

The Objectives of Sharia between Tradition and Modernity – A Comparative Study

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Abstract

The notion of maqāṣid ash-sharī‘a (“purposes of the Sharia”) has given rise to various debates since its inception relating to Islamic legal questions. Today, many scholars and Muftis still resort to these objectives for their legal opinions (fatāwā sg. fatwā). However, due to unprecedented modern living circumstances, some broadened the traditional inherited understanding of maqāṣid, in order to face the challenges of the contemporary world. The present paper attempts to compare the understandings of maqāṣid of a traditional, medieval scholar Abū Ḥāmid al-Ghazālī (d. 1111) with a contemporary scholar Yūsuf al-Qaraḍāwī (b. 1926) to show the scope of differences between them. Al-Ghazālī is famous for articulating the concept of maqāṣid in an authoritative and lasting manner. Al-Qaraḍāwī is one of the most influential and popular Sunni scholars today. Reading them together sheds light on the intricacies of Islamic legal thought past and present.

Keywords: *Maqāṣid, maṣlaḥa, al-Ghazālī, al-Qaraḍāwī, tradition, modernity.*

1. Introduction

The term *maqāṣid ash-sharī‘a* comprises the objectives and purposes behind Islamic rulings. From an Islamic point of view, all Sharia rules and instructions are, generally speaking, predicated on the benefits of the individual and that of the community. They promote people’s interest and welfare and protect them from harm. A large number of Islamic legal theoreticians use therefore *maṣlaḥat al-khalq* (“the interest of human creatures”) as a synonym for *maqāṣid ash-sharī‘a*.¹ The idea of assessing a certain underlying purpose, aim, or intent from Qur’ānic or prophetic instructions goes back to the early period of Islam, indeed to the Companions of the Prophet. They formulated numerous legal decisions in the light of certain aims, whereby they did not use the term *maqāṣid* directly. Rather, they referred to technical terms such as *asrār* (“secrets”), *ḥikma* (“wisdom”), *‘illa* (“reason”) or *ma‘ānī ash-shar‘* (“meanings of legislation”).² It was left for the fifth century legal scholar Abū Ḥāmid al-Ghazālī to establish a well-defined theory of *maqāṣid*. His theoretical articulation of this legal concept has gained general acceptance ever since.³ Today, many contemporary Muslim scholars calling for reform and renewal of Islamic legacy and thought often employ *maqāṣid ash-sharī‘a* for the purposes of their reformist agenda. Based on their notion of *maqāṣid*, they give new fatwas under the pretext that they protect the common good.

¹ Auda, Jasser, *Maqāṣid ash-sharī‘ah: A Beginner's Guide* (London: IIIT, 2008), 3.

² Ar-Raisūnī, Aḥmad, *Nazarīyat al-maqāṣid ‘inda al-imām ash-Shāṭibī* (Beirut: IIIT, 1995), 18.

³ Kamali, M. Hashim, *Shari‘ah Law: An Introduction* (Oxford: Oneworld Publications, 2008), 124 and Auda, *Maqāṣid*, 17.

In this sense, they try to broaden the scope of the traditional understanding of *maqāṣid*.⁴ Kamali states in this regard that *maqāṣid* had been “the focus of renewed interest and attention in recent decades, borne out by the growth of voluminous literature in Arabic on its various themes”.⁵

The present paper compares two definitions of *maqāṣid ash-sharī‘a*: the first is that of Abū Ḥamid al-Ghazālī (d. 1111) whose contribution on this issue remains influential to this day and shows according to Felicitas Opwis “[...] a highly developed system of legal theory which is more coherent than the thought of previous jurists.”⁶ The second author is the Egyptian-born Qatari scholar Yūsuf al-Qaraḍāwī (b. 1926). He is regarded as one of the most influential and preeminent Muslim scholars in the world today. Due to his writings on *maqāṣid* and his intensive commitment to this theme, he was called as *faqīh al-maqāṣid* (“jurist/specialist of *maqāṣid*”).⁷ His positions as the chairman of the *International Union of Muslim Scholars* (IUMS) as well as of the *European Council for Fatwa and Research* (ECFR) give him popularity and recognition not only among Muslims in the Middle East, but among European Muslims as well.⁸ Indeed, the most popular broadcast of *al-Jazeera* TV channel, *ash-Sharī‘a wa-l-Ḥayāt* (“Sharia and Life”), helped him to become an influential authority among Muslims worldwide.⁹

The purpose of this study is to show how the concept of *maqāṣid ash-sharī‘a* as a classical legal construct developed by medieval as well as pre-modern Islamic legal theoreticians is understood in the contemporary time in meeting the current challenges of the Muslim life. We begin with an overview of *maqāṣid* with the focus on al-Ghazālī’s contribution. This is followed with an examination of al-Qaraḍāwī’s understanding of *maqāṣid* with reference to common features and differences between him and al-Ghazālī. The primary sources for this study are al-Ghazālī’s *al-Muṣtaṣfā min ‘ilm al-uṣūl* and al-Qaraḍāwī’s books inter alia *Dirāsa fī fiqh maqāṣid ash-sharī‘a* and *Madkhal li-ma‘rifat al-islām*.¹⁰

2. *Maqāṣid ash-sharī‘a*

We mentioned that assessing a certain underlying objectives of Sharia rulings can be traced back to the Companions of the Prophet, as transmitted in a number of incidents. A series of examples show the result of taking a purpose-oriented approach to the Qur’anic or prophetic instructions occurred, for instance, during the caliphate of ‘Umar b. Khatṭāb, the second caliph (d. 644). For example, during the period of famine in Medina, he suspended the prescribed punishment for theft. He recognized that applying the punishment, while people are in need and often forced to steal food just to survive, goes against the purpose of law, in this case the general principle of justice.¹¹ Although *maqāṣid* were at that time obviously relevant for the justification of legal issues and for *ijtihād* in general, they have not been treated as such in the conventional expositions of the theory of *ijtihād*. The term *maqāṣid* was, according to Auda and ar-Raisūnī, first used in the juristic writings of at-Tirmizī al-Ḥakīm (d. 908 CE) in his book “*aṣ-Ṣalāt wa-maqāṣiduhā*” (“Ritual prayer and its purposes”).

⁴ Ramadan, Tariq, *Western Muslims and the future of Islam* (Oxford: Oxford University Press, 2004), 41.

⁵ Kamali, *Shari‘ah*, 123.

⁶ Opwis, Felicitas, *Maṣlaḥa and the Purpose of the Law. Islamic Discourse on Legal Change from the 4th/10th to 8th/14th Century* (Leiden: Brill, 2010), 65.

⁷ Ar-Raisūnī, Aḥmad, „*al-Qaraḍāwī faqīh al-maqāṣid*“, in Dār as-Salām (ed.), *Yūsuf al-Qaraḍāwī: Kalimāt fī takrīmihī wa-buḥūth fī fikrihī wa-fiqhihī. Muḥdāt ilaihi bi-munāsabat bulūghihī as-sab‘in* (Cairo: Dār as-Salām, 2003), vol. 1, 111.

