

Book Reviews

Maqasid al-Shari`ah: A Beginner's Guide

Jasser Auda

*Herndon, VA: International Institute of Islamic Thought, 2008. pbk.
65 pages.*

Maqāṣid al-Shāri‘ah Made Simple

Mohammad Hashim Kamali

*Herndon, VA: International Institute of Islamic Thought, 2008. pbk.
26 pages.*

The Islamic Vision of Development in the Light of Maqāṣid al-Shāri‘ah

Muhammed Umer Chapra

*Herndon, VA: International Institute of Islamic Thought, 2008. pbk.
50 pages.*

The Objectives of Maqasid al-Shari‘ah

Along with Islamic finance and jurisprudence for Muslim minorities, Maqasid al-Shari‘ah (the higher objectives of Islamic Law) completes the trinity of cutting-edge traditional Islamic research. Its importance emanates from its philosophical vision, which allows for the practice of divine text and prophetic teachings in a manner that acknowledges and responds to contemporary challenges.

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Recognizing that this vibrant topic is complex, intellectually challenging, and that most books on the subject are written for specialists, the International Institute of Islamic Thought published three introductory guides to provide simple and accessible material for the general reader. The series includes the three books above that are the subject of this review.

While significantly varying in focus, all three books succeed in providing introductory-level texts. Muhammed Chapra presents one long argument that human well-being and development is realized by enriching the human self, faith, wealth, intellect, and posterity. Before moving on in detail to examine the conditions necessary for the enrichment of faith, wealth, intellect, and posterity, and how the Shar‘iah allows people to preserve them all, he cites fourteen different human needs that must be taken into account in order to enrich and invigorate the human self. Instead, Mohammad Kamali and Jasser Auda begin with the genealogy of Maqāṣid. After explaining its textual origins, multiple classifications, and the history of its development, Kamali addresses Maqāṣid theory – following its expansion beyond the traditional five objectives (the focus of Chapra’s book) and describes the main methodological challenges that have faced the field. Auda departs from Kamali by focusing on the relevance and promise of Maqāṣid for contemporary Islamic jurisprudence and thought.

Genealogy

Textual Origins

Since any authentic Islamic discipline must find its justification in the Qur’ān, Kamali and Auda introduce the reader to the textual roots of Maqāṣid by means of two different routes. The crux of their presentations is that the Shari‘ah is characteristically goal-oriented and that the underlying theme of these goals is the realization of human interests and benefits (in this world and the next). To set up the stage for his presentation, Auda begins with a story of a child who asks her father, “Dad, why do you stop the car at the traffic light?” Through answers and deeper follow-up “why-questions,” the duo eventually reach a point at which the daughter asks, “Why do you love for people what you love for yourself?” The father responds, “Because all people are equal, and if you would like to ask why, I would say that God is the Just – and out of His Justice, He made us all equal, with equal rights – and that is the way He made the world!” Auda’s dialogue is centered around the question of “why,” an equivalent of the question of “What is the *maqṣid* (purpose)?” This is a reiterative question

in the Shari‘ah that takes us from the details of simple actions to the level of laws and regulations, from there to the level of mutual benefits, and finally to the level of the overall principles and basic beliefs – such as justice, compassion, and the attributes of God. At this basic level, the Qur’ān provides the endless resource of supporting text. Aside from the Qur’ān, Auda also traces the textual origins of Maqāṣid indirectly by demonstrating how its early conceptions were the Companions realizing the purpose-oriented nature of legislation – as evident in the incident of Banu Quraiza, a primary case study on the issue, as well as four examples from Umar’s *fiqh*.

Kamali, on the other hand, presents this argument by directly citing verses from the Qur’ān that emphasize *huda* (guidance), *rahmah* (compassion), and *tahdhib al-fard* (educating the individual); he then speaks about Shari‘ah as being goal oriented and the theme of its injunctions being *maslahah* (benefit). For Kamali, *rahmah* is manifested in the centrality of *maslahah* to the Shar‘iah.

