-Shāṭibī’s fourteenth-century Granada, which was a period that had similarly undergone unprecedented developments within all facets of its society. Ibn ‘Āshūr would follow in al-Shāṭibī’s footsteps in turning to Islamic legal theory to confront changes in his society and to secure a meaningful voice for Islamic tradition in the face of ongoing developments.

Finally, our third and most central inquiry, which took up Part Three of this work, concerned the orientation that *maqāṣid* philosophy takes in the modern era. Much of Part Three focused in particular on a comparative analysis between aspects of al-Shāṭibī’s theory and the theories developed by modern *maqāṣid* thinkers, giving special attention to the *maqāṣid* thought of the prominent Tunisian scholar Muḥammad Ibn ‘Āshūr. We learned in Chapter Nine that the motives behind al-Shāṭibī’s and Ibn ‘Āshūr’s works paralleled significantly. They both included the jurists as their primary audience. They both cited the differences among the jurists and the limitations within *uṣūl al-fiqh* as the primary reason behind the need for their work. And they both had as the ultimate goal for their work the benefit of the masses; protecting them from any rancor that would result from diverging

juristic opinions, while offering them solutions to problems and issues rising as a result of new developments in their time. These parallel motives suggest several things. They suggest that differences among the scholars was the status quo, having not gone away for some five centuries between al-Shāṭibī's and Ibn 'Āshūr's time. They suggest that *uṣūl al-fiqh* remained largely the same, and hence, that it did not incorporate al-Shāṭibī's *maqāṣid* theory. That al-Shāṭibī's *maqāṣid* theory did not gain traction within *uṣūl al-fiqh* further supports the thesis that al-Shāṭibī's theory was marginalized for some five centuries. The five century marginalization of al-Shāṭibī's theory is also supported by the fact that Ibn 'Āshūr does not engage or reference any other *maqāṣid* work after al-Shāṭibī's time. That Ibn 'Āshūr felt the urgency to critically reengage and revise al-Shāṭibī's *maqāṣid* work because of what he deemed to be certain deficiencies in al-Shāṭibī's writing on the subject, including “longwinded and confused analysis,” and the “[omission] of crucial aspects of the *Sharī'ah*'s higher objectives,” suggests that these factors may have at the very least contributed to the marginalization of al-Shāṭibī's work.

We also learned from Chapter Nine that Ibn 'Āshūr expanded on the audience that al-Shāṭibī had for his *maqāṣid* work. Ibn 'Āshūr's intended audience included practicing jurists and aspiring jurists, as well as students of Islam in general, a distinction that al-Shāṭibī did not make, having only mentioned jurists in general. Ibn 'Āshūr made a point to address aspiring jurists and students of Islam in general because he recognized that to change the existing legal culture and status quo, and for *maqāṣid* thinking to really take effect, education and training must begin with this next generation of Muslim leadership. His hope was that this next generation would find his work to be “a guide and frame of

reference when faced with differences of opinion and change in time.”⁶⁷⁰ This, coupled with the fact that Ibn ‘Āshūr affirmed for the first time that the subject of *maqāṣid al-Sharī‘ah* is a self-standing discipline and that the study of the science of *maqāṣid al-Sharī‘ah* is a communal obligation (a *fard kifāyah* for scholars to know, but also for the masses to be encouraged to be familiar with), tells us that Ibn ‘Āshūr was actively and practically trying to change Muslim legal culture with his *maqāṣid* philosophy.

We learned in Chapter Ten that among the changes to *maqāṣid* philosophy which Ibn ‘Āshūr brought was a more structured and systematic methodology to deriving or ascertaining *maqāṣid*—including clarifying and omitting certain features of al-Shāṭibī’s methodology—compared with al-Shāṭibī’s scattered and haphazard way in arriving at the *maqāṣid*. And among the new features which Ibn ‘Āshūr introduced to the subject of deriving *maqāṣid* was a methodology to assess and derive *maqāṣid* from the Sunnah. In this regard, Ibn ‘Āshūr introduced several different contextual categories, twelve in all, that *aḥādīth* could be attached to. These included three which he picked up from al-Qarāfī (that of judge (*qāḍī*), deliverer of legal edicts (*muftī*), and head of state (*imāmah*)), and an additional nine different categories which he deemed to reflect statements or actions of the Prophet, including: legislation (*tashrī‘*), guidance (*hady*), conciliation (*ṣulḥ*), advice to those seeking his opinion (*ishārah*), counselling (*naṣīḥah*), spiritual uplifting of people (*takmīl al-nufūs*), teaching high and lofty truths (*ta‘līm al-ḥaqā‘iq al-‘āliyah*), disciplining (*ta’dīb*) and non-instructive ordinary statements (*tajarrud ‘an al-irshād*).⁶⁷¹

In Chapter Eleven, we identified certain difference between al-Shāṭibī’s and Ibn ‘Āshūr’s approach to the very important *maqāṣid* related concept of *maṣlahah*. Though

⁶⁷⁰ Ibn ‘Āshūr, *Maqāṣid*, xvi.

