To My wife Nagham

and

To my children-Noor, Arwa, Sumia, and Amar

ACKNOWLEDGMENTS

To Prof. Shaun Marmon I express my gratitude and appreciation for her excellent advice throughout my work on this project.

I am also grateful to Profs. Jeffrey Stout and L. Carl Brown for their insightful reviews of the manuscript.

TABLE OF CONTENTS

The Spirit of Islamic Law and Modern Religious Reform: *maqāṣid al-sharīʿa* in Muḥammad ʻAbduh and Rashīd Riḍā's Legal Thought

ABSTRACT

This dissertation presents an analysis of the legal thinking of two modern Muslim religious reformers, particularly their usage of a concept in Sunnī Islamic legal theory known in Arabic as *maqāṣid al-sharīʿa*. The religious reformers who are the subjects of this dissertation, the Egyptian Muḥammad ʻAbduh (d. 1905) and his Syrian student Muḥammad Rashīd Riḍā (d. 1935), consider this term to mean the "true" aims or spirit of Islamic law in contrast to a tradition of strict literal interpretation. ʻAbduh can be regarded as the founder of this movement of religious and legal reform which continued throughout the twentieth century. By focusing on the *maqāṣid*, the reformist *ʻulamā'* (religious scholars) hope to bring about broader social and legal reforms in the Islamic world. I focus on the development of the *maqāṣid* movement through its first modern conceptualization by ʻAbduh. Since this mode of religious and legal reform has largely been ignored or dismissed by existing scholarship, my methodology will consist in presenting the reformers' thought in light of the critique they faced. This critique comes from certain traditionalist religious scholars, especially neo-Ḥanbalites associated with the Wahhabi movement in Saudi Arabia and certain scholars affiliated with the famous al-Azhar university in Egypt in which ʻAbduh studied and attempted to reform. However, certain scholars of Islam in the West who studied ʻAbduh and Riḍā's reform movement also offer a critique of their legal thought. In the dissertation I mostly refer to Malcolm

Kerr, Albert Hourani, and Wael Hallaq's assessments of 'Abduh and Riḍā's projects of legal reform. After an introduction that aims to define *maqāṣid al-sharīʿa* and the role this concept plays in classical and modern Islamic legal theorization, chapter one addresses the connection between "natural law" and "divine law" in 'Abduh's legal thought and considers Kerr's claim that 'Abduh's theological views, which are different from the Ash'arite Sunnī ones, influenced his legal thought. Chapter two focuses on the *maqāṣid* thought of 'Abduh through the analysis of his theoretical writings and some of his *fatāwā* (religious edicts). Chapter three examines the religious and legal reform espoused by 'Abduh's disciple Rashīd Riḍā and analyzes his *maqāṣid* thought.

The Spirit of Islamic Law and Modern Religious Reform: *maqā□id al-sharī'a* in Mu□ammad 'Abduh and Rashīd Ri□ā's Legal Thought

Preface

This dissertation presents an analysis of the legal thinking of two modern Muslim religious reformers, particularly their usage of a concept in Sunnī Islamic legal theory known in Arabic as *maqā□id al-sharī'a*. The religious reformers who are the subjects of this dissertation, the Egyptian Mu□ammad 'Abduh (d. 1905) and his Syrian student Mu□ammad Rashīd Ri□ā (d. 1935), consider this term to mean the "true" aims or spirit of Islamic law in contrast to a tradition of strict literal interpretation. 'Abduh can be regarded as the founder of this movement of religious and legal reform which continued throughout the twentieth century. By focusing on the *maqā□id*, the reformist *'ulamā'* (religious scholars) hope to bring about broader social and legal reforms in the Islamic world. I focus on the development of the *maqā□id* movement through its first modern conceptualization by 'Abduh. Since this mode of religious and legal reform has largely been ignored or dismissed by existing scholarship, my methodology will consist in presenting the reformers' thought in light of the critique they faced. This critique comes from certain traditionalist religious scholars, especially neo-□anbalites associated with the Wahhabi movement in Saudi Arabia and certain scholars affiliated with the famous al-Azhar university in Egypt in which 'Abduh studied and which he attempted to reform. However, certain scholars of Islam in the West who studied 'Abduh and Ri□ā's reform movement also offer a critique of their legal thought. In the dissertation I mostly refer to

Malcolm Kerr, Albert Hourani, and Wael Hallaq's assessments about 'Abduh and Ri□ā's projects of legal reform.

