

Public Policy in Islam: Exploring Synergies
Between *Siyāsah Shar‘iyyah* and *Maqāsid al-Shari’ah* *

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Abstract

Siyasah Shar‘iyyah is the nearest equivalent of *public policy*, with one difference perhaps, which is that the Islamic notion of public policy is closely tied to the Shariah, and more specifically to the goals and purposes, or *Maqasid* of Shariah. This paper begins with an introductory note on the contemporary understanding of public policy in its Western context, and then provides an overview of the two main areas of our concern: *siyasah* and *maqasid*. The rest of this paper engages in identifying the synergies between the two disciplines, and in this regard looks more specifically at al-Qaradawi’s work on how *siyasah shar‘iyyah* can be guided by the guidelines of *maqasid al-shari’ah*.

Introduction

Public policy is the principled guide to action taken by the administrative and executive branches of the state with regard to a class of issues in a manner consistent with the constitution, law and institutional customs. Strong public policy should solve problems efficiently, serve justice, support governmental institutions and policies, and encourage active citizenship.¹

Public policy requires diverse input and feedback from numerous individuals and interest groups, such as politicians, domain experts and industry representatives. Mass communications and technological changes have caused the public policy system to become more complex and interconnected.² Today public policy making is increasingly goal-oriented, aiming for measurable results and goals, focussing on decisions that must be taken often without delay. Traditionally, the academic field of public policy focused on domestic policy, but the wave of economic globalisation since the closing decades of 20th centuries created

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¹ http://en.wikipedia.org/wiki/Public_policy (accessed 13 January 2015).

² http://en.wikipedia.org/wiki/Public_policy#cite_note-The_Process_and_Effects_of_mass_communication-9 (accessed 24 February 2015).

a need for public policy to engage in issues beyond national borders, such as climate change, terrorism, nuclear proliferation, and economic development.³

The foregoing characterisation of public policy, which is taken from Western sources, comes close to that of *siyāsah shar'iyyah* (henceforth as *siyāsah*) in the Islamic context, albeit that national laws and constitutions are substituted, in the Islamic sources, by references to shari'ah. Yet it would be reasonable now to add conformity to the constitution and laws of the state as valid point of reference to our contemporary understanding of *siyāsah*.

It also appears that public policy signifies a programme or a platform rather than individual and unrelated decisions. Government leaders may take a policy initiative to introduce a certain law, and also the manner in which that law is implemented. Yet policy and law are primarily two different yet inter-related concepts both of which involve efficient management of public affairs.

Siyāsah and *maqāṣid* are both shari'ah-oriented subjects and derive their substance from the shari'ah so much so that there is no *siyāsah* nor *maqāṣid* independently of the shari'ah itself. Yet both *siyāsah* and *maqāṣid* provide different understandings of the shari'ah in their respective capacities, each seeking to articulate and develop a new dimension of the shari'ah. Both also represent belated developments that materialised well after the crystallisation of the major schools of Islamic jurisprudence, even though both derive their substance from the data of the Qur'an and hadith. One was significantly developed by Ibn Taymiyyah (d. 728/1328) and the other by al-Shatibi (d. 790/1388), although many other scholars had made contributions to them even before these scholars came on the scene. The two scholars named are, however, distinguished for articulating their respective themes into separate and distinctive chapters of shari'ah through consolidation of the disparate streams of ideas and contributions other scholars had already made. Yet the progress of ideas remained intermittent in both fields even after Ibn Taymiyyah and al-Shatibi's landmark contributions. It is still doubtful whether either of the two disciplines under review have reached the status of some of the more mature branches of Islamic scholarship, such as fiqh, *uṣūl al-fiqh*, *tafsīr* and hadith.

There is a revival of interest in both the *maqāṣid* and *siyāsah* as of late and both have witnessed a spate of scholarly contributions especially in the latter part of twentieth century and ever since. That said, both *siyāsah* and *maqāṣid* are prone to a degree of arbitrariness, though for different reasons. *Siyāsah* has often fallen prey to the vagaries of power politics and despotism throughout the longer stretch of Islamic history, and the *maqāṣid* is in want of a stronger methodological grounding that can be used to curb subjectivity and value judgment in its applications. Unlike the *uṣūl al-fiqh* which is rich on methodology, the *maqāṣid* had for a long time remained on the fringes of the legal theory of *uṣūl al-fiqh* and did not enjoy the same degree of support from the 'ulamā' due to the philosophical underpinnings of *maqāṣid*. A reliable methodology for *maqāṣid* can also help provide credible guidelines for *siyāsah*. It may be added that the revival of scholarly interest in the *maqāṣid* in recent decades has also seen progress on its methodological themes.

³ http://en.wikipedia.org/wiki/Public_policy#cite_note-11 (accessed 24 February 2015).

It would burden this presentation to provide full details on *siyāsah* and *maqāṣid*, as both have grown into extensive branches of shari’ah. The present writer has also treated both of these subjects in his previous publications.⁴ Hence the attempt in the following pages to offer a coverage of only the basic contours of the two subjects before us. The balance of the article then focuses on identifying points of convergence between the two themes, and specifying ways in which the guidelines of *maqāṣid* can be gainfully utilised in the applications of *siyāsah*. This article also explores, in its latter part, the question as to how the two themes before us relate respectively to fiqh and *uṣūl al-fiqh*, and refers in this connection to some of the writings of Shaykh Yusuf al-Qaradawi on the subject.

I. Shari’ah-Oriented Policy (*Siyāsah Shar‘iyyah*)

The ‘ulamā’ have used *siyāsah* for different purposes. Literally, it means shari’ah-oriented policy, or government in accordance with the shari’ah. This is the widest meaning of *siyāsah* in that it is free of the technicality that has developed around this expression in the works of Muslim scholars. *Siyāsah shar‘iyyah* thus applies to all government policies, be it in areas where the shari’ah provides explicit guidance or otherwise.

But in its technical applications, *siyāsah shar‘iyyah* implies decisions and policy measures taken by the imam and the ‘ulū al amr on matters for which no specific ruling could be found in the shari’ah. In this sense, *siyāsah shar‘iyyah*, as Khallāf observed, is tantamount to acting on *maṣlaḥah*, or public interest, which the Lawgiver has neither upheld nor overruled.⁵ *Siyāsah* in other words, denotes administration of public affairs in an Islamic polity with the aim of realising the interests of, and preventing harm to, the community in harmony with the general principles of the shari’ah “even if it disagrees with the particular rulings of the *mujtahidūn*”⁶

According to the key Hanbali scholar, Ibn Qayyim al-Jawziyyah (d.1350 CE), *siyāsah shar‘iyyah* does not necessarily mean conforming to the explicit rules of shari’ah: “any measure which brings the people closest to beneficence (*ṣalāh*) and furthest away from corruption (*fasād*) partakes in just *siyāsah* even if it has not been approved by the Prophet, pbuh, nor regulated by Divine revelation. Anyone who says that there is no *siyāsah shar‘iyyah* where the shari’ah itself is silent is wrong and has misunderstood the Companions.”⁷

⁴ See Mohammad Hashim Kamali, “*al Siyāsah Shar‘iyyah* or the Policies of Islamic Government,” *The American Journal of Islamic Social Science*, vol.6, No.1, 1989, 59-881; idem., *maqāṣid al-Shari’ah, Ijtihad and Civilisational Renewal*, Occasional Paper 20, London: The International Institute of Islamic Thought, and Kuala Lumpur: the International Institute of Advanced Islamic Studies (IAIS) Malaysia, 2012. Idem., *Shari’ah law: An Introduction*, Oxford: Oneworld Publications, 2008. Chapter 6 (pp. 68-99) of this book bears the title “Goals and Purposes (*maqāṣid*) of Shari’ah: History and Methodology,” and Chapter 11 is entitled “Beyond the Shari’ah: An Analysis of Shari’ah-Oriented Policy (*al Siyāsah Shar‘iyyah*), 225-246.

⁵ ‘Abd al Wahab Khallaf, *al- Siyāsah al Shar‘iyyah*, (Cairo: al Maktabah al Salafiyah, 1350/1931, p. 3.

⁶ Ibid., p. 14.

⁷ Ibn Qayyim al Jawziyah, *al Ṭuruq al Ḥukmiyah fī al- Siyāsah al- Shar‘iyyah*, Cairo: al Mu’assaḥ al ‘Arabīyah li ‘l- Ṭībā’ah, 1380/1961. p.16.

