The Modernist Discourse Surrounding Maqāṣid Theory: A Critical Study

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In the name of Allah, the most Gracious, the most Merciful

Modernists base their stance on what they believe to be unquestionable principles. They believe that it’s inevitable that everyone adopts these beliefs and submits to them, and they reprimand and ridicule anyone who disagrees with them.

The most important of these principles, as well as the most dangerous, is the principle of historicity; that is that all events, practices and speech have regional and chronological considerations and worldly and material conditions, and that foundations, terminology and ideas are all subject to evolution, change and re-employment.

This principle is the pinnacle of modernist doctrine and is considered one of its deepest and most sacred epistemic dimensions.

For this reason, the modernist discourse continues to strive to replace the historical method of dealing with the Sharī‘ah (Islamic Law) and the heritage that comes with it, rather than the indisputable method used by religious thought.

The modernist discourse does not hide that it finds it very difficult to establish that view within the contemporary Arab intellect. For this reason, it often resorts to intellectual equivocation. Instead of dealing with [Islamic] heritage as a separate entity, and that it is something that runs counter to their position and represents an opposing and contradicting side, they instead try to look for any basis within the heritage on which they could possibly justify their historical view. This abuse shows the great level sinuosity present in the modernist discourse, and in a great way reveals the extent of the defeatism that the Arab modernists live.

Among the religious and heritage dimensions that the modernist discourse found a loophole in, through which they can base their intellectual history of the systems, principles, and detailed legislations of the Sharī‘ah, is the theory of Maqāṣid (i.e. higher objectives of the Sharī‘ah).

The reader will come across extensive usage of the term Maqāṣid as well as many concepts that refer back to it in modernist discourse. This theory has received wide recognition and acceptance within ideological forums and dialogues of modernism.

Modernist discourse, concentrates on Maqāṣid as a basis and ends up abolishing the specific and obligatory legislations and laws of the Sharī‘ah. They conclude that the laws of the Sharī‘ah were only legislated to achieve certain Maqāṣid and, therefore, they are considered only a means
to achieve certain ends. Likewise, the laws of the Hudūd (divinely fixed and mandated laws of punishment) were only placed to deter those who sin; the banning of usury was only legislated to achieve justice and prevent the strong from taking advantage of the weak, etc. Moreover, this is applied to every law of the Sharī’ah and, thus, the laws do not carry any value in and of themselves, rather their value depends on how effective they are in achieving the Maqāṣid. Hence, if the objective is achieved through other means, whether due to the times or the needs of the people, then there is no need to adhere to it (i.e. the Sharī’ah) and there is no reason for its continuation. This principle is applied to every act of worship in the Sharī’ah, for according to them, the Sharī’ah only came with these laws in order to achieve objectives during the time when the message was being revealed. Thus, it means that it was only meant to be legislated as a means [through which the Maqāṣid are achieved].

In order to be more just and accurate in ascribing this statement to the modernist discourse, some of their statements which prove this must be mentioned:

One person who has given great interest to the Maqāṣid theory is ‘Abdul Majīd ash-Sharafi. He says that the Sharī’ah is living in a crisis with the principles of current modern discourse and that there is no way out of this crisis except by getting rid of all of the rulings which don’t take the difference of environment, time, and place into account. He explains that disposing of such rulings which are contrary to modernity can be done through various means, among them being:

The need to get rid of the disease of adhering to the literal text, especially the Qur’anic text, and to give the Maqāṣid al-Sharī’ah its due place in the enactment of updated legislation that suits the needs of contemporary society.

He also calls to:

Changing what has passively found settlement in the Islamic heart during the second Islamic century, and to recognize that the wisdom (of acting upon rulings) does not hinge on the specific context of the revelation, nor in its general applicability (i.e. of a ruling, regardless of the specific situation) together, but rather in the reasoning behind the specific context and the [general] wording used, which allows one to search for its ultimate purpose and objective.

Translator’s note: Original article was written in Arabic in two parts and could be accessed here and here.

1 ‘Abdul Majīd an-Najjār, Al-Qirā’atu al-Jadīdah lil-Naṣ ad-Dīnī, p. 69

2 ash-Sharafi, Labināt, p. 162
Then he derives a conclusion and says:

وفي هذا البحث مجال لاختلاف التأويل بحسب احتياجات الناس واختلاف بيئاتهم وأزمنتهم وثقافاتهم

And with this under consideration, an opportunity remains open for one to have different interpretations based on the needs of people, and the difference of their environments, times, and cultures.³

As a result of that, he concludes by abolishing the necessity of all of the main acts of worship in Islam: Ṣalāh (prayer), Siyām (fasting), Zakāh (obligatory charity) and Ḥajj (pilgrimage), on the grounds that the Šarī‘ah came to benefit the interests of that specific time, and thus if the Maqāṣid achieve elevation of the soul and attainment of justice through any other way, then we are not obliged to adhere to the specific legislative rulings of the Šarī‘ah.⁴

Hassan Ḥanafi considers the Maṣlaḥa (benefit) to be the first and primary source of legislation, to which the revealed text must be tried against, as well as the reference through which it is decided whether they are to be accepted. He says:

The sources of legislation are all based… on one basis which is the Maṣlaḥa, as it is considered the primary source of legislation; the Book (i.e. Qur‘ān) is based on the Maṣlaḥa, and the Sunnah is also based on the Maṣlaḥa.⁵

He also says:

كما يؤوَّل النقل لصالح العقل في حالة التعارض، كذلك يؤوْل النقل لصالح المصلحة في حالة التعارض

Just as what is transmitted is explained in such a way that appeals to the mind in a case when they are in contradiction, then also what is transmitted must be explained in a way that appeals to the Maṣlaḥa when they are in contradiction.⁶

He did not distinguish between the definitive proof and other kinds of proof, rather everything is subject to be tried against the Maṣlaḥa according to him.