After an introduction that aims to define *maqā□id al-sharī'a* and the role this concept plays in classical and modern Islamic legal theorization, chapter one focuses on 'Abduh's role as the founder of this movement. 'Abduh's legal thinking and the main precepts of his religious program of reform challenge traditional formulations in Islamic legal theory and jurisprudence. Thus, the discussion about traditional vs. modern interpretations of Islamic theology, ethics and law is one of the chief concerns in my dissertation. Can a modern interpretation in these fields be legitimately called "Islamic"? Certain scholars in the West, particularly Malcolm Kerr and Wael Hallaq, consider 'Abduh and Ri□ā's legal thought as espousing a form of "natural law" theory embedded in Utilitarianism, which deviates from traditional doctrines and leads to a "secularist" notion of the law. Chapter one addresses the connection between "natural law" and "divine law" in 'Abduh's legal thought and considers Kerr's claim that 'Abduh's theological views, which are different from the Ash'arite Sunnī ones, influenced his legal thought. Chapter two focuses on the *maqā□id* thought of 'Abduh through the analysis of his theoretical writings and some of his *fatāwā* (religious edicts). Chapter three examines the religious and legal reform espoused by 'Abduh's disciple Rashīd Ri□ā and analyzes his *maqā□id* thought. An analysis of 'Abduh and Ri□ā's conception of *maqā□id al-sharī'a* and its actualization in their legal opinions will enable me to trace the development of this concept from 'Abduh to Ri□ā. Despite the fierce opposition his project of reform faced from certain religious scholars of Al-Azhar University in Cairo, Ri□ā actualized 'Abduh's hidden idea of the possibility of having a "human law" in

Muslim societies that can be guided by the legal aims of the religious law (*sharī'a*), unlike the traditional Sunnī doctrine that assumed that the *sharī'a* covered all the legal problems facing the Muslim community. Although Ri□ā wanted human legislation to remain separate from the *sharī'a* to ensure that it is not associated with the divine law, he insisted that this human law be called "Islamic," in the sense that it is sanctioned by the Lawgiver (God) in the Qur'ān.

One of the points discussed in the dissertation is that in order to extract the legal aims or the *maqā□id* from Islamic sacred texts, particularly the Qur'ān, 'Abduh, Ri□ā, and other *maqā□id* reformers developed a new method of Qur'ānic interpretation known as the "thematic" method (*tafsīr maw□ū'ī*). For example, Ri□ā, and later Ma□mūd Shaltūt (d. 1965) used this method to interpret the Qur'ānic verses on war and peace, and they concluded that peace was the primary legal aim in the Qur'ān and that war could only be legitimized for defensive reasons, a view that contradicts the classical doctrine of jihad. These ideas of Ri□ā, Shaltūt and other religious scholars place more emphasis on the *maqā□id* through their vigorous reinterpretations of several legal texts.

In the second half of the twentieth-century, however, and after the rise and fall of Arab nationalism, a new surge of religious activism began to dominate the Middle East. Current scholarship tends to see this period as a struggle between two forces, namely, the traditional (religious) and the modern (secular). Although some of the *maqā□id* thinkers of this period are part of the Islamic movement, they are not necessarily anti-Western or against modernity. The reason that the *maqā□id* thinkers cannot be fully described as traditionalists is because although they do not reject traditional Sunnī legal theorization and jurisprudence altogether, they, nevertheless, offer new interpretations and challenge

certain dominant traditionalist views. In addition, some of them, such as Mu□ammad al-Ghazālī (d. 1996) and Yūsuf al-Qara□āwī (b. 1926), call on Muslims to learn from the Western experiences of the respect for human rights and political participation in order to rid Muslim societies of political tyranny.[1] However, in spite of these positive contributions, the *maqā□id* thought has been overwhelmed by the rise of " literalist" thinking that subsumes the legal aims under strict traditionalist interpretations. Lastly, a contemporary movement of *maqā□id al-sharī'a* exists, represented mainly by figures such as □āhā Jābir al-'Alwānī (b. 1935), which attempts to revive this thought along the lines of 'Abduh's project of reform. 'Abduh's vision of reforming the Muslim mind is that first and foremost it must be "independent." Religion sanctions this "independence" and encourages the Muslim mind to embark on two projects. First, one has to engage in a dialogue with the tradition in matters related to theology, ethics and law; but Muslim thinkers must simultaneously interact with the Western tradition in the humanities and social sciences in order to construct modernized Muslim societies.[2] The contemporary *maqā□id* thinkers have adopted 'Abduh's vision to reform the Muslim mind. This movement, in my view, is expected to have more influence on Muslim societies than the so-called "liberal" reform. The "liberal" projects of reform, such as those of Fazlur Rahman, Nasr Abu Zayd and others, tend to suggest new models of religious and legal reform without engaging in comprehensive discussion with the tradition. In spite of their thought-provoking discourse, these reasons contribute, in part, to why the "liberal" reformers hold less appeal to the Muslim masses than the *'Ulamā'* do.

[1] See, for example, Ghazālī's *Al-Islam wa'l-Istibdād al-Siyāsī*, (Cairo: Dār al-Kutub Islamiyya, 1984), pp. 5-6.
[2] See 'Abduh, *Risālat al-Taw□īd* (Cairo: Maktabat al-Ma'ārif, 1971), pp. 15-16.