⁸ Gräf, Bettina, “*In search of a Global Islamic Authority*”, in *ISIM Review* 15/Spring 2005. Leiden, 47, Caeiro, Alexandre/al-Saify, Mahmoud, „*Qaraḍāwī in Europe, Europe in Qaraḍāwī? The Global Mufti’s European Politics*“, in Bettina Gräf/ Jakob Skovgaard-Petersen (eds.): *Global Mufti. The Phenomenon of Yūsuf al-Qaraḍāwī* (London: Hurst, 2009), 109-148 and Caeiro, Alexandre, “*The making of the fatwa The production of Islamic legal expertise in Europe*”, in *Archives de sciences sociales des religions* (155), (Sept. 2011), 81-100.

⁸ Skovgaard-Petersen, Jakob, „*The Global Mufti*“, in Birgit Schaebler (ed.): *Globalization and the Muslim World. Culture, Religion and Modernity* (Syracuse: Syracuse University Press, 2004), 153 and Gräf, Bettina, „*Der Fernseh-Mufti*“, in *Tageszeitung (taz)*, available at: URL, <http://www.taz.de/1/archiv/archiv/?dig=2005/02/09/a0203> (seen: 06.10.11).

⁹ Due to his visibility in social media, he has received academic attention not only from Arabic, but also from Western researchers. See for more details Gräf, Bettina, ‘*Yūsuf al-Qaraḍāwī. State of research*’, in Gräf/Skovgaard-Petersen, *Global Mufti*, 17-25 and Belén, Ana, „*Shaykh Yusuf al-Qaradawi: Portrait of a Leading Islamist Cleric*“, in *MERIA Journal* 12 (2008) 1, 51-68.

¹⁰ Al-Qaraḍāwī, Yūsuf, *Dirāsa fī fiqh maqāṣid ash-sharī‘a. Baina al-maqāṣid al-kullīya wa-n-nuṣūṣ al-juz‘īya* (Cairo: Dār ash-Shurūq, 2006) and idem., *Madkhal li-dirāsāt ash-sharī‘a al-islāmīya* (Beirut: Mu‘assasat ar-Risāla, 1993).

¹¹ Auda, *Maqāṣid*, 13-16.

He also wrote a treatise on the “Pilgrimage and its secrets” (*al-Hajj wa-asrāruh*). In these writings, he deals with the wisdoms and spiritual purposes behind the daily ritual prayers and the pilgrimage.¹²

Another scholar who dealt intensely with the *maqāṣid* as a juridical concept is Abū Bakr al-Qaffāl ash-Shāshī (d. 975 CE). In his jurisprudential work *Maḥāsīn ash-sharī‘a* (“The Beauties of the Sharia”), he presents Islamic rulings on different issues briefly and elaborates subsequently the aims and purposes of the Sharia behind the rulings.¹³ In the introduction of his book, he writes: “[...] I decided to write this book to illustrate the beauties of the revealed Law, its magnanimous and moral content, and its compatibility with sound reason. I will include in it answers for those who are asking questions about the reasons and wisdom behind its rulings.”¹⁴

Although a number of prominent jurists and *uṣūl* scholars continued to contribute to the study of *maqāṣid*, its theoretical development took place only later in the fifth Islamic century by Imam al-Juwaynī (d. 1085 CE).¹⁵ Therefore, ‘Abdallāh b. Bayya, a contemporary Islamic scholar (b. 1935), associates the fifth Islamic century with “the birth of the philosophy of the Islamic law.”¹⁶ Al-Juwaynī, a leading scholar of his time, noted that the Prophet’s Companions exhibited a high level of awareness of the objectives of Sharia. He emphasized in his work *al-Burhān fī uṣūl al-fiqh* that one who does not reflect on the *maqāṣid* and consider it by responding to all concerns of the society, does not have sufficient knowledge about the Sharia at all.¹⁷ Under his discussion of the legal term *qiyās al-‘illa* (“causative inference”), he presents five levels of *maqāṣid*, necessities (*amr ḍarūrī*), public needs (*ḥāja ‘amma*), moral behavior (*makrūma*), recommendations (*mandūbāt*) and what cannot be attributed to a specific reason such as the way of performing the ritual prayer.¹⁸ Al-Juwaynī’s approach was then clarified and developed further by his student, Abū Ḥāmid al-Ghazālī.

2.1. Abū Ḥāmid al-Ghazālī’s theory of *maqāṣid*

In two of Ghazali’s works on legal theory, *Shifā’ al-ghalīl* and *al-Mustasfā min ‘ilm al-uṣūl*, he wrote at length on the following legal terms: *ratio legis* (*ta’līl*), public interest (*maṣlaḥā*) and *maqāṣid ash-sharī‘a*.¹⁹ He understands the doctrine of *maṣlaḥa* interchangeably with *maqāṣid*. He writes: “*Maṣlaḥa* is, primarily, an expression of bringing about benefit (*manfa‘a*) or averting harm (*maḍarra*). Yet, this is not what we mean, [...]. Rather, we mean by *maṣlaḥa* the preservation of the purpose of the law (*maqṣūd al-shar‘*).”²⁰ For him, every Qur’anic or prophetic instruction God revealed to humankind is aimed at their *maṣlaḥa*. Following the example of his teacher al-Juwainī, he classified *maqāṣid* into a hierarchy. But, Ghazālī’s hierarchy is slightly different. He speaks of three levels, namely necessities (*ḍarūrāt*), needs (*ḥājīyyāt*) and refinements (*taḥsīnāt*).²¹

The first category consists of five objectives, namely those of religion (*ad-dīn*), life (*an-naḥs*), intellect (*al-‘aql*), lineage (*an-nasl*) and property (*al-māl*). The preservation of these so called “the fundamental elements of human existence” (*aḍ-ḍarūrāt al-khamsa*) has a matter of absolute priority.²² This circle includes the basic and universal necessities on which the lives of people depend.

¹² Ar-Raisūnī, *Naẓarīyāt*, 40, Auda, *Maqāṣid*, 14 and El-Wereny, Mahmud, „Das Konzept der *maṣlaḥa mursala*: Theoretische Rahmenbedingungen und praktische Anwendung zwischen Tradition und Moderne“, in: *Electronic Journal of Islamic and Middle Eastern Law*, 4 (26) (2016), 75-95.

¹³ Auda, *Maqāṣid*, 15 and ar-Raisūnī, *Naẓarīyat*, 42-43.

¹⁴ According to Auda, *Maqāṣid*, 15-16.

¹⁵ For more details see Auda, *Maqāṣid*, 15 and Kamali, *Shari‘ah*, 125.

¹⁶ Auda, *Maqāṣid*, 17.

¹⁷ Al-Juwaynī, Imām al-Ḥaramayn Abū al-Ma‘ālī ‘Abd al-Mālik Ibn ‘Abdillāh, *al-Burhān fī uṣūl al-fiqh*. ‘Abd al-‘Azīm ad-Dīb (ed.), (Cairo: Dāral-Anṣār, 1399/1980), vol. 2, 923 and Kamali, *Shari‘ah*, 125.

¹⁸ See for further details Al-Juwaynī, *al-Burhān*, 923, Kamali, *Shari‘ah*, 125 and Opwis, *Maṣlaḥa*, 60-65.

¹⁹ Since al-Ghazālī’s concept of *maṣlaḥa* has been studied and written about extensively, I concentrate on the main points that are relevant for understanding his contribution to this legal principle. For a detailed analysis of al-Ghazālī’s concept of *maṣlaḥa* see Imran Ahsan Khan Nyazee, *Theories of Islamic Law: The Methodology of Ijtihād* (Islamabad: International Institute of Islamic Thought and Islamic Research Institute, 1994), 197-230, al-Raysuni, *Imam al-Shatibi’s Theory*, 16-21, Opwis, *Maṣlaḥa*, 65-88 and El-Wereny, *Das Konzept*, 81.