Siyāsah is characterised by its essential harmony with the higher objectives of shari’ah, at the risk sometimes of abandoning its letter. An illustration of this is the decision of the second caliph, ‘Umar ibn al-Khattab, concerning the *mu’allafat al-qulūb*, persons of influence whose friendship and cooperation were regarded beneficial for Islam. The Qur’an (al-Tawbah 9:60) had assigned a share for them in zakat revenues, which Caliph ‘Umar discontinued, because, in ‘Umar’s widely quoted statement, “Allah has exalted Islam and it is no longer in need of their favour” ‘Umar thus departed from the letter of the Qur’an to an alternative ruling as the original purpose for which the Qur’anic ruling was made no longer obtained, and “his ruling is considered to be in harmony with the spirit of the Qur’an.”⁸ The original ruling was thus suspended due to the subsequent change of circumstances, but the Qur’anic text remains intact; it is still a part of Qur’an, and its ruling may also be revived again whenever further change circumstances may so require.⁹

Siyāsah is also used in the sense of implying flexibility (*tawsi‘ah*) and discretion for rulers and judges in their decisions. When a decision is said to have been taken as part of the *siyāsah* of a ruler or judge, it is tantamount to saying that it was a discretionary decision, provided, of course, it did not contravene the shari’ah.¹⁰

Qur’anic authority for *siyāsah* is found in a number verses, especially those enjoining the believers to the promotion of good and the prevention of evil.¹¹ The good and evil are nowhere listed in the Qur’an or Sunnah, but they can be known through a general investigation of these sources. Al-Shāṭibī has also noted that rights and wrongs cannot be known in detail in advance without referring to particular acts and their surrounding circumstances. Hence, the government leaders must have discretionary powers to uphold and protect the higher purposes of shariah.¹² The Qur’anic command that requires obedience to the ‘*ulū al amr* in sura al-Nisa’ (4:58) also provides the necessary authority for *siyāsah*. It thus becomes the duty of every Muslim to comply with the dictates of *siyāsah* that promote the ideals of justice and *maṣlahah*.¹³

Siyāsah, in its widest sense, has five purposes: protection of life, religion, mind, lineage, and property. The ‘*ulamā*’ are unanimous that protection of these values constitutes the ultimate objectives of the shari’ah, and *siyāsah* is an instrument by which to achieve them.¹⁴

Ibn Qayyim divides *siyāsah* into two types: unjust *siyāsah* (*siyāsah zālimah*), which the shari’ah forbids, and just *siyāsah* (*siyāsah ‘ādilah*), which seeks to serve the cause of justice. Since justice is the principal goal of *siyāsah*, it is an integral part of the shari’ah and always in harmony with it. “We merely call it *siyāsah* because of the linguistic usage, but it is nothing other than the justice ordained by God and His Messenger”¹⁵ God Almighty sent

⁸ ‘Abd al Rahmān Taj, *al Siyāsah al Shar‘iyyah wa al- Fiqh al- Islāmi*, Cairo: Maṭba‘ah Dar at Ta’līf, 1373/1953.

⁹ This has in fact happened in some states in Malaysia where a share in zakat is given to new converts to Islam, in the name of *muallafat al-qulub*.

¹⁰ Taj, *al Siyāsah*, p. 28; Khallaf, *al Siyāsah*, p. 3.

¹¹ Note. e.g., the Qur’an (Āl ‘Imrān: 104 and 100; al Tawbah: 71 and 124).

¹² Abu Ishaq Ibrahim at Shaṭībī, *al Muwāfaqāt fī Uṣūl al Shari‘ah*, Cairo: Maktabah al Tijāriyah al Kubra, II, p.7. See also Ibrahim bin ‘Alī Ibn Farhum, *Tabṣirah al Hukkām fī Uṣūl al ‘Aqdīyah* (Cairo: al Maṭba‘ah al Bahīyah, 1302) II, p. 106.

¹³ Cf. Mohammed S. el-Awa, *Punishment in Islamic Law*, Indianapolis: American Trust Publications, 1982, p. 116.

¹⁴ Taj, *al Siyāsah*, p. 28.

¹⁵ Ibn Qayyim, *al Turuq*, p. 5.

messengers and scriptures to mankind in order to establish justice among people. When there are signs that indicate the path to justice, it is in accord with the Law of God to aim toward it.¹⁶ Hence, “any path that leads to justice and fairness is an integral part of the religion and never contrary to it.”¹⁷

Siyāsah is changeable in accordance with the change of circumstances. Indeed *siyāsah* is an instrument with which to accommodate the needs of social change with the shari’ah. *Siyāsah* also enables the government to administer its domestic and foreign affairs by enacting laws and regulations that guarantee security and justice to the citizens, materialise their interests, and pave the way for their prosperity.¹⁸

In the area of taxation, just *siyāsah* requires fairness in the levying of taxes and consideration to the ability of the taxpayer. The non-Muslim citizens must also be fairly treated and must not be burdened with oppressive taxes that subject them to poverty and degradation.¹⁹ No policy can properly be called *siyāsah shar‘iyah* unless it observes the limits of moderation, which errs neither toward severity nor to laxity, for both lead to injustice and the loss of rights.²⁰

The requirements of a just *siyāsah*, with regard to the selection and appointment of officials, as Ibn Taymiyyah explains, have been laid down in the Qur’an (al Nisā’, 4: 58) as follows: “Surely Allah commands you to make over the trusts (*an-tu’addū al-amānāt*) to those to whom they due, and when you judge between people, you judge with justice.” Ibn Taymiyyah’s widely-acclaimed book, *al-Siyāsah al-Shar‘iyah fī Islāḥ al Rā’ī wa al-Ra‘iyyah*, as he says it on the very first page, is a commentary on this verse. “Selection of officials’ is the occasion of revelation of this verse. It is a trust fulfilled only when selection is based on ability and competence. Ibn Taymiyyah adds that *tu’addū al amānāt* in this verse has been interpreted by the following hadith: “When a person is entrusted with authority over the affairs of the believers, and he, in turn, delegates this authority to another while he could find a more competent person for the task, he has betrayed Allah and His Messenger.”²¹ Then he quotes ‘Umar b al Khattab also to have said: “Whoever delegates a public office to another for the sake of friendship or personal favour indeed betrays Allah and His Messenger and the believers”

The fact that the Qur’an refers to *amānāt* in the plural indicates that all forms of trust - be it the responsibility of public office, abiding by one’s promises and contracts, responsibility to give a sincere counsel, and one’s duties towards others - all fall within the purview of *amānāt*.²²

Elsewhere, the Quran singles out two qualities, namely, strength and loyalty, to be the most desirable qualities in the selection of employees: “Surely the best of those you can employ is the one who is strong and loyal (*amīn*)” (al-Qaṣaṣ: 26). Strength in every *wilāyah* (delegation of power) is to be sought in the best of its relevant qualities. The strength of an army

¹⁶ Ibid., p. 17.

¹⁷ Ibid., p. 16.

¹⁸ Cf., Khallaf, *al Siyāsah*, p. 19; Taj, *al Siyāsah*, p. 30.

¹⁹ Taj, *al Siyāsah*, p. 40-41.

²⁰ Ibid., p. 34.

²¹ Ibn Taymiyyah, *al Siyāsah*, p. 6.

²² Muhammad Al Bahi, *al Dīn wa al Dawlah min Tawjihāt al Qur’ān al Karīm*, (Beirut: Dar al Fikr, 1391/1971). p. 356.

commander, for instance, refers to his knowledge of military affairs, and that of a judge to his knowledge of shari'ah. Loyalty, in turn, refers to three qualities: fear of Allah, refusal to neglect His commands for a small price, and lack of fear of men. This is the purport of the verse: "So fear not people and fear Me and take not a small price for My messages." (al-Mā'idah, 5:44).²³

Another important aspect of *amānāt* Ibn Taymiyyah has expounded at length is concerned with the just distribution of wealth in the community. The citizens must not expect from the government more than what they deserve, nor must they withhold any payment to which the government may be entitled. The ruling authorities must, in turn, deliver the wealth of the community to those of its deserving members, not according to their whims, nor in the manner of owners and proprietors, but in their capacity as trustees and delegates (*umanā' wa nuwwāb*).²⁴

Furthermore, in matters of fatwa and judgment, *siyāsah* must aim at "opening the doors of mercy and beneficence to the people, and select from the diversity of schools and interpretations advanced by the 'ulamā' that which is beneficial to relieve people from severity and hardship."²⁵

To conclude this section, the availability of some discretionary powers to the rulers is accepted in principle in all theories of government. Yet the rule of law and constitutionalism in modern states give rise to questions over developing adequate checks and balances over the exercise of discretionary power. The need for such controls is particularly emphasised in the field of criminal law where the citizen is exposed to the coercive power of the state.

With the unprecedented advance of education and learning in modern times, it is also obvious that specialisation and technical know-how have become essential to good management. The development of a judicious *siyāsah* must, therefore, to a large extent, depend on the availability of better and more refined methods. In a similar vein, as a result of the introduction of formal constitutions and codes of laws by most of the present day Islamic countries, and their attempts to define and regulate the powers of the various organs of state, the scope of *siyāsah* has been regulated to a large extent. However, *siyāsah* can still play a useful role, which is to encourage initiative in the direction of *maṣlahah*, to prevent rigidity in the application of the law, as well as enable the government to formulate responses to unprecedented situations. The need for such flexibility is often felt when the legal text does not cover a particular case or situation, or when it does so cover it, *siyāsah* can still play a role in moderating an overly strict and literal application of the legal text that fails to serve the ideals of justice and public interest.

II. Higher Purposes of Shari'ah (*Maqāṣid al-Shari'ah*): Definition, Conditions and Classifications

Al-Shatibi who developed the *maqāṣid* it in the fourth volume of his magnum opus, *al-Muwāfaqāt*, quite surprisingly, did not provide a definition for it, and it was not until the Tunisian scholar Ibn 'Ashur (d.1973) provided it and defined the general objectives (*maqāṣid 'āmmah*) of shari'ah as "the deeper meanings and inner wisdom (*ma'ānī wa ḥikam*) that the

²³ Cf. Ibn Taymiyyah, *al-Siyāsah*, pp. 12-13. See also "Muhammad Asad. *The Principles of State and Government in Islam*, Berkeley and Los Angeles: University of California Press. 1961, p. 47.

²⁴ Ibn Taymiyyah, *al-Siyāsah*, p. 29.

²⁵ Khallaf, *al-Siyāsah*, p. 14.