Al-Jābirī criticizes the work of the Fuqahāʾ and describes them as having preoccupied themselves with linguistic issues rather than Maqāṣid al-Šarī‘ah, and criticizes the rule used by the jurists which asserts that a judgement depends on the presence of a cause or its absence. He calls for this to be changed so that the ruling instead depends on the presence or absence of the Maṣlaḥa. He

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³ al-Sharafī, Al-Islām bayn al-Risālāt wa-l-Tārīkh, p. 70
⁴ Ibid., p.59
⁵ Ḥassan Ḥanafi, Min al-Naṣ Ḭa-l-Wāqi’, Vol. 2, pp. 488-489
⁶ Ḥassan Ḥanafi, Ḥiṣār az-Zaman, p. 76
gives examples for this, which is the prohibition of dealing in usury in some bank transactions and investments. He asserts that they are allowed because there is no exploitation in them. This is confirmed by his statement:

ومعلوم أن منه الاستغلال هو الحكمة من تحريم الربا

It is known that exploitation is the wisdom behind the prohibition of usury. 7

As for Naṣr Ḥāmid Abu Zaid, he believes that religious thought suffers from the idea that religious Naṣ (authoritative scriptural text) has sanctity, and he deals with it as if it is a Naṣ that transgresses the current state of affairs that he was brought up in. He sees that a way to rid the authority that religious Naṣ has, and to replace the historical view of dealing with the creeds and legislations that it contains, can be achieved by replacing it with Maqāṣid when dealing with religious Naṣ, just as was supposedly done, as he claims, by 'Umar b. al-Khaṭāb (رضي الله عنه). 8

The modernist discourse continues to hail the Maqāṣid theory as the reference and basis to Islamic legislation, through which the spirit of Islam can be preserved in modern times. Moreover, that through it the Mujtahidūn (independent Muslim jurists) could abrogate whatever has lost its Maṣlaḥa and they can get rid of the authority which religious texts have, as they say, so that they can roam freely in within the Islamic legislative entity and change whatever features it may have, depending on what they deem to be a Maṣlaḥa. 9

We do not wish for the reader to issue a ruling regarding this theory just by merely reading about it, for this is not the correct intellectual way of dealing with the modernist call, to arbitrate the theory of Maqāṣid; to hasten to denounce or to rush to nullify it. Rather, firstly, we must without a doubt, analyze this theory and adopt an approach that takes into account logical necessities, historical evidence and epistemic requirements.

If we do so, we will discover that it clearly suffers from profound epistemological and methodological problems, which result in great defects and epistemological fallacies in its entire entity. Furthermore, in order for us to not merely claim things that are not derived from the truth of the matter, those problems must be mentioned and clarified.

These problems have taken many forms; some of which are due to a result that has been reached, and some of these are due to the mechanism on which the theory is based, including the mentality used to deal with evidences and examples.

These problems and their different types are illustrated by the following matters:

The first matter: The Volatile Notion: Despite the importance that has been given to the Maqāṣid theory by the modernists and the high status it has been given, they have yet to provide the readers

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7 Muḥammad al-Jābīrī, Wajhatu Naẓār, p. 61. Also see Bonyat al-‘aql al-‘Arabī, p. 63
8 Naṣr Ḥāmid Abu Zaid, Mafhūm an-Naṣ, p. 104
9 See a collection of their statements in: Aḥmad at-Ta-‘ān, al-‘Almāniyūn wal-Qur‘ān, pp. 382-418
with a clear meaning of *Maqāṣid* which they prefer over the divine text and whose authority the text is subjected to. They have not provided any cognitive content which shows its essence, limitations, and characteristics, and which assures its use properly. Moreover, if the *Maqāṣid* theory has such a place within the modernist discourse as one of the major pillars which the divine texts are judged by and founded on its light, and which changes the undisputed rulings of the *Sharī'ah* depending on the change of the *Maṣlaha*, then this status shoulders great responsibility with serious ramifications which are confirmed by the cognitive dimensions that it is built upon.

We must ask: did the modernist discourse carry out these great responsibilities in a way that meets the methodological responsibilities?

When we read modernist writings, we only find a repetition of the importance of the *Maqāṣid*, and the demand to make it a criterion for abiding by the divine texts, and for it to have precedence over them. However, they did not build an integrated cognitive system by which the *Maṣlaha*, to which they call to, can be defined; to explain its identity and characteristics, its limits and conditions, explains its foundations and principles, removes confusion and ambiguity about its sections and categories, and which explains the real criterion to considering it valid. Therefore, what *Maṣlaha* should take precedence and what are its conditions? What are its limits? Who can carry it out? How can one answer those who oppose the idea? All these methodological questions have no answers in modernist discourse.

The *Maṣlaha* which modernists demand are vague and loose and have no identity, no meaning, no entity, and no borders. This is what Ḥassan Ḥanafī declared when speaking about the *Maṣlaha*:

> أمور إضافية تختلف باختلاف الأفراد والأحوال والظروف، وربما العصور والأزمان

[They are] added matters which vary depending on individuals, conditions, circumstances, and perhaps even eras and times.\(^\text{10}\)

Therefore, is it logically acceptable that something is called for and given a very high status that it becomes a criterion over divine *Nūṣūṣ* (texts), while at the same time it is left with no explanation or clarification? Is it logically acceptable to leave divine *Nūṣūṣ* which are clear in their proofs, explanatory in their words, and consistent in their meanings, to be subjected to something that is neither clear, nor defined?

Had the modernist discourse been committed to the correct scientific methodology, it would have proceeded to carry out the necessary cognitive responsibilities which are obligatory on it, however, it has failed to do so.

If we compare the interaction of the *Fuqahā’* (scholars of Islamic jurisprudence), *Usūliyyūn* (scholars of Islamic principles) and the modernists with the *Maqāṣid* theory, we would find that the *Fuqahā’* understood all of the responsibilities that the *Maṣlaha* demands. They strived to explain its nature and proper understanding, and studied its history and phases. They researched its categories and various forms, and went to great lengths to organize and classify it, as well as to explain its limits and characteristics. They clarified its importance and established legal, logical,

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\(^{10}\) Ḥassan Ḥanafī, *Min al-Naṣ Ila al-Wāqi’*, Vol. 2, p. 487
and historical proofs for it. They showed its importance and established evidences on rational, historical and textual grounds; all of this took them hundreds of written pages.

