

MAQASID AL-SHARI'AH AS A METHODOLOGY FOR TAJDID
A RETURN TO THE SPIRIT OF THE QUR'AN AND
THE SUNNAH OF HIS MESSENGER (SAAS)

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ABSTRACT

The intention of this thesis is to demonstrate the necessity to revisit and utilize the principles and purposes (*Maqāsid*) of the Qūr'an and *Sunnah* as the methodology to expose erroneous beliefs that have pervaded the religion (*dīn*) of Islam past and present. According to the Qūr'an and the *Sunnah* of the Prophet, the *dīn* would become corrupted. Conversely, Allah Most High vows to protect the *dīn* and the *Sunnah* of the Prophet through human agency. This thesis will articulate the styles of deviation that have been mentioned within the Qūr'an and *Sunnah* and will propose the system of *maqāsid* as a necessary corrective to maintain faithfulness in lieu of the prevalence towards deviation. The *dīn* of Islam has historically been contaminated through literalism, divergent beliefs and practices, corruption of the *Sunnah* and incorrect legal judgments (*ijtihad*). The exoteric aspect of the *dīn* has been obsessively exaggerated while the esoteric (*tasawwuf*) or the spiritual aspect of the heart has been condemned as an innovation. Renewal (*tajdid*) of the *dīn* is a perpetual obligation on the Muslims to return to the objectives or the *maqāsid* of revelation. I propose the knowledge and application of the principles, purposes and objectives (*Maqāsid al-Shari'ah*), of the Qūr'an coupled with the *maqāsid* of the Prophetic *Sunnah* is the illuminating methodology for *tajdid*. I will demonstrate that revisiting disputed *fatawa*, *fiqh* and hadiths through the prism of *Maqāsid al-Shari'ah* is the most logical methodology to expose fallacious beliefs from antiquity and clarify contemporary deviations propagated with the advent of mass literacy.

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DEDICATION

To my beloved parents Pauline Hrusovsky and Gerald Dewey Gipson.

TABLE OF CONTENTS

	PAGE
ABSTRACT.....	ii
ACKNOWLEDGMENTS	iii
DEDICATION.....	iv
CHAPTER	
1. INTRODUCTION	1
2. MAQASID AL-SHARI'AH.....	10
3. TAJDID-THE NECESSITY OF RENEWAL	16
4. TRADITIONALISTS AND THE CONSTRICTION OF IJTIHAD	21
5. THE SPIRIT OF THE PROPHETIC SUNNAH	33
6. THE MAQASID OF THE FIRST THREE GENERATIONS	36
7. THE SIGNIFICANCE OF MEDINA AND THE MUWATTA.....	44
8. CONCLUSION.....	48
BIBLIOGRAPHY.....	51

CHAPTER 1

INTRODUCTION

Now more than ever, there is a necessity to clarify the *Shari'ah* of Islam. Daily, the media, government institutions and lobbying groups depict Islam as a religion bent on domination with the ultimate goal of enforcing the *Shari'ah* on Muslims and non-Muslims alike. Unfortunately, a small minority of Muslims promoting a deviant, archaic legal system far removed from the principles and purposes (*maqāsid*) of the spirit of Islam are complicit in perpetuating this biased narrative. We are living in a time when the religion of Islam is being maligned by outside and inside forces. The *Shari'ah* of today needs to be clarified as a continuation of previous *Shari'ah* as in the case of the *Shari'ah* of Moses and the *Shari'ah* of Jesus. The methodology of *Maqāsid al-Shari'ah* needs to be articulated and promoted to the Muslim and the non-Muslim alike. When the *Shari'ah* of Islam can be realized and clarified through universal principles and purposes (*maqāsid*), the Muslim community (*ummah*) can rectify Islam from those who have corrupted the tradition from within. The *ummah* of the Prophet (saas) needs to be awakened from its slumber and turn to the higher fiqh (*Maqāsid al-Shari'ah*) to renew (*tajdid*) and infuse the spirit of Islam back into the hearts and minds of the believers.

Renewal is an obligation for those who are capable to cleanse the tradition of Islam from deviant beliefs, practices and innovation that are not in agreement with the Qūr‘an and the *Sunnah* of His Messenger (saas). “The term *tajdid* appears frequently in contemporary Islamic literature (and this has been especially true over the last 150 years): it literally means “renewal”, or even “rebirth” and “regeneration”. The verb root of this noun can be found in a famous hadith of the Prophet: God will send this (Muslim) community, every hundred years, someone/some people who will renew (*yujaddidu*) its religion.”¹ *Tajdid* (renewal) will emerge from within the center of Islam, from within the heart of the tradition of Islam, neither from the right or the left.

To understand the necessity for *tajdid*, it is important to go back to the sources to see what previous illuminated scholars have said regarding the *Shari‘ah*. Ibn al-Qayyim (d.751AH/1350CE) so eloquently simplified the wisdom behind the principles (*maqāsid*) of the *Shari‘ah* to reveal the ‘spirit’ of the law:² The natural inclination (*fitra*) towards right understanding is a powerful tool and a gift from God.

Shari‘a is based on wisdom and achieving people’s welfare in this life and the afterlife. Shari‘a is all about justice, mercy, wisdom, and good. Thus, any ruling that replaces justice with injustice, mercy with its opposite, common good with mischief, or wisdom with nonsense, is a ruling that

1 Ramadan, Tariq. *Radical Reform, Islamic Ethics and Liberation* (Oxford University Press), 2009, 12.

² AH refers to the Islamic lunar calendar associated with the migration of the Prophet Muhammad to Medina in 622 Common Era (CE) or the beginning of the Islamic calendar or Hijri Calendar.

does not belong to the Shari‘a, even if it claimed to be so according to some interpretation.³

Critical Analysis

Now is the time to turn our attention inward, from the aforementioned external problems to a critical analysis (*ijtihad*) of renewing (*tajdid*) the religion of Islam from within. Throughout the history of the Islamic tradition, there has been an ebb and flow of rules, philosophies, practices and sects, which have arisen due to the inherent problem of interpretation and human fallibility. With the colonization of the Muslim world by European powers and the eventual abolishment of the Ottoman Empire in the early twentieth century, much of the Muslim world was in a state of crisis.

Various ideologues and groups suggested the religion (*dīn*) of Islam was in need of reform.⁴ The word reform unfortunately has taken on a negative connotation due to either extreme groups ascribing the need to reform to a either a puritanical past, a political entity, or a modernist trend often called progressive reform whose underlying motive is primarily based on promoting liberal agendas. Within both the aforementioned groups, there are subgroups that are on the fringe or outside the parameters of Islam given their

³ Auda, Jasser. *Maqasid Al-Shariah as Philosophy of Islamic Law; A Systems Approach* (The International Institute of Islamic Thought), 2008.

⁴ The Wahhabi movement founded by Muhammad ibn Abd al-Wahhab (1703–1792), the Salafi movement articulated through Muhammad Nasiruddin al-Albani (1914-1999), Modernist Reform groups such as The Muslim Brotherhood founded by Hassan al-Banna (1906-1949) and Progressive and Liberal Muslims which are too numerous to mention.

extreme beliefs and practices. Islam as a religion is not in need of reform since its foundation and principles are sound. What the tradition and Muslims need is a renewal of understanding and a cleansing of anachronistic beliefs and practices that have been reified through deviant sects.

Intellectual Crisis

During a conference held by the International Institute of Islamic Thought in 1976, “the participants reached the conclusion that the Muslim world was afflicted with an intellectual crisis (*al-azmah al-fikriyyah*) and any remedies that were to be attempted must therefore begin in this context.” Kamali mentions, “The group singled out a certain poverty of vision which was neither goal-oriented nor purposeful: intellectual debate often conducted for its own sake rather than to find the needed solutions. It was further stated that the leading *ulema* and *mujtahids* of early Islam, the Companions and Followers, were right in their vision to see Islam, not just as a set of rules, commands and prohibitions, but as a mission and philosophy of life which required a strong sense of direction. This was to be achieved, not only by conformity to specific rules but also by following the broad principles, the vision and objectives of Islam without which conformity to specific rules would be reduced to a mechanical exercise. Only when Islamic thought lost its clarity and purpose, and its association with life in the community

it began to become a force of conservatism afflicted with a dry literalist conformity while oblivious of the overall philosophy and direction of Islam.”⁵

The idea of an intellectual crisis within Islam is nothing new. Within four centuries after the Prophet’s death (saas), Abu Hamid Al-Ghazali (d. 505/1111) was challenged on all sides by heretical views. Within the process of successfully refuting these heretical groups, the Imam experienced his own personal crisis. Imam Ghazali realized he himself harbored the signs of hypocrisy and arrogance. The Great Imam left his position at the academy and would encounter the wisdom of the Sufi’s, resulting in a transformative effect within his being and a realization that the essence or *maqāsid* of Islam needed a revival or purification.⁶ During his sojourn as an anonymous figure, the Imam compiled his magnum opus, ‘Revival of the Religious Sciences,’ (*Ihya ulum al-dīn*). The Imam was now acutely aware of the need to revive or renew the religious sciences from the corruption and deviations that had crept into the beliefs, practices, texts and minds of the Muslims. Imam Ghazali needed to address this phenomenon of deviation as early as the 4th Century Hijri, since the corruption had already become rampant.⁷ Al-Ghazali spent most of his subsequent years on purifying and perfecting (*ihsan*) his inward states through Sufism while continuing to correct incorrect beliefs within his latter works.