²⁰ Al-Ghazālī, *al-Mustasfā min ‘ilm al-uṣūl*. Ḥāfīz, Ḥamza Zuhair (ed.) (Medina: al-Madina li-ṭ-Ṭibā‘a wa-n-Nashr, 1413/1992), vol. 2, 481. Cited from Opwis, *Maṣlaḥa*, 67.

²¹ Al-Ghazālī, *al-Mustasfā*, vol. 2, 481.

²² *Ibid.*, 489.

According to Kamali, these elements must be observed and protected regardless of personal predilections.²³ The second category, *hājiyyāt*, is a reference to what removes restrictions and difficulties from the daily lives of Muslims. More so, it should bring flexibility and facilitation. In addition, it supports the essentials (*ḍarūrāt*) and is associated with those interests that, if neglected, would bring difficulties and hardship. For example, it is permissible for pregnant woman not to fast if she fears some harm which she thinks will most likely affect her and/or her baby. The third kind, *taḥsīnāt*, includes such issues and interests that lead to perfection in the moral conduct of people (e.g. eating manners or using perfume).²⁴

In his further discussion, al-Ghazālī distinguishes between three types of *maṣāliḥ*, public interests, concerning its recognition as based in the Islamic textual sources (the Qurʾān and the Sunna): (1) Accredited public interest, (*maṣlaḥa muʿtabara*), for which the Qurʾān or the Sunna provide evidence such as the prohibition of wine which preserves the faculty of reason.²⁵ (2) Nullified public interest (*maṣlaḥa mulghāt*), which is invalid according to Qurʾānic or prophetic indications. The dealing with interest brings, for example, profit. However, it has been prohibited by both the Qurʾān (2:276-279, 3:130, 4:161) and the Sunna.²⁶ (3) The third category, “unregulated benefit” (*maṣlaḥa mursala*), includes such public interests about which the revelation texts are silent. The Qurʾān and the Sunna do not support it but neither do they reject it.²⁷ Formulating a legal opinion belonging to one of the first two categories does not cause any problems, because they are explicitly approved or rejected by textual evidence. However, the last type has given rise to much debate and internal polemic among scholars. Since the understanding of *maṣlaḥa mursala* is variable, it does need some clarification and precision. Thus, al-Ghazālī sets three preconditions for its application to legitimately serve the public good: An undetermined *maṣlaḥa* has to be necessary (*ḍarūrīya*), universal (*kullīya*) in nature and certain (*qaṭʿīya*).²⁸

As an example for a valid ruling based on an unattested *maṣlaḥa*, al-Ghazālī presents the following hypothetical war scenario: Unbelievers shielding themselves with a group of Muslim captives. If the Muslim army would not attack and shoot against the enemy including the Muslims used as human shield, the unbelievers would have an opportunity to advance and conquer more Muslim territory killing all Muslims as well as the prisoners. If, however, the Muslims were to shoot against the enemy, they would also kill innocent Muslims, what the divine texts expressly prohibit. With regard to the conditions of the application of *maṣlaḥa mursala*, al-Ghazālī argues that it is permissible to shoot at the Muslims used as human shield and kill them, in order to preserve the whole of the Muslim community (here, it is a *maṣlaḥa kullīya*). He also categorizes this action as necessary (*ḍarūra*), because it preserves the life of Muslims definitely (*qaṭʿī*) since it is the only method of saving Muslims from annihilation.²⁹

The conditions al-Ghazālī puts on the application of this aspect of public interest severely limit its use. It makes it practically hard to invoke, since the conditions of necessity, universality, and certainty will be hard to meet.³⁰ Despite the detailed analysis that al-Ghazālī offered, he nevertheless clearly refused to give an independent legitimacy (*hujjiyyah*) to *maṣāliḥ mursala* as an Islamic legal source. He even counts it – beside *istiḥsān* (“preference”) and *qaul aṣ-ṣaḥābī* (“legal opinions of the Companions of the Prophet”) – as one of the “illusionary sources of law” (*al-uṣūl al-mauḥūmah*).³¹ Accordingly, for al-Ghazālī, like for many other legal theoreticians, Islamic rulings should be based on textual indications (*adilla*) found in the Qurʾān and/or the Sunna.

²³ Ibid., 482-483 and Kamālī, *Sharīʿah*, 132 and idem., “Sources, Nature and Objectives of Shariʿah,” in *The Islamic Quarterly* (1989), 215-35.

²⁴ Al-Ghazālī, *al-Mustaṣfā*, vol. 2, 485 and Auda, *Maqāṣid*, 5.

²⁵ Qurʾān (al-Māʿida 5:90).

²⁶ See for more details and examples Delorenzo, Sh. Yusuf Talal, “Introduction to understanding *riba*”, in Abdulkader Thomas: *Interest in Islamic Economics Understanding riba*. (London: Routledge, 2006) 1 and Choudhury, Masudul Alam, “Development of Islamic economic and social thought”, in Kabir M Hassan: *Handbook of Islamic Banking* (Massachusetts: Edward Elgar Publishing, 2007), 32.

²⁷ Al-Ghazālī, *al-Mustaṣfā*, vol. 2, 479.

²⁸ Ibid., 489.

²⁹ Ibid., 487-489

³⁰ See also Opwis, *Maṣlaḥa*, 73.

³¹ Al-Ghazālī, *al-Mustaṣfā*, vol. 2, 450, 467 and 478. For more details about *istiḥsān* and *qaul aṣ-ṣaḥābī* see for example Kamali, Mohammad Hashim, *Principles of Islamic Jurisprudence*. (Cambridge: The Islamic Texts Society, 1991), passim and Hallaq, W., *An Introduction to Islamic Law* (Cambridge: University Press, 2009), 16.

However, some legal scholars after al-Ghazālī have completely changed the conditions of the application of *maṣlaḥa mursala*. The clearest example in this regard can be seen in the approach of the famous fourteenth century Hanbali jurist Najm al-Dīn aṭ-Ṭūfī (d. 1316).³²

By and large, he ended up giving *al-maṣlaḥa al-mursala* priority over textual evidences from the Qur'ān and/or the Sunna.³³ Based on this notion, many contemporary thinkers make “very strange ‘modern Islamic legal decisions’” thinking they protect the people’s interest.³⁴ Be that as it may, al-Ghazālī’s conception of *maṣlaḥa* and *maqāṣid* remains the basic framework for a number of Islamic jurists dealing with *maqāṣid ash-sharī‘a*, such as al-‘Izz b. ‘Abdassalām (d. 1262), Ibn Taimīya (d. 1328) and Tāj ad-Dīn as-Subkī (d. 1369). Referring to his concept, they develop their own interpretations and continue to contribute to *maqāṣid*. Beside many other jurists, the Mālikī jurist, Shihāb al-Dīn al-Qarāfī (d. 1285), discusses in his treatise of suitability (*munāsaba*) as an indicant for the *ratio legis* the three categories of *maqāṣid* and adds to the list of universals (*al-kullīyāt al-khams*) a sixth, namely the protection of honor (*‘ird*).³⁵ Also the Mālikī scholar ash-Shāṭibī (d. 1388) considerably distinguished himself in this regard from other jurists, especially by his *maqāṣid* approach in his book *al-Muwāfaqāt fī uṣūl ash-sharī‘a* and in the third volume of his work *al-Iṭīṣām* as well.³⁶ His contribution is considered as the first systematic study on *maqāṣid*. With regard to his discussion on *maṣlaḥa*, it is seen as “the culmination of the interpretation of *maṣlaḥa* in the pre-modern period.”³⁷ Ash-Shāṭibī’s treatises on *maqāṣid* and *maṣlaḥa* have received keen attention by contemporary scholars and researchers. Masud, al-Raisūnī and Opwis, for example, portray his theory of *maṣlaḥa* in detail.³⁸ Al-Qaraḍāwī cites him as well. On this account and in order to avoid unnecessary repetition, I here continue with al-Qaraḍāwī’s concept of *maqāṣid*.