On the other hand, the modernist discourse has not done any of this, even though the status of *Maqāṣid* is greater and more important in their ideology than it is to the *Fuqahā’*.

Does this not indicate a significant gap in their methodology of scientific research, and their neglect of cognitive duties? As well as a loss in the scientific trust and intellectual foundations? All of this caused a flaw in the theory, and in it losing its discipline and consistency, as well as its accordance to practical principles and foundations. Doesn’t the negligence of the modernist movement in carrying out the required responsibilities obliged on them, show that they don’t respect the Arab intellect, and that they don’t appreciate the cognitive awareness that it has?

It must be emphasized that the problem is not the need to consider the *Mašlaḥa* or its importance, nor with acknowledging the direct correlation it has with the laws of the *Sharī’ah*, for this surely has become one of the clear scientific necessities, and it is one of the axiomatic cognitive intuitions of the *Fuqahā’* and *Usūliyyūn*. Rather, the problem is with defining its principles and characteristics, as well as clarifying its criterion and boundaries. Moreover, to uncover its substantive guarantees on which it relies on in order to validate the *Mašlaḥa*. All of these issues have been neglected and omitted from the modernist discourse.

This methodological neglect which emerged clearly in the use of the modernist discourse of the *Maqāṣid* theory, is reflected in many instances within their epistemological writings. The use of ambiguity and reliance on vague and broad terms has become a prominent feature of theirs, and there have been many complaints regarding this usage, even from within the discourse itself.

The Muslim intellect cannot accept this loose and vague approach to the modernist *Mašlaḥa*, because it will inevitably lead to a forfeiture of the laws of *Sharī’ah* and a disbanding of the limits the *Sharī’ah* set for its laws. Moreover, it will also contradict that which the honorable companions have agreed upon, rather what the entire *Muslim Ummah* throughout its history [has agreed on]. Therefore, the door would remain open to changing the indisputable laws of the *Sharī’ah*, as well as changing them depending on where the immediate *Mašlaḥa* lies. The result would then be the dissolving of the Islamic identity itself, as well as the dilution of its laws and loss of its unique characteristics.

It is also necessary to emphasize that the demand to disclose the essence of the *Mašlaḥa* and to clarify its limits and principles is not only specific to the *Mašlaḥa*, nor to the modernist discourse; it is general in all the methodological approaches that are attributed to it in the study of the *Sharī’ah*. Therefore, whoever asks us to rely on texts, then they must provide the conditions and principles which assure the reliability of those texts in an orderly manner. Moreover, the arguments of those who ask us to rely on consensus or deductive analogy are not accepted until they uncover the essence and limits of what they call to.


12 See Şuṭṭān al-’Umayrī, *at-Tafsīr as-Siyāṣī lil-qadāya al-’Aqadiyah*, p. 19
The second matter: The Severe Reduction: the wanderer within the modernist discourse will find that they have greatly narrowed down the nature of the *Maslaha*, that they claim has precedence over the *Sharī‘ah* and that the *Sharī‘ah* is subject to. Therefore, the one who touches on the nature of the *Maslaha* to which the modernist discourse calls to will find the main factor that presides is a material factor, which is built on spreading the benefits that are related to material life, such as the preservation of wealth and everyday life. However, it forgets the moral benefits that are spiritual, psychological and eschatological. Also, they forget the hidden benefits that relate to the human psyche and societies.

The reason behind the reduction of the theory of *Maqāṣid* by the modernists, is that they did not research the religious *Nūṣūṣ*, rather they only sufficed with general matters, whereas if we were to return to the writings of the *Fuqahā’* and *Usūliyyūn*, we would find the assurance of many scholars of *Maqāṣid* that the *Sharī‘ah* did indeed elaborate very clearly on what the *Maqāṣid* the Law Maker [*Allah*] wants achieved.

This is also confirmed by the intellect as well; for since the *Maqāṣid* is a pivotal issue within the *Sharī‘ah*, then it is far-fetched that it doesn’t include within its *Nūṣūṣ* an elaboration of it. The *Sharī‘ah* has specified the details of its laws, and this necessarily demands that it should also explain –by clearly mentioning in the text or by allusion- it’s foundational and subsidiary *Maqāṣid*. This issue was very clear to the scholars of *Maqāṣid*, such as ash-Shāṭibī and others, and for that reason you see them stressing that the way to knowing the *Maqāṣid* that actually have an effect on the laws, is through the *Nūṣūṣ* of the *Sharī‘ah*.

If we return to the legal *Nūṣūṣ* (the Qur’ān and Sunnah) to verify the nature of the benefits on which the laws of the *Sharī‘ah* were based, we find that they include both types [material and moral benefits] in a balanced manner and they don’t differentiate between them. Rather, they express them clearly, and establish a great importance to them both that is considered within the subsidiary laws.

Among the legal examples in which the moral benefits stand out include the statement of Allah:

> Recite, [O Muḥammad], what has been revealed to you of the Book and establish prayer. Indeed, prayer prohibits immorality and wrongdoing, and the remembrance of Allah is greater. And Allah knows that which you do. [Q.29:45]

This indicates that some of the *Maqāṣid* are spiritual and relate to acts of worship, and some relate to that which is material and apparent.

Among the examples of that is the statement of Allah:
Take, [O, Muhammad], from their wealth a charity by which you purify them and cause them increase, and invoke [Allah's blessings] upon them. Indeed, your invocations are reassurance for them. And Allah is Hearing and Knowing. [Q.9:103]

This ayah indicates that one of the *Maqāṣid* of Zakāh is a moral one, which is to cleanse and purify oneself.