⁵ Mohammad Hashim Kamali, ‘Issues in Islamic Jurisprudence’, BRILL, Arab Law Quarterly, Vol. 11, No. 1 (1996).

⁶ Sufism is the esoteric practice inherent within the tradition of Islam. It is also understood to be the inward fiqh compared to the outer fiqh. The literalists have maligned Sufism within the last two centuries leading to the decay and necessity of renewal.

⁷ Hijri refers to the Islamic calendar, which is based on the Hijra (migration) to Medina in 622 C.E. This year 2012 corresponds to the Islamic years 1433–1434 AH.

Between the death of the Prophet (saas) and Imam Ghazali's writing of the '*Ihya ulum al-dīn*' elapsed more than 450 years. Within this period, there would be little political stability within the Muslim community (*ummah*). Contrary to contemporary popular opinion, the Rightly Guided Caliphs (632-661) were confronted with controversies, wars, sects and assassinations. The trials and tribulations (*fitna*) that occurred immediately after the assassination of the third Caliph Uthman ibn Affan exacerbated a practice of one party cursing another party and one group espousing traditions (*hadiths*) that benefited their sect while condemning their adversaries. Eventually these sects would multiply and continue their attacks during the reign of the Umayyads and deviate further on multiple fronts during Abbasid rule.

From Dynamism To Constriction

The Companions were not averse to making a decision contrary to the decision of the Prophet (saas) or different than what was stated in the Qūr'an. This preceding statement would appear heretical in the current milieu due to the strict adherence to a literal, romanticized narrative compounded by the misunderstanding of *Sunnah* resulting in a loss of the vision (*maqāsid*) of Islam. What needs to be understood regarding the statement of the Companions is they were acting within the spirit, principles and purposes (*maqāsid*) of the Qūr'an and the *maqāsid* of the Prophetic *Sunnah* rather than applying a dry-literalist cookie cutter approach to every situation. The necessity to return to our sources and continue in the example of the Prophet (saas) and the early communities is of the essence.

During the reign of the Abbasid dynasty there was contention between the rulers and the *ulema*, and it is suggested that, “doctrines of *usul*, such as *ijma* (general consensus), and *qiyas* (analogical reasoning), were partly designed to encourage stability and curb the influence of foreign traditions into the *juris corpus* of Islam.”⁸ The contention with the rulers and the disagreement amongst various *ulema* continued to restrict a renewed *ijtihad*. By the early fourth century, the *ulema* were encouraging *taqlid* (adherence to previous *ijtihad*). The dynamic use of rational and reasoning in the early period of Islam was now being constrained creating a constriction within *usul*. “The wider scope of reasoning was thus to be reduced to only one form that is analogical reasoning. The result was a certain “distortion of issues, arbitrariness and spread of spurious materials within the fabric of *usul al-fiqh*”. And then the *ulema*’s assertion that there was no further need for original *ijtihad*, the so-called closure of the door of *ijtihad*, was prompted by the struggle over legitimacy and this was a step that could only have been taken in an atmosphere of despondency at a time when Islamic thought and scholarship has lost the enthusiasm for originality and renewal.”⁹

Returning To The Spirit Of Shari‘ah

When looking at the Qūr‘an and the *Sunnah* of the Prophet (saas) one of the constant themes is the removal of hardship and the facilitation of ease. Narrated Anas bin Malik: The Prophet said, "Facilitate things to people (concerning religious matters), and do not

⁸ Kamali, Mohammad Hashim. *Shari‘ah Law: An Introduction* (Oneworld Publications), 2008. 175.

⁹ Kamali, *Shari‘ah Law*, 176.

make it hard for them and give them good tidings and do not make them run away (from Islam).”¹⁰ The religion of Islam is the middle way, the Qūr‘an so skillfully divides Surah Al-Baqara’s 286 verses with the middle verse (*ayat*) 143: “And thus We have made you a middle nation (*ummataṅ wasataṅ*).”¹¹

There can be no sincere transforming renewal within Islam without returning to the spiritual component of Islam. The science of *tasawwuf* (the *fiqh* of the heart) needs to be renewed and placed back in the texts, curriculum and practice of the Islamic tradition. A body without a heart is dead. The heart of Islam exists in the knowledge (*‘ilm*), the practice (*amal*), and the spiritual states (*hal*) that are achieved when applying a holistic comprehensive approach. It is time to return to the spirit of Islam through the methodology of *Maqāsid al-Shari‘ah*.

In the post-modern period especially in regard to the 21st Century the *dīn* of Islam is in need of renewal (*tajdid*). Colonialism and the creation of the nation state resulted in an inorganic Islam that ensued into a multitude of reformist movements shedding the traditional schools of law, creed and mysticism. *Tajdid* should be implemented from and through the normative tradition that existed prior to Colonialism. The scholars of Islam need to purify the tradition from the dross of contemptible innovation (*bid‘a*), superstition and literalism that has deprived the *ummah* of its rich intellectual and

¹⁰ Sahih Bukhari Volume 1, Book 3, Number 69.

¹¹ Qūr‘an 2:143.

spiritual heritage. “Today’s Muslims, both East and West, urgently need contemporary *fiqh*, distinguishing what in the texts is immutable and what may be changed.”¹²

Within the *hadith* of Mu’adh ibn Jabal lie the principal and purpose (*maqāsid*) of the *Sunnah* and the role of the scholar of Islam as a dynamic practitioner of *ijtihad* that transcends time and place. To be faithful to the tradition of Islam, it becomes imperative that we analyze this *hadith* for key instructions and implied realities. When Mu’adh was about to set off for his mission, the Prophet asked him: “According to what will you judge?” He answered: “According to the Book of God.” “And if you find nothing?” the Prophet asked. “According to the tradition (*Sunnah*) of God’s Prophet.” “And if you find nothing?” “Then, I shall exert myself (*atahidu*) to my utmost to formulate my own judgment, Mu’adh answered. The Prophet then exclaimed: “Praise be to God who guided his Messenger’s messenger to what pleases His Messenger.”¹³ This hadith implies not all solutions will be found verbatim in the Qūr’an; neither will they be answered within the *Sunnah* of the Prophet (saas), the key is in Mu’adh’s reply that he will exert himself (*atahidu*) to formulate his judgment. When the principles and purposes (*maqāsid*) implied within the Qūr’an and *Sunnah* are understood and the situation is unprecedented, then *ijtihad* is the highest action as confirmed by the Prophet’s (saas) enthusiastic exclamation, “Praise be to God who guided his Messenger’s messenger to what pleases His Messenger.”

¹² Ramadan, *Radical Reform*, 1.

¹³ Hadith reported by Abu Dawud, Ahmad, Tirmidhi and Darimi.

CHAPTER 2

MAQĀSID AL- SHARĪ‘AH

As a theme within the *Shari‘ah* and the Islamic ethos, there was an understanding from the earliest periods of the purposes, principles, objectives and spirit (*maqāsid*) of the Divine Law. Universal themes are constantly being repeated throughout the Qur‘an and personified in the *Sunnah* of the Prophet of Islam (saas). Revelation by its nature is predicated on facilitating ease for humanity and acting as a guide and benefit for all of creation. Within the first generations of Islam, “the precedent of the Leading Companions indicated that they saw the *Shari‘ah* both as a set of rules and a value system in which the specific rules reflected overriding values.”¹⁴

Unfortunately, “Islamic legal thought is, broadly speaking to the letter of the divine text, and the legal theory of *usūl* has advanced a large extent. This literalist orientation of the juristic thought was generally more pronounced among the Traditionists – the *Ahl al-hadīth* – compared to the Rationalists – the *Ahl al-ra‘y*. The textualist tradition of the three centuries until the time of al-Ghazālī (d. 1111) and then al-Shātībī (d. 1388) that significant developments were made in the formulation of the theory of *maqāsid*.”¹⁵

¹⁴ Kamali, *Shari‘ah Law*, 124.

¹⁵ Ibid.

Where Is The Islamic Law?