Imāms

Beyond textual origins, Auda provides a generous narrative of Maqāṣid development. He begins with the Companions before citing early theories and then introduces the reader to the imāms of Maqāṣid: al-Juwayni, his student al-Ghāzalī; al ‘Izz, his student al-Qarāfī; ibn al-Qayyim; and ending with al-Shatibi. According to Auda, al-Shatibi left his mark on Maqāṣid by transforming the objectives of Shari‘ah from *unrestricted interests* to *fundamental laws*, from *wisdoms* behind rulings to *bases* for ruling, and from *uncertain* to *certain fundamentals*.

Instead of emphasizing the acceptance of goal-oriented approaches from the Companions onward, Kamali provides a narrative of Maqāṣid as an underappreciated theme of the Shari‘ah and a nonconventional component of *ijtihād* theory. He situates its history within the tension between conformity to the letter of divine text or also its overriding values. He then defines al-Juwaini (who developed the work of al-Hakim al-Tirmidhi) as a starting point for Maqāṣid as it is accepted today.

Generally speaking, Kamali complements the chronology provided by Auda by citing additional contributors to Maqāṣid, including a mention of Sayf al Din al-Amidi and his identification of Maqāṣid as a criterion of preference among conflicting analogies. He also cites Ibn Taymiya’s novel contribution, which transformed the scope of Maqāṣid from a specific number to an open-ended list of values. In this expanded list, we find that Ibn Taymiya added, for example, matters related to the affairs of this world

such as the fulfillment of contracts, preservation of the ties of kinship, and honoring the rights of one's neighbor, as well as matters such as the love of God, sincerity, trustworthiness, and moral purity. This approach that allows for the continual expansion of *Maqāṣid*, is generally accepted by contemporary scholars, including Yusuf al-Qaradawi and Ahmad al-Raysuni.

Contemporary Scholarship

Auda summarizes the contributions of modern scholars who have derived new universal *maqāṣid* directly from the Qur'ān as opposed to an origin in the canon of *fiqh* literature. He includes: Rashid Rida who identified reform and women's rights as *maqāṣid*; al-Tahir Ibn Ashur and his proposal to include freedom (as expressed by contemporary Western political philosophy) as a universal *maqāṣid*; Mohamed al-Ghazaly who resorted to the previous fourteen centuries of Islamic history as a source of knowledge and thus emphasized equality and justice; al-Qaradwi who proposed a variety of novel universal *maqāṣid*, including building a strong Islamic nation; and Taha al-Alwani who identified three supreme and pervading *maqāṣid* – *tawhid* (oneness of God), *tazkiyah* (purification of the soul), and *'imran* (developing civilization on earth).

Although Chapra does not dedicate a section to the textual origins of *Maqāṣid* or its intellectual development, his flowing panoramic display of *maqāṣid* invariably refers the reader to supporting verses and the contributions of various scholars. On recent scholarship, his references tend to be limited to the citation of contemporary scholars who affirmed a certain point made, for example, "All modern scholars, including Mawlana Mawdudi, Imama Hasan al-Banna, Sayyid Qutb, Mustafa al-Siba'I, Abu Zahrah, Baqir al-Sadr, Muhammad al-Mubarak, and Yusuf al-Qaradawi are unanimous on this point (that it is a collective obligation of a Muslim society to take care of the basic needs of the poor)" (15).

Terms and Classifications

The approach by which *Maqāṣid* attempts to assert itself as a key agent in the development of Islamic jurisprudence has been emphasizing a set of terms that allow a legitimate shift in attention to a value-centered perspective and thereby circumvent the limitations of a text-centered conceptual framework. At the top of the list are the terms *maqāṣid* and *maslahah* (interest, not necessarily public). Both Kamali and Auda shed light on the interchangeability of *maqāṣid* and *masalih* (plural of *maslahah*), where the objectives

of Shari‘ah become synonymous with the interests of humans, thereby setting the stage for Maqāṣid being a system that seeks the interests of people.