Lawgiver has contemplated in respect of all or most of the shari'ah ordinances.” On a broader note, Ibn ‘Ashur also wrote that the general purpose of shari’ah (*maqṣad al-tashrī’ al-‘ām*) is “preservation of the order and prosperity of the ummah through educating and reforming the mental and behavioural self of the individual and taking care of the world around him and what has been placed under his custody and control.”²⁶

I shall not engage into the details of Ibn ‘Ashur’s definition here but briefly to say that he also specified four conditions a general *maqṣad* must qualify for it to be valid. These are: to be firm, evident, general, and exclusive (*thābit, zāhir, ‘āmm, and ṭard* respectively).²⁷ Al-Shāṭibī’s own contribution to the methodology of *maqāṣid* included inductive reasoning (*al-istiqrā’*) as a method by which the *maqāṣid* can be identified through a general reading of the Qur’an and hadith.²⁸

Briefly, *maqāṣid* are identified in the clear text (*naṣṣ*) or by general consensus (*ijmā’*), failing which they may be identified by recourse to *ijtihād*. Al-Shatibi suggested that *istiqrā’*, being a form of *ijtihād*, is a reliable method by which to identify the *maqāṣid*, whereas Ibn ‘Ashur also added, in line with the writings of ‘Izz al-Dīn ‘Abd al-Salam al-Sulami (d.1262/660) and others, that human intellect (*‘aql*) and unrestricted reasoning (*istidlāl*) could also identify the *maqāṣid*. Most of these methods can actually be subsumed under *ijtihād*.²⁹

Maqāṣid strike a close note with the rationale, ratio legis, and effective causes (*‘ilal*) of the *ahkam*. Ibn Qayyim al-Jawziyyah who has explored this subject in considerable detail has noted that the number of such references in the Qur’an alone reaches, not just one or two hundred instances as others had earlier estimated, but that in over one thousand places the Qur’an either directly or indirectly and in diverse manners of expression and language identifies the rationale, purpose, benefits and consequences of its rulings. All of these are then used as indicators toward the identification of *maqāṣid*.³⁰

Other names that stand out, next to al-Shāṭibī and Ṭāhir ibn ‘Ashūr, in the development of *maqāṣid* are those of Imam al-Haramayn al-Juwayni (d. 1058CE), and his disciple al-Ghazali. Al-Juwayni was the first to classify the *maqāṣid* into the three classes of essential, complimentary, and embellishments (*ḍarūriyyāt, ḥājjiyyāt* and *taḥsīniyyāt* respectively), a classification which has gained general acceptance ever since. Abu Hamid al-Ghazali (d.1111CE) was the first to classify the *ḍarūriyyāt* into the five headings of faith, life, intellect, lineage and property.³¹ Taqī al-Dīn Ibn Taymiyyah (d.1328) was probably the first to depart from the notion of confining the *maqāṣid* to a specific number and added to the existing list of five *maqāṣid* such other themes as fulfillment of contracts and trusts,

²⁶ Muhammad Tahir ibn ‘Ashur, *Maqāṣid al-Shari’ah al-Islamiyyah*, ed. Muhammad Tahir el-Messawi, al-Baṣā’ir li’l-Intāj al-‘Ilmī, 1998, p. 63.

²⁷ Ibid., p.63. See also on the definition and conditions of *maqāṣid*, Mohammad Hashim Kamali, *Maqāṣid al-Shari’ah, Ijtihad and Civilisational Renewal*, Occasional Paper 20, London: The International Institute of Islamic Thought, and Kuala Lumpur: the International Institute of Advanced Islamic Studies (IAIS) Malaysia, 2012, p.6-7.

²⁸ Al-Shatibi’s contribution is also noted in two other areas of the methodology of *maqāṣid*: the relationship of *maqāṣid* to *ijtihād*, and how the *maqāṣid* addressed the relationship between the individual (*mukallaḥ*) and the Lawgiver (al-Shāri’). See for details on *al-istiqrā’* and al-Shatibi’s work on *maqāṣid*, Mohammad Hashim Kamali, *Shari’ah law: An Introduction*, Oxford: Oneworld Publications, 2008, p.132f.

²⁹ See for details on *Istiqra’* in my *Maqṣid al-Shari’ah* at fn. 3 above, at p.20f.

³⁰ Ibn Qayyim al-Jawziyyah, *I’lām al-Muwaqqi’in*, vol. 1, p. 169; see also Ahmad al-Raysuni, “al-Baḥth fi *maqāṣid* al-shari’ah: Nash’atuh, Taṭawwuruh wa Mustaqbaluh,” in ed. El-Awa, *Maqāṣid al-Shariah*, 185.

³¹ Shihāb al-Dīn al-Qarāfī (d. 1285) added a sixth, namely the protection of honour (al-‘ird) to al-Ghazali’s five.

honouring the rights of one's parents and neighbours, and moral purity etc., themes which he said also featured prominently in the Qur'an and Sunnah. In his renowned *Maqāṣid al-Shar'iah al-Islamiyyah*, Ibn 'Ashur provided a definition, as already noted, for the *maqāṣid* and added further to its exiting classifications.³² In line with Ibn Taymiyyah's views, Yusuf al-Qaradawi (b.1926/1345) has further extended the scope of *maqāṣid* to include social welfare support (*al-takāful al-ijtimā'i*), human dignity and freedom, whereas the present writer has also added economic development, R & D in technology and science, as well as peaceful co-existence among nations to the *maqāṣid* as they too are crucially important and can find support in the Qur'an and Sunnah.³³

It hardly needs elaboration to say that politics and constitution in the Arab world bore the imprints of Western colonial legacy as well as the legacy of historical neglect of the Islamic past, due to the prevalence of despotism, and neglect of Islam's guidelines on consultation, justice and *maṣlahah*. This was strongly resonated in the Islamic revivalist movement of the latter part of twentieth century and the call hence that law and politics in the Muslim world must reconnect with Islam's own normative guidelines and heritage- and the Islamic state ideas. The effort now to develop politics from the viewpoint of Islamic norms, or *siyāsah* in light of the *maqāṣid*, is in many ways original and still in its early stages of development.

There is little merit in the view some commentators have advanced over the need for a separate discipline in the name of political *maqṣad* (*'ilm maqāṣid siyāsī*). The proponents of this view have held that the existing knowledge of *maqāṣid* and its five main varieties that were identified so long ago no longer corresponded to the exigencies of contemporary politics. That the *maqāṣid* theory developed by al-Shatibi and others is legalistic and not comprehensive enough to encapsulate the wider ranges of objectives that find support in - the revealed sources. This is a rash conclusion perhaps, as the classification of *maqāṣid* into various types as well as contributions by Ibn Taymiyyah, al-Qaradawi and others go a long way to accommodate such a suggestion. Besides, the idea to segmentise the *maqāṣid* in the name of separate disciplines would stand at odds with the unitarian spirit of the *maqāṣid*, and may extend the claim to other areas – and not perhaps advisable.³⁴ There should be no objection, on the other hand, to the elaboration of *maqāṣid* with reference to particular subject areas such as crimes and penalties, *mu'āmalat* and contracts and so forth.

Certain new developments, such as Islamic banking and finance that emerged in the latter part of twentieth century and grew at an exponential pace, were market driven more than knowledge driven. A groundswell of criticism has developed as of late over the authenticity and shari'ah compliancy of some of the IBF products. The critique has generally been that the industry has followed the fiqh rules but not the purpose and spirit of those rules – hence a renewed focus on the *maqāṣid* to provide the desired sense of direction and assurance over the credibility of IBF.

³² Whereas the *maqāṣid* were hitherto classified into the general *maqāṣid* (*al-maqāṣid al-'āmmah*), and partial *maqāṣid* (*maqāṣid juz'iyyah*), Ibn 'Ashur added the intervening category of specific objectives (*maqāṣid khāṣṣah*) and placed under this category the *maqāṣid* pertaining to family, *maqāṣid* in financial transactions, *maqāṣid* also of adjudication and testimony, and *maqāṣid* of punishments (*maqāṣid al-'uqūbāt*).

³³ Cf., Kamali, Shariah Law, 126-27.

³⁴ Cf., Sayfuddin 'Abd al-Fattah, "Nahw Taf'il al- Namūzaj al-Maqasidi fi'l-Majāl al-Siyāsī," in ed. Mohamed Saleem El-Awa, *Maqāṣid al-Sharī'ah al-Islāmiyyah: Dirāsāt fī Qadāyā al-Manhaj wa majalāt al-Taṭbīq*, London: Al-Furqan Islamic Heritage Foundation, 2006, pp. 357-59. 'Abd al-Fattah also disagrees with the suggested division.

When Malaysia's incumbent Prime Minister, Najib Razak, announced in January 2015 the introduction in Malaysia of the *maqāṣid* shari'ah index of governance, it was giving the *maqāṣid* a new profile as guide to government policy. This was yet another new projection of the *maqāṣid*, from IBF to the wider arena of governance.³⁵ This may well be marking a new phase in the development of the Islamic state idea, which has been around for some decades, but ran in different directions, and has yet to generate consensus, partly due to politicisation of Islam, radical fundamentalism and violence that ran parallel courses, and evolution of ideas on the theory and practice of Islamic state was met with disruptions.