The methodology of Islamic Jurisprudence (*usul al-fiqh*) is a system of deriving sources of law (*ijtihad*) from the *Shari'ah*. “The sources of *Shari'ah* are of two kinds: revealed and non-revealed. The revealed sources, namely the Qūr'an and the *Sunnah*, contain both specific injunctions and general guidelines on law and religion, but it is the broad and general directives, which occupy the larger part of the legal content of the Qūr'an and *Sunnah*. The methodology of *usul* refers mainly to the rules of interpretation and deduction. The clear injunctions (*nusus* pl. of *nass*) of the Qūr'an and *Sunnah* command permanent validity, the methodology of *usul* does not, for it was developed after the revelation of the Qūr'an and *Sunnah* came to an end, and most of it consists of juristic propositions advanced by scholars of different periods of history addressing issues which may or may not be reflective of the dominant concerns of contemporary Muslims.”¹⁶

Jasser Auda mentions, “ I understand the ‘Islamic Law’ to be a drive for a just, productive, developed, humane, spiritual, clean, cohesive, friendly, and highly democratic society. However, throughout my travels in various countries, I see little evidence for these values, on the ground, in the Muslim societies and communities everywhere. Therefore, the big question that I have is: Where is the ‘Islamic law’? To continue to understand “a detailed analysis of the terms *fiqh*, *Shari'ah*, *fatwa*, *madhāhib*, *ijtihad*, *qānūn*, and *'urf*, and the intricate relationships between these terms. However for

¹⁶ Kamali, *Shari'ah Law*, 128.

now I would like to differentiate between three different meanings of the general term ‘Islamic Law.’”¹⁷

Shari‘ah: The revelation that Muhammad (SAAS) had received and made practicing it the message and mission of his life, i.e., the Qūr‘an and the Prophetic tradition.

Fiqh: The huge collection of juridical opinions that were given by various jurists from various schools of thought, in regards to the application of the *Shari‘ah* (above) to the various real life situations throughout the past fourteen centuries.

Fatwa: The application of *Shari‘ah* and *fiqh* (above) to Muslims’ real life today.

Dynamism Verse Taqlid

In Jasser’s analysis of the proceeding three terms regarding law, he mentions there is no problem with the *Shari‘ah* as ‘Islamic law,’ i.e., the revelation that was given to the Prophet (saas), that he internalized and practiced in his own life and taught his companions. There is no problem with this definition of ‘Islamic law’ since it is all about justice, mercy, wisdom and good. He continues with his analysis of *fiqh* and mentions if when analyzing ‘Islamic law’ under the rubric of *fiqh*, if you mean the Islamic schools of law’s wealth of heritage, then he mentions there is no problem in this definition of ‘Islamic law.’ Here he makes a delineation and mentions the scholars ability to make mistakes, unlike the aforementioned definition of *Shari‘ah* as articulated through the

¹⁷ Auda, *Introduction*, xx.

Prophet (saas).¹⁸ However, when Jasser mentions if you understand ‘Islamic law’ as *fatwa*, then the answer is it depends on the *fatwa*. Here is where he delineates that some *fatawa* are manifestations of the *maqāsid* of Islam and others are completely un-Islamic.

Here Jasser makes a strict demarcation due to the obvious variables such as; if the *fatwa* is copied verbatim from a text not considering the nuances of time and place and the uniqueness of the situation, then this is problematic. Jasser Auda states, “this textual *fatwa* may have a twisted version of the script, with an aim to serve the political interests of some powerful people, then it is wrong and un-Islamic. If the *fatwa* is allowing people to commit injustice, discrimination, harm or immorality, then it is un-Islamic and wrong. If the *fatwa* is based on Islamic sources, while keeping people’s welfare and the principle values/purposes of the Islamic law (*maqāsid al- shari‘ah*) in mind, then it is a correct and valid *fatwa*.”¹⁹ Here we see Jasser mentioning probabilities for deviation through faulty *fiqh* and *fatwa*.

Deviation can also occur within any of the Islamic sciences such as the science of narration of traditions (*‘ilm al-hadith*), science of exegesis (*‘ilm al-tafsir*), and the science of creed or belief (*‘ilm al-aqida*). These sciences that were derived after the life of the Prophet (saas) are all open to interpretation, fabrication, human error or correct *ijtihad* when based on the principles and purposes of Islamic law (*maqāsid al- shari‘ah*). Jasser gives caution by stating, “exaggerated claims of ‘rational certainty’ (or else, ‘irrationality’) and ‘consensus of the infallible’ (or else, ‘historicity of the scripts’) add to

¹⁸ According to Muslim belief, the Prophets are guided and therefore their actions are above reproach.

¹⁹ Auda, *Introduction*, xxiv.

a lack of spirituality, intolerance, violent ideologies, suppressed freedoms, and authoritarian regimes.”²⁰ This unfortunate understanding of Islam needs the corrective methodology of the purposes and principles (*maqāsid*) of the *dīn* of Islam leading to a renewal (*tajdid*) of hearts and minds.

Examples Of Principles, Purposes And Objectives (Maqāsid)

Maqāsid incorporates the wisdoms, objectives, principles and purposes behind the vision of the *dīn* of Islam. For example, why is giving charity (*zakah*) one of Islam’s principle ‘pillars’? *Maqāsid* establishes a purpose to enhance the social welfare, to purify your income, to break selfish practices or to increase your spiritual state (*hal*) prior to supplication for yourself or someone else. Another example is, what are the physical and spiritual benefits of fasting the month of Ramadan? *Maqāsid* explains developing consciousness of Allah, learning self control, empathy with the hungry, one’s slave-hood and utter dependence on the Creator, and gratitude. Lastly, why is drinking alcohol a prohibition or a sin? In this case the *maqāsid* or the purpose is to block the means (*Sadd adh-dhara’i*), which in this case is a good thing which is to preserve the intellect, protect your health, decrease violence, decrease illicit sexual relations, preserve the integrity of a society, and to maintain strong family bonds. The principles are vast and beneficial when seen through the lens of *maqāsid*. If the *faqīh* is working within *fiqh* with a goal oriented binary vision versus a purposeful and principled *maqāsid* view then you will hear simplistic explanations such as forbidden (*haram*) or allowed (*halal*). This is a literalist

²⁰ Auda, *Introduction*, xxvii.

view, which is simply black and white. This is the view that the goal is to prohibit, so *haram* is sufficient.

The *maqāsid* vision, which is looking at the purposes or the principles behind the prohibition, will result in a multitude of variations. Knowing the principles and the maxims, the *faqīh* will extrapolate through reasoning and analogy that anything that harms the intellect will fall within this category. Immediately any drug or intoxicant that will harm the intellect is considered to have the same ruling as wine for example, cocaine harms the intellect, so cocaine is prohibited. Furthermore, the comprehension of the *maqāsid* behind this one example of drinking alcohol acts as a guiding maxim (*qawa'id*) and confirms the essential *maqāsid* of protecting and preserving faith, life, wealth, intellect, progeny and honor.

CHAPTER 3

TAJDID

THE NECESSITY FOR RENEWAL

For the Muslim community to advance in a holistic fashion the scholars of Islam need to apply critical thinking to reveal a legitimate historical narrative regarding the history of Islam. Often, to speak the truth regarding the personalities or movements that have permeated the Islamic historical account would be considered heretical. However, a scholar or believer who believes it is not permissible to critically analyze the Islamic narrative is either deluded or their faith (*iman*) is so weak that they have to resort to storytelling and exaggerating a past in a way that is neither true nor beneficial. For a scholar within Islam to have any efficacy, it is important that he or she remove any preconceived ideals and possible fantasies and do a critical analysis of the early development of Islamic history.

What the scholar or student will encounter when applying a critical analysis to the historical narrative will be a series of interreligious conflicts (*fitna*), wars, divisions, sectarianism and archetypes that have manifested themselves under different titles throughout Islamic history. According to the Islamic creed (*aqida*), only the prophets are perfect in relation to human perfection that is contingent. When studying early Islamic

history, one has to be a pragmatist and make their best effort (*ijtihad*) to uncover a normative view that transcends all of the wars (*fitna*), assassinations, sects, sects succeeding from sects, innovations and utter chaos that plagued the early Muslim community. This underlying contingent normative is personified in *maqāsid al-sharī'ah* emanating from within the divine Qūr'an and revealed in the practice, sayings and states (*hal*) of the Prophet (saas).²¹

Unfortunately, the majority of Muslims has been detached from the normative understanding of Islam since the second century *Hijri* (Islamic calendar) or approximately 825.CE.²² The contention is much of the original spirit of the *Sunnah* went through an editing process after the first three generations. The spirit, principles and purposes of the *Sharī'ah* were experienced through observing the living *Sunnah* not necessarily only as words but as actions, spiritual states (*hal*), a way of being and a lived experience that has to be witnessed to truly comprehend. A living *Sunnah* that has been passed down from generation to generation, from person to person through actions, sayings, and states (*hal*) from the Prophet of Islam, to his Companions (*Sahaba*), to the Successors (*Tabi'in*), to the followers of the Successors (*Taba'at-Tabi'in*). As stated in Sahih al-Bukhari, Narrated 'Abdullah:

²¹ The maqāsid of the Qūr'an was expressed through the being of the Messenger.

²² This date is an approximate and corresponds to 210 A.H. (after Hijri). This time is significant and demonstrates an editing process in the understanding of the term *Sunnah* that was already beginning and not yet completed. The Abbasid Caliphate had been in power for approximately seventy-five years, Imam Shafi'i has been deceased six years and within forty years, Imam Bukhari will finish his Sahih al-Bukhari of Hadith.

