

# **Maqasid al Shari'ah: A Strategy to Rehabilitate Religion in America**

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Eightieth Birthday Celebration, IIIT

## **Where do the Maqasid come from?**

Before I explain what the *maqasid al shari'ah* are and why they can serve to rehabilitate religion in America, I want to discuss where they come from and what their purpose is in the design of Allah.

As a professional, long-range global strategist, my concern has always been to forecast and plan the preservation and revival of entire civilizations as a means to fulfill the purpose of human life on earth. The purpose of every civilization or *hadara* is to promote peace, prosperity, and freedom for its own members and for all others through compassionate justice.

The challenge for all of us therefore is how to do this. The simple answer is to become what Allah intends us to be, both as persons and as communities. The Prophet Muhammad, *salla Allahu 'alayhi wa salam*, said that every person is created in the image of God, which is what the Christians call the *imago dei*. If we are to become God-like, what does this mean? In a hadith qudsi, the Prophet explained his understanding that we are to reflect the attributes of Allah by becoming His eyes, ears, and hands. All these, of course, are metaphors.

Allah has created us to be powerful, to be merciful, and to be knowledgeable, because these are the three central attributes of Allah. Some un-orthodox Christians refer to these attributes of God by the terms Father, Son, and Holy Spirit and distinguish them from the Being of God, just as Muslims do.

We have been given the power to know the truth and to apply it with compassion in the form of justice. Our purpose here on earth is to do this by recognizing our real identity, not any faux identity that we might prefer. We can become what we are intended to be by: 1) relying on the Word of Allah; 2) observing the coherence of the universe; and 3) using our power of

rational thought to understand how each of these two sources of knowledge, i.e., revelation and science, complement and reinforce each other.

This is all summarized in a single sentence of the Qur'an in Surah al An'am 6:115, *wa tama'at kalimatu Rabika sidqan wa 'adlan*, "And the Word of your Lord is fulfilled and completed in truth and in justice." This applies not only to individual persons but to entire communities, perhaps especially to the Muslim umma. Allah tells us, *wa min ma khalaqna ummatun yahduna bil haqqi wa bihi ya'adilun*, "And of those we have created is a community that is led by truth and applies it in the practice of justice." Of course this is the true identity of every community. We have the freedom, as creatures with power granted to us for a time, either to be what we are or to deny our transcendent identity and become its opposite.

It has always amazed me that Muslims may talk a lot about injustice and cite many ayat on justice, but they never refer to this verse from Surah al An'am. The reason may be that it is too generic. We can understand it only by reading and understanding the rest of the Qur'an as interpreted through the *nazm* or coherence of the Qur'an itself and by the *matn* or substance of the hadith that provide reinforcing interpretation.

The miracle of the Qur'an is that it has meaning only through the power of our rational intellect. The more we examine it the more meaning it has. And this comes not merely from infused knowledge or inspiration, known as *ilham*, but from the third jihad, the *jihad al kabir* or intellectual jihad, which is the only jihad specifically mentioned in the Qur'an, *wa jahidhum bihi jihan kabiran*, "And make effort [to understand divine revelation] in a great jihad."

Yesterday, I was reading in Surah al Hijr and found in verse 15:55 a word for the person who performs the third jihad, because I have never found a word either in Arabic or English adequate for the purpose. This reads, *ina fi dhalika laAyatin bi al mutawasimin*, from the very *wasama*, which means in the fifth form *tawasama* "to examine closely." Muhammad Asad's footnote says that Razi and Zamakhashari define a "mutawasim" as "one who applies his mind to the study of the outward appearances of a thing with a view to understanding its real nature and its inner characteristics."

This is the highest purpose and *fard 'ain* of Islamic scholars, whose highest achievement over the centuries has been the induction from the Qur'an and ahadith of the highest normative principles of jurisprudence, namely, the *maqasid al shari'ah*. Some of the modern pioneers of this art are right here today in the library of the International Institute of Islamic Thought.

### **What Is Truth?**

If the maqasid come from truth, we might ask what is truth, and by this I mean ultimate truth, because whatever comes from Allah is by definition ultimate in origin. I just sent to the printer a week ago a 250-page book that starts with a 30-page introductory chapter addressing this very issue, because we should address the issue of truth as the origin before we discuss the issue of justice as its product.