3. Al-Qaraḍāwī’s Concept of *maqāṣid ash-sharī‘a*³⁹

3.1. Al-Qaraḍāwī’s writings on *maqāṣid*

Like many other contemporary scholars and thinkers,⁴⁰ al-Qaraḍāwī pays keen attention to *maqāṣid ash-sharī‘a*. This is reflected in many of his writings. For example, in his first and most popular book *al-Ḥalāl wa-l-ḥarām fī l-islām*, he presents the first category of *maqāṣid* and discusses some of the Islamic legal maxims (*qawā‘id fiqhīya*) which are closely linked to *aḍ-ḍarūrāt*. He mentions inter alia: “necessity makes the unlawful lawful” (*aḍ-ḍarūrāt tubīḥ al-mahzūrāt*) and “harm must be eliminated” (*aḍ-ḍararu yuzāl*).⁴¹ In his treatise *Naḥwa fiqh muyassar* (“Towards a facilitated Islamic Law”), he also presents the consideration of *maqāṣid* as decisive factor for making Islamic law easy.⁴² The importance of *maqāṣid* in al-Qaraḍāwī’s thought can be furthermore found in many of his contributions and theoretical programs. In his writing on the implementation of the Sharia law (*taṭbīq ash-sharī‘a*), he underscores the necessity of taking *maqāṣid ash-sharī‘a* and the people’s interest into account.

³² Heinrichs, Wolfhart, “*al-Ṭūfī*”, in: Encyclopaedia of Islam. 2nd Edition, vol. X, 588.

³³ For more details see Opwis, *Maṣlaḥa*, 200, Lubis, Nazly Hanum, *Al-Ṭūfī’s concept of Maṣlaḥah: a Study in Islamic Legal Theory* (McGill University: Institute of Islamic Studies, 1995) and El-Wereny, *Das Konzept*, 84.

³⁴ For more details see Ramadan, *Western Muslims*, 41.

³⁵ Kamali, *Shari‘a*, 126. For more details see Opwis, *Maṣlaḥa*, 133.

³⁶ Ash-Shāṭibī, Abū Ishāq Ibrāhīm b. Mūsā, *al-Muwāfaqāt*. Āl Sulaimān, Mashūr b. Ḥasan (ed.). (al-Chubar: Dār b. ‘Affān, 1997), vol. 2 and idem., *al-Iṭīṣām*. Āl Salmān, Mashūr b. Ḥasan (ed.) (Medina: Maktabat at-Tauḥīd, 1421/1999), vol. 3.

³⁷ Opwis, *Maṣlaḥa*, 247.

³⁸ Ahmad al-Raisūnī, a contemporary Moroccan scholar wrote on Imam ash-Shāṭibī’s theory of *maqāṣid* in his *Nazarīyāt maqāṣid ash-sharī‘a ‘inda l-imām ash-Shāṭibī*. See ar-Raisūnī, *Nazarīyat*. Numerous studies on ash-Shāṭibī have been published in Arabic, of which ar-Raisūnī’s is among the more prominent. Khalid Masud has also written extensively on ash-Shāṭibī, especially in his Ph.D. thesis entitled *Shatibi’s Philosophy of Islamic Law* presented at McGill in 1973. Masud, Muhammad Khalid, *Islamic Legal Philosophy: A Study of Abū Ishāq al-Shāṭibī’s Life and Thought* (Delhi: International Islamic Publishers, 1989) and Opwis, *Maṣlaḥa*, 248.

³⁹ See also El-Wereny, Mahmud, *Mit Tradition in die Moderne? Yūsuf al-Qaraḍāwī’s Methodologie der fiqh-Erneuerung in Theorie und Praxis* (Köln: Ditib, 2016), 167-180 and idem., “Yūsuf al-Qaraḍāwī’s Theorien zu den Hauptzielen der Scharia”, in *Zeitschrift für Islamische Studien*. 5. (2014), 25-41.

⁴⁰ See for example Kamali: *Shari‘ah*, 123-141, al-‘Alwānī, Ṭāhā Jābir, *Maqāṣid ash-sharī‘a* (Beirut: Dār al-Hadī, 2001), az-Zuhāilī, Wahba, *Uṣūl al-fiqh al-islāmī* (Damaskus: Dār al-Fikr, 1986), vol. 2, 1017 and Ramadan, Tariq, *Radical Reform : Islamic Ethics and Liberation* (Oxford: Oxford University Press, 2009), 59-77.

⁴¹ Al-Qaraḍāwī, *al-Ḥalāl wa-l-ḥarām fī l-islām* (Cairo: Maktabat Wahba, 1997), 17 and 37.

⁴² Al-Qaraḍāwī, *Naḥwa fiqh muyassar mu‘āṣir. Fī uṣūl al-fiqh al-muyassar. Fiqh al-‘ilm* (Cairo: Maktabat Wahaba, 2008), 37.

This enables, according to his understanding, the application of the rulings of Islamic law in the everyday life of Muslims.⁴³ This notion is founded on his belief that the provisions of the Sharia are valid at all times and in all places. They are, so his argument suggests, absolute and universally applicable, regardless of the time and the place where Muslims live. For him, Islam or Sharia – he uses both synonymously – bear a universal message to all human beings. It takes, therefore, people’s interests and their needs into account.⁴⁴ Al-Qarāḍāwī also represents *maqāṣid* as a guiding principle for changing of traditional legal opinions.⁴⁵ In this context, he precisely requires that Muftis have to have sufficient knowledge of *maqāṣid ash-sharī‘a* to be able to give legal judgments that are suited for the context. An awareness of the high purposes of the Sharia leads scholars, so al-Qarāḍāwī says, to revise previous legal opinions in accordance with the changes of time, place, and situation. He justifies this notion with historical incidents, which shows the consequence of taking the *maqāṣid* into account: For instance, ‘Umar b. al-Khaṭṭāb did not feel obliged to do what the Prophet had done in respect of the distribution of newly acquired lands in Sawādā, based on *maqāṣid ash-sharī‘a* and simply because the situation had been changed. Subsequently, al-Qarāḍāwī warns that Muftis or scholars who do not have enough knowledge about *maqāṣid* and who do not understand the reasons behind the Sharia rulings may mistakenly contradict either the letter or the spirit of the Sharia law. As a result, an Islamic ruling may even seem to contradict interests in some way and lead people to conclude that the Sharia should either be ignored or changed. Therefore, he considers knowledge of *maqāṣid* as an “indispensable necessity” (*ḍarūra lā-budda minhā*).⁴⁶