The Prophet said, "The best people are those of my generation, and then those who will come after them (the next generation), and then those who will come after them (i.e. the next generation), and then after them, there will come people whose witness will precede their oaths, and whose oaths will precede their witness."²³

Hadith And Literalism

Within the last two centuries, various modernist (neo-revivalist) groups have attempted to redefine or reform Islam by demanding a return to the Qūr'an and *Sunnah*.²⁴ Their statement appears valid, since these two sources are the foundations for deriving the *sharī'ah*, which later will be clarified and systematized under various sciences such as foundations of Islamic jurisprudence (*usul al-fiqh*), the science of traditions or narrations (*'ilm al-hadith*), and later the science of creed or beliefs (*'ilm al-aqida*).²⁵ From these two primary sources, Qūr'an and *Sunnah*, jurists (*fuqaha*) and scholars (*ulema*) will derive understandings, rulings and law by utilizing various methodologies such as those that have been credited to Imam Shafi'i in his four-source theory.²⁶

This unfortunate narrative that has been taught is a deconstructionist narrative versus a constructionist one. The idea that there were only four sources within *usul al-fiqh* was an

²³ This often quoted hadith is a historical reality and is related in Sahih al-Bukhari, 8:76:437. Tajdid or renewal is obligatory to maintain a normative constant within the Islamic tradition. Reflecting back at the historical developments and practice of Islam within these first three generations will reveal after the Qūr'an the most important text will be the Muwatta of Imam Malik, giving us a glimpse of the early community.

²⁴ These groups are too numerous to mention, an archetype is demonstrated that is embodied in the neo-Salafi and Wahhabi movements.

²⁵ This list of Islamic sciences mentioned is not inclusive.

²⁶ The Neo-Classical, post-Shafi'i view is Imam Shafi'i codified the four sources, Qūr'an, *Sunnah*, *Ijma* and *Qiyas*.

attempt at encouraging *taqlid* and discouraging *ijtihad*. The dynamism that existed in the time of the Prophet (saas), his Companions and the early community was now going through a metamorphosis in Baghdad under the Abbasid rule. The dynamic *Sunnah* and the principles and purposes (*maqāsid*) that inspired a unique *ijtihad*, that was exclusive to time and place became codified in texts of *hadith* and later texts of *fatawa*. Codification and constriction of the methodologies that were used in the early community removed the spirit and the dynamism that is inherent in the Qur'an and the *Sunnah* of His Messenger (saas).

The Prophetic statement: "The best people are those of my generation, and then those who will come after them, and then those who will come after them, and then after them there will come people whose witness will precede their oaths, and whose oaths will precede their witness," was realized as expected. During the gathering of traditions from all corners of the Muslim empire the dynamic *Sunnah* and the creative methods precipitating *ijtihad* were now frowned upon as an innovation. The multiple sources of law that were based on principles and purposes (*maqāsid*), especially within the Maliki School, were now being limited to *qiyas* and *taqlid*. The art of *ijtihad* that was the progressive mechanism encouraged by the Prophet (saas) was now defunct in the presence of textual hadith and *fatawa*. Many of the traditionists would often become literalists. With the codification of hadith, there was an emphasis on textual hadith and eventual preponderance solely for Prophetic hadith. *Ijtihad* and its modalities were constricted in a milieu of textual literalism and the statement, the gates of *ijtihad* were closed, would be encouraged resulting in a stagnation and constriction of the *dīn* of Islam.

Tajdid would become manifest through the *ijtihad*, *tasawwuf* and the *maqāsid* of Imam Ghazālī, granting him the title (*Hujjat al-Islam*) ‘The Proof of Islam’.

CHAPTER 4

TRADITIONALISTS AND THE CONSTRICTION OF IJTIHAD

Before commencing a discussion of *hadith*, it is important to define terms and acknowledge the necessity of remaining faithful to the *Sunnah* (usual practice) of the Prophet (saas). The word ‘tradition’ as used in this paper will consist of a few distinct meanings. Religions themselves are classified as Religious Traditions, when discussing this meaning the word will be capitalized, as in the ‘Tradition of Islam.’ The oral narrations that become *hadiths* are also known as traditions. Historically within Islam, literalist groups have been known as or referred to as ‘Traditionalists’ not to be confused with traditionists who are collectors of narrations.²⁷ To demonstrate the variations of terms, it would be valid to say that oral narrations of traditions, many including the *Sunnah*, have been collected by the traditionists who frequently became Traditionalists.

²⁷ The term Traditionalism is commonly used to describe the early Islamic movement that coalesced around the ideas of Ahmad Ibn Hanbal (d. 855) during the mihna (inquisition, c. 833-847). Traditionalism indicates the loose configuration of scholars who rejected the rationalist interpretation of Islamic theology proposed by the Mu’tazili school of thought. Contemporary traditionalism is loosely based on the idea that all individuals have the faculties of reason necessary, when combined with piety and a reading knowledge of Arabic, to discern on their own the will of God, an idea that would have been anathema to Ibn Hanbal and early traditionalist thought. Jacques, R. Kevin. “Traditionalism.” *Encyclopedia of Islam and the Muslim World*. Ed. Richard C. Martin. Vol. 2. New York: Macmillan Reference USA, 2004, 694-695.

These traditions are then examined with various techniques, analyzing the *isnād* of transmission along with the body of the text (*matn*), while studying the reliability of the narrators to their truthfulness, memory, credibility and their orthodox verse heretical views. The tradition then could be classified as a *hadith* that is *sahih* (sound), *hasan* (good or fair), *da'if* (weak) or *mawdu* or *batil* (fabricated).²⁸

The term *Sunnah* also has various connotations and for our efficacy needs to be defined. The *Sunnah* that was understood by the early community of Medina and mentioned within the 'Muwatta' of Imam Malik (d. 179 AH) is not what is currently referred to when talking about the Qūr'an and *Sunnah*? Yasin Dutton mentions in his text, 'The Origins of Islamic Law,' "Furthermore, since *sunna* is part of *amal*, what we observed about *amal* in its relation to *hadith* applies equally well to *sunna*: that although *sunna* and *hadith* often overlap, *sunna* may or may not be recorded by *hadith*, and *hadith* may or may not record *sunna*. Thus the two terms are quite distinct."²⁹ The word *sunna* has other nuances, "In a general meaning, often used by jurists and theologians, the *sunna* also refers to all customs and habits of the Prophet, including his everyday life practices that are not considered by the shari'a as obligatory. Hence, the term *Sunnah* is often used in the sense of recommended or good practice. Examples of this are supererogatory

²⁸ This is a simplified explanation of the divisions within the grading of Hadith. For a more detailed analysis consult; Muhammad Hashim Kamali, *The Textbook of Hadith Studies* (Islamic Foundation), 2009.

²⁹ Yasin Dutton, *The Origins of Islamic Law: The Qūr'an, the Muwatta and Madinan Amal* (Curzon Press), 2005, 168.

prayers and fasting that the Prophet performed over and above the prescribed rituals.”³⁰
 For convenience and to facilitate ease, the term *Sunnah* will not be used as a synonym for textual hadith but may be deployed to reveal subtle nuances of a dynamic *Sunnah* verse a textual tradition or *hadith*.³¹

There are three principles I intend to observe and expound on when discussing a critical analysis of problematic *hadith*. The first two are formulated as requirements on the individual Muslim to value the *hadith* out of love for the Prophet and their obligation to obey the Messenger as mentioned in the Qūr‘an 9:25:

“Say, (O Muhammad), “If your fathers, your sons, your brothers, your wives, your relatives, wealth which you have obtained, commerce wherein you fear decline. And dwellings with which you are pleased are more beloved to you than Allah and His Messenger and jihad in His cause, then wait until Allah executes His command. And Allah does not guide the defiantly disobedient people.”³²

Qūr‘an 4:69 “And whoever obeys Allah and the Messenger - those will be with the ones upon whom Allah has bestowed favor of the prophets, the

³⁰ Scott Alexander, “*Sunna*” *Encyclopedia of the Modern Middle East and North Africa*.’ Ed. Phillip Matter. 2nd ed. Vol. 4. New York: Macmillan Reference USA, 2004, 2122.

³¹ The understanding of *Sunnah* within the Maliki School often carries a different connotation than the later schools of *fiqh*. The *Sunnah* could be in the *hadith* or in the multiply agreed upon normative practice (*amal*) of the community of Medina. The *Sunnah* is a dynamic concept and is practiced and expanded on utilizing *ijtihad* by the early community as in the case of the second Caliph Umar ibn al-Khattab.

³² This verse from the Qūr‘an is one of many espousing the obligation to love the Prophet (saas).

steadfast affirmers of truth, the martyrs and the righteous. And excellent are those as companions.”³³

The third and final principle I will employ for a critical analysis of historically problematic *hadiths* is to stay true to the intention and the *maqāsid* (principles and purposes) of the Qūr‘an and *Sunnah*. Applying these three principles begins with right understanding and right intention for the sole purpose to oppose any textual corruption, practices, or comments of deviant innovators as is mentioned in Qūr‘an 4:115:

“And whoever opposes the Messenger after guidance has become clear to him and follows other than the way of the believers - We will give him what he has taken and drive him into Hell, and evil it is as a destination.”³⁴

To further clarify and understand that deviation from the Prophetic Sunnah would occur we will concentrate on the *maqāsid* of four hadith.³⁵ The Prophet (saas) is related to have said:

"Anyone who adds something to my commands which is not part of them is a renegade." (Muslim and al-Bukhari).³⁶

"The Bani Isra'il split into about seventy-two sects. My community will split into seventy-three. All of them will be in the Fire except for one." They asked, "Who are they, Messenger of Allah?" He replied, "Those who

³³ This verse is used to support the concept of following the *Sunnah* of the Prophet (saas).