Next in line are the terms used in al-Juwaini’s three-tiered hierarchical classification of human interests: *daruriyyat* (essential necessities), *hajiyyat* (complimentary needs), and *tahsiniyyat* (embellishing luxuries). The level of necessities (*daruriyyat*) is then elaborated on by introducing the term *hifz* (preservation) and the five necessary interests the Shari‘ah seeks to preserve – faith, life, property, intellect, and progeny.

In addition to the three-tiered hierarchy of benefits in relation to the five necessities, Kamali presents a series of alternative binary classifications of *maqāṣid*: general versus particular, definitive versus speculative, objectives of the lawgiver versus human objectives, and primary versus subsidiary. Auda critiques the shortcomings of the traditional classification before providing an alternative developed by modern scholarship. The criticisms are that traditional *maqāṣid* is concerned with the individuals rather than families, societies, and humanity as a whole and, therefore, does not include universal values such as justice and freedom. Furthermore, *maqāṣid* was deduced from the legal heritage, with an emphasis on penal code, instead of from the original primary sources (the Qur’ān and Sunnah). Auda then leaves us with a multidimensional scheme in which the levels of necessity, the comprehensiveness of rulings, the range of people, and the levels of universality are all valid dimensions that represent valid viewpoints and classifications of Maqāṣid.

Applied Ijtihād

The abundance of alternative classifications, some reaching an intricate level of detail and complexity, is perhaps a feature of a field that is hitherto limited to theory and awaiting the feedback of practical application. Transforming theory to practice is therefore a major concern for Maqāṣid-oriented scholars.

Recognizing that Maqāṣid is one of today’s most important intellectual means and methodologies for Islamic reform and renewal, Auda speaks of Maqāṣid as a basis of a New Ijtihād. Auda summarizes his previous research on the issue of abrogation (*naskh*) and highlights Maqāṣid-based *ijtihād* as a means to resolve apparent textual contradictions. He contends that the dismissal of a chronologically earlier text or narration in favor of a later one, in the case of disagreement between the two, originated as a failure to understand how they could fit together in a unified perceptual framework and, later, became a method of invalidating opinions or narrations endorsed by rival schools of law. For example, part of the Qur’ānic *āyah*

dubbed “Verse of the Sword” (9:5) reads, “But when the forbidden months are past, then slay the pagans wherever you find them, and seize them....” The perceived disagreement between this verse and more than two hundred others calling for dialogue, freedom of belief, forgiveness, peace, and even patience has led the majority of scholars to invoke some form of abrogation to dispel the contradiction. Maqāṣid, Auda asserts, provides a solution to the dilemmas of opposing evidences by understanding them within their underlying *maqāṣid*, such as (1) magnanimity (*taysir*) in the case of opposing narrations related to acts of worship, (2) universality of the law (and consideration for local customs) in the case of opposing narrations pertaining marriage, (3) gradual application to facilitate the changing of deep-rooted habits in the case of opposing evidences regarding the prohibition of liquor and usury and the performance of prayers and fasting, and (4) fulfilling the best interest of people in the case of opposing evidences regarding child custody. This approach allows Muslims to appreciate any fair law of the land that is trying to achieve a sense of justice in the society, even if it were coming from a non-Islamic philosophy or theory. It also allows for a deeper reinterpretation of the Qur’ān and the Sunnah, thus providing common grounds between schools of jurisprudence and different faith systems.