⁶⁷¹ *Ibid*, 34. For his discussion of these, see pp. 34-51.

there were some similarities between their understandings of *maṣlaḥah*, Ibn ‘Āshūr deemed al-Shāṭibī’s overall definition to be flawed (without him explaining exactly what he found wrong with al-Shāṭibī’s definition). In comparing their understandings of *maṣlaḥah*, we observed at least one apparent difference. Al-Shāṭibī provided a singular connotation of *maṣlaḥah*, defining it as *naf’* (benefit), whereas Ibn ‘Āshūr arrived at two shared yet distinct meanings, that of benefit combined with the notions of righteousness and goodness found in the related verbal-noun *ṣalāḥ*. We surmised that though this particular difference between their two definitions appears purely semantical and trivial, noting this distinction, namely highlighting the notion of righteousness and goodness, was especially important to preserving the moral-ethical dimension attached to *maṣlaḥah*; lest it be misconstrued that what is of benefit for the individual and the public, and what human beings find acceptable and important to their lives—what al-Shāṭibī was outwardly conveying in his definition of *maṣlaḥah*—is solely grounded in human arbitrary reasoning that is devoid of any moral-ethical consideration and that ignores revelation.

In addition to his taking issue with al-Shāṭibī’s definition of *maṣlaḥah*, Ibn ‘Āshūr is expressly critical of al-Shāṭibī for not establishing “a clear and decisive” criteria for the determination of what actually constitutes a *maṣlaḥah* or *maḥsadah*, which Ibn ‘Āshūr would go on to provide. We found that the most significant contrast between Ibn ‘Āshūr’s and al-Shāṭibī’s approach to the notion of *maṣlaḥah* is in the way they express the degree of utility assigned to reason in navigating through, identifying, and weighing *maṣlaḥah* and *maḥsadah* such that it leads to some course of action or ruling. We observed that whereas Ibn ‘Āshūr assigns a great role for reason in engaging with *maṣlaḥah* and *maḥsadah*, al-Shāṭibī appears much more restrictive. Al-Shāṭibī’s position on the role of reason in

identifying *maṣlahah* and *mafsadah* is difficult to pinpoint due to what appears to be conflicting remarks in *al-Muwāfaqāt*. We suggested that al-Shāṭibī not establishing a clear and definitive criteria for determining how to arrive at a *maṣlahah* or a *mafsadah* may be attributed to the challenges which Ibn ‘Āshūr himself alludes to concerning those matters where clear benefit and harm are not so obvious or where there is an even mixture of both benefit and harm.

In Chapter Twelve, “Negotiating between Competing *Maqāṣid*,” we found that the apparent premodern divide on this issue of prioritizing the *maqāṣid* led some contemporary Muslim scholars to offer more nuanced considerations that would try to reduce the ambiguities in deciding between the *maqāṣid* in those instances which made it necessary to choose between them. We learned that Ibn ‘Āshūr developed a certain distinction for the *maqāṣid* that would make it easier to both navigate within a particular *maqāṣid* as well as between multiple *maqāṣid*. More specifically, he held that there should be a distinction between the *maqāṣid* as it relates to the individual and the *maqāṣid* as it relates to the community or Ummah.⁶⁷² For example, and concerning the *maqāṣid* of religion, Ibn ‘Āshūr maintained that where it pertains to the individual, the preservation of religion concerns personal piety, whereas where it pertains to the community, the preservation of religion concerns the prevention of anything which might undermine the definitive principles of the religion. Ibn ‘Āshūr, in addition, expanded the number of *maqāṣid* beyond the longstanding five or six that had been common with premodern scholars. However, and as already mentioned, he did not set a definitive ordering of the *maqāṣid*. We further suggested in Chapter Twelve that the fact that premodern thinkers never reached a consensus on the

⁶⁷² Ibn ‘Āshūr, *Maqāṣid al-Sharī‘ah*, 80-81, 139.

order of prioritization for the *maqāṣid*, and that they never definitively limited them to the commonly accepted five or six, gave momentum for contemporary thinkers to critically reengage with and contribute to the *maqāṣid* discipline. Premodern *maqāṣid* thinkers had left the door open—consciously or not—for future thought on the interpretation, expansion and application of *maqāṣid* philosophy.