INTRODUCTION

Maqā□id is the plural form of *maq□ad*, a term which refers to intention. In Islamic legal parlance, the plural *maqā□id* is used more often than the singular form, *maq□ad*, to refer to the aims of the *sharī'a* (Islamic law), the intentions of the Divine Lawgiver (God).[3] Although these aims or general principles are, in most cases, products of the intellectual activity or the reasoning of legal theorists, they are always claimed by them to be articulated, in one form or another, by the Lawgiver in the Qur'ān and *□adīth* (Prophetic traditions). A legal aim such as "the preservation of the mind," for example, is a general principle formulated by legal theorists based on their understanding of several Qur'ānic verses. The Qur'ānic ban on intoxicating drinks is understood to achieve this legal aim of preserving the mind (Q. 5:90-91). But there is no particular Qur'ānic verse that directly articulates this legal aim in its general form. Other principles, regarded by the *maqā□id* theorists as aims of legislation, such as *raf ' al-□araj* (alleviating hardship), are also products of juristic thinking but believed to be embedded in scriptural evidence. For example, in the Qur'ānic verse, which allows the Muslim to break his or her daily fast during the month of Rama□ān for reasons of sickness or travel, there is also an explanation that "God intends every facility for you; He does not want to put you to difficulties" (*yurīdu Allāhu bikum al-yusr wa lā yurīdu bikum al-'usr*) (Q. 2:185). In another verse, it is stated " He has imposed no difficulties on you in religion" (*mā ja'ala*

[3] The concept of *maqā□id al-sharī'a* might be equated with the Western notion of the "spirit of the law". However, the "spirit" of Islamic law, as Bernard Weiss aptly observes, is not necessarily opposed to the literal interpretation of the sacred texts. See Bernard G. Weiss, *The Spirit of Islamic Law*, (Athens, GA: The University of Georgia Press, 1998), xii.

'alaykum fi'l-dīn min □araj) (Q. 22:78). Thus, by using these verses and others, some medieval legal theorists formulated the principle of *raf ' al-□araj* as representing a general aim of the *sharī'a*.

There are, however, aims of the *sharī'a* that are articulated in their general form in scripture such as the aim of "justice" mentioned in the Qur'ānic verse (16: 90) which reads: "God commands justice, doing of good, and giving to kith and kin, and He forbids all indecent deeds, and evil and rebellion: He instructs you, that you may receive admonition."[4]

Classical Legal Theory and *maqā□id al- sharī'a*

One can assume that after the death of Muhammad in 632 C. E. the early Muslim community, especially the Prophet's Companions and their Successors, understood through the Qur'ānic references to the legal aims that *sharī'a* laws were always purposeful and intended by the Lawgiver to achieve certain goals. The Qur'ānic ban on drinking grape-wine (*khamr*) and the prohibition of gambling (*maysir*) (Q. 5:90-91), for example, is followed by the reasoning that both would lead the one engaging in these practices to have quarrels with his or her fellow Muslims and would also lead to forgetting the daily prayers. But despite the clear indication of the legal aims and purposes of some religious laws in the Qur'ān, there are other legal stipulations, such as the prohibition of eating pork meat (Q. 2:173), where no clear reference to a legal aim is mentioned. Such verses might lead us to think that the early Muslim community

[4] The translation of Qur'ānic verses in this dissertation is mainly taken from Abdullah Yusuf 'Ali, *The Meaning of the Holy Qur'ān* (Brentwood, Maryland: Amana Corporation, 1991).

understood the ultimate legal aim of the *sharī'a* as obedience to the commands of the Lawgiver (God). Whether the purposes and aims of any religious law are mentioned or not, one has to follow the dictates of the Qur'ānic legal injunctions. But the expansion of the Islamic state to territories outside the Arabian Peninsula, after the death of the Prophet, had created many new legal cases that were not regulated by the Qur'ān or Prophetic traditions. In addition, if the Prophet's Companions succeeded during the reign of the third caliph, 'Uthmān b. 'Affān (35/656), in canonizing the Qur'ānic text, the acceptance of Prophetic traditions remained controversial. This situation led the emerging early jurists and judges in different Islamic provinces to develop methods of legal reasoning in order to provide legal rules for new problems.