The teachings of all the sages of every religion preface all discussion of such matters, and especially the what, the whence, and the whither of truth, with the humility of doubt in one's own certainty, because only ultimate truth can be certain and we are not ultimate. As the spiritual philosophers say, we live in a world of contingency, a world of existence, but Existence is created by the Ultimate, from which it is contingent and therefore cannot in anyway be absolute.

Another significant element of Surah al An'am 115 is Allah's use of the word *kalima* as the source of truth and justice. This is similar to the Christian *logos* or Word of your Lord, though Christians usually reference it to Jesus, just as many Muslims use it in reference to the uncreated Qur'an. Both are messengers of the Good Word. The message is not merely an expression of God's will but a manifestation of the Being of God as ultimate truth, which is beyond our grasp as contingent creations of God but remains an object of our search for higher understanding.

This concept of Logos has been central to philosophical and theological discussion in all three of the Abrahamic religions, and it forms the basis of the so-called Common Word about which the Muslim-Vatican dialogue is now forming under Pope Benedict XVI in order to transform mere interfaith dialogue into interreligious solidarity in cooperative action.

This dialogue may be formulated as the effort to distinguish between Existence and Being, or even further between Being and Beyond Being, about which three schools of thought crystallized in classical Islam, namely during the third through seventh centuries of the Islamic calendar. The Muta'zillites argued a thousand years ago that Allah is what many theologians in many religions call Beyond Being, that the Qur'an is uncreated, and that therefore Allah in essence is reasonable and cannot be unreasonable or unjust, in other words, that He cannot be what He is not.

The Salafis, on the other hand, argued that Allah is not Beyond Being but is all Will and that whatever Allah wills is reasonable and just. Ibn Hazm, who founded the Zahari Madhhab, fortunately now extinct, argued quite logically that if Allah had so willed He could have demanded polytheism as a requirement for salvation. This Salafi position was great for justifying tyrants who claimed they were merely doing the will of Allah and justified this by picking and choosing verses from the Qur'an to justify whatever suited their purposes in the search for power at the expense of justice.

Each of these two groups became extremists by arguing that its position trumped the other one's, namely, that reason trumps Revelation or Revelation trumps reason. The Ashar'ites took an intermediate position and argued that neither trumps the other because there cannot possibly be a conflict between Revelation and enlightened reason, or in modern times between religion and science.

The Mutazillites faded into history, though so-called progressivist or liberal Muslims today claim to be Mutazillites in order to invent their own religion, and the Salafis retreated into what at least until recently we have seen in Saudi Arabia. The tragedy is that members of these seminal schools of thought in the Islamic heritage so often have refused to talk to each other.

The conflicts that have raged for centuries about the source and nature of truth may be one reason why the entire concept of the *maqasid al shari'ah* has been dead, at least in the Sunni world, for 600 years. Fortunately, the International Institute of Islamic Thought is reviving Islamic normative law again by building on the work of Chief Mufti Ibn Ashur in the first half of the 20<sup>th</sup> century, who revived the works of the master of the art, Al Shatibi, who died in Andalusia toward the end of the great Andalusian civilization.

## What are the Maqasid?

The next question, after the question where the maqasid come from, is what are the maqasid?

The last and greatest of the *maqsudi* scholars, Imam Abu Ishaq al Shatibi, who died in 790 AH (1388 AC), taught that the *maqasid* are part of the art of *'Ilm al Yaqin*, one of the three sources of knowledge (the others being *Haqq al Yaqin*, which is certain knowledge from divine revelation, and *'Ain al Yaqin*, which is knowledge derived from observation of the physical world. One might also consider the *maqasid al shari'ah* to be the heart of a sub-category known as *'Ilm al 'Adl*.

The first task in this art is to determine which are the most irreducibly essential and universal purposes or *maqasid* of Islamic normative law. Al Shatibi taught that there is no set number of *maqasid* and no set prioritization among them. Furthermore, he taught that what Dr. Muna Abul Fadl called the architectonics of this system are flexible and may change according to changing times and cultures.