Maqāṣid have been classified into several types, depending on the viewpoint and purpose of classification. An overview of the classification of *maqāṣid* into the following five categories will help advancing a better understanding of the subject:

- a) From the viewpoint of their relative importance, the *maqāṣid* have been classified into the three categories of essential *maqāṣid* (*ḍarūriyyāt*), complementary *maqāṣid* (*ḥājiyyāt*) and desirabilities (*taḥsīniyyāt*) as already mentioned. Only the first of these have been specified into the five headings of the protection of religion, life, intellect, family and property. Briefly the *ḍarūriyyāt* are essential to the survival and spiritual well-being of the individual and society, so much so that their destruction and collapse would precipitate chaos and demise of normal order in society. The *ḥājiyyāt* are defined as *maqāṣid* or *maṣāliḥ* that seek to remove severity and hardship which are, however, not essential to normal life and order. *Taḥsīniyyāt* are in the nature of desirabilities that seek to attain refinement and perfection in customs and conduct of the people at all levels, and they often complement the previous two classes of *maqāṣid*.³⁶
- b) From the viewpoint of their scope, *maqāṣid* have been further classified into the three categories of general purposes (*al-maqāṣid al-‘āmmah*), particular purposes (*al-maqāṣid al-khāṣṣah*), and partial purposes (*al-maqāṣid al-juz’iyyah*).³⁷

The general purposes are those that extend to the whole of shariah in all its parts and they are altogether broad and comprehensive. Realisation of benefit (*maṣlaḥah*), prevention of harm and corruption (*ḍarar, mafsadah*), building the earth (*i’ṣār al-ard*), administration of justice, and removal of hardship (*raf’ al-ḥaraj*) are examples of the general purposes of shari'ah. They differ from particular purposes in that the latter contemplate specific areas and subjects of the shari'ah, such as commercial transactions, crimes and punishments, matrimonial law, worship matters, acts of charity and so forth. The two are not totally separate in that the particular *maqāṣid* should observe and comply with the broader objectives of shari'ah and should not go against the general *maqāṣid*.³⁸

³⁵ Ili Liyanah Mokhtar, "Islamic principles key in govt policies," Kuala Lumpur, *New Straits Times*, January 3, 2015, p.2: Work on "the *Maqāṣid* Syariah Index was mooted by Najib in August last year," and it was spearheaded by the Department of Islamic Development Malaysia (JAKIM). The initial announcement of the *maqāṣid* index was made on the occasion of the national Maulidur Rasul celebration 2014.

³⁶ See for details and illustrations Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, Revised and enhanced edn., Kuala Lumpur: Ilmiyyah Publishers, 1998, 397-99.

³⁷ This third class (i.e. *juz’iyyah*) has also its correlative, namely *al-maqāṣid al-kulliyah*, or totalitarian purposes. However the last category is almost identical with 'general purposes' - hence we combine the two classifications into one that consist of three varieties.

³⁸ Cf., Muhammad Ibrahim Naqashi, 'Amaliyyāt al-Taṣkīk wa Dawruhā fi Taḥqīq Maqāṣid al-Shari'ah al-Islāmiyyah,' in IIUM Conference Proceedings, Vol. 2, Maqsid al-Shariah, 62.

Partial purposes may be defined as those which signify the Lawgiver's intention and purpose regarding particular rulings of shari'ah in any area or topic. This is similar to what is known as the effective cause ('illah, hikmah) of a ruling, which the jurist needs to identify in the construction, for example, of analogy (qiyās).³⁹ One of the reasons why the *uṣūl al-fiqh* jurists have not expatiated on the *maqāṣid* is that in their view 'illah is about the same as the *maqṣad* of a ruling.⁴⁰ That said, it is submitted that the 'illah of a ruling may or may not be the same as its purpose. For the 'illah of a ruling tends to be grounded in the status quo or existing order, whereas its end-goal and purpose may also be looking to the future and beyond status quo.

- c) *Maqāṣid* have also been classified into the Lawgiver's purposes (*maqāṣid al-shāri'*) and the human purposes (*maqāṣid al-mukallaf*). To say that human welfare and benefit, or knowledge of religion, are God's illustrious purposes in ordaining the laws of shari'ah illustrate the former, whereas seeking employment, or university qualifications may represent the human purpose of seeking knowledge. It is generally recommended that all competent persons should bring, as far as possible, their own purposes into conformity with the *maqāṣid* of the Lawgiver.⁴¹
- d) Another classification of *maqāṣid* is its division into primary purposes (*al-maqāṣid al-aṣliyyah*) which the Lawgiver, or a human agent, have originally intended, whereas subsidiary purposes (*al-maqāṣid al-tab'īyyah* or *far'īyyah*) are those which support and complement the primary *maqāṣid*. For instance, the primary shari'ah purpose of marriage is procreation of the human species, which may or may not materialise in a marriage among elderly persons contracted with the purpose mainly of companionship - which is a secondary purpose.⁴²
- e) Lastly, the *maqāṣid* may be either definitive (*qaṭ'ī*) or speculative (*ẓannī*). The former signify purposes which are based in a clear text of the Qur'ān, hadith, or general consensus (*ijmā'*), and even induction (*istiqrā'*) according to al-Shatibi and Ibn 'Ashur, whereas the latter may be based on a speculative text, rationality and ijtihad.⁴³ In the event of a conflict between them, the definitive purposes of shari'ah take priority over the speculative ones.

Siyāsah and *maqāṣid* may both be described as dynamic and flexible against the background of a rich heritage of the juristic thought of *uṣūl al-fiqh* that was, however, textualist in orientation and also bore the influences of syllogism and intricacies of Greek logic. The *maqāṣid* discourse is goal-oriented that can bring efficiency to decision making on contemporary issues, beyond the technicalities of the *uṣūl al-fiqh* doctrines. Valuable as these are, they are exceedingly elaborate and burdened at times minutiae at the expense some times of the broader sense of purpose the shari'ah is meant to convey.

³⁹ Cf., Gamal Eldin Attia, *Towards Realisation of the Higher Intents of Islamic Law: Maqasid al-Shari'ah – A Functional Approach*, Eng. Tr. by Nancy Roberts, London and Washington: the International Institute of Islamic Thought, 2007, 112.

⁴⁰ Yet the present writer has argued that this could also mean an attempt to subsume the *maqāṣid* under the *uṣūl* methodology and thus deny them independent recognition. See for further detail, Mohammad Hashim Kamali, "Maqāṣid al-Shari'ah and Ijtihad as Instruments of Civilisational Renewal," *Islam and Civilisational Renewal*, Vol.2, no.2 (January 2011), 251 f.

⁴¹ Al-Shatibi, *al-Muwāfaqāt*, Vol. II, p. 400. See also Attia, *Towards Realisation*, 113.

⁴² See for details on the classification of *maqāṣid*, Kamali, *Shariah Law*, 134-137.

⁴³ See for details *ibid*, p. 134.

The precedent of Companions and leading imams is associated with flexibility and dynamism often exhibited in their responses to issues, fatwa and ijihad. The onset of indiscriminate imitation (*taqlīd*) after the crystallisation of *madhāhib*, however, brought restrictions that constrained the free spirit of enquiry and interpretation. Then also the rift between the ‘*ulamā*’ and political leaders (*umarā*’) that began with the Umayyad ruler Mu’awiyah persisted such that politics and jurisprudence parted company and followed different courses, one dominated by the ‘*ulamā*’ and the other by the *umarā*’, with little understanding and interaction between them. The ‘*ulamā*’ were isolated from politics and they in turn hardly assigned a role to the *umarā*’ in their formulations of ijihad, *ijmā*’, and *uṣūl al-fiqh* doctrines. The rift continued and the question such as we now pose on how *siyāsah* can be guided by the guidelines of *maqāṣid* was basically not entertained.

III. A *Maqāṣid* -Based Approach to *Siyāsah Shar’iyyah*

To ascertain healthy interaction and exchange between *siyāsah* and *maqāṣid* would naturally mean that *siyāsah* should be guided by the guidelines of the *maqāṣid*. To facilitate this, one would need to identify the major themes of *maqāṣid*, the order of priorities between them, and how they can guide decision making in *siyāsah*. How is one to juxtapose the wider bulk also of fiqh, its value pointers, such as in the scale of five values (*al-aḥkām al-khamsah*), and fiqh rules that relate to a great variety of other themes and subjects with the guidelines of the *maqāṣid*?

The *maqāṣid* are purposive and provide general guidelines which can help consolidate the extensive data of other disciplines, especially of Islamic law and jurisprudence (fiqh, *uṣūl al-fiqh*), *tafsīr*, *siyāsah* etc., and read them from different angles that convey a sharper sense of direction and purpose. *Maqāṣid* consist primarily of epistemological guidelines rather than thematic and substantive details, metrics and yardsticks on particular subjects. In the sphere of Islamic banking and finance, for instance, the *maqāṣid* are more useful for policy makers and strategists at leadership levels rather than product designers and project operators. The *maqāṣid* resemble the *uṣūl al-fiqh* in that both consist of value categories and methodological guidelines applied to certain subjects in order to extract certain results. This would be the fiqh rules, in the case of *uṣūl al-fiqh*, and prioritisation of the higher goals and purposes of shari’ah in public policy, in the case of *siyāsah*.

It would be hard to imagine the *maqāṣid* operating in a vacuum, or operating on their own, without their being a subject matter to which they can apply. For instance, when it is said that justice, trustworthiness (*amānah*), or protection of life and family are the *maqāṣid* of shari’ah, these are not self-evident in respect of detail. A great deal of details on each of these are available in the fiqh manuals. These would most likely need to be consulted, side by side with the substantive rules of justice, *amānah*, family laws etc., in the Qur’an and hadith. One may find that the fiqh rules have not always been constructed in line with the higher purposes of shari’ah as are expounded in the Qur’an and hadith, and so one sets out to provide a fresh purpose-oriented reading of justice, observance of trusts (*amānāt*), and of the detailed rules that protect and promote life and family. One would still be concerned, in other words, with the detailed rules of shari’ah and fiqh for one to develop a new reading.