Chapters Thirteen and Fourteen were especially critical in capturing certain shifts in *maqāṣid* thought. Through a process that included reapproaching the primary sources with a holistic and inductive reading, Ibn ‘Āshūr as well as other contemporary *maqāṣid* thinkers expanded the scope of the classical *maqāṣid* and introduced new *maqāṣid*. The result was not only a revival of *maqāṣid* philosophy, but a reshaping of it that was conversant with modern-day issues and concepts while remaining rooted in the sources of Islam. We demonstrated, for instance, how Ibn ‘Āshūr led the way in revamping *ḥifẓ al-dīn* from a primarily Islam-centric *maqāṣid* to that which conveyed respect and security for all religious traditions. Contemporary *maqāṣid* thinkers like Attia followed in Ibn ‘Āshūr’s reconstruction of *ḥifẓ al-dīn* and presented an undoubtedly universal and inclusive articulation of it that matched what was deemed to be a parallel expression being used in human rights discourses, that of “freedom of religion.” Thus, the *maqāṣid* of *ḥifẓ al-dīn* was submitted in terms that were friendlier to modern humanistic sensibilities, otherwise as an Islamic notion of freedom of religion. It was done so, moreover, not merely to placate Western detractors or Muslim reformists and progressives, but rather, and importantly, because it held true to strong evidential support from within the authoritative texts and voices of early, classical and medieval Islam.

In similar fashion to his treatment of *ḥifẓ al-dīn*, Ibn ‘Āshūr went beyond his premodern predecessors to widen the scope of *ḥifẓ al-‘ird*, emphasizing its applicability to all of humanity, regardless of race, ethnicity or religion. Contemporary Muslim scholars further adapted it and framed it within the nomenclature of modern-day discourses on human rights. Thus, *ḥifẓ al-‘ird* was rendered into the “preservation of human dignity” or the “protection of human rights,” the latter also reflecting a grouping of all six essential classical *maqāṣid*.

With respect to *ḥifẓ al-nafs*, Ibn ‘Āshūr and contemporary *maqāṣid* thinkers found its premodern rendering to fall short of adequately speaking to a host of humanitarian issues. Ibn ‘Āshūr believed that treating the root causes of issues affecting the well-being of humanity was imperative to fulfilling any Islamic notion of *ḥifẓ al-nafs*, and he called on Muslims to be global citizens serving humanity. Contemporary *maqāṣid* thinkers like Attia further expounded on concrete ways in the political, social, economic, religious, and environmental spheres wherein Muslims could work towards *maṣlaḥah* and avert *mafsadah*, and thereby fulfill *ḥifẓ al-nafs*. Many of these thinkers hold that the *maqṣid* of *ḥifẓ al-nafs* provides a basis for and makes obligatory the institutionalization of policies and measures to address a number of pressing modern-day issues including crime, assault, murder, extremism, terrorism, suicide, poverty, hunger, environmental hazards, healthcare, and infrastructure. For Ibn ‘Āshūr and contemporary *maqāṣid* thinkers, *ḥifẓ al-nafs* is not only about saving a physical life, but it is also about ensuring that the necessities and needs of life are met for people, and that undue hardship is removed. We additionally showed how the notion of *ḥifẓ al-nafs* and *maqāṣid* philosophy in general have been instrumental

in guiding and shaping the work of a number of Muslims organizations especially in the West.

We also learned in Chapter Thirteen that Ibn ‘Āshūr, like Professor Jackson, had gone beyond the premodern construct of *ḥifẓ al-‘aql* to develop it in terms of more abstract matters. We found that whereas Professor Jackson retained the classical term *ḥifẓ al-‘aql* for his modified contemporary construct of it, Ibn ‘Āshūr had spun off his modification of it under “freedom,” a term and concept relevant to contemporary discourse. Thus, in addition to a more dynamic, enlightened, and universalistic transformation of the classical *maqāṣid*, Ibn ‘Āshūr had initiated the development of new *maqāṣid*.

Such new *maqāṣid*, namely “equality” and “freedom,” were discussed in Chapter Fourteen. We noted that these new *maqāṣid* illustrated Ibn ‘Āshūr’s attempt to fuse *maqāṣid* thought with popular modern and Western concepts. Concepts such as ‘freedom,’ ‘rights,’ and ‘equality’ would become common themes in not only his writings and discourses, but also in those of contemporary *maqāṣid* thinkers. Ibn ‘Āshūr and contemporary *maqāṣid* thinkers would demonstrate substantial areas of overlap between these concepts and normative Islamic values and principles.