Within the arena of American debate on the revival of transcendent natural law as a framework for human rights, one might zero in on eight *maqasid* and group them into two categories, the spiritual or transcendent and the social or immanent. These would correspond to the two halves of the hajj (in Makkah and 'Arafat) as a grand university of Islamic thought and action.

Each of these two categories of principles consists of four major purposes, each of which in turn has two levels of sub-categories, known as *hajjiyat* and *tahsiniyat*. This transcendent perspective on Islamic law was perhaps first introduced as a systems approach in the modern West in the book, *The Sun is Rising in the West*, edited by Hakeem and Bowman in 1998, specifically in Part Three, entitled "The Search for Justice and the Quest for Virtue: The Two Basics of Islamic Law."

One recommendation for appropriate categories and component parts is the following set, ordered in priority as a code of human responsibilities and human rights:

## Spiritual Principles

- 1) *Haqq al Din*, the free right and duty to be aware of and worship God (with the implied right also not to do so) and to search for ultimate truth and justice;
- 2) *Haqq al Nafs*, the duty to respect the human person, known as the natural law principle of personalism; including the second-order principle or *hajj* of *haqq al haya*, which is the duty to respect human life;
- 3) *Haqq al Mahid* (from *wahada*), the duty to respect the coherent order or *tawhid* of all creation, i.e. ecology and environment;
- 4) *Haqq al Nasl*, the duty to respect human community based on the sacredness of each of its members (not on any secular human collectivity);

## Social Principles

- 1) *Haqq al Mal*, the duty to respect private property and societal institutions of money, credit, and taxation to promote the universal right to individual ownership of productive wealth as an alternative to older systems of wage slavery;
- 2) *Haqq al Hurriyah*, the duty to respect the political self-determination of persons and communities, based on the principle of subsidiarity, whereby legitimacy originates in the human person and ascends through such second-order implementing tools as political democracy;
- 3) *Haqq al 'Ilm*, the duty to respect rational thought through freedom of speech, publication, and assembly; and
- 4) *Haqq al Karama*, the duty to respect human dignity in social life, especially gender equity, as well as all the other *maqasid* or normative principles, which can be observed effectively only as a single whole.

One of the fatal errors noticeable in Islamic intellectual history is the tendency to insist quite rightly on the absoluteness of the creed, namely, what is clear in the Qur'an and relates to the vertical relationship of humans

with Allah, but then to extend this absolute approach beyond the vertical to the horizontal relationship among human persons and communities, namely, to the field of law. Islamic jurisprudence is absolute in principles but relative in application according to time and place, because one purpose of the principles is to provide guidance in applying the *fiqhi* regulations of *ahkam* and *hudud*, without which guidance the superficial application of the shari'ah would produce injustice and even absurdity.

The irreducible principles of normative law, although absolute in theoretical nature, should never be dogmatized. Dr. Muna abul Fadl, the wife of Shaykh Taha Jabir al Alwani and a former full professor of political science in Cairo and probably the most brilliant person I have ever met, taught that the multi-layered “architectonics” of Islamic normative law, the *maqasid al shari'ah*, are flexible, because the maqasid are a product of human reason based on the coherence of the Qur'an and the *matn* or substance of the ahadith.

This inherent flexibility based on the use of human reason has inspired fear among the hide-bound who confuse Islam with un-Islamic Muslim culture and therefore oppose such normative law as an existential threat. This is one reason why the entire paradigm and system of the maqasid until recently has been dead for so long. It is only now being revived, primarily by the International Institute of Islamic Thought, as the most powerful answer to the rage of extremist modernism that threatens all civilization, just as the opposite plague, the extremist rejection of the Islamic intellectual heritage, threatened and eventually destroyed the Islamic civilization more than half a millennium ago.

The same has occurred in every civilization throughout history, most notably in the Chinese civilization half a millennium ago, from which Muslims benefited so much. Even a millennium earlier, the Prophet Muhammad, encouraged his followers to “seek knowledge everywhere, even if you have to go as far as China.”

### **The Role of the Maqasid in Rehabilitating Religion in America**

All students of religion in America agree that during the past forty years it has been experiencing one of the periodic renaissances that mark America's history. One of the critical questions is whether this is good for

human rights and good for justice, because some trends in this revival are not necessarily good for either.