By and large, al-Qarāḍāwī mentions the *maqāṣid* in almost all his writings, particularly in his works on themes such as *ijtihād* and *iftā’*. He lists ten books in which he treats the question of *maqāṣid* as a reference for his intensive commitment to this issue.⁴⁷ In his treatises, *Madkhal li-dirāsāt ash-sharī‘a* and *Dirāsa fī fiqh maqāṣid ash-sharī‘a*, he elaborates this topic systematically and considers *maqāṣid* to be the fundamental core of the Islamic religion and the foundation law. Within the scope of these writings, which obviously include a number of overlaps of topics, he also discusses many other concepts that have been closely linked to *maqāṣid* such as above mentioned unregulated public interest (*al-maṣlaḥa al-mursala*) and *istiḥsān* (“juristic preference”).⁴⁸ Al-Qarāḍāwī himself emphasizes his early preoccupation with *maqāṣid* as follows: “For a long time, I believe in the purposes of Sharia and the necessity of its knowledge and relevance building/educating the mentality of the jurists who want to dive into the seas (*biḥār*) of the Sharia to bring out its beads (*la’ālī’uhā*). It helps the jurists to reach the correct assessment [...].”⁴⁹

Therefore, ar-Raisūn, a contemporary Moroccan scholar, summarizes the consideration for the purposes of Sharia as that which constitutes “the first and fundamental characteristic in Qarāḍāwī’s *fiqh*.”⁵⁰ However, how does al-Qarāḍāwī understand the objectives of Sharia in the context of the twenty first century, compared with al-Ghazālī’s definition?

3.2. Al-Qarāḍāwī’s notion of *maqāṣid*

Like al-Ghazālī, al-Qarāḍāwī uses the terms *maqāṣid* and *maṣlaḥa* interchangeably. He defines *maqāṣid ash-sharī‘a* as “[...] the higher goals to which the textual authority by the obligations and the prohibitions aims at.

⁴³ See for example *Bayyināt al-hall al-islāmī wa shubuhāt al-‘almānīyīn wa-l-mutagharribīn* (Cairo: Maktabat Wahab, 2003), 214.

⁴⁴ Al-Qarāḍāwī, *Sharī‘at al-islām ṣāliḥa li-t-taṭbīq fī kull zamān wa-makān* (Cairo: Dār aṣ-Ṣaḥwa, 1993), 1st edition 1973), 11 and 58.

⁴⁵ Al-Qarāḍāwī, *Naḥwa fiqh muyassar*, 37 and 104.

⁴⁶ Al-Qarāḍāwī, *Madkhal*, 76.

⁴⁷ Al-Qarāḍāwī himself lists these ten books as reference for his dealing with the *maqāṣid* issue in the following order: *Kaifa nata’āmal ma’a al-qur’ān al-‘aẓīm?* (Cairo: Dār ash-Shurūq, 2000), *Kaifa nata’āmal ma’a as-sunna an-nabawīya: Ma’ālim wa-ḍawābiṭ* (Cairo: Dār ash-Shurūq, 2006), *Madkhal*, 51-81, *as-Siyāsa ash-sharī‘ya fī ḍau’ an-nuṣūṣ ash-sharī‘ya wa-maqāṣiduhā* (Cairo: Mu’assasat ar-Risāla, 2008), *Sharī‘at al-islām ṣāliḥa, Madkhal li-ma’rifat al-islām. Muqawwimātuh...Khaṣā’iṣuh... Ahdāfuh...Maṣādiruh* (Cairo: Maktabat Wahba, 2001), 191-288 and *Fī fiqh al-aqallīyāt al-muslima. Ḥayāt al-muslimīn wasaṭ al-mujtama’āt al-ukhrā* (Cairo: Dār ash-Shurūq, 2001). Al-Qarāḍāwī, *Dirāsa*, 13-14.

⁴⁸ Al-Qarāḍāwī, *Dirāsa*, passim and idem., *Madkhal*, 51-81.

⁴⁹ Al-Qarāḍāwī, *Dirāsa*, 11.

⁵⁰ Ar-Raisūnī, *al-Qarāḍāwī faqīh al-maqāṣid*, 111.

Thereby, the subordinate regulations (*al-aḥkām al-juzʿiyya*) aim to achieve these higher goals in the life of the addressees, whether individuals, families, communities or the entire community.⁵¹ From his point of view, there is no Islamic ruling, which has not been decided in order to implement a *maṣlaḥa* for the human beings or to protect them from harm. All Islamic instructions are purposive in nature. The entire Islamic legislation serves one soon or later occurring *maṣlaḥa*. With the term *maṣlaḥa*, al-Qaraḍāwī does not only mean a *maṣlaḥa* of worldly or material nature, but he also includes the common good of human beings in the hereafter. The Islamic regulations consider the life of the human in his bodily and spiritual existence. They ensure a balance between national and international interests as well. In this regard, he writes: “The aim of the Sharia is to protect and maintain the interests of human beings in this world and the next.”⁵² Accordingly, al-Qaraḍāwī only takes up the ideas of earlier scholars such as al-Ghazālī, as seen above, and the Hanbali jurist Ibn Qayyim al-Jauzīya (d. 1350), but not the detailed content of their theory. The latter summarized his position as follows: “The fundamentals and principles of the Sharia aim at the good of human beings in this life and the next. They all are based on justice, mercy, the good of man and wisdom [...]”⁵³

It is obvious that al-Qaraḍāwī cites in his writings on *maqāṣid* and depends on jurists from the late medieval period such as al-Ghazālī, ash-Shāṭibī, Ibn Qayyim and Njm ad-Dīn aṭ-Ṭūfī.⁵⁴ But, he also refers to contemporary *maqāṣid* studies of modern thinkers such as Rashīd Riḍā (d. 1935) and Ḥasan al-Bannā (d. 1949), especially when he tries to justify his new developed understanding of *maqāṣid*. With reference to al-Ghazālī’s and ash-Shāṭibī’s presentations of *maqāṣid*, he distinguishes between three types of *maqāṣid*: (1) *Ḍarūrāt*: these relates to things that are indispensable to daily and spiritual life. If these interests would not be protected and preserved, humanity would slide into corruption and degradation in this life, and would have no hope of success or reward in the next. While al-Ghazālī counts five elements into this category, which he calls *aḍ-ḍarūrāt al-khams*, al-Qaraḍāwī adds up the protection of honor (*ird*) to this list and refers to al-Qarāfī who firstly suggests this element to *aḍ-ḍarūrāt*.⁵⁵ According to al-Qaraḍāwī, the Qura’nic sanctions (*ḥudūd*) have been imposed, in order to preserve these six elements. For example, the protection of life is assured by the right of retaliation for unlawful killing. Similarly, intoxicants were prohibited to protect the mind, and apostasy was forbidden to protect religion. The interests of children support the prohibition of adultery. The protection of private property demands the prohibition of theft. The protection of personal honor and dignity lies behind the prohibition of slander.⁵⁶

Emphasizing the importance of *aḍ-ḍarūrāt*, al-Qaraḍāwī depicts the person who dies protecting one of these elements as a martyr (*shahīd*). He justifies this claim by prophetic sayings such as: “The person who is killed in defense of his property is a martyr and who is killed in defense of himself is a martyr and who is killed in defense of his religion is a martyr, and who is killed in defense of his wife is a martyr.”⁵⁷ Referring to al-Ghazālī, he asserts that any legal system protects and maintains the interests of human beings. It preserves these necessary elements of human existence and prohibits what harms them.⁵⁸ (2) Below the rank of necessity are those *maqāṣid* that pertain to a human need, but do not reach the level of necessity. Referring to al-Ghazālī and ash-Shāṭibī as well, al-Qaraḍāwī presents *al-ḥājāt* as the second category of *maqāṣid ash-sharīʿa*. These, in his view, support such needs and interests in order to have smooth life. If it is neglected, human beings will suffer distress and hardship (e.g. the possibility of praying while sitting or lying down). (3) The third rank of *maqāṣid* is occupied by matters that reach neither necessity nor need. It comprises such interests that relates to public life and the development of good character, such as the adoption of good habits and the avoidance of anti-social and self-destructive behavior. Each of these categories complements the one above it.