Also among the examples of that is the statement of the Prophet (ﷺ):

Come and give me the pledge of allegiance that you will not worship anything besides Allah, will not steal, will not commit illegal sexual intercourse, will not kill your children, will not utter slander invented by yourself, and will not disobey me if I order you to do something good. Whoever among you will respect and fulfill this pledge, will be rewarded by Allah. And if one of you commits any of these sins and is punished in this world then that will be his expiation for it, and if one of you commits any of these sins and Allah hides his sin, then his matter, will rest with Allah: If He wills, He will punish him and if He wills, He will excuse him.13

This ḥadīth highlights the moral dimension in the *Maqāṣid* of setting boundaries, contrary to the modernist view.

There are repeated allusions within the *Nūṣūṣ* of the Sharī’ah regarding the moral benefits in a very concentrated manner, as stated in the obligation to fast, slaughtering during Ḥajj, the prohibition of alcohol, and the obligation of retribution, among others.

This makes it mandatory for anyone who wants to deal with the *Nūṣūṣ* of the Sharī’ah using the *Maqāṣid* theory, to take into account all the types of *Maqāṣid* that the Sharī’ah came to fulfill. They should be aware of the differences between the original and subsidiary *Maqāṣid* of the acts of worship. When one doesn’t have sufficient awareness of the differences between the two types, they fall into problems and defects, thus diverting towards injustice when dealing with the complete and balanced *Sharī’ah*.

Look at how ash-Shāṭibī was aware of this fact and how he was able to deal with the *Maqāṣid* of the *Sharī’ah* with great skill, and listen to what he says regarding prayer:

الصلاة - مثلاً - أصل مشروعتها الخضوع لله - سبحانه - بإخلاص التوجه إليه، والانتصاب على قدم الذلة والصغار بين يديه، وذكر الله - تعالى - {أقم الصلاة لذكرك} [طه: 14]، وقال: {إنَّ الصلاة تنبىء عن الخشية والمُنكَر، وليذكر الله أكبر وليؤمن مَّا يُصنَفون} [العنكبوت: 45]، وفي الحديث: {إن المصلي ينادي ربه}.13

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13 Ṣaḥīḥ al-Bukhārī, no. 3892
The prayer – for example – the original reason for its legislation is submission to Allah – with sincerity in turning to Him, and to prone oneself with humility and diminutively between His Hands, and to remind the soul to remember Him. Allah says: {...and establish prayer for My remembrance} [Q.20:14]. He also says: {Indeed, prayer prohibits immorality and wrongdoing, and the remembrance of Allah is greater. And Allah knows that which you do} [Q.29:45]. And in the hadith says: “one who is praying is indeed calling on his Lord for salvation.”

It has benefits which include forbidding indecency and immorality, as well as a relief from the petulant life, as in the hadith [where the Prophet (ﷺ) said]: “give us comfort by it (i.e. by calling to the prayer), O Bilal.” Also as mentioned in the Sahih: “My comfort has been provided in prayer”, as well as asking for livelihood through it. Allah says: {And enjoin prayer upon your family [and people] and be steadfast therein. I ask you not for provision; I provide for you} [Q.20:132]. In the hadith mentioned is the explanation of this meaning as well as fulfillment of needs through the prayer of Istikhārah and prayer of need, and the request to achieve paradise and escape from the Fire, which is the general public benefit, and the fact that the worshiper is under the protection of Allah as in the hadith: Whoever prays the morning prayer remains under the Protection of Allah, as well as to get a higher status. Allah says: {And from [part of] the night, pray with it as additional [worship] for you; it is expected that your Lord will resurrect you to an honored station} [Q.17:79], thus giving an honored place through voluntary night prayer.14

He clearly distinguishes between the foundational Maqāṣid and the subsidiary Maqāṣid, and creates balance between the apparent and the non-apparent Maqāṣid

Ibn Taymīyyah had warned early on about the dangers of prioritizing material benefits and negligence of spiritual and moral benefits. He warned of this and uncovered its ramifications as if he was predicting the modernist discourse. He says:

وَكَثِيرٌ مِّن النَّاسِ يَقُسُرُ نُظْرُهُ عَنْ مَعْرَفَةِ مَا يُحِبَّ اللَّهُ وَرِسُولُهُ مِنْ مَصَالِحِ الْقُلُوبِ وَالْبَقْرَةِ وَمَفَاسِدُهَا وَمَا يَنفَعُهَا مِنْ حَقَّاتِ الإِيمَانِ وَمَا يُضِرُّهَا مِنْ غَفْلَةِ وَالْشَّهْوَةِ كَمَا قَالَ – تَعَالَى – : {وَلَوْ تَطَوَّى مِنْ أَعْمَالِ فُلُولٍ قَلْبُكَ تَغْدُرُني}. [الإسراء: 28]، وقَالَ – تَعَالَى – : {إِفَاعُضْ عَنْ مَا تَوْلَى عَنْ ذَكَرِنَا وَلَمْ يُرِدْ إِلَّا الْحَيَاةَ الدُّنْيَا} [النجم: 30] فَفَتَحُدُّ كَثِيرًا مِّنْ هَؤُلَاءِ فِي كِثِيرٍ مِّنْ الأَهْلِ وَلَنْ يَرَى مِنَ الْمَصَالِحِ وَالْمَفَاسِدِ إِلَّا عَلَى مَلَكَةِ الْحَالَاتِ وَالْبَلْدَةِ. وَغَيْرَةُ كَثِيرٌ مِّنْهُمْ إِذَا تَشَرِّدُوا ذَلِكَ أَنْ يَنْظُرُ إِلَى سَيَاسَةِ الْنَّفْسِ وَتَهْذِيبَ الأَخْلَاقِ بِبَلْغَهُمْ مِنْ الْعَلْمِ

14 ash-Shāţībī, al-Muwāfaqāt, Vol. 3, pp. 142-143
Many people limit their view of knowledge to knowing what Allah and His Messenger love, from that which benefits and harms the heart and soul, as well as the realities of faith that benefit it, and what harms it from negligence and desires, as He, the Almighty, says: and do not obey one whose heart I have made heedless of My remembrance and who follows his desire and whose affair is ever [in] neglect [Q.18:28]. He also says: So turn away from whoever turns his back on My message and desires not except the worldly life. That is their sum of knowledge [Q.53:29-30]. You find that many of them when dealing with many of the laws [of the Sharī‘ah] only look at the benefits or harms that relate back to the material or physical benefit. The goal of many of them who go beyond that is to view the human psyche and refinement of ethics only with their limited knowledge.