In the formative period of Islamic legal theory (second-fourth centuries, Hijrī/eighth-tenth centuries, C.E.), however, a controversy emerged among Muslim jurists on the question of legal reasoning. The followers of the □āhirite school, for example, maintained that the purpose of or the reason for having the divine law could only be realized through the literal application of legal rules in the Qur'ān and □*adīth*. Thus the reason for having any law must be attached to its form and cannot be isolated as a guiding principle to be applied in new cases. Thus all *sharī'a* laws must be applied literally to the cases that are under their direct effect. As for the new legal cases, which are not regulated by the sacred texts of the Qur'ān and Prophetic traditions, they should be regarded as outside the realm of religious obligation (*khārij dā'irat al-taklīf*), and therefore their legal status is "permission."[5] The followers of what we now think of as the four established Sunnī schools, □anafite, Mālikite, Shāfi'ite and □anbalite, agreed in

[5] For the explanation of this □āhirite view, see Ibn □azm, *al-I□kām fī U□ūl al-A□kām* (Beirut: Dār al-Fikr, 1978) vol. I, 10-13.

principle on the literal application of textual rules, but they also advocated the use of causes or reasons behind the laws as a method for extending the application of textually regulated legal rules to non-textual cases. Among the four schools, however, the jurists' understanding of the applicability of this practice varied to a considerable degree. In general, the Sunnī schools use legal analogy (*qiyās*) to extend the effect of a textual legal rule to include non-textual cases by sharing the same cause (*'illa*). A classic example of such analogy is the use of "intoxication" as *'illa* for the prohibition of intoxicating drinks not mentioned in the Qur'ān or Prophetic traditions. Therefore, if drinking grape-wine is prohibited in the Qur'ān, date-wine becomes prohibited by analogy because it shares the same attribute of intoxication with grape-wine. □āhirite and Shī'ite jurists, on the contrary, reject the use of analogy as a legal source.[6]

While the four established Sunnī schools agreed on having four sources of Islamic law, namely, the Qur'ān, □*adīth*, *ijmā'* (consensus of the religious scholars) and *qiyās*, some of them added other methods of legal reasoning and included them as complementary sources of law. □anafite jurists, for example, used *isti□sān* (juristic preference) to rule in some new cases instead of using *qiyās*.[7] Mālikite jurists used *isti□lā□* (the consideration of a *ma□la□a mursala*, i.e. a benefit or utility unregulated by

[6] □āhirite and Shī'ite jurists, for example, argue that the prohibition of drinking date-wine can be established through the sacred texts themselves because there is a well-accepted Prophetic tradition which states clearly that "every intoxicating drink (*muskir*) is prohibited." Thus, there is no need to use analogy. The main argument of □āhirite and Shī'ite jurists against the inclusion of *qiyās* as a legal source stems from their conviction that the results of legal analogy are probable, and therefore cannot be included within the divine law (*sharī'a*). While □āhirite jurists approve only three sources of Islamic law, namely, the Qur'ān, □*adīth* and *ijmā'*, Shī'ite jurists also include *'aql* (reason) which in their interpretation amounts to rational decisions that are based on self-evident truths, and therefore, unlike *qiyās*, can provide "certain" knowledge. For a detailed explanation of the role of *'aql* in classical Shī'ite legal theory, see Mu□ammad □usayn Mughniyya, *'Ilm U□ūl al-Fiqh fī Thawbihī al-Jadīd* (Beirut: Dār al-Mashriq, 1975), 25-32.

[7] For a definition of *isti□sān* by a □anafite jurist, see Abū Sahl al-Sarakhsī, *al-U□ūl*, ed. Abū al-Wafā al-Afghānī (Cairo: Dār al-Ma'rifa, 1973), vol. 2, pp. 199-215.

the texts).[8] Other methods such as *sadd al-dharāi'* (closing the means to harm) and the consideration of *'urf* (local custom) were also used by some jurists as sources for legal ruling.

As for incorporating the concept of *maqā□id al-sharī'a* into the theoretical formulations of medieval jurists, it is clear that the legal aims were not considered by any school of jurisprudence as a distinguished legal source similar to *qiyās*, *isti□sān* or *ma□la□a mursala*. However, some medieval jurists expressed a general understanding of the *sharī'a* as preserving certain utilities (*ma□āli□*) and preventing harms and injuries (*mafāsid*). One of the earliest jurists who engaged in this kind of discourse was Abū □āmid al-Ghazzālī (d. 505/1111). Out of his deep Sufi convictions, Ghazzālī embarked on a mission to revive traditional sciences in his major work, *I□yā' 'Ulūm al-Dīn*, through his emphasis on the religious and spiritual content of the *sharī'a*. He very much abhorred the strict formality of these sciences as they were taught during his time. This attitude helped Ghazzālī in shaping a new legal discourse in which the legal aims took a major part. He stated that the *sharī'a* aims at preserving religion, life, private property, mind and offspring. These are, for Ghazzālī, the *maqā□id* of the *sharī'a*. But as a Shāfi'ite jurist, Ghazzālī did not accept as legitimate any legal sources other than the Qur'ān, *□adīth*, *ijmā'* and *qiyās*. *Isti□la□* can be used as a legal source only in extreme cases of necessity. Another medieval jurist, Ibn Qayyim al-Jawziyya (d. 751/1350), reiterated Ghazzālī's new theorization with an equal emphasis on *maqā□id al- sharī'a*,