³⁴ This verse warns the believers to avoid going against the authentic *Sunnah* and teachings of the Prophet (saas). These three verses formulate my methodology.

³⁵ For simplicity the plural form of hadith transliterated as *ahadith* will not be used. If it becomes necessary to pluralize, hadith the English form hadiths will be used.

³⁶ The hadith are from Ash-Shifa' of Qadi 'Iyad, <http://bewley.virtualave.net/shifa2a.html>.

base themselves on what I and my Companions are doing today." (At-Tirmidhi).

Abu Huraira said that once the Messenger of Allah went to visit some graves and, while there, described his community, saying, "Some men will be driven away from my Basin as a stray camel is driven off. I will call to them, 'Come here! Come here!' It will be said, 'They made changes after you.' Then I will say, 'Get away! Get away!'" (Muslim, Malik, Abu Dawud and an-Nasa'i).

It is narrated on the authority of Abu Huraira that the Messenger of Allah (may peace be upon him) said: "Islam initiated as something strange, and it would revert to its (old position) of being strange, so good tidings for the stranger." Sahih Muslim.³⁷

The first three *hadith* illustrate people would corrupt the Prophetic *Sunnah* by adding false sayings, deviating from the original *Sunnah* of the Prophet and his companions and by making changes after the Prophets death. Taking the fourth *hadith* regarding the strangers and placing it in context with the three preceding *hadiths* an image unfolds of a unique archetype consisting of corruption by adding false sayings, deviating from the original *Sunnah* and introducing *bid'a* (innovations). In contrast to the above-mentioned examples there would remain those within the *ummah* (Muslim community) that would appear strange as they holdfast to the principles of the first community and follow the

³⁷ Sahih Muslim Book 1: 270.

Qūr'anic injunction to obey Allah and his Messenger in Qūr'an 33:70-71:

“O you who have believed fear Allah and speak words of appropriate justice. He will [then] amend for you your deeds and forgive you your sins. And whoever obeys Allah and His Messenger has certainly attained a great attainment.”

The original premise within the Islamic Tradition is *al-Kitāb* (the Qūr'an) is the immutable word of God revealed to the Prophet Muhammad in the Arabic language and is inimitable.³⁸ Secondly, the Prophet Muhammad (saas) is the final Prophet and the Qūr'an is the final revelation. Thirdly, God will protect the *dīn* (religion) of Islam through human agency. Fourthly, the Qūr'an and Prophetic Hadith mentions those who will corrupt the Tradition of Islam and those who will continue to rectify it by remaining faithful to the *maqāsid* of the Qūr'an and Prophetic *Sunnah*.

³⁸ Patricia Crone, an Orientalist and historian trained by such ilk as Bernard Lewis, have attacked the Muslim narrative of the Qūr'an. Crone was critically condemned within the Orientalist community for her shoddy arguments. Many within the Orientalist faction have settled on the Qūr'an being the words of Muhammad and have turned to critiques of fiqh or hadith. Harald Motzki, a German Orientalist has debunked the 20th Century mistakes made by Ignaz Goldziher, Joseph Schacht, Norman Calder and others in his text '*Hadith: Origins and Developments*', Aldershot: Ashgate Publishing, 'The Formation of the Classical Islamic World Series, 28', 2004. Patricia Crone and Michael Cook have been discredited by David Waines in his text, '*An Introduction to Islam*', Second edition, Cambridge University Press, 2003.

The majority of Muslims recognize the religion of Islam is derived from two primary sources, the Qūr'an and the *Sunnah*.³⁹ If the Qūr'an is, *qati al-thubut* (indisputable in its Divine origin) then the only disagreement amongst the Muslim community could be in the literal verse figurative, universal verse particular, *naskh* (abrogation) of various verses and the *tafsir* (exegesis) of the Qūr'an.⁴⁰ It is undeniable that misinterpretation of the Qūr'an has led to sectarianism and fallacious conclusions in *fiqh* (jurisprudence) and *aqida* (creed).

The admonitions that were previously quoted in the Qūr'an and Prophetic *Sunnah* warned of corruption and changes to the original *Sunnah* of the Prophet (saas) that could take place by addition, exaggeration, deviation, fabrication and omission to the original *Sunnah*. Since the majority of the *Sharī'ah*, *fiqh* and *aqida* of Islam will be derived from the *Sunnah*, or what has now become known as *hadith*, one can see the inherent problems that will arise. The urgency to remain faithful to the Tradition of Islam necessitates an incessantly dynamic critical analysis of possible misinterpretations and corruptions.

It is undeniable there have been disagreements amongst the *ulema* regarding *hadith* from the earliest period. In one *riwaya* (transmission), the Prophet (saas) is said to have

³⁹ This term Qūr'an and Sunnah are often interchanged with Qūr'an and Hadith or simply the latter. This is problematic since Sunnah and hadith are not necessarily one and the same.

⁴⁰ Islamic scholars have not been unanimous on the theory of naskh nor of the science of Tafsir. Throughout Islamic history many opinions have been postulated on naskh with the current trend to reduce the number or eliminate the idea of naskh altogether. The science of Tafsir, or exegesis, ...has given rise to various interpretations and texts from a literalist tafsir to the esoteric or Sufi tafsir.

prohibited the writing down of his sayings and actions as to not confuse them with the Qūr'an. "The Prophet is thus to have reported to have said to his Companions:

"Do not write what I say. Anyone who has written from me anything other than the Qūr'an let him blot it out. You may speak about me and there is no objection to that, but one who attributes a lie to me deliberately should prepare himself for a place in Hell."⁴¹

There is a difference of opinion as to who was allowed to write, when this prohibition was lifted and for whom. "Abu Hurayrah tells us that when one the *Ansar* (Helpers) complained to the Holy Prophet of his inability to remember what he heard from him, the Prophet's reply was that he should seek the help of his right hand (referring to the use of the pen)".⁴² Another well-known report is from 'Abdullah b. 'Amr:

I used to write everything that I heard from the Holy Prophet, intending to commit it to memory. (On some people taking objection to this) I spoke about it to the Prophet who said, "Write down, for I only speak the truth."⁴³

There also was the opinion that nothing should be written down to deter confusing the Prophet's words with revelation (*wahy*) of the Holy Qūr'an.

⁴¹ Mohammad Hashim Kamali, *A Textbook of Hadith Studies: Authenticity, Compilation, Classification and Criticism of Hadith* (The Islamic Foundation) 2009, 22.

⁴² Al-Tirmidhi, *al-Jami'*, k. 39, b. 12.

⁴³ Abu Dawud, *op. cit.*, k. 24, b. 3.

“Abu Hurayrah is reported to have said: The Prophet of God came to us while we were writing Hadith and said, ‘What is this that you are writing?’ We said, ‘Hadith which we hear from thee.’ He said, ‘What! A book other than the Book of Allah?’”⁴⁴

The writing or not writing of the narrations of the Prophet (saas) nonetheless was a cause for concern. Umar ibn Khattab, Uthman ibn Affan and Aisha voiced their concern over what verses were once in the Qūr‘an and removed from the *Kitāb* of Allah. Within the ‘Muwatta’ of Imam Malik there are thirteen variants mentioned with nine of these in accord with the Madinan version and the last four are from the Iraqi (Basran?) version.⁴⁵ Imam Malik mentions an additional six *shadhdh* (non-canonical) readings attributed to Umar, Aisha, Hafsa and Ibn Umar.⁴⁶ What is significant to recognize is the difference of opinion of what was originally considered Qūr‘an demonstrated in the *shadhdh* readings and the thirteen variants? If verses of the Qūr‘an were questionable as to their canonicity, one has to question the import and wisdom of relating or writing hadiths prior to the codification of the Qūr‘an.

Difference of opinion demonstrates diverse realities, perceptions and experience as was previously mentioned regarding the aforementioned Righteous Sahabah and their statements pertaining to the *ayat* (verses) that were omitted from the *Kitāb* of Allah. During the reign of the third Caliph Uthman ibn Affan, discrepancies were manifesting themselves from amongst the reciters. Uthman realized the necessity to preserve the

⁴⁴ Kamali, *Hadith Studies*, 27.

⁴⁵ All Sunni scholars accept the thirteen minor variants that are mentioned in the ‘Muwatta’ as valid elements within the Qūr‘an corpus.

⁴⁶ For a more detailed analysis, refer to Yasin Dutton’s, ‘*Origins of Islamic Law*’, 55 - 57.

Qūr'an from deviation and formulated a committee that would codify the Qūr'an. On satisfactory completion, he sent out an edict to burn all of the copies of the Qūr'an that diverged from the Uthman compilation.