And a group of people from among those who looked deeply into the fundamentals of jurisprudence and the wisdom of the rulings of the Sharī‘ah in appropriate contexts; if they said that the order of the laws placed by the Law Maker [Allah] with the appropriate contexts includes achieving benefits of Allah’s servants and repelling what harms them, and they saw that the benefit is divided into two categories, those that pertain to the hereafter and those that pertain to this world: They made the afterlife as the human psyche and refinement of ethics from among the wisdoms of Sharī‘ah. They made what pertains to worldly matters include preservation of blood, wealth, what pertains to the mind, and the apparent from the religion. They made the aspects of inner and outer worship from the aspects of knowing Allah, His angels, His books, His messengers, as well as the states of the hearts and their actions, such as: the love and fear of Allah, and the sincerity in worship to Allah, as reliance on Him, asking for His mercy and blessings, etc. from among the benefits in both this world and in the hereafter. Likewise, in what He legislated from adherence to covenants, maintaining blood relations, rights of slaves and neighbors, the rights of Muslims over each other, and other matters of what He ordered and forbade, in order to preserve the Sunnah based ethics and manners. It becomes clear that this is one section of the benefits that the Sharī‘ah has come to fulfill.15

Ibn Taymīyyah, in this text, emphasizes the need for balance in the observance of the Maqāṣid that the Sharī‘ah came with and that it isn’t allowed to give precedence of one type over another, nor to neglect one for another.

Once again, if we compare the efforts of the Fuqahā’ and the Usūliyyūn with the efforts of the modernist project in the explanation of the public, private, material, and moral Maqāṣid al-Sharī’ah, we find that the Fuqahā’ have made great efforts and gone to great extents to search and explore the benefits of Sharī’ah and were able to conclude on the different types of benefits that the Sharī’ah came to achieve. We do not deny that their efforts may have errors and exaggerations, however, the reader is able to reach – through what they have put forth - a mature understanding which shows the legitimacy and integrity of the Sharī’ah, as well as the need to apply the laws and limits that it came with. Also, that it came in the most perfect way, in the brightest form, and the clearest condition. On the other hand, one will find clear shortcomings in the modernist discourse regarding this issue, which has resulted in many mistakes in their research which stand in clear contradiction with history, and particularly the religious text itself.

The third matter: Cherry Picking: When the modernist discourse sought credibility for their views on the Maqāṣid theory, and began to search for a basis on which they could build a foundation for its legitimacy, they chose specific Nūṣūs (texts) which deal with the issue of Maṣāliḥ (benefits) in a very apparent manner, such as the Prophet’s (ﷺ) statement:

لا وَلَاء أَنْ قُومِكَ حَدِيثَتُوا عَهْدٍ يَكْفَرُ لِهِمْ دَكَّةُ الكَعْبَةِ وَلَبْنَيْتَهَا عَلَى قَوَاعِدِ إِبْرَاهِيمٍ

If it wasn’t that your people were only recently disbelievers, I would have demolished the Ka‘bah, and rebuilt it on the base of the structure built by Ibrahim.16

They apply this ruling on the entire Sharī’ah (Islamic Law) and conclude that if the Maṣāliḥ conflict with indisputable laws of the Sharī’ah, and the religious Naṣ (text), which is also indisputable in its rulings, then there is no doubt that the Maṣlaḥa (benefit) takes precedence.

They have also taken statements of some scholars, such as at-Ṭūfī and ash-Shāṭibi, whom they think hold the same view as them, and began to showcase them as those who brought forth what the Sharī’ah supposedly truly came with, and that they are the ones who truly understood the Sharī’ah, from amongst the scholars of Islam.

This method is incompatible with honest scholarly inquiry and usually leads to intellectual embarrassment. If we look at the logic of the modernist discourse, we would conclude with ideas contradictory to the conclusion that they made; by being selective, it can be concluded that the Sharī’ah does not take into account the Maṣāliḥ, does not pay attention to it, and that it requires people just to accept them, with no other reason. Among the Nūṣūs that could be used to affirm this view is Allah’s statement:

لا يُسْأَلُ عَمَّا يَفْعَلُ وَهُمْ يُسْأَلُونَ

He is not questioned about what He does, but they will be questioned. [Q.21:23]

فَعَلَ الَّذِي لَمْ يُرِدُ

Effecter of what He intends [Q.85:16]

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16 Ṣaḥīḥ Muslim, no. 3308
And Allah decides; there is no adjuster of His decision. And He is swift in account.

[Q. 13:41]

Even though this statement is a mistake, without a doubt, this conclusion can still be reached, by cherry picking just like the modernists, and it opens a very wide door [of interpretation and abrogation].

The Qur’ān itself has warned us of cherry picking when using evidence and explained that it is a characteristic of oppressors who don’t want to arrive at the truth. Allah says:

أَفَتُؤْمِنُونَ بِبَعْضِ الْكِتَابِ وَتَكْفُرُونَ بِبَعْضٍ فَمَا جَزَاءُ مَن يَفْعَلُ ذَلِكَ مِنكُمْ إلَّا خِزْيٌ فِي الْـحَيَاةِ الدُّنْيَا وَيَوْمَ الْقِيَامَةِ يُرَد ونَ إلَى أَشَدِ  الْعَذَابِ وَمَا اللََُّّ بِغَافِلٍ عَمَّا تَعْمَلُونَ

So do you believe in part of the Scripture and disbelieve in part? Then what is the recompense for those who do that among you except disgrace in worldly life; and on the Day of Resurrection they will be sent back to the severest of punishment. And Allah is not unaware of what you do. [Q.2:85]

Therefore, true faith in the Nūṣūṣ of the Sharī’ah, as well as in the proofs, laws and principles they entail cannot be actualized by selectively choosing some and leaving others out.