[8] In classical legal theory, *ma□la□a* is usually associated with a legal source known as *ma□la□a mursala* (a benefit or utility unregulated by the texts). Some classic examples of the use of this source, according to some Sunnī jurists, are the collection of the Qur'ān by the third caliph after the Prophet, 'Uthmān b. 'Affān and the institution of *Dīwān al-Jund* to write down the names of the combatants in the Muslim army by the second caliph, 'Umar b. al-Kha□□āb. Although such actions were not mentioned in the Qur'ān or instituted by the Prophet, and therefore the utilities or benefits gained from them were not considered in the sacred texts, the caliphs' decisions apparently indicated a consideration of those "unregulated" utilities.

but despite his □anbalite loyalty, he acknowledged the need to resort to some methods other than *qiyās* if the use of the latter would not help to achieve the purpose of the law.

The most prominent medieval jurist who incorporated *maqā□id al-sharī'a* in his legal thinking was the Mālikite jurist Abū Is□āq al-Shā□ibī. He developed in his *al-Muāfaqāt fī U□ūl al-Sharī'a*, a coherent *maqā□id* theory based on Ghazzālī's conception of *ma□la□a*. All *shar'ī* rules, according to Shā□ibī, aim at preserving specific utilities (*ma□āli□*) that can be divided into three types according to their religious significance. These are the indispensable (□*arūriyyāt*), the needed (□*ājiyyāt*) and the utilities that achieve improvement (*ta□sīniyyāt*). Preserving life, for example, is considered by Shā□ibī an indispensable utility, while the abridgment of ritual obligations under circumstances of hardship is considered necessary but not indispensable. For the third type of utilities, the *ta□sīniyyāt,* Shā□ibī considers performing ablution before prayer and being charitable to the poor as examples of such utilities. Shā□ibī's aim was to show that in all textually regulated legal cases, whether in the Qur'ān or Prophetic traditions, the legal rule was instituted based on the priorities of the utilities aimed by the Lawgiver. Thus, in spite of the fact that fasting the month of Rama□ān, for example, might lead to some hardship, the utility of preserving religious devotion through fasting is, according to Shā□ibī, more significant than the utility of avoiding such hardship.

Shā□ibī's reference to several levels of utilities that are considered according to their significance in the textually-based rules raises the question whether non-textual legal cases must be subjected to the same method of comparing the significance of different kinds of utilities involved. Shā□ibī focuses in his examples only on textual cases and he does not clearly call for the use of any legal methodology that is different

from the traditional Mālikite one, which incorporates *ma□la□a mursala* as a source used only on a limited basis after *qiyās*. If this is true, then what kind of practical results can the use of this method achieve compared with, for instance, the traditional use of *qiyās* or *ma□la□a mursala*? These questions lie at the heart of the legal thinking of modern religious reformers.

The Modern *maqā□id* Movement

The basic questions that modern reformers contemplate are the following. Can a jurist isolate the general aims of the *sharī'a*, taken from particular Qurānic verses and Prophetic traditions, and then use them as guiding principles in the application of all *shar'ī* rules, whether those stated in the sacred texts or reached through juristic reasoning? Or should such aims be viewed as only a kind of explanatory note to particular textual rulings aimed at motivating Muslims to literally apply these rulings without being generalized to guide the application of all legal rulings?

The modern movement of thought that focused on the concept of *maqā□id al-sharī'a* represents a group of religious reformers who span the late nineteenth century through the late twentieth century.[9] Some of the movement's important figures are: Mu□ammad 'Abduh (d. 1905), Mu□ammad Rashīd Ri□ā (d. 1935), 'Abd al-Wahhāb Khallāf (d.1956), Ma□mūd Shaltūt (d. 1963), Mu□ammad al-□āhir Ibn 'Āshūr (d. 1973), Mu□ammad 'Allāl al-Fāsī (d.1973), Mu□ammad al-Ghazālī (d. 1996), Wahba al-

[9] My usage of the term "reform" to describe the legal thought of this diverse group of religious scholars stems from the fact that all of them view their own contribution in Islamic law as reforming a rigid, literalist tradition of legal thinking that has been rooted in the pre-modern period and continued through the twentieth-century. Being described as reformers, therefore, does not make their projects of reform necessarily "liberal."

Zu□aylī, Yusuf al-Qara□āwī (b. 1926), □asan al-Turābī (b. 1932), and □āhā Jābir al-'Alwānī (b.1935). All of these figures have advocated religious reform to maintain the Islamic identity of the Muslim community while at the same time they supported the modernization (*ta□dīth*) of Islamic societies. Despite the fact that these projects of reform have been challenged by both Western scholars and engaged Muslim writers, their vision of reform remains a compelling one for many Muslims.[10] One of the basic ideas in these projects of reform is that Islam is compatible with modernity. Under this general principle, these Muslim scholars have contributed to legal reform in Muslim societies by underscoring the role of *maqā□id al- sharī'a* in legal theory and jurisprudence. Despite the apparent differences in the details of their projects, all of them treated the *maqā□id* as foundational principles for legal understanding and interpretation.