One may have a similar case for *siyāsah*, as we have before us in the present article, that politics and government have not been on the whole observant of the priorities and value points of the *maqāṣid*, and there are many supportive arguments to justify that this is indeed the case. Then one sets out to identify which aspects of *siyāsah*, if any, is wanting of

adjustment in the light of *maqāṣid*, and finally come up with a different reading of that aspect of *siyāsah*.

This has been the point I believe behind al-Qaradawi's attempt, developed in his book entitled *al-Siyāsah al-Shar'iyyah fī Daw' Nuṣūṣ al-Shari'ah wa Maqāṣiduhā* (*siyāsah shar'iyyah* in light of the injunctions of shariah and its higher purposes) to put the data of shari'ah/fiqh in a certain order and categories, as I elaborate below, such as the jurisprudence of priorities (fiqh of *awlawiyyāt*), jurisprudence of measurement and balance (fiqh of *muwāzanāt*), and the jurisprudence of change (fiqh of *taghyīr*), and in this way provide a holistic reading of the purposes and themes of *maqāṣid*, *siyāsah* and fiqh together - a *maqāṣid*-oriented reading, in other words, of *siyāsah* and fiqh. This would entail an attempt, in turn, to put the fiqh details in a certain order of priority, balance and moderating it in parts, and change it, if need be, in other parts in line with the *maqāṣid*, so that the data of fiqh can be utilised for policy making in light of the guidelines of *maqāṣid*.

IV. *Maqāṣid*, *Siyāsah* and Fiqh

Al-Qaradawi's attempt to provide an interactive reading of the three subjects, fiqh, *siyāsah* and *maqāṣid* is prompted, to some extent, by the differences of perspective and approach between them. The rules of fiqh, and those of the applied state law (*qānūn*), are not primarily concerned with what initiative should one take, or what law or policy should one introduce – this will be of interest to *siyāsah* and *maqāṣid*, of course, but not necessarily to fiqh. Fiqh is primarily concerned with the practical rules of conduct addressed to the competent person (*mukallaf*), rules in other words, that already exist and should be implemented. In certain areas of fiqh, such as in criminal law and family law, the fiqh rules come into play mainly when an act is committed or a contract is concluded. This is characteristic of all positive law, which is also largely shared by the fiqh rules, and is on the whole in line with the requirements of the principle of legality that no act is a crime unless there is an existing law to say so in advance. This is where fiqh differs with *siyāsah* and *maqāṣid*, neither of which would be constrained by such prerequisites. *Siyāsah* and *maqāṣid* determine what laws and policies should there be to achieve certain purposes. The *maqāṣid* set and articulate those purposes and *siyāsah* designs laws and policies to implement them in the best ways possible. *Maqāṣid* is where theology, philosophy and legal theory meet and interact; it sets vision and determines the course fiqh and *siyāsah* should take.⁴⁴

There is a natural interface between *siyāsah shar'iyyah* and *maqāṣid* in regards to a set of fundamental objectives that the Qur'an has identified. One of these is the principle of the vicegerency of man in the earth (*istikhlāf fi'l arḍ*, al-A'raf, 7:129), which is focused in turn, on building the earth and its resources (Hud, 11:61) and establishing a just socio-political order therein. That interface also obtains in regards to human dignity, *'adl*, *amānah*, and *maṣlahah*, which feature prominently in the Qur'an and are of concern to both to *siyāsah* and *maqāṣid*. These are all typically broad and comprehensive and receive detailed coverage in other Islamic disciplines, including *tafsīr*, *ḥadīth* and fiqh. The *maqāṣid* can help identify the priorities of relevance to *siyāsah*. One who is knowledgeable of the *maqāṣid* would be able to identify, in *tafsīr* and hadith, for instance, reports and interpretations that may be weak and erroneous, and in regards to *ijtihād* also the strength and weakness of the evidence on which it may be founded - or indeed the need, as the case may be, to depart from that *ijtihād* due to

⁴⁴ Cf., David Johnston, "Yusuf al-Qaradawi's Purposive Fiqh: promoting or Demoting the Future Role of the Ulama," in ed. Adis Duderija, *Maqasid al Shari'a and Contemporary Reformist Muslim Thought: An Examination*, New York, N.Y: Palgrave Macmillan, 2014, p. 44f.

subsequent change of conditions and new developments in knowledge.⁴⁵ Al-Qaradawi's more detailed responses to these questions and the role of the *maqāṣid* in regards to them is given in his exposition of *fiqh al-awlawiyyāt*, or jurisprudence of priorities. This is another way of saying, for instance, that the *maqāṣid* should naturally prioritise and pay closer attention to the *wājib*, and the *ḥarām*, before attending to that which may be *mandūb* or *makrūh* and so forth.

Both the *maqāṣid* and *siyāsah* are concerned, as already noted, with the *maṣāliḥ* and *maḥāsib*. The policy maker must be careful neither to exaggerate nor underestimate the scope and size of the *maṣlahah* and *maḥsadah* in real situations, but to take correct positioning in regards to them and the various combinations in which they occur again in light of the *maqāṣid*. This is the subject of fiqh of *muwāzanāt*, or jurisprudence of measurements and balance. I begin with an exposition of the *fiqh* of priorities.

V. Jurisprudence of Priorities (*Fiqh al-Awlawiyyāt*)

A *maqāṣid*-oriented *siyāsah* is bound to be concerned with priorities in the sense of placing every situation and its relevant guidelines in their due order of priority on the wider scales of shariah values. What is of greater importance and command priority must naturally come first, which may, in turn, relegate to a lower order of priority some of the subsidiary rules and guidelines of shariah. This would be as per normal expectation. Yet the persistent legacy of imitation (*taqlīd*) and hardline fundamentalism have brought about distortions whereby Muslims began to give priority to minor matters and relegate and neglect matters of greater importance. One is readily reminded in this connection of the prominence that radical and hardline conservatives attached to what people wore and ate, the length of one's beard and the detailed expressions of concern over women's clothing and appearance. These became the focus of attention at the expense often of larger issues of much greater importance, such as good governance, social justice, economic development, combating poverty and corruption in the Muslim lands. Such attention to minutiae did not fail to convey the wrong impression as if all Islam cared about was clothes and food, matters that had little to do with the priorities of Islam, of our time and age, and the higher objectives of shari'ah.

The jurisprudence of priorities is closely associated in turn with fiqh of *muwāzanāt* (explained below) as careful measurement and comparative assessment also lead to ascertaining priorities for purposes of decision making. Al-Qaradawi mentions in this connection that when he first used the expression *fiqh al-awlawiyyāt*, some people disapprovingly commented that all of the decisive rules of shari'ah are *awlawiyyāt*, and that a holistic approach was what the shari'ah demanded. Are we going to accept some of the shari'ah as priority and relegate the rest to lower ranks? Qaradawi acceded in principle to say that we do not have the choice to pick and choose between the decisive injunctions of shari'ah in the sphere, for instance, of *ḥalāl* and *ḥarām*, but to accept the whole of shari'ah, adding however, that this was not what *fiqh al-awlawiyyāt* had meant. As for ascertaining and prioritising certain aspects of the shariah, this is what the shari'ah itself has done with regard to its own rulings and *aḥkām*: the obligatory (*wājib*, *fard*) is not of the same rank as the recommendable (*mandūb*), nor is the prohibited (*ḥarām*) the same as that which is reprehensible (*makrūh*).⁴⁶

⁴⁵ Cf., Abdullah b. Yusuf al-Juday', "Maqāṣid al-Shari'ah," (unpublished) doctoral dissertation, University of Oslo, 2014/ 1435, pp. 25-26.

⁴⁶ Yusuf al-Qaradawi, *al-Siyāsah al-Shar'iyyah fī Daw' Nuṣūṣ al-Sharī'ah wa Maqāṣiduhā*, 2nd edn., Cairo: Maktabah Wahbah, 1426/2005, p. 307.

Furthermore, it is established by the testimony of the Qur'an that belief (*'aqīdah*) takes priority over action (*'amal*), but since the belief itself necessitates prior knowledge of the subject matter of that belief, then knowledge precedes belief/*'aqīdah*, and becomes a priority of the first order. There is an inherent interdependence between knowledge and faith in Islam, which is clearly upheld in the Qur'an, including for instance, in the following verse: "Those who are endowed with knowledge may know that the (Qur'an) is the Truth from thy Lord and may believe it so, hence their hearts surrender and become open to it." (al-Hajj, 22:54)

The *'ulamā'* have further maintained that the intellect (*'aql*) is the foundation of received knowledge (*naql*), so much so that without the instrumentality of *'aql*, the articles of faith could not have a reliable base or audience. This also explains why the faith of a total imitator (*muqallid*) who does not comprehend what he imitates is doubtful and unreliable.⁴⁷ A certain order of priorities would also flow from this: priority of understanding over memorisation, priority of *ijtihād* over *taqlīd*, and priority of the definitive over the speculative rulings of shari'ah. A certain order of priority is also ascertained at almost every level of the *maqāsid* themselves. The essential (*darūriyyāt*) thus take priority over the complementary (*hājjiyyāt*) and the embellishments (*taḥsīniyyāt*). This is also the case with regard to the five essentials themselves wherein priority is given to the protection of religion, then of life, then *'aql*, then lineage and finally property.⁴⁸

The definitive *maqāsid* (*qaṭ'iyyah*) also take priority over those which are based on interpretation and probability (i.e. *ẓanniyyah*), and the primary *maqāsid* (*maqāsid aṣliyyah*) take priority over those which are subsidiary (*far'iyyah*), just as the Lawgiver's *maqāsid* (*maqāsid al-shāri'*) take priority over those of the individual (*maqāsid al-mukallaḥ*) and so forth. This order of priorities, as also many others, may not be absolute and not always clear-cut as the value points therein may overlap and become, at least partially, an extension of one another, especially in real life situations. Yet constructing a certain order of priorities is useful for purposes of resolving possible conflicts arising between them, and the allocation also of available resources for their implementation by the state authorities and policy makers.