The preservation of the Qūr'an required codification. During the reign of Uthman ibn Affan, he decided to preserve the original recital and textual copies from problematic variations that were being recited in places such as Kufa and Damascus. The Qūr'an was codified as the Uthmani Text (c. 650 CE), less than twenty years after the death of the Prophet (saas) to preserve it from deviant recitations that were becoming common and problematic throughout the vast Muslim controlled territories. Our original premise stated there would be corruption of the *Sunnah* by a variety of means. The Qūr'an and Prophetic statements confirmed that deviation would occur to the original *Sunnah* of the Prophet (saas).

Traditions that would become *hadith* were collected and compiled up until and including the third Islamic century or approximately a period of 275 years. Uthman and others realized the necessity to codify the Qūr'an to protect it from deviation within 20 years after the death of the Prophet (saas). The Qūr'an that is *mutawatir* (transmitted by such a large number of people) still needed human agency, reason, and wisdom to protect it from an onslaught of corruption. Knowing this, it becomes of the essence to follow in the footsteps of the scholars to reanalyze the vast corpus of traditions, narrated by thousands of fallible people, often not native to the Arabic language, and sometimes known to be heretical or affected by political turmoil or partisan beliefs.

To remain faithful to the Tradition of Islam it is imperative that each capable person understands the Qūr‘an and Prophetic declarations, that the *dīn* of Islam will become corrupted, while Allah Most High guarantees to preserve the *dīn* and the *Kitāb*.

Qūr‘an 15:9 “ Indeed, we have sent down the message [i.e., the Qūr‘an] and indeed, We will be its guardian.”

Qūr‘an 3:31 “Say, [O Muhammad], “ If you should love Allah, then follow me, [so] Allah would love you and forgive you your sins. And Allah is Forgiving and Merciful.”

Therefore, deviation in misunderstanding the Qūr‘an will appear from literalists, allegorical interpretations, erroneous *tafsir*, diverse beliefs regarding *naskh* and the inherent problem of language. These four modes of deviation are in no way comprehensive; nevertheless, they demonstrate the perplexing probabilities inherent within the books of *hadith*.

Fazlur Rahman summarizes so eloquently, “...beyond any shadow of a doubt that our earliest generations looked upon the teaching of the Qūr‘an and the *Sunnah* of the Holy Prophet not as something static but essentially as something that moves through different social forms for self-realization and finds these forms and moves creatively. Islam is the name of certain norms and ideals, which are to be progressively realized through different social phenomena and set-ups. Indeed, Islam, understood properly, ever seeks new and fresh forms for self-realization and finds these forms. Social Institutions are one of the most important sectors of the Islamic activity and expression. Social institutions,

therefore, must become proper vehicles for the carriage and dispensation of Islamic values – of social justice and creativity, etc. This is the clear lesson that we learn from the early development of the *Sunnah*.⁴⁷

⁴⁷ Fazlur Rahman, *Hadith and Sunnah – Ideals and Realities* (Islamic Book Trust Kuala Lumpur), 1996, 231.

CHAPTER 5

THE SPIRIT OF THE PROPHETIC SUNNAH

The etymology of the term *Sunnah* when used in Islamic law refers to the normative practice set up by the Prophet as a model, which, so long as he was alive, was his unique privilege.⁴⁸ Besides, although the Qūr'an governed the actions of the Community, the Prophet (saas) gave its injunctions a practical shape and a concrete form. Thus, the way in which the Prophet acted upon the Qūr'an became the law of the community.⁴⁹ This definition of *Sunnah* is very limiting and does not take into consideration the *maqāsid* initiating the *Sunnah*. The *Sunnah* is not the textual hadith. Our thesis is the *Sunnah* of the Prophet (saas) was dynamic, transformative and was based on principles and purposes (*maqāsid*) of the Qūr'an. The message of the Qūr'an was a message of renewal and a reminder that *tajdid* would be required to remain faithful to the tradition of Islam.

At this point, it is important to clarify the understanding of *hadith* from *Sunnah*. A *hadith* may contain the *Sunnah* and it may not. The *Sunnah*, as we will see, is based on principles and purposes *maqāsid* that originate from the essence of the Qūr'an through the Prophet (saas). A hadith of the Prophet (saas) is a narration that contains or explains a

⁴⁸ Kamali, *Hadith Studies*, 86.

⁴⁹ *Ibid.*, 88-89.

comment, an action or a non-action by a transmitter of *hadith*. The *hadith* could relate the tradition that reveals the underlying principals, purposes and spirit of the event. In this case, it is possible to see the *maqāsid* as the underlying principle of the *hadith* such as advocating generosity, mercy or pointing to a prohibition. Many of the *hadith* do not have all the necessary requirements to point to the spirit or *maqāsid* of the Prophet (saas) and therefore are not representative of the *Sunnah* that is to be emulated.⁵⁰ The conflation of *hadith* with *Sunnah* has created much deviation within the Islamic tradition causing an uneasiness of the *fitra* in a person who is aware of the universals and the *Sunnah* of the best of all of creation.

Principles and purposes (*maqāsid*) are the universals that point to the concept of *Sunnah*. The Prophet (saas) was the explainer of the Qūr'an through his actions, practice, sayings and his acceptance or disapproval of another's action. The *Sunnah* like the Qūr'an has principles (*maqāsid*) and a social benefit (*maslaha*), likewise *Sunnah* is not necessarily a blind following of a previous statement or act but requires the ability to use the intellect to strive to deduce (*ijtihad*), or to arrive at the best situation for any particular situation. These interpretational non-textual mechanisms included reason (*al-aql*), reason-based opinion (*ra'y*) or the understanding of *Sunnah* and the Qūr'an being conceptually

⁵⁰ In the Muwatta of Imam Malik, he relates approximately 1,720 *hadith* and *athar* from an estimated 100,000 of *hadiths* that he was aware of. He relates the *hadith* but he does not act on every *hadith* because he is a *faqih* before he is a *muhadith*. The *faqih* does not act upon every *hadith*. Unfortunately, due to mass literacy, there are Muslims and Orientalists who believe they can act on any *hadith* they read from a text. This methodology was never the way of the Mujtahid Imams, nor the *ulema* that were working within the framework of a *madhahab*.

coterminous with certain ethical values or principles such as the principles and purposes (*maqāsid*) of the Qūr‘an and *Sunnah*.⁵¹ During the lifetime of the Prophet (saas), there is interplay between Qūr‘an and *Sunnah*. The *Sunnah* is, as it were, the living embodiment of the Qūr‘anic message.⁵² “I have left among you two things and if you hold to them both you will never go astray: the Book of Allah and the *Sunnah* of His Prophet.”⁵³ The next two chapters will continue to extrapolate the understanding of the *Sunnah* amongst the first generations and will explain hadith and *Sunnah* are not always synonymous.

⁵¹ Duderija, Adis, “Neo-Traditional Salafi Qūr‘an -Sunnah Hermeneutics and Its Interpretational Implications,” *Religion Compass* 5/7 (2011): 315

⁵² Dutton, *Origins*, 163.

⁵³ *Muwatta* Book 46, Number 46.1.3.

CHAPTER 6

THE MAQĀSID OF THE FIRST THREE GENERATIONS

During the Prophet's 'Farwell Address' at the *hajj* it has been reported that the ayat: "This day I have perfected for you your religion and completed My favor upon you and have approved for you Islam as religion" was revealed.⁵⁴ It wasn't much longer until the Prophet (saas) himself would die and leave the *dīn* to be continued by his Companions or *Sahaba*. The Rightly Guided Caliphs began in the year (632 C.E) with the selection of the Prophet Muhammad's (saas) successor. The first four caliphs were all companions of the Prophet: Abu Bakr (632-634), Umar ibn al- Khattab (634-644), Uthman ibn Affan (644-656), and Ali ibn Abi Talib (656-661).

The vast majority of (Sunni) Muslims believe that Muhammad died without designating his replacement or establishing a system for the selection of his successor. "After an initial period of uncertainty the Prophet's companions, the elders of Medina, selected or acknowledged Abu Bakr, an early convert and the Prophet's father-in-law, as caliph (*khalifa*, successor or deputy). Abu Bakr had been a close companion and a trusted

⁵⁴ Qūr'an 5:3.

adviser of the Prophet. The Prophet (saas) had appointed him to lead the Friday Community prayer in his absence.”⁵⁵

What is important in this narrative is the lack of instruction by the Prophet (saas) on who would replace him and what type of society or system would be established. The solution was established in the *Sunnah* and this *Sunnah* had been initiated not only by the Prophet (saas) but also by other companions during the life of the Prophet (saas). The *Sunnah* or way of the Prophet (saas) includes his words, his actions, his states and his practices, but also we have to acknowledge what was said or done in his presence that he encouraged, or allowed what was said and done in his presence and he remained silent. All of which becomes part of the *Sunnah* since a Prophet is obligated to condemn an action done within his presence that is against the *Shari‘ah* of the Qūr‘an and the *Sunnah*. Therefore, if others were able to initiate a *Sunnah* then there would undoubtedly be good practices and some bad practices. We need to continue to define our terms and proceed with a clear understanding of *Sunnah*.