Following Shā□ibī's methodology, the *maqā□id* reformers view the *sharī'a* as encompassing two major parts. The first part represents the laws that regulate ritual practices (*'ibādāt*) and the second part represents the laws that regulate social relations and economic transactions (*mu'āmalāt*). The first part has to be fixed. It is not developing, and no new laws are acceptable. This understanding of the fixation of *'ibādāt* resonates in Ibn Taymiyya's (d. 728/1327) dictum: *lā na'bud Allāh illā bimā shara'* (we do not worship Allah except through what he has legislated).[11] As for the *mu'āmalāt*, the reformers define these laws as intended by the Lawgiver to serve the utility and interest (*ma□la□a*) of Muslims in all times and places. Rules that are explicitly stated in the

[10] See, for example, Malcolm Kerr's critique of Mu□ammad 'Abduh and Rashīd Ri□ā's projects of legal reform in his *Islamic Reform*: *The political and Legal Theories of Mu□ammad 'Abduh and Rashīd Ri□ā* (Berkeley: University of California Press, 1966), 103-86. Another critique of 'Abduh's thought is provided by Mu□ammad Mu□ammad □usayn, *al-Islam wa'l-□a□āra al-Gharbiyya* (Beirut: Dār al-Irshād, 1971), 91-103.

[11] Taqī al-Dīn Ibn Taymiyya, *al-'Ubūdiyya* (Cairo: al-Dār al-Salafiyya, 1966), 11.

Qur'ān and Prophetic traditions are, by nature, based on the consideration of utility, interest, and the public good. *Ma□la□a*, therefore, is presented by the reformers as one of the greatest legal aims of the *sharī'a*. Thus, modern Muslim jurists, the reformers argue, should take this fact into consideration when interpreting and applying any legal rule of the *sharī'a*, whether found in the sacred texts or reached through the legal reasoning of Muslim jurists.

There is a consensus among the modern proponents of the concept of *maqā□id al- sharī'a* --coming from their Sunnī Islamic background-- that it played a significant role in the legal interpretation of the early Muslim community, especially that of the four "well-guided caliphs" after the Prophet, and the early *fuqahā'* (religious scholars) such as Abū □anīfa (d. 150/767) and Mālik b. Anas (d. 179/796).[12] It is also embedded in the classical interpretation of Islamic law, at least as a trend within diverse lines of thought. Modern reformers argue, for example, that the concept of *maqā□id al-sharī'a* was very much alive in the legal thinking of several medieval *fuqahā'* such as the □anbalite jurists Ibn Taymiyya (d. 728/1327), Ibn Qayyim al-Jawziyya (d. 751/1350), and Najm al-Dīn al-□ūfī (d. 716/1316). Moreover, the emphasis on the role of *maqā□id al- sharī'a* culminated in the works of the Mālikite jurist Abū Is□āq al-Shā□ibī (d. 790/1388) who devoted a great part of his book *al-Muwāfaqāt* to this concept. These jurists, according to the reformers' view, always took into consideration the general aims of the *sharī'a*, especially the consideration of *ma□la□a*, as a main factor in legal rulings, even though they lived in a period characterized by a trend toward literalist interpretation. Many other

---

[12] Most modern religious reformers refer to some of 'Umar b. al-Kha□□āb's decisions as examples of a legal understanding based on the consideration of *maqā□id al-sharī'a*. One of these decisions was his suspension of the textually regulated punishment for stealing during the "year of famine."

medieval *fuqahā'* ignored the *maqā□id*, preferring a rigid imitation of their school's legal interpretation. For example, Ibn Qayyim al-Jawziyya's critique of both the □āhirite and later Shāfi'ite methodologies stems from his rejection of the rigidity and misunderstanding of the spirit of Islamic law. The □āhirites are criticized by Ibn al-Qayyim for their literal application of textual rules to the effect of being inconsistent with the legal aims of the *sharī'a*. The Shāfi'ites, argues Ibn al-Qayyim, have used *qiyās* in many occasions where non-textual cases are different from the textual ones, and therefore they do not require a legal rule based on analogy.[13] Thus, according to modern reformers, the concept of *maqā□id al-sharī'a* is rooted in classical legal theory and the practical legal opinions of several medieval jurists.