It is not advisable, for instance, for the state officials in charge of trade and commerce, to invest in, or even allow, the production and import of embellishments, such as jewellery and cosmetics, while there is a persistent shortfall of the *darūriyyāt*, such as essential foodstuffs and medicine in the market. It is similarly not allowed to allocate resources to production of luxury food varieties and fruits, while the people cannot find enough staples such as wheat and rice in the marketplace.⁴⁹

Shari'ah's order of priority is also well-known with regard to the priority of *fard 'ayn* (personal obligation) over *fard kifāyah* (collective obligation), and that of the obligatory over the supererogatory (*farā'id* over *nawāfil*) - and in the negative order, of the prevention of

⁴⁷ Ibid., 310.

⁴⁸ This is the conventional order of *darūriyyāt*, although a minority of scholars, including the present writer are of the view that protection of life may be put the first in this order, simply because without life all other *maqāsid* would collapse. The conventional argument that religion comes first because life is sacrificed for the sake of protecting religion is weak - as life is also sacrificed for protection of other values, such as property, and in fact for most of the other *daruriyyat*.

⁴⁹ Cf., Qaradawi, al- *Siyāsah*, 313.

harm over the procurement of benefit.⁵⁰ In a similar vein, prevention of infidelity (*kufr*) takes priority over prevention of major sins (*al-kabā'ir*), and prevention of minor transgressions (*al-saghā'ir*) takes priority over prevention of doubtful matters (*al-shubuhāt*) and so forth.⁵¹ All of these priorities provide indicators for understanding of what the shari'ah values most and what it does not - and indicators also for *siyāsah* decision makers and those in charge of allocation of resources to take them into account for purposes of implementation.

To illustrate the priority of *fard 'ayn* over *fard kifāyah*, it is reported that when a man came to the Prophet, pbuh, and informed him of his intention to join the jihad, he was asked a question: "is either of your parents alive?" to which the man replied that both of them were. The Prophet then told him: "go back and serve them - that is your jihad."⁵² This is because jihad is a collective obligation, which is, in principle, fulfilled if only some members of the community performed it, whereas being good to one's parents (*birr al-wālidayn*) is *fard 'ayn* addressed to everyone without exception, and takes priority over jihad.

VI. Jurisprudence of Measurement and Balance (*Fiqh al-Muwāzanāt*)

It is important for *siyāsah* to focus on the prospects of benefit and harm (*maṣlahah & maḥsadah*) that affect people's lives. Benefits and harms are relative and circumstantial for the most part and often mixed, such that a pure benefit or harm become a rarity in real life situations. The actual conditions surrounding benefits and harms may thus need to be carefully weighed against the odds that may be pulling in different directions. On occasions when government leaders find themselves confronted with a mixture of harms and benefits and need to make decisions, they naturally face questions as to which to be given preference, which criteria should they be judged by and whether there are guidelines that can be employed to resolve conflicts.

The subject before us is addressed in *uṣūl al-fiqh* under the rubric of conflict and preference (*al-ta'arūḍ wa'l-tarjīḥ*- or *al-ta'ādul wa'l-tarjīḥ*). Al-Qaradawi has used the expression instead of *fiqh al-muwāzanāt*, which he says has found general acceptance. Several scenarios are envisaged as follows:

- 1- Comparison and measurement of the relative weight and scope of various benefits with a view to ascertaining which should be given preference and which may be ignored.
- 2- Comparison and measurement of harms in relationship to one another, especially when all cannot be avoided and a decision has to be made as to which to be tolerated.
- 3- Comparison and measurement in situations of conflicting benefits and harms, and ascertaining when prevention of a certain harm is to be given priority over procurement of a benefit, or when a harm is to be tolerated in order to realise a benefit.

⁵⁰ This is the purport of the legal maxim that "prevention of harms take priority over the procurement of benefits" (*dar' al-mafāsīd awlā min jalb al-manāfi*).

⁵¹ *Al-shubuhāt* or *mashbūhāt* refer mainly to grey areas on which clear evidence is not available one way or another. For instance, when a person avoids consumption of imported chicken from a Muslim country on suspicion that it may not have been slaughtered properly. Another example, a person avoids giving testimony over what he knows but merely doubts himself in case he says something that might cause harm.

⁵² This and a similar other hadith are both cited in Qaradawi, *al-Siyāsah*, 314. In this latter hadith a man came to the Prophet and said "I came to join the jihad while both my parents were weeping." He was ordered to "return and try to make them smile just as you made them weep."

The general guidelines of shari'ah maintain that the benefits of the this world may be sacrificed if it means securing that of the Hereafter, and a private benefit should give way to public benefit in the event of a direct conflict between them - in which case the individual or private party concerned is entitled to fair compensation for the loss or harm inflicted as a result. In a similar vein, benefits that are permanent or long-term take preference over ones that may be temporary and passing. Then also a certain (*yaqīnī*) benefit takes priority over that which may be probable or doubtful (*ẓannī*); and a genuine (*ḥaqīqī*) benefit is also preferred when it falls into conflict with a specious (*wahmī*) one.⁵³

To illustrate a genuine, as opposed to a specious, benefit, a reference is made to the peace pact of Hudaibiyyah, which the Prophet, pbuh, signed with the Quraysh of Makkah in the year 5 A.H. The latter proposed conditions which were one-sided and aroused criticism among the leading Companions,⁵⁴ who complained about them to the Prophet, yet the Prophet went ahead to accept the proposed conditions as he saw Hudaibiyyah opening the door to many long-term advantages for Muslims, and history actually proved him right.⁵⁵ The message of this illustration is that when in doubt, leaders and decision makers should not make superficial decisions, but ascertain and distinguish the genuine *maṣlahah* from that which may be pleasing yet specious and superficial. While the Prophet had access to Divine revelation, Muslim political leaders are advised to consult the experts and community leaders to ascertain the situation. Our discussion of the classification of *maqāṣid* above would also help provide relevant pointers to the question of prioritisation of *maqāṣid* in conflicting situations.

There are a number of legal maxims of fiqh (*qawā'id kulliyah fiqhiyyah*) that provide useful guidelines on benefits and harms. Some of these are derived from the clear text and evidence of the Qur'an or hadith, in which case they command higher authority. A much larger number of legal maxims have also been added in course of time by Muslim jurists and thought leaders through induction and general observation of scattered evidence in the sources - the total number thus reaching about 1,200 legal maxims. Legal maxims are usually epithetic and brief, devoid of detail as they seek to deliver a general message succinctly often in a few words. But since some of them are based on inductive reasoning, they may not be equally authoritative as the ones based on clear scripture.

The hadith-cum-legal maxim that "Harm may neither be inflicted nor reciprocated in Islam"⁵⁶ is the most prominent on the subject and has also become the matrix of a number of other maxims on *maṣlahah*, *mafsadah* and *ḍarar*. The obvious meaning of the maxim before us is that no one may harm another person, animal, property etc., but when harm is inflicted, whether by accident or design, on another, the party/parties so harmed may not take the law unto his own hands and inflict an equivalent harm, as it were, but to seek relief through due

⁵³ See for details al-Qaradawi, *al Siyāsah al Shar'iyah*, 301-302.

⁵⁴ The Hudaibiyyah pact thus stipulated: if anyone migrated from Makkah to the Muslim side in Madinah, he or she must be returned, but they refused to accept a reciprocal condition in favour of the Muslim side. The Quraysh also objected the reference 'Muhammad, the Messenger of Allah' in the text of the treaty and insisted that it should be changed to 'Muhammad b. 'Abd Allah,' to which the Prophet also agreed.

⁵⁵ Qaradawi, *al Siyāsah*, 302.

⁵⁶ Hadith-cum-legal maxim is featured in 100 most salient legal maxims that constitute the introductory chapter to the Ottoma Mejelle (Art. 19. See for details of the *fiqhi* treatment of this maxim Kamali, *Shari'ah Law* 148f). Most of the examples found in the fiqh sources of the application of this maxim tend to relate, however, to instances of harm among individuals. Corporate bodies and states are not in focus. I have tried to move forward and look into the implications of some of these maxims into the public domain as the subject before us would indicate.

process. The maxim under review is broadly worded in an unqualified language so as to include all manner of harms that fall within its purview. Harm inflicted on another may thus include the personal safety, rights, properties, honour, social and professional standing of persons, corporate bodies, communities and states. It is a broad guideline of considerable import on peaceful living and co-existence in a law-abiding society. The hadith-cum-maxim is also broad enough to include all aspects of harm, regardless of the specifics of the perpetrator, the victim, circumstances and factors.