Innovating A Sunnah

“Let us look for a moment at innovation or *bid’a* in the light of the *Sunnah* of the Prophet concerning new matters. *Sunnah* and innovation (*bid’a*) are two opposed terms in the language of the Prophet such that neither can be defined without reference to the other, meaning that they are opposites, and things are made clear by their opposites. Many writers have sought to define innovation (*bid’a*) without defining the *Sunnah*

⁵⁵ John Esposito, *Islam: The Straight Path* (Oxford Press), 2005, 35-36.

which is primary and have fallen into inextricable difficulties and conflicts with the primary textual evidence that contradicts their definition of innovation, whereas if they had first defined the *Sunnah*, they would have produced a criterion free of shortcomings.”⁵⁶

The way of the Prophet (saas) in giving guidance, accepting, and rejecting: this is the *Sunnah*. For "good *Sunnah*" and "bad *Sunnah*" mean a "good way" or "bad way", and cannot possibly mean anything else. Thus, the meaning of "*Sunnah*" is not what most students, let alone ordinary people, understand; namely, that it is the prophetic hadith (as when *Sunnah* is contrasted with Qūr'an (*Kitāb*) in distinguishing textual sources), or the opposite of the obligatory (as when *Sunnah*, i.e. recommended, is contrasted with obligatory in legal contexts), since the former is a technical usage coined by hadith scholars, while the latter is a technical usage coined by legal scholars and specialists in fundamentals of jurisprudence. Both of these are usages of later origin that are not what *Sunnah* means within this paper. Rather, the *Sunnah* of the Prophet (saas) is his way of acting, ordering, accepting, and rejecting, and the way of his Rightly Guided Caliphs who followed his way acting, ordering, accepting, and rejecting. So practices that are newly begun must be examined in light of the *Sunnah* of the Prophet and his way and path in acceptance or rejection.⁵⁷

⁵⁶ This discourse is taken directly from Nuh Ha Min Keller, *Reliance of the Traveller* (Amana Publications), 1994, 58.1 (2).

⁵⁷ These last two chapters are taken from the text of a talk given by Sheikh Nuh Ha Mim Keller at Nottingham and Trent University on Wednesday 25th January 1995, called *Bid'a and Sunnah in Shariah*, www.shadhiliteachings.com.

Now, there are a great number of hadiths, most of them in the rigorously authenticated (*sahih*) collections, showing that many of the prophetic companions initiated new acts, forms of invocation (*dhikr*), supplications (*dua*), and so on, that the Prophet (saas) had never previously done or ordered to be done. Rather, the companions did them because of their inference and conviction that such acts were of the good that Islam and the Prophet of Islam came with and in general, terms urged the like of to be done, in accordance with the word the hadith of the Prophet:

"He who inaugurates a good *Sunnah* in Islam earns the reward of it and all who perform it after him without diminishing their own rewards in the slightest."⁵⁸

From this investigative point of departure, one may observe that many of the prophetic companions performed various acts through their own personal reasoning, (*ijtihad*), and that the *Sunnah* and way of the Prophet was both to accept those that were acts of worship and good deeds conformable with what the Sacred Law had established and not in conflict with it; and to reject those which were otherwise. This was his *Sunnah* and way, upon which his caliphal successors and companions proceeded, and from which Islamic scholars have established the rule that any new matter must be judged according

⁵⁸ Sheikh Keller states: Though the original context of the hadith was giving charity, the interpretative principle established by the scholarly consensus (def: Reliance of the Traveler b7) of specialists in fundamentals of Sacred Law is that the point of primary texts lies in the generality of their lexical significance, not the specificity of their historical context, without this implying that just anyone may make provisions in the Sacred Law, for Islam is defined by principles and criteria, such that whatever one initiates as a *Sunnah* must be subject to its rules, strictures, and primary textual evidence.

to the principles and primary texts of Sacred Law: whatever is attested to by the law as being good is acknowledged as good, and whatever is attested to by the law as being a contravention and bad is rejected as a blameworthy innovation (*bid'a*). They sometimes term the former a good innovation (*bid'a hasana*) in view of it lexically being termed an innovation, but legally speaking it is not really an innovation but rather an inferable Sunnah as long as the primary texts of the Sacred Law attest to its being acceptable.⁵⁹

As mentioned we now have to look at a few examples where the companions initiated a *Sunnah* either during the lifetime of the Prophet (saas) and he approved of their (*ijtihad*) or afterwards where there was agreement or consensus (*ijma*) amongst the scholars of that locale. Bukhari and Muslim related from Abu Huraira that at the dawn prayer the Prophet said to Bilal:

"Bilal, tell me which of your acts in Islam you are most hopeful about, for I have heard the footfall of your sandals in paradise", and he replied, "I have done nothing I am more hopeful about than the fact that I do not perform ablution at any time of the night or day without praying with that ablution whatever has been destined for me to pray."⁶⁰

⁵⁹ This clarification by the Sheikh regarding using the terminology (inferable Sunnah) as opposed to a good innovation (*bid'a hasana*) is important when discussing terminology that can be provocative and intimidating if not properly understood.

⁶⁰ Sheikh Nuh Ha Mim Keller has expounded on this hadith, saying that Bilal would make ablution (*wudu*) and then offer a two a rakat *nafileh* prayer. Sheikh Nuh Ha Mim Keller at Nottingham and Trent University on Wednesday 25th January 1995, called *Bid'a* and *Sunnah* in *Shariah*, www.shadhiliteachings.com.

Ibn Hajar Asqalani says in Fath al-Bari that the hadith shows it is permissible to use personal reasoning (*ijtihad*) in choosing times for acts of worship, for Bilal reached the conclusions he mentioned by his own inference, and the Prophet (Allah bless him and give him peace) confirmed him therein.

There are other times after the death of the Prophet when a companion after doing his own *ijtihad* would introduce a new element into the *Sunnah* with the understanding that it was within the spirit or (*maqāsid*) of the Qūr'an and *Sunnah* of the Prophet (saas) and it had a social benefit (*maslaha*) for the community. Narrated Abu Huraira: Allah's Apostle said, "Whoever prayed at night the whole month of Ramadan out of sincere faith and hoping for a reward from Allah, then all his previous sins will be forgiven. From this hadith and action of the Prophet (saas) during the holy month of Ramadan will come the progression of a unique *taraweeh* prayer.⁶¹ Ibn Shihab (a sub-narrator) said, "Allah's Apostle died and the people continued observing that (i.e. nawafil offered individually, not in congregation), and it remained as it was during the Caliphate of Abu Bakr and in the early days of 'Umar's Caliphate." 'Abdur Rahman bin 'Abdul Qari said:

"I went out in the company of 'Umar bin Al-Khattab one night in Ramadan to the mosque and found the people praying in different groups. A man praying alone or a man praying with a little group behind him so, 'Umar said, 'In my opinion I would better collect these (people) under the leadership of one Qari (Reciter) (i.e. let them pray in congregation!)'. So, he made up his mind to congregate them behind Ubai bin Ka'b. Then on

⁶¹ *Taraweeh* prayers are extra prayers that are performed in the evening during the month of Ramadan.

another night, I went again in his company and the people were praying behind their reciter. On that, 'Umar remarked, 'what an excellent Bid'a (i.e. innovation in religion) this is; but the prayer which they do not perform,

but sleep at its time is better than the one they are offering.' He meant the prayer in the last part of the night. (In those days) people used to pray in the early part of the night."⁶²

Umar's (*ijtihad*) was done in the spirit of the Prophetic *Sunnah*.⁶³ Another *Sunnah* confirmed by Umar is the hadith:

“Yahya related to me from Malik that he had heard that the caller of the prayer (*muezzin*) came to Umar ibn al-Khattab to call him to the subh prayer and found him sleeping, so he said, "Prayer is better than sleep," and Umar ordered him to put that in the adhan for subh.”⁶⁴

In conclusion, we are aware that some companions after doing their own (*ijtihad*) would introduce a new element to the *Sunnah* with the understanding that it was within the spirit or (*maqāsid*) of the Qūr'an and *Sunnah* of the Prophet (saas) and it had a social benefit (*maslaha*) for the community. This once again confirms the maxim that the

⁶² Sahih Bukhari: Book 3: Volume 32: Hadith 227, *Praying at Night in Ramadan (Taraweeh)*.

⁶³ According to Imam Malik, there are varying degrees of *Sunnah*. If the practice has originated from a companion, it remains the *Sunnah* but not the Prophetic *Sunnah*. Other scholars will often use the term (*Athar*) of the companions verse Hadith of the companions. Eventually al-Shafi'i will insist on and prefer only Prophetic Hadith, even if it is related by one companion (*ahad*) compared to an established (*mutawatir*) *Sunnah*.

⁶⁴ Al-Muwatta, Hadith 3.8 'The Call to Prayer'. This introduction of something into the religion (*dīn*) had a benefit and did not contravene any of the rules of jurisprudence that were being established as the *Sunnah* and foundations of law (*usul al-fiqh*) were being schematized. The reality is this innovation or addition to the morning call to prayer is a continued practice or *Sunnah* in our present time.

Sunnah and the Qūr'an are filled with principles and maxims. The principles are the desired result since the principles become the universals and when you understand the universals, you can deduce the particular.