It should be noted that not all modern scholars of Islamic law view the medieval reference to the *maqā□id* as a call for using the legal aims as guiding principles in applying the *sharī'a*. Rather, it is possible to see the references to *maqā□id al- sharī'a* by some medieval jurists, including Shā□ibī, as representing a genre of religious writings that encourage the literal application of the *sharī'a* through the enumeration of the benefits and purposes of legislation to show that by applying the *sharī'a* Muslims would achieve their real interests. Thus, if this position is true, it does not entail that the legal aims would be considered as determining factors in the process of application. A case in point is Mu□ammad ibn 'Abd al-Ra□mān al-Bukhārī's *Ma□āsin al-Islam*.[14] This book enumerates the benefits achieved from applying many textual rules of the *sharī'a* in the fields of *'ibādāt* and *mu'āmalāt*. It is an apologetic treatise that aims at motivating

[13] Ibn Qayyim al-Jawziyya, *I'lām al-Muwaqqi'īn 'an Rabb al-'Ālamīn*, ed. Mu□ammad 'Abd al-□amīd (Beirut: al-Ma□ba'a al-'A□riyya, 1987), vol. 1, pp. 15-17.
[14] Mu□ammad ibn 'Abd al-Ra□mān al-Bukhārī, *Ma□āsin al-Islam* (Baghdad: Maktabat al-Sharq al-Jadīd, 1989).

ordinary Muslims to apply all the rules of the *sharī'a*. As for Shā□ibī's writings on the *maqā□id*, while some contemporary writers, such as Muhammad Khalid Masud, view them as a response to a rigid literality in applying the *sharī'a*, Wael Hallaq, in contrast, sees this interest of Shā□ibī in the *maqā□id* as a call to encourage the literal application of the *sharī'a* due to the arbitrary rulings of some of Shā□ibī's contemporary *fuqahā'*.[15] Moreover, some modern proponents of applying the *sharī'a* might use many references to *ma□la□a* and *maqā□id* in general to respond to secular accusations that applying the *sharī'a* would jeopardize Muslim interests today. It is not my aim in the dissertation to check whether the medieval usage of *maqā□id* was only a rhetorical one, adopted for apologetic purposes to encourage the literal application of the *sharī'a*, or a possible reference to the legal aims to support their consideration in applying *shar'ī* rules, textual or non-textual. But it is clear that the modern movement for the consideration of *maqā□id al-sharī'a* has produced some legal opinions that challenge traditionalist ones, even in the field of textual rulings.

One example of this line of legal thought, which assigns to *maqā□id al-sharī'a* a major role in legal interpretation, can be demonstrated in the topic of war and peace in Islam. The reformers have advocated a reinterpretation of the classical doctrine of jihad (often translated as "holy war") articulated by medieval Muslim jurists. Some modern Muslim jurists and Western scholars have argued that the classical doctrine of jihad defines the relationship between the Islamic state and other states as one based on conflict and warfare. The Islamic state should give other states three options: converting their subjects to Islam, paying a tribute to the Islamic state, or facing war. The state of peace

[15] See Muhammad Khalid Masud, *Islamic Legal Philosophy: A Study of Abu Ishāq Al- Shā□ibī's Life and Thought* (Islamabad: Islamic Research Institute, 1977) 35; Wael Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunnī Usul al-Fiqh* (Cambridge: Cambridge University Press, 1997), 162-3.

with the enemy is only a temporary one. Moreover, these scholars have presented the classical doctrine of jihad as representing "Islamic international law".[16] In contrast to this view, the reformers, such as Shaltūt and Zu□aylī, have reinterpreted the doctrine of jihad in Islam to argue that peace is the main legal aim intended by the Lawgiver to govern the relationship between the Islamic state and other states. War is only an exception to the rule of peace, initiated to protect the Muslim community against aggression. In the case of Shaltūt's reinterpretation of the jihad doctrine, for example, his rearrangement of the role of the apparently contradictory Qur'ānic verses on fighting and peacemaking stems from his denying the abrogation of the earliest Qur'ānic verses, which call Muslims to fight only those who aggress against them.[17] Shaltūt's denial of this abrogation, an argument made by medieval jurists, is buttressed by his usage of a classical principle on the case of abrogation. This principle states that contradictory texts should first be harmonized in order to apply all of them; only in the case where harmonization between conflicting texts is impossible should jurists regard the historically later one as abrogating the earlier. Shaltūt argues that it is possible to harmonize the texts on fighting in the Qur'ān, and that the Qur'ānic verses associated with the later action of the Prophet do not abrogate the earlier ones. Rather, the later verses reflect historical circumstances and the necessity to initiate war against the enemy, while the earlier verses represent the Islamic legal aim of having peaceful relations with non-Muslims. The state of having war is the exception to the general rule of peaceful coexistence between the Islamic state and other

[16] See Majid Khadduri, *War and Peace in the Law of Islam* (Baltimore: Johns Hopkins University Press, 1955), pp. 51-73; 'Abd al-Karīm Zaydān, *Majmū'at Bu□ūth Fiqhiyya* (Baghdad: Maktabat al-Quds, 1976), pp. 53-61.