The objectivity of the maxim before us is further endorsed in another legal maxim which simply provides: “Harm must be eliminated – *al-ḍararu yuzāl*,” – again without any further details or qualifications. Harm must not be inflicted in the first place, but when it is inflicted, then all measures should be taken to eliminate it, and in doing so there is to be no discrimination between poor, rich, man woman, powerful and weak. All are equal in their entitlement to due process, remedy and compensation.

According to another maxim on *ḍarar*, “A greater harm is eliminated by tolerating a lesser one” (*al-ḍarar al-ashadd yuzālu bi'l-ḍarar al-akhaff*); and a parallel other maxim which has it that “harm to an individual is tolerated in order to prevent harm to the general public” (*yutaḥammalu al-ḍarar al-khaṣṣ li-daf' al-ḍarar al-'āmm*).⁵⁷ Both of these are supplementary to the above-quoted hadith-cum-maxim of *lā-ḍarar*. For example, a factory that releases harmful substances into air or water may be stopped, or the harm it causes may be suppressed to the extent necessary, even if doing so may involve harm to the factory owner. To give another example, Islamic law permits compelling the debtor, or one who is responsible to support his family and close relatives, to fulfil their obligations, even if this would involve inflicting some harm or hardship on them.⁵⁸

But when harm is inflicted, it must be ascertained, quantified and measured accurately to provide a valid basis of legal action. The remedial measures that follow must also be realistic and proportionate. This is the import of a subsidiary maxim which declares that “Harm is eliminated to the extent possible” and within reasonable bounds (*al-ḍararu yuzāl bi-qadr al-imbkān*).⁵⁹ For example if the harm emanating from a plant that releases poisonous substances can be stopped by closing a certain section of the factory, or by making other adjustments that would stop the harm in question, that would be the right course to take, rather than shutting the whole factory altogether. That said, a *siyāsah*-based decision may well take a different course, depending on the circumstances of the case: the authorities may decide to teach a lesson to others and to that extent exceed perhaps the limits of proportionality so as to stem a spreading mischief from recurring. According to yet another legal maxim, “Harm may not be eliminated by its equivalent: *al-ḍararu lā-yuzālu bi-mithlihi*”, which is self-evident in what it says.⁶⁰

Most of the legal maxims cited above are rational statements and guidelines that receive shari'ah's stamp of approval. Rationality alone is not always enough, however, to provide the basis of court judgment - hence the need for authoritative guidelines to judicial relief and suitable action by other law enforcement agencies.

⁵⁷ The Mejlle (Art. 26). See also al-Barekati, *Qawā'id al-Fiqh*, 88 and 139.

⁵⁸ Cf., Kamali, *Shari'ah law*, 147.

⁵⁹ Cf., al-Qaradawi, *al-Siyāsah*, 302.

⁶⁰ The Mejlle (art. 25).

Legal maxims are broadly designed to facilitate a better understanding of shari'ah; they are useful aids to decision making and ijtihad. They also relate closely to the *maqāṣid* of shari'ah, so much so that they were, for a long time, regarded as an extension of the *maqāṣid* and treated as part thereof, until they were separated at a later stage. But even so, legal maxims are generally not binding on the courts unless the maxim in question is derived from the Qur'an and hadith, or supported by general consensus.⁶¹ This is in contrast, however, with the Maliki jurist, al-Qarafi's (d.1283/684) opinion who held that a judicial decision is reversible if it violates a generally accepted maxim.⁶²

The following questions will help illustrate the nexus between *siyāsah* and *maqāṣid* and the relevance of legal maxims in that regard. They tend to arise in the context both of domestic and foreign relations:

- Is it acceptable for Muslims to enter an alliance with non-Muslim powers?
- Is it acceptable to participate, take employment, or play a role in a non-Islamic government, or one whose constitution is not in harmony with Islamic principles?
- Should a Muslim join a totally secular political party in order to topple a deviant and oppressive government?
- Is it acceptable to establish Islamic economic and financial institutions in a predominantly usurious (*ribawī*) economy?
- Is it permissible for Muslims to take employment with conventional banks and media organisations that contravene Islamic norms and are hostile to Islam?

Considered responses to these questions would demand looking into the relative merits and demerits of each in the context of a particular country, institution or locality, as the case may be, fuller details on which would fall beyond the scope of this presentation. Yet while discussing some of these questions, al-Qaradawi makes references to Ibn Taymiyyah's views regarding the permissibility of taking employment, even leadership positions (*al-wilāyāt*), in an oppressive government if this would help reduce the scope of oppression or the extent of the corruption and harm that would otherwise be expected to continue. A reference is also made to Abu'l A'la Mawdudi's views on women's leadership when questions arose in the context of an election contest in Pakistan: who should be elected to leadership: Fatimah Jinah or Ayub Khan? While those who opposed voting for a woman cited the hadith: "a people whose affairs are led by a woman shall not attain success" (*lan yufliḥ qawmun wallū amrahum imra'atun*), al-Qaradawi poses a parallel question that begs an answer: "would a people attain prosperity and success if they were to be led by an oppressive tyrant!" - obviously implying that Islam's opposition to tyranny is far more potent than its opposition to women's leadership, for the hadith so cited was not only contextual but also less than

⁶¹ Cf., Subhi Mahmassani, *Philosophy of Jurisprudence in Islam - Falsafat al-Tashrī' fi'l-Islām*, Eng tr. Farhad Ziadeh, Leiden: E.J. Brill, 1961, p. 152; Mustafa Ahmad al-Zarqa, *Sharh al-Qawa'id al-Fiqhiyyah*, 2nd Edition, Damascus: Dar al-Qalam, 1989, 34.

⁶² Shihab al-Din al-Qarafi, *Kitab al-Uruq*, vol. 4, p. 40. See also Jamal al-Din 'Atiyyah, *al-Tanzīr al-Fiqhī*, 208.

definitive.⁶³ Relevant information to some of these questions can also be found in al-Qaradawi's other book *Min Fiqh al-Dawlah fi'l-Islām*.⁶⁴

VII. Jurisprudence of Change (*Fiqh al-Taghyīr*)

The main question addressed in this section is this: what needs to be kept and protected, and where and how one may need to attempt a change so as to realise a *maṣlahah* or protect the people against harm? This is the subject of the jurisprudence of change (*fiqh al-taghyīr*), and Islam's characteristic approach to change is that of gradualness (*al-tadarruj*) as opposed to sweeping departures and revolutions.

Change for a good purpose, and changing that which is undesirable for something better that would help bringing the people closer to *salāh*, prosperity and success is of crucial importance for public policy and *siyāsah*, just as it is for the *maqāṣid*, and indeed a great deal of the substantive guidelines of shari'ah. Change for the better thus lies at the centre of the shari'ah concepts both of *maṣlahah*, and juristic preference (*istiḥsān*), both of which are in many ways characteristic of the shari'ah itself. For they both imply a persistent engagement and quest for finding better solutions to issues, and in pursuit of building a more humane civilisation in conformity with the Qur'anic assignment of *i'mar al-ard*.⁶⁵ Certain changes may be necessary and not just preferable by way of improving an existing status quo. The political systems and constitutions, for instance, that many Muslim countries inherited from colonial times may be necessary to change if certain aspects of that system or constitution prove to be unacceptable to shari'ah. Change for the better is an integral principle also of *ijtihād*, and constitutes the central message, of course, of the *fiqh* legal maxim that "Change of the *aḥkām* is undeniable with the change of times," (*lā yunkaru taghyīr al-aḥkām bi-taghyīr al-azmān*).⁶⁶

Those of the *fiqh* rules that are based on *ijtihād* and prevailing *maṣlahah* of the time of their origin are changeable with the change of time when they no longer secure the *maṣlahah* they had contemplated in the first place. This is also the case with the rules of *fiqh* based on custom, which become liable to change with the change of that custom. The scholastic works of the *madhāhib* are generally cognisant of these positions, as in the following illustration. In a report from 'Umar ibn al-Khattab or 'Umar Abd al-'Aziz (reporter is not certain), it is said that a ruling was made for the *dhimmi*s to wear a distinctive colour of clothing so as to distinguish them from Muslims. This was necessary in situations, for instance, of sudden death when they were treated like Muslims regarding funeral rites and burial places - which were later found unacceptable by their relatives. This was considered *maṣlahah* at the time, but the situation has changed in modern times such that people of different faiths live in pluralistic societies in many Muslim countries, often in very large numbers, and the distinction between them is now facilitated by the identity card that shows the personal

⁶³ Qaradawi, *al-Siyasah al-Shar'iyyah*, 3004-305. The hadith on women's leadership was uttered in a context: this was when the Prophet was informed that a woman had become the Chosroe of Persia, and he uttered this hadith in response. The hadith is, moreover, not conveyed in the language of prohibition but more likely of preference.

⁶⁴ Yusuf al-Qaradawi, *Min Fiqh al-Dawlah fi'l-Islām: makānatuhā, ma'ālimuhā, tabī'atuhā, mawqifuhā min al-dimuqrāṭiyyah wa'l-ta'addudiyyah wa'l-mar'ah wa ghayr al-muslimīn*, Cairo: Dar al-Shuruq, 1997/1417, especially pp. 147, and 177f.

⁶⁵ See for details on *istiḥsān*, Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, Cambridge: Islamic Texts Society, Ch. 8 (pp. 323-351); see also idem., "Istihsan or the Renewal of Islamic Law," *Islamic Studies* 43 (2004), 561-581.