In his treatment of the *maqṣid* of equality (*musāwāh*), Ibn ‘Āshūr provided significant attention to complex nuances and contexts that factor in to inform its understanding from an Islamic perspective. We also found strong parallels between Ibn ‘Āshūr’s thought on equality and Professor Jackson’s presentation of equality in the context of his argument supporting affirmative action from an Islamic perspective. Both Ibn ‘Āshūr and Professor Jackson were able to produce a uniquely Islamic construction of

equality which was transformative rather than simply adaptive; challenging its modern liberal interpretation to be reconsidered.

Ibn ‘Āshūr would arguably be the first to articulate the principle of freedom (*hurriyyah*) as both a formal categorical concept and a *maqṣid* of the *Sharī‘ah*. The process of arriving at his conception of freedom included vindicating Islam from the practice of slavery. Through an inductive reading of numerous expressions in the primary sources, Ibn ‘Āshūr concluded that the *Sharī‘ah* aimed to purge the institution of slavery. Having covered the *Sharī‘ah*’s objective to attain freedom from physical bondage, Ibn ‘Āshūr went on to address a second type of freedom which he held the *Sharī‘ah* aimed to achieve; a more metaphorical or abstract notion of freedom that concerned people’s beliefs, opinions, speech, and actions, and that included freedom from such things as mental or psychological bondage. Though far from being an exhaustive treatment of the subject of freedom, Ibn ‘Āshūr’s construction of an Islamic notion of freedom within the purview of Islamic values and principles offered contemporary *maqāṣid* thinkers like Mohammad Hashim Kamali important precedent to build upon.

The medieval world in which al-Shāṭibī had operated in was perhaps not ready for his *maqāṣid* philosophy. This philosophy would have to wait some five centuries before it could truly make an impact and affect real change in Islamic thought. The main person to bring this about was Ibn ‘Āshūr. Ibn ‘Āshūr had not only resuscitated al-Shāṭibī’s *maqāṣid* theory, but with it his legacy. Though Ibn ‘Āshūr’s own work on *maqāṣid* was unquestionably indebted to al-Shāṭibī, he would also leave his mark on the *maqāṣid* discipline. Critically engaging with and not merely replicating al-Shāṭibī’s work, and

through the purview of the modern world, Ibn ‘Āshūr revamped the *maqāṣid* discipline in ways that he believed to better respond to his time. His work challenges the notion that modern Muslim thinkers were not able “to move beyond the pre-modern jurists’ abstractions of the *maqāṣid al-Sharī‘ah* to practical concretions that are responsive to the realities of the modern world.”⁶⁷³ In his efforts to introduce his *maqāṣid* work to the next generation of scholars; in his affirmation for the first time that the subject of *maqāṣid al-Sharī‘ah* is a self-standing discipline and that the study of the science of *maqāṣid al-Sharī‘ah* is a communal obligation (a *fard kifāyah*); in his encouragement of the masses to also be familiar with the *maqāṣid*; in his expansion and dynamic, enlightened, and universalistic transformation of the classical *maqāṣid*; and in his development of new *maqāṣid*, Ibn ‘Āshūr was attempting to improve upon what his premodern predecessors—namely al-Shāṭibī—had submitted, while actively and practically trying to change Muslim legal culture so that it could better respond to the realities of the modern world.

Ibn ‘Āshūr’s *maqāṣid* work would influence later Muslim thinkers, who in turn further elaborated on and expanded the *maqāṣid*. Ibn ‘Āshūr’s *maqāṣid* philosophy had thus spurred a *maqāṣid* movement that was eager to explore new thought in the field. Through both preservation and adaptation of certain elements within Islamic tradition Ibn ‘Āshūr and the contemporary *maqāṣid* movement present a *maqāṣid* philosophy which attempts to be meaningful and relevant for Muslims in the contemporary world. His philosophy and the ongoing work of the contemporary *maqāṣid* movement also reflects an attempt to not simply be adaptive to the time, but transformative, both integrating and

⁶⁷³ Jackson, *Literalism, Empiricism, and Induction: Apprehending and Concretizing Islamic Law's Maqasid Al-Shari'ah in the Modern World*, 1470. For his association of Ibn ‘Āshūr with “juristic empiricism,” see p. 1478.

challenging certain modern sensibilities. From al-Shāṭibī to Ibn ‘Āshūr and the contemporary *maqāṣid* movement, an evolution in *maqāṣid* philosophy certainly did take place. It is now the turn of the next generation of *maqāṣid* thinkers who have inherited both al-Shāṭibī’s and Ibn ‘Āshūr’s legacies, to continue to figure out ways to preserve the core, fundamental and immutable of Islamic tradition, while searching at ways to be responsive to their own time.

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