⁵¹ Al-Qaraḍāwī, *Dirāsa*, 20.

⁵² Al-Qaraḍāwī, *Madkhal*, 53-56 and idem., *Dirāsa*, 11.

⁵³ Ibn al-Qayyim al-Jauzīya, *Iʿlām al-muwaqqiʿin ʿan rabb al-ʿālamīn*. Āl Sulaimān, Abū ʿUbaida Mashhūr b. Ḥasan (ed.). (Dammam: Dār b. al-Jauzī, 2002/1423), vol. 4, 337.

⁵⁴ See for example al-Qaraḍāwī, *Madkhal*, 54 and idem., *Dirāsa*, 139.

⁵⁵ Al-Qaraḍāwī, *Madkhal*, 55 and idem., *as-Siyāsa*, 86. See for al-Qarāfī’s theory of *maqāṣid* Kamali, *Shariʿa*, 126 and Opwis, *Maṣlaḥa*, 133.

⁵⁶ Al-Qaraḍāwī, *Dirāsa*, 28 and idem., *Madkhal*, 67.

⁵⁷ Al-Qaraḍāwī, *Madkhal*, 68.

⁵⁸ Al-Qaraḍāwī, *Dirāsa*, 138 and idem., *as-Siyāsa*, 88

Thus, the lowest category of interests, those that improve a situation, complements the second category, those that relieve a burden, and these in turn complement the highest category, those that insure something vital.⁵⁹ Al-Qaraḍāwī, then, asks whether the *maqāṣid* can be defined in a different way from previous scholars such as al-Ghazālī, ash-Shāṭibī and al-Qarāfī. Indeed, he answers. With regard to modern scholars such as Rashīd Riḍā in his book *The Muhammadan Revelation (al-waḥī al-muḥammadī)*, he justifies the renewability of *maqāṣid ash-sharī'a*. According to his presentation, Riḍā speaks of the objectives of the Qur'ān and adds new *maqāṣid* such as promoting science; working for peace and fighting corruption; liberation of slaves and granting women all their rights.⁶⁰

On this basis, al-Qaraḍāwī appeals the extension of the traditional classification of *maqāṣid*, mentioned above. It depicts, he argues, the result of the work of scholars whose concerns were primarily about the individuals rather than about the community and human beings. This established notion of *maqāṣid* does not, so al-Qaraḍāwī says, comprise a lot of issues such as human relationships, state systems or the most universal and basic values such as solidarity (*takāful*) human rights (*ḥuqūq al-insān*), justice (*'adāla*), brotherhood (*ikhā'*), freedom (*ḥurīya*) and equality (*musāwāt*). Thus, he evaluates these values as *maqāṣid ḍarūrīya* and legitimizes his view with Qur'ānic and prophetic references. He lists inter alia sura 6 verse 152: “And give full measure and weight in justice. We do not charge any soul except [with that within] its capacity. And when you testify, be just, even if [it concerns] a near relative. And the covenant of God fulfill. This has He instructed you that you may remember.” and sura 16 verse 90: “Indeed, God orders justice and good conduct and giving to relatives and forbids immorality and bad conduct and oppression. He admonishes you that perhaps you will be reminded.”⁶¹

The discussion of al-Qaraḍāwī's understanding of *maqāṣid* has not yet been finished. In his treatise *Madkhal li-ma'rifat al-Islām* (“Introduction to Islam”), he presents six aspects of Islam and declares them as “guiding purposes or aims of Islam” (*maqāṣid au aḥdāf asāsīya li-l-islām*).⁶² He puts these objectives at the same place of relevance as the five universal elements (*aḍ-ḍarūrāt al-khams*) developed by al-Ghazālī.⁶³ These six goals go initially back to his “ideological father” Ḥasan al-Bannā who has discussed these aspects in his complete works (*majmū'at rasā'il al-imām*).⁶⁴ Al-Qaraḍāwī joined the Muslim Brotherhood, founded by al-Bannā in 1928 in Egypt, in his teenage years. He was according to his presentation very impressed by al-Bannā, his words and personality in general.⁶⁵ To date, he is still regarded as a leading figure and the “spiritual father” of the Muslim Brotherhood, even if he officially since the early 1960s has declared his independence of all religious movements, legal, theological schools and political institutions.⁶⁶

In the following, I briefly introduce these six goals of Islam according to al-Qaraḍāwī's presentation. First, he discusses the construction of a righteous man (*binā' al-insān aṣ-ṣāliḥ*). According to him, the first aim of Islam is to establish a righteous man, who is capable of being God's vicegerent (*khalīfa*) on earth; this is man whom God has molded in the nicest form and dispensed all that is in the heavens and the earth for him. Al-Qaraḍāwī describes extensively the criteria of a religious Muslim. He represents inter alia the faith and belief (*īmān wa 'aqīda*), the rites and worship (*nusuk wa 'ibādāt*) as well as the good character and virtue (*khuluq wa-faḍīla*) as the crucial guidelines for the development of the aspired Muslim.⁶⁷

⁵⁹ Al-Qaraḍāwī, *as-Syāsa*, 89 and idem., *Madkhal*, 56.

⁶⁰ Al-Qaraḍāwī, *Dirāsa*, 25-28.

⁶¹ Al-Qaraḍāwī, *Dirāsa*, 28 and idem., *Madkhal*, 69-74.

⁶² Al-Qaraḍāwī, *Dirāsa*, 27.

⁶³ *Ibid.*, 27.

⁶⁴ Al-Bannā, Ḥasan, *Majmū'at rasā'il al-imām ash-shahīd Ḥasan al-Bannā* (Cairo: Tawāṣul li-n-Nashr wa-t-Tauzī', 12011), 207-219.

⁶⁵ Al-Qaraḍāwī, *Ibn al-qarya wa-l-kuttāb* (Cairo: Dār ash-Shurūq, 2006), vol. 1, 159 and 168. For more details see Tammam, Husam, Yūsuf al-Qaraḍāwī and the Muslim Brothers. The Nature of a Special Relationship, in Gräf/Skovgaard-Petersen (eds.): *Global Mufti*, 55-83.

⁶⁶ Krämer, Gudrun, “Preface”, in Gräf/Skovgaard-Petersen: *Global Mufti*, x.

⁶⁷ Al-Qaraḍāwī, *Madkhal li-ma'rifat al-islām*, 193.