⁶⁶ *Mujallat al-Ahkam al-Adliyyah* (Art. 39).

details of its bearer, and which applies equally to Muslims and non-Muslims alike.⁶⁷ This is the *maṣlaḥah* –cum-*maqṣad* now and it is more in line with the spirit of equality and social harmony that the shari’ah advocate.

Change of rules in line with the change of custom and conditions of time and place may be illustrated as follows: when ‘Umar ibn ‘Abd al-‘Aziz (d. 101/720) was governor of Madinah, he adjudicated some cases brought to him based on the testimony of one witness and a solemn oath by the plaintiff, and did not insist on having two witnesses, which is the standard proof. But when he became caliph and moved to Damascus, he changed that position and demanded two upright witnesses for proof of claims in every case. When he was asked a question on this, his reply was that he found the people of Syria different to those of Madinah.⁶⁸

To what extent is it true to say, however, that we need to change the modern political system and status quo in order to make them Islamic? This is the question al-Qaradawi raises toward the end of his book on *siyāsah* and *maqāṣid*. He begins his response with a note of caution, however, regarding unrealistic expectations some Muslims may have - that as soon as a country adopts an Islamic system of rule, or *siyāsah shar’iyyah*, all will be well and the institutions of state will be renewed and replaced with Islamic alternatives. This is unrealistic, just as it is also an exaggeration to say that all of the political status quo need to be changed in order to become Islamic. In reality only some basic changes may be necessary, whereas other changes may be piecemeal and need-based. Take the modern judiciary for instance. In answer to a question as to what needs to be changed in order to make a modern judiciary Islamic - it is said that the existing judiciary in many Muslim countries will most likely continue and remain as an independent organ of state, and if possible, its independence should be strengthened further. All the courts and their various divisions into civil, criminal, commercial, administrative etc., would also most likely remain as they are, and so would be the case with a three-tiered judiciary, which will also be left intact. All that may need to change would probably involve aspects of the existing laws that should be carefully examined to ensure their harmony with the *maqāṣid* of shari’ah, and may be also to bring corresponding changes in the training of judges and lawyers.⁶⁹

In determining the scope and manner of change in the existing rules of shari’ah, the leader and those in charge of community affairs should clearly distinguish between that which is changeable and that which is immutable and permanent and (i.e. *thawābit wa mutaghayyirāt*) in the value order of Islam. Certain aspects Islam, especially in the sphere of *‘aqīdah*, *‘ibādah*, mandatory injunctions (*wājibāt*) and prohibitions (*muḥarramāt*), are unchangeable. The scope of change is also limited with regard to *qat’iyyāt* and *muqaddarāt*, although possibilities may exist for fresh interpretation and *ijtihād* to incorporate changes for improvement in their administration in light, for example, of modern scientific methods and inventions that may involve adjustments without affecting their substance. The scope of change is fairly wide, on the other hand, with regard to civil transactions, fiscal policy, *siyāsah*-based decisions, and that which is based on *‘urf*, *maṣlaḥah* and *ijtihād*, criminal law and procedure, international affairs and the like. Change in all cases should aim at promoting the *maqāṣid* of shari’ah, especially the prevention of harm and realisation of benefit and

⁶⁷ Yusuf al-Qaradawi, *al-Siyāsah al-Shar’iyyah fī Daw’ Nuṣūṣ al-Sharī’ah wa Maqāṣiduhā*, 2nd, Cairo: Maktabah Wahbah, 1426/2005, p.288.

⁶⁸ Shaykh ‘Ali Hasbullah, *Uṣūl al-Tashrī’ al-Islāmī*, Egypt: Dar al-Ma’arif, 1976, 84-85; Qaradawi, *Siyāsah*, 288.

⁶⁹ Cf., Qaradawi, *al-Siyāsah*, 324-325.

maṣlahah to the people.⁷⁰ On the principles of government such as consultation (*shūrā*), equality, basic rights and liberties, the Qur'an and hadith are characteristically brief and devoid of specific details. General principles are laid down and it is for the community and its leaders, the '*ulū'l-amr*', to elaborate them in light of the people's needs and prevailing conditions of the time.⁷¹

An issue has arisen with regard to the Hanbali scholar, Najmuddin al-Tufi's (d. 1316/716) views on *maṣlahah*. He wrote in a treatise entitled, *al-Maṣāliḥ al-Mursalāh*, which is in fact a commentary on the hadith "*lā ḍarar wa lā-ḍirār*," and he allegedly held, based on this hadith, that *maṣlahah* can override the clear *naṣṣ*. That this hadith is a clear text on *maṣlahah* and should there arise a conflict between this text and another, it would be a question of conflict between two texts.⁷² Al-Qaradawi takes up this issue and writes with a degree of emphasis that commentators have sometimes misunderstood al-Tufi and drawn exaggerated conclusions from his writings, adding that al-Tufi has not stated that *maṣlahah* overrides definitive injunctions (*nuṣūṣ*). What al-Tufi has held is that *maṣlahah* qualifies and specifies *nuṣūṣ* which are open to interpretation. The general ('*āam*) and absolute (*muṭlaq*) of the Qur'an, which are in principle open to specification and qualification, may indeed be specified or qualified by *maṣlahah*. Furthermore, al-Tufi has excluded the '*ibādat* and *muqaddarāt* from the scope of his discussion on *maṣāliḥ*. '*Ibādat* are well-known, whereas *muqaddarāt* (lit. quantified, measured) refer to injunctions that involve quantities and numbers, such as the Qur'anic specifications on allotted shares of inheritance to close relatives, the prescribed penalties of *ḥudūd*, numbers of repudiation (*talāq*), and number of days in a probation period ('*iddah*) the wife may observe following a divorce or death of her husband and so forth.⁷³

In a chapter entitled '*taghyīr al-fatwā*' (change of fatwa), Ibn Qayyim al-Jawziyyah (d. 1350/751) expressed concern over a certain misunderstanding of the shari'ah "by those who have held views, out of ignorance, which inflict hardship and rigidity through laying down conditions that are unjustified and unsustainable." The shari'ah is "founded, in roots and branch, on wisdom and realisation of *maṣlahah* for the people both in this world and the next. It is justice, mercy and benefit in every part." Ibn Qayyim continued: "Any ruling that abandons justice in favour of tyranny, mercy for its opposite, *maṣlahah* for corruption (*mafsadah*), and wisdom for futility – would have nothing to do with the shariah, even if it is shown, by some remote interpretation, to be a part of it."⁷⁴ Ibn Qayyim's teacher, Ibn Taymiyyah (d.1328/728) also held the view, which is representative of the vast majority of '*ulamā*', that "the shari'ah always contemplates realisation of benefits (*al-maṣāliḥ*) for the people, and aims at minimising corruption and harm (*al-mafāsīd*), which is why the shari'ah is fit to be applied to all times and places."⁷⁵

⁷⁰ See for details, Kamali, *Shari'ah law*, 49-54.

⁷¹ Cf., 'Abd al-Rahman al-Sabuni et al, *al-Madkhal al-Fiqhī wa Tārīkh al-Tashrī' al-Islāmī*, Cairo: Maktabah Wahbah, 1982/1402, 73.

⁷² Qaradawi, *al-Siyāsah*, 256.-257.

⁷³ Ibid., 257. See also for detail on al-Tufi's views, Kamali, *Jurisprudence*, 360-361

⁷⁴ Ibn Qayyim al-Jawziyyah, *I'lām al-Muwaqqi'īn 'an Rabb al-'Ālamīn*, ed. Muhammad Munir al-Dimashqi, Cairo: Idarah al-Tiba'ah al-Muniriyyah, n.d., vol. 3, p. 1.

⁷⁵ Taqi al-Din Ahmad ibn Taymiyyah, *Minhāj al-Sunnah al-Nabawiyyah*, Egypt: Bulaq: al-Matba'ah al-Amiriyyah, 1940/1321, vol. 1, p. 147.

Conclusion

In tracing the historical developments of *siyāsah* and *maqāṣid*, this article began with a note that both of these represented belated developments in the history of Islamic scholarship. This laps of time naturally meant that a gap had already developed between these and certain other fields of Islamic learning. Since *siyāsah* and *maqāṣid* emerged well after the formulation of the *madhāhib*, and the development also of *uṣūl al-fiqh*, *tafsīr*, hadith and fiqh, the linkages with these other disciplines were not clearly identified in the existing discussions of *siyāsah* and *maqāṣid*. The present article has attempted to ascertain those in the sense not only of explaining the interface between the *siyāsah* and *maqāṣid* themselves, but also how they relate to certain other and more mature shed fields of Islamic learning.

The close relationship this article has ascertained between the various disciplines it has looked at is a testimony also to the unitarian pull of the principle of Divine Oneness (*tawhīd*) which runs deep in shaping Islamic scholarship in almost all of its important manifestations, and in particular, that they all take from the same sources, namely the Qur'an and Sunnah, which is the mainstay also of the connectivities that this article has explored.

Leadership is also characteristically monolithic in many ways, a melting pot, as it were, of the various influences, both objective and subjective, that give leadership its effectiveness. In the case of *siyāsah*, the unitarian influence of *tawhīd* and its ramifications on other Islamic disciplines tend to endorse that and enrich *siyāsah* with the input and advice it can take from both the revealed and rational sources of Islam. This article has asserted that *siyāsah* takes its substance in justice, *amānah*, *maṣlaḥah* and *ijtihād*, and then focuses on the protection and development of a set of essential values that are vital for human survival, prosperity and success. This represents the sum total of the advice and message of the revealed and rational evidence we have examined in relationship to *siyāsah* and public policy in Islam.