Kamali considers the promise that Maqāṣid holds for *ijtihād* is the importance it puts on harmony between decisions and the underlying purposes of injunctions, and stresses the importance of reflecting on the end result and consequences of a ruling. He cites Ibn Ashur who noted that some scholars confined the scope of their *ijtihād* to literal interpretations and, therefore, found it possible to project a personal opinion into the words of the text and fell into error as they were out of line with the general spirit and purpose of the surrounding evidence. Kamali then uses the difference of opinions pertaining to *zakat* to illustrate the importance of reflecting on the end result and consequences of *ijtihād*. The Hanafis have validated giving *zakat* in a monetary equivalent, but al-Shafi‘i did not. The Hanafi view is founded on an understanding that the purpose of *zakat* is to satisfy the needs of the poor, which can be achieved by paying the monetary equivalent of the commodities literally mentioned in the Hadith. An earlier, and prophet example, is that of the Prophet Muḥammad (ṢAAS) deciding not to restore the Ka‘bah to its original design, lest it induce people to disbelief. Thus the *mujtahid*, Kamali asserts, needs to learn not only the law and specific evidence, but must also have acumen and insight to render judgment that is enlightened by both the overall consequences and special circumstances of each case.

Methodological Issues

Kamali alerts the reader to the common methodological flags raised by scholars of Maqāṣid, who have been wary and worried that “the identification of maqāṣid might have partly been due to the elements of projection and prognostication that such an exercise was likely to involve” (10). Along with Auda, concerns are cited such as “what if the intent [of a ruling] has been empirically shown to be achieved regardless of the *hukm*?” and how does one respond to the observation that maqāṣid may be “representations of each scholar’s own view-point for reform” (10) rather than objective objectives of Shari‘ah. “Are there any guidelines?” Kamali wonders (17). Neither author provides satisfactory responses to such caveats, yet they attempt to do so. Kamali lists a number of indicators that determine the merit of proposed *maqāṣid*. These indicators are: (1) the presence of definitive or speculative supporting text in the Qur’ān and Hadith or the precedent of the Companions; (2) the forecasted benefit or the mischief it will likely prevent; (3) its practical importance, that is, is it or should it be considered obligatory, recommended, reprehensible, permissible, or forbidden; (4) the presence of a punishment in the Shari‘ah for the violation of the proposed value; (5) the strength or weakness of a promise of reward or warning (in the Qur’ān and Hadith); and (6) how frequently this goal or value was repeated in the Qur’ān or Hadith.

Critiques

Each book (with its own share of shortcomings) is a useful introduction to Maqāṣid. Chapra ushers his text with numerous un-nuanced straw-man arguments against Christian theology and existential philosophy (among other thought systems), which subtracts from the pristineness of his expressed vision.

Kamali and Auda take for granted that the Shari‘ah “is predicated on the benefits of the individual and community and its laws are designed to protect these benefits and facilitate improvement and perfection of the conditions of human life on earth” (Kamali, 1) and that injunctions are rationalizable. They do not contrast this view with other perspectives within the Islamic tradition, except with that of the *Zāhirī*. In highlighting the promise of Maqāṣid in conflict resolution, Auda takes for granted that conflict is something to be avoided and does not entertain the instances in which conflict is a necessary means to a solution.

None of the introductory guides spell out the underlying assumption that makes Maqāṣid theory relevant to Muslims. A stronger and more thorough discussion is needed in such introductory texts to address the extent

of divine providence toward the faithful and whether or not worldly success is a valid feedback to substantiate or discredit ones actions toward God. Maqāṣid theory builds a system where worldly success and felicity are the interests of Shari‘ah. Thus – if the faithful are suffering loss of things such as wealth, intellect, and posterity –then there is an error in their practice of faith. Maqāṣid, therefore, ought to find a challenge in reconciling itself with the trials and tribulations of this world, which may aim to illicit a response of patience and perseverance, while belittling the overall significance of the (lowly) worldly life. Furthermore, *maqāṣid*-oriented scholars contrast themselves with the literalists. However, they do not critique the literalist assumption that God will facilitate matters in this world and in the hereafter as long as one is faithful and despite the immediate hardship caused by following the letter of the law. Such a critique must be followed by a defense of the underlying assumption that validates the consequences of a Shari‘ah-inspired action as legitimate feedback qualifying or disqualifying that action.

Overall, the three introductory guides leave the reader with an impression that the challenge facing Maqāṣid al-Shari‘ah (and the other two cutting-edge disciplines) is to prove its relevance to the struggles of Muslims today, without severing the bond with their tradition.

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