CHAPTER 7

THE SIGNIFICANCE OF MEDINA AND THE ‘MUWATTA’

The importance of Medina in the understanding of the development of the *Sunnah* of the Prophet is unparalleled and needs to be discussed to shed light on the reality of *Sunnah* in the earliest period of Islam prior to it becoming distorted by foreign definitions and innovations.⁶⁵ Medina is the city where the Prophet (saas) migrated and established his community and begins the Islamic (*Hijri*) calendar. Medina was where the Prophet (saas) received the majority of the Qūr‘anic revelation. The Prophet Muhammad (saas) and his Companions (*Sahaba*) lived thirteen years together in Medina watching Revelation (*wahy*) being articulated as Qūr‘an and demonstrated by the actions, statements, character, rulings and spiritual states that were realized and personified in the person of the Prophet of Islam.

⁶⁵ Narrated ‘Abdullah: The Prophet said, "The best people are those of my generation, and then those who will come after them (the next generation), and then those who will come after them (i.e. the next generation), and then after them, there will come people whose witness will precede their oaths, and whose oaths will precede their witness." Sahih al-Bukhari, 8:76:437.

In Medina, multiple transmissions (*mutawatir*) from companions who were witnessing the integrated relationship between the revealed Qūr‘an and the person of the Prophet were being assimilated.⁶⁶ The Qūr‘an states: “And we have not sent you, except as a mercy to the whole worlds.”⁶⁷ The Companions of the Prophet are considered the best generation since they witnessed his actions, sayings, character and his states (*hal*). As Aisha, the wife of the Prophet mentioned: “The Prophet was the walking Qūr‘an,” meaning he embodied the virtues of mercy, justice, and compassion and was the channel through which the Qūr‘an was revealed. He was also the exemplar par excellence since the Qūr‘an was not only revealed through him and lived by him but also most importantly clarified by him.⁶⁸ Medina will become the place where the *maqāsid* of the Prophetic *Sunnah* is articulated, visualized, experienced, taught and transferred to the companions (*Sahaba*) not by pieces of paper or texts but by example, through principles. So the *Sunnah* of the Prophet (*The embodiment of the Qūr‘an*) was lived, demonstrated, taught and learned in Medina and was witnessed by thousands of Companions who practiced this *Sunnah*, memorized it, and taught it prior to it being written down and circulated as traditions.⁶⁹ The *Sunnah* during the Prophet’s life was the emanation, elucidation and

⁶⁶ Mutawatir means it was passed down from such a large number of people, to such a large number of people that it is impossible or unacceptable that they would all agree on a lie. Examples of Mutawatir practices are the Qūr‘an, the five daily prayers, fasting during Ramadan and the *hajj*.

⁶⁷ Surah 21:107 Sahih International Version

⁶⁸ Of the 6236 verses or *ayat* in the Qūr‘an, only a small portion deals directly with legal issues. Some postulate 400-500 verses deal with legal judgments. What needs to be expressed here is the Prophet was the explainer of the Qūr‘an not only by words but also through actions and states or *Sunnah*.

⁶⁹ Estimates state there was up to 200,000 Muslims at the time of the Prophet’s death and 124,000 attended his ‘Farewell Address’ at the *hajj*.

explanation of the ‘principles’ *maqāsid* that would be the example to follow continuously.⁷⁰

Despite the early conflicts (*fitna*) after the death of Uthman and the move of Ali and his base of authority to Kufa, then with the Umayyad relocation to Damascus and the Abbasid movement to Baghdad, Medina never lost its importance throughout the first two centuries as the foremost center of learning in the land of Islam.⁷¹ It was understood that Medina had the most scholars and was the historical center where the Prophet (saas), Companions and the Rightly - Guided Caliphs practiced and lived the *Sunnah*. The majority of the legal verses from the Qūr‘an were revealed in Medina and put into practice. ‘Furthermore because of the religious merit of visiting its mosque, Medina continued to attract people – both scholars and others- from all over the Muslim world, especially in conjunction with the *hajj* to Mecca.⁷²

Medina will be the epicenter during the first three generations of Islam where the Prophetic *Sunnah* will be transmitted from the Prophet and his Companions to the Successors and then the Successors of the Successors in mass. Medina will be the city where the *Sunnah* as a living tradition will be past down from a large community to another large community without doubt being undeniable valid or *mutawatir*. Later we will see how the scholar of Medina, Mālik ibn Anas ibn Mālik ibn Abī 'Āmir al-Asbahī, better known as ‘Imam Malik’ will bring together the requisite knowledge’s comprising

⁷⁰ This sentence is loaded with terminology connoting a dynamic *Sunnah* that is set into motion and carried in the hearts, sayings, actions and states (*hal*) of the practitioners, taught from person to person and recorded in texts and sometimes related as hadith.

⁷¹ Dutton, *Origins*, 14.

⁷² *Ibid.*, 14-15.

Sunnah, common practice or (*amal*), rulings or (*fatawa*) of various Sahaba and (*fatawa*) from the caliphs specifically Umar.

Malik's inclusion of hadith of the Prophet, hadith of the companions (*athar*), and Malik's judgments according to his experience of the learned men of Medina, along with the (*amal*) practice of the people of Medina would become the living *Sunnah* that is unprecedented and recorded in Malik's 'Muwatta'. The 'Muwatta' of Imam Malik is of major significance since this is one of the earliest texts describing the ancient development of jurisprudence (*usul al-fiqh*), the development of the chain (*isnād*) of narrators of traditions, and the science of and the ancient understanding of the *maqāsid* of the *Sunnah*. The passing of Imam Malik in (179 A.H.) or (795 C.E.) signifies the beginning of the end of a 'Living *Sunnah*' that will mostly be eradicated leaving traces recorded in various hadiths.

CHAPTER 8

CONCLUSION

Muslim Scholars need to be at the forefront of critical thinking and research of our own tradition to cleanse it from erroneous beliefs and be at the forefront of the dialogue demanding equity, justice and parity. *Maqāsid al-Shari'ah* should be the starting point in our religious discourse articulating the 'spirit' of the law and its benefit for humanity. *Maqāsid* is dynamic and is applicable for any time and place. Since the scholars are working with universal principles, the necessity for a fresh *ijtihad* is once again required. I believe the *hadiths* and *fatawa* that go against the Qūr'an and the *maqāsid* of the *Sunnah* be reevaluated under the lens of *Maqāsid al-Shari'ah*.

I am not suggesting that we rework or edit the texts of hadith in the fashion of Nasiruddin al-Albani (d.1999). I recommend the texts remain intact and contemporary and future scholars extrapolate the *maqāsid* from the texts. Within the *madhahab*, the *ulema* knew what texts worked and what to avoid and within the four Sunni schools, there is an agreement to disagree. I am not suggesting a monolithic *Fiqh as-Sunnah* construct that was a deconstructionist and constricting proposition. The principles and purposes I am espousing is a re-visitation of *maqāsid* through the established schools of law and their

rich historical legacy. Contemporary sciences and knowledge needs to be analyzed through the lens of *maqāsid*. Utilizing the wisdom from the rich Islamic tradition, Muslim scholars can continue to advance *fiqh* via the science of *maqāsid* and remaining faithful to the *dīn*. As Mark Twain is purported to have said, “The ancients stole all of our secrets.”

Without incorporating relevant ideas from other disciplines, research in the fundamental theory of Islamic law will remain within the limits of traditional literature and its manuscripts, and Islamic law will continue to be largely ‘outdated’ in its theoretical basis and practical outcomes. The relevance and need for a multidisciplinary approach to the fundamentals of Islamic law is of the essence. “Current applications (or rather, mis-applications) of Islamic law are reductionist rather than holistic, literal rather than moral, one-dimensional rather than multidimensional, binary rather than multi-valued, deconstructionist rather than reconstructionist, and causal rather than teleological. There is a lack of consideration and functionality of the overall purposes and the underlying principles of the Islamic law (*maqāsid al- shari‘ah*) as a whole.”⁷³

Islamic law needs to be advanced and renewed through the methodology and spirit of the purposes and principles of the law (*maqāsid al- shari‘ah*). “Therefore, a number of theoretical developments are proposed such as, legitimizing the juridical implication (*dilālah*) of the purpose of scriptural evidence, resolving opposing evidences by

⁷³ Auda, *Introduction*, xxvii.

considering their multiple dimensions, and contextualizing *hadith* narrations by considering prophetic intents in various forms.”⁷⁴

In conclusion, to remain faithful to the Tradition of Islam it is necessary to revisit problematical traditions that have existed amongst the scholars past and present. With the advent of mass literacy and accessibility of the *hadith corpus* to the common layperson there has developed an increased urgency to clarify and reevaluate disputed *hadiths*. It is time to revisit problematic *hadiths* and *fatawa* through the prism of *maqāsid*. It is time to rectify and preserve the spirit and the *Sunnah* of Islam. “Islam initiated as something strange, and it would revert to its (old position) of being strange, so good tidings for the stranger.”⁷⁵

⁷⁴ Auda, *Introduction*, xxviii.

⁷⁵ Sahih Muslim: *The Book of Faith (Kitab Al-Iman)*: Book 1: Hadith 270.

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