The Qur’ān also explains that among the characteristics of the hypocrites is that they don’t return to the Nūṣūṣ of the Sharī’ah as a criterion, except if they think that they could find what achieves their Maṣāliḥ. Allah says:

وَيِقُولُونَ آمَنَّا بِاللََِّّ وَبِالرَّسُولِ وَأَطَعْنَا ثُمَّ يَتَوَلَّى فَرِيقٌ مِنْهُمْ مِنْ بَعْدِ ذلِكَ وَمَآ أُوْلَـئِكَ بِالْمُؤْمِنِينَ - وَإِذَا دُعُوا إِلَى الْوَسُوءِ فَأَمْرُهُمْ إلَى مَعْرِضَةٍ وَإِذَا دُعُوا إِلَى الْحَقِّ إِلَى مُذْعِنٍ

But the hypocrites say, “We have believed in Allah and in the Messenger, and we obey”; then a party of them turns away after that. And those are not believers. And when they are called to [the words of] Allah and His Messenger to judge between them, at once a party of them turns aside [in refusal]. But if the right is theirs, they come to him in prompt obedience. [Q.24:47-49]

A number of scholars of the past and present have warned about cherry picking with the Nūṣūṣ, and among them is Ibn Ḥazm, who said:

فلا تأخذ بعض الكلام دون بعض فتفسد المعرف، وأحذر من شعب قوم في هذا المكان إن ناظروا أطبلوا على آية واحدة أو حديث واحد، وهذا سقوط جديد وجهل مفرط.
Do not pick some of the words and leave some, to corrupt the knowledge. Moreover, I warn you of some people in this place who, when they debate, push for one verse or one hadith [selectively]. This is a new low and excessive ignorance.\textsuperscript{17}

Scholarly methodology rejects all of this; and requires that the researcher of truth gathers everything related to the issue at hand, and analyzes and takes into account all the evidence it contains, so that the desired result is reached in a correct and clear manner.

The fourth matter: The Problem of Alternatives: When modernists presume that there exists a contradiction between the \textit{Mašlaḥa} and the \textit{Naṣ} of the \textit{Sharī’ah}, or claim that the detailed legislations of the \textit{Sharī’ah} have lost their value; they fail to provide a single clear example which couldn’t be objected to. All of the alternatives and \textit{Mašāliḥ} that they present and give precedence to over the \textit{Naṣ} of the \textit{Sharī’ah}, are all refuted by the many contradictions and questions that surround them. This is keeping aside the fact that the way they went forward in determining what they saw as \textit{Mašāliḥ}, was not based on correct scholarly methodology, nor was it built on understood comparisons which take into account all of the circumstances that surround the issue, as well as, the legal judgment. Therefore, it is described as having a narrow-minded approach in analyzing the current state of affairs, and human practices.

A number of researchers have shown many examples within modernist discourse wherein calls have been made to abolish the laws of \textit{Sharī’ah} on grounds that they are contrary to \textit{Mašlaḥa} that the social condition of the present era requires, such as fasting in Ramadān, the \textit{Anṣibah} (the amount of wealth which if met, obliges the owner to pay \textit{Zakāh} [obligatory charity]) of \textit{Zakāh}, \textit{Ḥijāb} of women, and implementation of \textit{Hudūd} (laws of punishment). They have explained how all of these laws are compatible with the \textit{Mašlaḥa} and help in achieving them in the most perfect manner. They exposed the fallacies in the alternatives to those laws, presented by the modernists, and have clearly shown the deep problems in the way in which they have presented them.

If we look at one example, which is the \textit{Ḥadd} (law of punishment) of theft, we find that the modernist discourse calls to replace it with imprisonment, because it would achieve the \textit{Mašāliḥ}, but is not correct. This is because there are major \textit{Mašāliḥ} to the society in cutting the hand of the thief that prison does not achieve. Just by merely announcing the punishment of cutting off the hand, acts as a deterrent to many thieves, contrary to prison. Furthermore, the punishment of cutting off the hand relieves society from the burden of guarding them (i.e. the thieves), feeding them and providing healthcare for them in prison. Moreover, cutting the hand of the thief only partially disables him, whereas imprisonment of the thief for any years restricts more \textit{Mašāliḥ} than if his hand was cut off. Additionally, prison often serves as an excellent school for learning crime and corruption.\textsuperscript{18}

The fifth matter: Opposition to the Essence of the Religion: The theory of \textit{Maqāṣid} that the modernist discourse has adopted necessitates that reference to the \textit{Sharī’ah} be removed from daily life. Instead of the \textit{Sharī’ah} being the judging force in the lives of people, it would become subsidiary to its \textit{Mašāliḥ}, and thus its laws would change and be exchanged depending on the

\textsuperscript{17} Ibn Ḥazm, \textit{at-Taqrīb li-Ḥadd al-Maņṭiq}, p. 281

Maṣāliḥ of the people. This is in absolute contrast to the reality of religion and contradicts its original objective. The major truth and premise on which the religion and adherence to it is based, is the organization of human life and the regulation of their actions. All religions – even the man-made ones among them – engage in this objective, which is that the person remains subject to the teachings of the religion and proceeds through life in accordance to its laws. However, the modernist discourse has reversed the issue in Islam, and made the laws of Islam subject to the lives of people, in accordance with its changing adaptations. Moreover, if by this procedure the religion is not eradicated, its preferential status destroyed, and its prestige removed, then how can it be done?