A Muslim is for al-Qaraḏāwī a man of faith and belief, as man of rites and devotion; he is an embodiment of the virtues of justice, mercy and good influence.⁶⁸ An *insān ṣāliḥ* builds in al-Qaraḏāwī's thought the first objective of Islam, because "such a man is the foundation of the good home, the society, the good nation."⁶⁹

Second, the purpose of Islam that al-Qaraḏāwī mentions is "the construction of righteous family" (*binā' al-usrah aṣ-ṣāliḥa*).⁷⁰ According to him, it is necessary to build a Muslim family which lays the foundation stone of the Muslim community (*umma*).⁷¹ In this context, he underlines the obligation of marriage as a starting point of a good family.⁷² He further introduces the characteristic and framework of Islamic marriage as well as the mutual rights and obligations of the married couple (which cannot be explained in detail here).⁷³

In the third place, he presents "the establishment of the righteous society" (*binā' al-mujtama' aṣ-ṣāliḥ*). Since all of these purposes of Islam are in al-Qaraḏāwī's understanding interdependent and interrelated, he claims that the construction of a good person and a good family are the basic conditions of the foundation of the Muslim society.⁷⁴ In this context, he points out the importance of Islamic values (*qiyam islāmīya*) for building *al-mujtama' aṣ-ṣāliḥ*: "The righteous society is the one which ties the individual with his family, with the noble values of Islam, and its commendable principles making them the mission of life and the center of its existence."⁷⁵ The main principal values he mentions in this regard are: brotherhood (*ikhā'*); kindness (*tarāḥum*), solidarity (*taḏāmun*) and justice (*'adāla*).⁷⁶

Al-Qaraḏāwī goes on to present the fourth goal of Islam, which is concerned with the "establishment of a righteous community" (*binā' al-umma aṣ-ṣāliḥa*).⁷⁷ This *umma*, community, which is considered as "one of the elementary purposes of Islam [...] has to carry out its mission and base its life on its faith and its laws etc. It shall raise its generations along the right path [of Islam], and spread its mission all over the world [...]."⁷⁸ In this regard, al-Qaraḏāwī underlines repeatedly the importance of *da'wa* ("mission") and requires that Muslims should improve their language skills as well as the strategy of the missionary work to be able to call everyone in their own language and in accordance with their habits of thinking. He writes: "It is obligatory for the Islamic community to invite all people to Islam in their own tongues in order to explain to them [Islam] and to prove the argument to them."⁷⁹ He further argues that the mission of Islam is universal: for all races, colors, all regions, all communities, all languages and all classes. He often refers to the following Qur'ānic verse to support his argument: "And We have not sent you, [O Muhammad], except as a mercy to the worlds."⁸⁰

The fifth objective of Islam al-Qaraḏāwī deals with is "the establishment of righteous state" (*binā' ad-dawla aṣ-ṣāliḥa*). This ambition is, in his view, logical and legal, exactly as the Qur'ān appeals to build the good individual, righteous family and the establishing of the Islamic community. According to this notion, it is of essential relevance for the *umma* having an Islamic state to achieve its goals, safeguard its mission in and outside of the Islamic territory.⁸¹ He further claims, that the idea of an Islamic state is not an invention created or disclosed by himself or by any Islamic movement. Rather, it is sanctioned clearly in the divine texts of Islam, in the Qur'ān and the Sunna, and confirmed historically as well. Supporting this claim, he lists inter alia verses 4:58 and 59.⁸²

⁶⁸ Ibid., 197.

⁶⁹ Ibid., 193.

⁷⁰ Ibid., 213.

⁷¹ Ibid., 213.

⁷² Ibid., 213.

⁷³ For more details see Ibid., 215-233.

⁷⁴ Ibid., 234.

⁷⁵ Ibid., 234.

⁷⁶ Ibid., 237.

⁷⁷ Ibid., 246.

⁷⁸ Ibid., 246.

⁷⁹ Ibid., 251.

⁸⁰ Qur'ān (al-Anbīyā' 21:107). Al-Qaraḏāwī further argues with another Qur'ānic verses such as: "Say, [O Muhammad], "O mankind, indeed I am the Messenger of God to you all." (al-A'rāf 7:158) Cited in Al-Qaraḏāwī, *Madkhal li-ma'rifat al-islām*, 251.

⁸¹ Ibid., 251. 258.

⁸² "God commands that you should render back the trusts to those, to whom they are due; and that when you judge between men, you judge with justice. Verily, how excellent is the teaching which He (God) gives you! Truly, God is Ever All-Hearer,

In short, he understands these two verses as proof that Muslims should have an Islamic state: “This hopeful and desirable state is an Islamic necessity, and it is also a human necessity, because it will offer humanity a living example of the combination of religion and the world [...] and it will be the foundation stone for the establishment of the great state of Islam, which shall unite the Muslim nation under the banner of the Qur’ān, under the domain of the Caliphate of Islam.”⁸³

Although al-Qaraḍāwī speaks elaborately of the *umma* and of an Islamic state, he, however, does not clearly define what he exactly means by that. A number of questions remain in this context unanswered, such as when should this aspired state be established? How big should it be and who is in it or excluded from it? These are open questions. He continues with the sixth and last objective of Islam. It is according to his presentation “the invitation to the prosperity of humanity” (*ad-da’wa ilā khair al-insāniya*). This is what he sees in the call for and acceptance of Islam. He describes the missionary work at this point as the first and most important duty for the *umma*. To paraphrase his own words, the *umma* is in the first place a community with a message sent with the Prophet to all human beings. Since the beginning of the mission of Islam, the message universal, and a call to all mankind, a mercy to all people, Arab or non-Arab, in both East and West, to all colors, white or black.⁸⁴

3.3. Al-*maṣlaḥa mursala* in al-Qaraḍāwī’s thought

In respect of *maṣlaḥa mursala*, al-Qaraḍāwī embraces al-Ghazālī’s and ash-Shāṭibī’s approaches to the principle of *maṣlaḥa*. Based on al-Ghazālī’s presentation, he distinguishes between three kinds of *maṣāliḥ* as well: accredited public interest (*maṣlaḥa mu’tabara*), nullified public interest (*maṣlaḥa mulghāh*) and textually unregulated public interest (*maṣlaḥā mursala*).⁸⁵ The three conditions of necessity, universality and certainty that al-Ghazālī mentioned imply in al-Qaraḍāwī’s point of view al-Ghazālī’s rejection of *maṣlaḥa mursala* as a normative legal instrument in Islamic law. They are very stringent and hard to meet, he argues.⁸⁶ In contrast to al-Ghazālī and with reference to ash-Shāṭibī, al-Qaraḍāwī suggests the validity of *maṣlaḥa mursala* as a source of Islamic law when it is real (*ḥaqīqīya*) and not specious (*wahmīya*); acceptable for the common sense (*ma’qūla*); in accordance with the high objectives of the Sharia and preserves a definitive interest (*ḍarūrīya*) or removes a distress (*raf’ haraj*).⁸⁷ Al-Qaraḍāwī affirms, contrary to al-Ghazālī, that the *maṣlaḥa mursala* must not be necessary (*ḍarūrīya*), universal (*kullīya*) and certain (*qaṭ’īya*) to be legitimately used for legal rulings. It has to be just factual (*ḥaqīqīya*). The question of what criteria can determine that a *maṣlaḥa* is recognized as *ḥaqīqīya* remains unanswered by al-Qaraḍāwī. He only warns in general terms against taking legal decisions based on arbitrariness or justified by personal whims and preferences (*manfa’a khāṣṣa*). Relying on the *maṣlaḥa mursala* does not mean according to his understanding that legal opinions can be given random answers and according to personal inclinations and desires. Making a legal decision on the basis of a *maṣlaḥa mursala* has to be very cautiously reviewed.⁸⁸ Pertaining to the collision of a definitive scriptural ruling with a nullified or unattested public interest, al-Qaraḍāwī underlines that the texts cannot be suspended by virtue of a *maṣlaḥa* unless the *maṣlaḥa* is certain (*qaṭ’īya*) and essential to preserve a binding objective of Sharia at the *ḍarūrāt* level. As an example, he mentions the above illustrated war scenario presented by al-Ghazālī.⁸⁹ In this correlation, al-Qaraḍāwī discusses the question when there are conflicting public interests.