The focus of current discussion is developed in one of the blogs of the Social Science Research Council (SSRC Blogs), specifically in one known as "The Immanent Frame: Secularism, Religion, and the Public Square." Some prominent Muslims have participated in this over the years but not as guiding scholars. This blog is similar to Khalil Shadeed's Scholar's Chair, which is ecumenical but originated for Muslim intra-faith dialogue. The Social Science Research Council is a staple of Washington paradigmatic debate. It funded my work at the Center for Strategic and International Studies forty-five years ago. The particular topic in the current thread, which has several lengthy entries, is on "Justice: Rehabilitating Religious Rights Talk."

The immediate question being addressed is the relationship between religion and human rights, specifically which brand of religious tradition is trying to support human rights. One perspective is that the most important question is not whether specific religious traditions are addressing human rights on specific issues, such as Gaza, Darfur, or asset-based money, but rather is the question who is trying to revive human rights as a systematic paradigm for viewing all of human life based on a traditionalist or classical system of thought that may have been lost in the modern age. In other words it is a question of conscious paradigmatic transformation from the immanent to the transcendent.

A good example of an issue-oriented approach favored perhaps by most Protestants is Jim Wallis's, *The Great Awakening: Reviving Faith and Politics in a Post-Religious Right America*. A good example of the systems or paradigmatic approach favored by Roman Catholics would be Russell Hittinger's *The First Grace: Rediscovering the Natural Law in a Post-Christian World*, which I reviewed, along with several other recent books in my article "Taproot to Terrorism: The Loss of Transcendent Law in America and the Muslim World," published in *The Muslim World Book Review*, Summer 2005.

The second question is which of these consciously paradigmatic approaches is being revived under the rubric of justice as another word for natural law and as simply an older term for human rights. The best book in the Roman Catholic tradition, with specific reference to the current issues of

banking, credit, and taxation, is Michael D. Greaney's collection of his articles from the *Social Justice Review* under the title *In Defense of Human Dignity: Essays on the Just Third Way: A Natural Law Perspective*.

Within the Islamic tradition, the best book on natural law and justice is the monumental tome by Jasser Auda entitled *Maqasid al Shari'ah as Philosophy of Islamic Law: A Systems Approach*. This is part of an entire library of books being published by the International Institute of Islamic Thought either as translations from the Arabic, such as Ibn Ashur's seminal treatise of 1946, published as *Ibn Ashur: Treatise on Maqasid al-Shari'ah*, or else written, like Auda's, originally in English and translated into Arabic and other languages. Some of these books are reviewed, for example, in my article, "Human Rights in Traditionalist Islam: Legal, Political, Economic, and Spiritual Perspectives," in *The American Journal of Islamic Social Sciences*, Winter 2008.

The IIIT is now preparing for a twenty-year project to publish in Wikipedic form a twenty-volume Encyclopedia of Natural Law and Justice, perhaps categorized according to my own preferred formulation of the irreducibly universal principles of justice, known as the *maqasid al shari'ah*, as developed jointly during the high point of the Andalusian civilization by Muslims, Jews, and Christians.

The final issue to be discussed is how the Islamic shari'ah, in the sense being developed in recent years by the International Institute of Islamic Thought, can rehabilitate religion in America by bringing out the best of the major faiths in America and thereby bringing out the best of America as envisioned by America's founders.

The task of Muslims in America or in any other country is to work with other faith traditions in exploring and applying the universal principles of compassionate justice that form the core of all dynamic civilizations. The task is not to aim merely for tolerance, or even merely for diversity, but to work toward pluralism, whereby every faith tradition welcomes the others because each has so much to offer in shaping the agenda of society.

Certainly Muslims should be active in the political process, and they should be active in their own think tanks so that they can network with other like-minded think-tanks. But, still more importantly, they should be active in academia and in research centers, like the International Institute of Islamic

Thought, because here is where the paradigms of thought that guide civilizations are developed. These paradigms shape the work of think-tanks, which, in turn, can be decisive in controlling policy.

The Muslim contribution to building a better America and through it a better world should focus less on specific policy issues, though this is important, and more on rehabilitating enlightened, faith-based America because this is now and will continue to be the major challenge to persons and communities of faith in the decades ahead.