Abul Ḥasan an-Nadwī explains the implications that result from the modernist call to Maqāṣid and reveals the horrendous intellectual and religious conclusions resulting from them, in a fine literary manner. He says:

As one who seeks guidance and a follower of a religion, I can never accept a situation in which this religion responds to every change, and neither can you agree to that, because the religion is not a thermometer confined to recording the temperature, nor is it a tool that monitors the direction of the wind,. . . the religion cannot be defined by these terms and religion cannot become a tool of strange mechanisms. There is none amongst us who wants the Qur‘ān to turn into a book for western inventions and discoveries. If manmade religion cannot bear this placement, so what then about a divinely revealed one? The religion goes hand-in-hand with life and does not convey life as a follower of it. . .; its job is also to distinguish between sound change, and unsound and destructive change.19

While contemplating over the approach of Maqāṣid practiced by the modernist discourse, with the teachings of Islam, we find that it inevitably leads to the abasement of Islamic Sharī‘ah and the removal of its prestige. It ends up making it equal to rhetoric of the lowest standard, and of least importance. This occurs when they say that it changes and evolves depending on the change and development of the Maṣāliḥ. This eradicates any type of advantage over anything else, and removes its magnificence, ingenuity, divinity, completeness, prestige and respect. Any student at any stage [of school] can draft a law that complies with the evolution of times and laws and adapts to them, and continues alongside the current state of affairs and the daily needs of people.20

19 Abul Hasan an-Nadwī, al-Islām fi ʾālam Mutaghayir, p. 57

20 Ramaḍān al-Būṭī, Ḍawābiṣ al-Maṣlaḥa, p. 30
The modernist discourse won’t cease interpreting depending on the *Maqāṣid*, until the Islamic *Sharī‘ah* ends in this manner. What magnificence and ingenuity will it demonstrate, and what greatness will it continue to have? This is unacceptable to any Muslim who cherishes his religion and is proud of his *Sharī‘ah*.

**The sixth matter:** The Modernist Discourse Deals with Islamic legislation Very Superficially:

It doesn’t take into consideration the complex way in which the *Sharī‘ah* legislates its laws, and it didn’t stop at the intricate details that show the philosophy and complexity of Islam. Furthermore, it didn’t take into account the realistic considerations to the different details of its laws, as well as their diversity and ramifications.

One who reads the details of the Islamic *Sharī‘ah*, its laws, rules of its rites, and conditions, will find that it explains the ways through which docility and worship of Allah is achieved in a detailed manner. Prayer, for example, has a specific and specified form; ablution has certain specified characteristics; *Zakāh* has specific descriptions and conditions; the *Kaffārāt* (atonements) have specific *Anṣibah*; and this is the case with many of the detailed legislations. The *Sharī‘ah* insists on adherence to them, describing them as the limits of Allah and His boundaries, and warns against evading them or deviating from them. It assigns specific and certain times and forms to them, and commands for them to be adhered to in challenging and most difficult circumstances, such as maintaining prayer on time during times of war. It placed heavy blame on those who transgress or overlook them. Moreover, severe punishments are placed on those who transgress them. Furthermore, when the Prophet was asked to concede some of the *Ḥudūd* in favour of a tribe, he adamantly refused, became very angry, and said:

ولو أن فاطمة بنت محمد سرقت لقطعته يدها

If Fatima the daughter of Muhammed had stolen, I would cut her hand off.\(^{21}\)

The *Sharī‘ah*, with all these strong evidences, never hinted to the fact that it came with these legislations in accordance to the circumstances of that time. Rather, it stressed in many *Nüṣūṣ* that its legislations are compulsory until the Day of Resurrection.

All of these detailed legislations are considered to be under the broad banners of *Maqāṣid*, which make an integrated and legislative system that is integrated and constant throughout the ages. *Ash-Shāṭibī*, the architect of *Maqāṣid*, revealed this integrative reality:

إذا ثبتت قاعدة كلية في الضروريات أو الحاجيات أو التحسينات، فلا ترفعها آحاد الجزئياً ت Calls back our charity, and don’t forget to let us know the result.

If a universal principle (*kullīyah*) is established, with regards to the essentials (*darurīyyāt*) or the complementarity (*al-ḥājīyyāt*) or the embellishments (*at-\(^{21}\) Ṣaḥīḥ al-Bukhārī, no. 3475
He warned against the introduction of the encompassing \textit{Maqāṣid} without regard to the legislative subsidiaries as if he is referring to the modernist discourse. He says:

\begin{quote}
من الواجب اعتبار تلك الجزئيات بهذه الكليات عند إجراء الأدلة الخاصة من الكتاب والسنة والإجماع والقياس؛ إذ محال أن تكون الجزئيات مستغنیة عن كلياتها، فمن أخذ بنص مثلا - في جزئی معرضة عن کلیه فقد أخطأ…، كذلك من أخذ بالکلی معرضا عن جزئیه…
\end{quote}

It is necessary to consider individual precepts when discussing universal principles when deriving specific evidences from the Qur'ān, Sunnah, \textit{ijmāʿ} (consensus), and \textit{qīyās} (deductive analogy). This is because it is impossible for individual precepts to be independent from their universal principles. For example, if someone applies a text in the case of an individual precept whilst ignoring the universal principle upon which it is based, then he has erred…. Likewise, anyone who only applies the universal principles without considering the individual precepts has also erred.\footnote{Ibid., Vol. 2, p. 174}

It is far-fetched to claim that legislation of the detailed \textit{‘Ibādāt} (acts of worship), \textit{Hudūd}, and \textit{Aḥ-kaṃ} (laws) was done in such a way to be only integrated within the historical and social context of the Prophet’s time. Likewise, that it changes depending on the change of those contexts, as the modernist discourse claims. It is also far-fetched that those specifications don’t have value in and of themselves, and that they only came to achieve certain \textit{Maqāṣid}, so whenever those \textit{Maqāṣid} are achieved without them, there is no reason to remain adherent to them, as the modernist theory claims.

Furthermore, if it is possible that those legislations change and become subordinate to the \textit{Maṣlaḥa} and historical context, then it is logically possible to change the first \textit{Maqṣad} of the \textit{Sharī'ah}, which is singling out Allah in worship, as long as there is no logical basis otherwise. It would also be possible, logically, to contradict the \textit{Sharī'ah} for whatever logic sets on. All of these issues are unacceptable to Muslims who have knowledge in the truth of their religion.

Moreover, if it is possible to change those detailed legislations for the immediate \textit{Mašāliḥ} in the lives of people, then this means that it is logically permissible to invalidate the \textit{Sharī'ah} as a whole, because if it is possible that the \textit{Sharī'ah} came with that which contradicts the \textit{Maṣlaḥa} in some

* Translator’s note: An example of a universal principle would be protection of wealth, while an example of an individual precept/ruling which seeks to enact this universal principle would be the punishment for theft.