All-Seer. O you who believe! Obey God and obey the Messenger (Muhammad and those of you (Muslims) who are in authority. (And) if you differ in anything amongst yourselves, refer it to God and His Messenger (Muhammad), if you believe in God and in the Last Day. That is better and more suitable for final determination.” (an-Nisā’ 4:58 and 59). The first verse is, according to his interpretation, addressed to the Muslim guardians and rulers. They have to rule with justice full respect for human rights. The second verse is directed to the faithful followers. They should obey their rulers on the condition that the obedience comes after obedience to God and His Prophet and instructed that in the case of disputes, the matter be referred to God and His Prophet, that are the Qur’ān and the Sunna. He further argues, that Ibn Taimīya wrote his well-known book *as-Siyāsa ash-shar’īya fī iṣlāḥ ar-rā’ī wa-r-ra’īya* (“The Policy of the Sharia in the Interest of the Leader and subjects”) based on these two verses. See Ibid., 260.

⁸³ Ibid., 268.

⁸⁴ Ibid., 270.

⁸⁵ Al-Qaraḍāwī, *as-Siyāsa*, 84 and for more details see El-Wereny, *Das Konzept*, 87.

⁸⁶ Ibid., 99.

⁸⁷ Ibid., 99 and ash-Shāṭibī: *al-I’tisām*, vol. 3, 6-12 and 47.

⁸⁸ Al-Qaraḍāwī, *Naḥwa fiqh muyyassar*, 86-87.

⁸⁹ Al-Qaraḍāwī, *as-Siyāsa*, 158.

He states that Muftis should first attempt to reach a compromise. If this is not possible it assigns priorities: The general interest or public welfare takes precedence over the particular or the personal well-being and avoiding harm is preferable to gaining an advantage. The same principle should be applied to choose a lesser harm to avoid what is worse.⁹⁰

4. Conclusion

The concept of *maqāṣid ash-sharī'a* rests basically on the idea that all Islamic provisions uphold particular purposes. From an Islamic point of view, God aims with all of his commandments and prohibitions to promote people's interest and protect them from harm. This approach, as a juridical term justifying legal decisions, has given rise to numerous debates since it was used. Throughout Islamic history, Muslim scholars have identified several and different *maqāṣid*. Al-Ghazālī as the first theoretician who systematically dealt with *maqāṣid* or *maṣāliḥ ash-sharī'a* speaks of three ranks (*ḍarūrāt*, *ḥājāt* and *taḥsīnāt*) and five necessary objectives of the Sharia. Other scholars adopted his concept, added new objectives and formulated legal decisions in the light of this notion.

Al-Qaraḍāwī understands *maqāṣid* or *maṣāliḥ* primarily as a system of values that should contribute to his desired application of the Sharia, based on the conviction that all Sharia rules are valid for every time and at every place. He recalls, taking up the ideas of al-Ghazālī, ash-Shaṭībī as well as of Ibn Qayyim, that all divine rules found on the Qur'ān or the Sunna are in accordance with the good and interest of human beings. Although he frequently quotes al-Ghazālī's concept of *maqāṣid*, he does not blindly follow it. With reference to other scholars and modern thinkers, such as ash-Shaṭībī and Riḍā, he broadens the scope of the five traditional *maqāṣid* and adds new elements which include modern issues such as human dignity, justice and freedom etc. In addition, he declares the goals of the Muslim Brotherhood, adopted from its founder, al-Bannā, as further *maqāṣid* of Islam. In this context, al-Qaraḍāwī does not constitute an exception. Other modern and contemporary scholars have also added new *maqāṣid* to the traditional inherited concept. For example, the Tunisian scholar Ibn 'Āshūr (d. 1973) included in his study of *maqāṣid ash-sharī'a* new values such as tolerance, equality, freedom, and orderliness as part of the universal *maqāṣid* of Islamic law.⁹¹ Tāhā Jābir Al-'Alwānī, an Islamic scholar and former president of International Institute of Islamic Thought (d. 2016), suggests new *maqāṣid* as well, such as the concept of developing civilization on earth (*imrān*).⁹² It can therefore be concluded that *maqāṣid* or *maṣāliḥ ash-sharī'a* can be understood in al-Qaraḍāwī's judgment, as a flexible principle that is interpreted anew in harmony with the historical and geographical context. The main criteria are, as seen in al-Qaraḍāwī's presentation, the supporting evidences of the Qur'ān and/or the Sunna. This gives, nonetheless, rise to another question: according to which criteria or hermeneutical methods can or should such Qur'ānic or prophetic proofs be interpreted to decide on adding new *maqāṣid*?

The same can be said about the application of *maṣlaḥa al-mursala*. It provides Muftis and scholars the ability, based on their own efforts and reasoning and in the light of current living circumstances, to give legal decisions. In order to avoid misinterpretations or arbitrariness dealing with this kind of *maṣlaḥa*, al-Ghazālī – as explained – defines three conditions (necessary, certain and universal) for its use as a legal reference. Al-Qaraḍāwī regards these preconditions as difficult to meet and attempts to simplify its use removing al-Ghazālī's conditions. Therefore, he argues, giving a *fatwā* referring to a textually unregulated interest requires only that the *maṣlaḥa* is authentic (*ḥaqīqīya*), that is in accord with the objectives of the Sharia and that the formulation of an injunction will avoid a general difficulty. Thus, a *maṣlaḥa mursala* must not be *kullīya*, *ḍarūrīya* and *qaṭ'īya*, as al-Ghazālī mentions. Nonetheless, it remains unclear how can a *maṣlaḥa mursala* be defined as real or not. Such a broad scope introduced by al-Qaraḍāwī might show the renewability and the flexibility of a part of *uṣul al-fiqh*. However, it still gives rise to the risk of arbitrariness giving legal decisions without reference to the Qur'ān or the Sunna; only on the basis of rational and completely free reasoning, all to protect the common good or to remove hardship. Against this background, there is still a considerable lack of clarity in the way *maṣlaḥa mursala* can be applied. In my opinion, this gap cannot be closed, because the public interests are continuously changeable depending on their context, which are always variable.

⁹⁰ Al-Qaraḍāwī, *Madkhal*, 60.

⁹¹ Ibn 'Āshūr, aṭ-Ṭāhir M., *Maqāṣid ash-sharī'a al-islāmīya* (Cairo: Dār as-Salām, 2009), 60.

⁹² Al-'Alwānī, *Maqāṣid*, 135-151 and idem., *Issues in Contemporary Islamic Thought* (Washington and London: IIIT, 2005).

Consequently, it remains only the responsibility of the high qualified scholars who should conscientiously verify the degree of the certainty of *maṣlaḥa mursala*. They can (as the case may be) evaluate the state of the questioner (*mustaftī*), his living circumstances and the necessity of giving him a positive or a negative judgment.⁹³

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⁹³ See for more details El-Wereny, Das Konzept, 95.

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