\footnote{ash-Shāṭibī, \textit{al-Muwāfaqāt}, Vol. 2, p. 96}

\footnote{Ibid., Vol. 2, p. 174}
of its laws, then there is nothing stopping this from occurring from within all of its legislations and laws, since they are all from the same legal source and thus equal in legislative authority. Therefore, anyone could present that which they see has a Maṣlaḥa over any law of the Sharīʿah [and give it precedence].

Ash-Shāṭibī pointed to something similar when he explained that the laws of the Sharīʿah cannot nullified by logic, and that the Naṣ is not subservient to it. He said:

إنه لو كان كذلك لجاز إبطال الشريعة بالعقل، وهذا محال باطل، وبيان ذلك أن معنى الشريعة أنها تحدد للمكلفين حدوداً في أفعالهم، وأقوالهم، واعتقاداتهم، وهو جملة ما تضمنته، فإن جاز للعقل تعدي حد واحد، جاز له تعدي جميع الحدود؛ لأن ما ثبت للشيء ثبت لمثله، وتعدي حد واحد هو معنى إبطاله؛ أي: ليس هذا الحد بصحيح، وإن جاز إبطال واحد جاز إبطال السائر، وهذا لا يقول به أحد لظهور محاله.

If such is the case, then it would be permissible to abolish the Sharīʿah by using logic, and this impossible and invalid. This is made clear in the fact that the Sharīʿah limits the actions, statements, and beliefs of those who are religiously responsible, and this is wholly what it contains. Therefore, if it is possible for the logic to transgress one limit, then it is allowed to transgress all of the limits, because whatever is established for something (i.e. a ruling) is established for other rulings, and transgressing one limit entails nullifying it. It’s like saying that that this certain limit [i.e. the one set by Sharīʿah] isn’t correct, and if it’s possible to abolish one, then all the rest could be abolished as well. No one claims [or would claim] this because it is impossible.

Giving precedence to the Maṣlaḥa over the Naṣ in the form called for by the modernist discourse is therefore impossible to be accepted by Muslims, for that will lead to the abolishment of the entire Sharīʿah.

The modernists adopted a view, which necessities all these aforementioned implications, and reprimands Muslims for not accepting their conclusions. They launched harsh campaigns against the Fuqahā’ (jurists) and Usuliyyūn (scholars of Islamic principles) who haven’t reached the conclusions they have reached. With that, they still didn’t present a convincing answer about those horrendous implications, and haven’t even tried to delve into them. Rather, they have turned away from and neglected them, as if they don’t even exist.

The seventh matter: The Reader Finds the Modernist Approach without Credibility in its Dealings with the Maqāṣid Theory: because [for example] if the Maqṣad of the Ḥadd of theft is solely based on the preservation of people’s wealth, that means if corruption and burglary rates increase in society, then the severity of punishment would also increase, and not that its form changes and its severity lessened. Likewise, if the only Maqṣad of the Ḥadd of Zina is solely to preserve the honor of people, then that means that if moral corruption and the rates of forbidden relationships increase, then the severity of the punishment should increase, and not that its form should change or its severity lessened. Moreover, if the only Maqṣad of prayer is spiritual elevation, it means that if people become more attached to materialistic things and the rates of spiritual dehydration increase, then the amount of worship should increase, and it shouldn’t be

24 Ibid., Vol. 1, p. 131
called for them to be reduced. Furthermore, if the only Maqāṣid of Zakāh is to achieve social justice and division of wealth, this means that an increase in stinginess of the wealthy, or an increase in the needs of those who are in a state of poverty, then the Anṣibah of Zakāh should be increased.

Whoever researches the modernist discourse, will find that all of their applications of the Maqāṣid theory lean towards abolishing the laws of the Sharī‘ah, getting rid of them, and freeing from adhering to them. We haven’t seen any modernists who call, based on their Maqāṣid theory, for an increase in punishment due to the social situation being in need of it. We haven’t seen most of them call to more acts of worship, such as Ṣalāh and Ṣiyām, whilst seeing that the people suffer from spiritual dehydrations in this age. Rather, the opposite is true, that you only see them demanding their diminishment and encouraging the ridding of their obligation. All of this confirms that the modernist discourse is not serious in its enthusiastic ovation of the Maqāṣid theory, but rather they only use it to achieve their own personal ends.

The eighth matter: Falling into Methodological Contradiction: It is known to scholars of logic and those of sound methodology that it is not sufficient when building a case to simply assert that it is correct. Rather, it is necessary to establish the correct evidences for it, while addressing the implications that negate the position, cause contradictions within it, arouse pressing questions around it, and disallow the acceptance of its veracity. The modernist discourse decided on principles that contradict the view that Sharī‘ah has Maqāṣid that must be considered, taken, and applied. One of the clearest contradictions, is that some from within the modernist discourse do not fail to repeat day and night that the Nūṣūṣ of the Sharī‘ah do not have a fixed or inherent meaning, nor lead to a specific meaning. And that modern-day reading is not to truly search for the Maqāṣid of the author of the Naṣ (i.e. Allah), but rather what he personally understands from it. If this was so, then how can it be said that the Nūṣūṣ of the Sharī‘ah point to Maqāṣid within the detailed legislations that must be taken into consideration? And how can it be said that it includes wisdoms and universal Maṣāliḥ that are the ruling force within their systems? Is this not a methodological contradiction that the intellect seeks to evade?

These issues reveal to the reader the extent of the methodological problems the modernist discourse has when dealing with the Maqāṣid theory. They provide methodological and logical justifications to the reader, through which one may judge the modernist usage of the Maqāṣid theory with justice, based on sound methodological, and scholarly foundations. Furthermore, they are a means by which once can judge them as having cognitive imbalance, which is contradictory to the truth of the Sharī‘ah, and far from the correct methodology which presents advanced and constructive ideas.