[17] For example, Qur'ān, (2:190).

states. In the final analysis, therefore, Shaltūt argues that by using principles already established in classical legal theory, the classical doctrine of jihad was in fact shaped by the life situation of the jurists' time, and that it does not represent the immutable Islamic view on the conduct of war and peace.[18]

Another example of the modern consideration of *maqā□id al- sharī'a* in relation to a legal case that is regulated by textual rulings can be demonstrated in the case of the modern abolition of slavery.[19] The Muslim community in the early centuries of Islam and up to the modern period practiced slavery. There is no text that prohibits slavery, and in fact the Qur'ān and □*adīth* contain some regulations of this practice, which gives an indication that the practice in itself is permitted. But most Muslim scholars today prohibit the practice of slavery. The reasoning behind this prohibition, at least according to the *maqā□id* thinkers, is that although there are some texts that refer to slavery as permitted, others encourage Muslims to free slaves. Freeing a slave is one of the actions that are dedicated to expiate certain kinds of sins (e.g. Q. 4:92, 5:89, 58:3). Therefore, although there is no text that prohibits slavery, those scholars argue that freeing the slaves is the aim of the Lawgiver. The Qur'ān did not prohibit slavery due to the circumstances of the time, but it was only regulated to ensure the humane treatment of slaves and also to encourage freeing them. The modern prohibition is clearly based on the consideration of the intended aim of the Lawgiver, which is to free slaves and establish equality among human beings.

In both of these examples, modern scholars have reached a legal position that is different from the traditional one by reinterpreting the Qur'ānic verses related to each

[18] Ma□mūd Shaltūt, *al-Islām wa'l-'Alāqāt al-Duwaliyya fi'l-Silm wa'l-□arb* (Cairo: Ma□ba'at al-Azhar, 1951), pp. 40-42. cf. Ri□ā's view on jihad, pages 168-71 of this dissertation.
[19] See Ri□ā's view on slavery, pages 171-72 of this dissertation.

case. Some of these verses are given more significance than others by representing the ultimate legal aim of the Lawgiver (*maq□ūd al-shāri'*). The legal effect of other verses becomes conditioned, either to a specific time in case of slavery or to a specific state of aggression against the Muslim community in the case of the jihad doctrine. It is important to notice that without the determination of the presumed legal aim intended by the Lawgiver, as stated in specific Qur'ānic verses, other verses cannot be conditioned in their application.

The Current Literature on the *maqā□id* Thought of Modern Religious Reformers

The current literature on the subject mostly covers the *maqā□id* thought of Shā□ibī and the role of *ma□la□a* in classical legal theory more than that of twentieth-century reformers.[20] However, there are a few studies in Arabic that focus specifically on the *maqā□id* thought of only one reformer, including his understanding of *ma□la□a* in legal theory and jurisprudence.[21] Therefore, according to my knowledge, there are no studies in Arabic that treat the *maqā□id* thought of any reformer as part of a continuous movement in legal thinking and religious reform and follow the development of this thought from its inception at the hands of 'Abduh and Ri□ā until the latest contributions of Qara□āwī and 'Alwānī.

[20] See, for example, Mu□ammad Khalid Masud, *Islamic Legal philosophy: A Study of Abū Is□āq al-Shā□ibī's Life and Thought* (Islamabad: Islamic Research Institute, 1977); A□mad al-Raysūnī, *Na□ariyyat al-Maqā□id 'inda al-Imām al-Shā□ibī* (Rabat: Dār al-Amān, 1991); Mu□ammad al-Yūbī, *Maqā□id al-Sharī'a al-Islāmiyya wa 'Alāqatuhā bi'l-Adilla al-Shar'iyya* (Riyad: Dār al-Hijra, 1998).

[21] Ismā'īl □asanī, *Na□ariyyat al- Maqā□id 'inda al-Imām Mu□ammad al-□āhir ibn 'Āshūr* (Herndon, VA: The International Institute of Islamic Thought, 1995). This study, as expected, does not compare Ibn 'Āshūr's thought with other reformers before or after him.

There have been many monographs written in Arabic on ‘Abduh and Ri□ā’s life and thought, such as ‘Uthmān Amīn’s *Rāid al-Fikr al-Mi□rī al-Imām Mu□ammad ‘Abduh*. These studies concentrate on ‘Abduh or Ri□ā’s political views, theological doctrines, and/or their method(s) of Qur’ānic interpretation, including only a limited treatment of their legal thought without specific mention of the role of *maqā□id al-sharī‘a* or the consideration of *ma□la□a* in their legal thinking.

As for Western scholarship, there are several studies on the early reformers, especially ‘Abduh and Ri□ā, that focus on their intellectual projects as representing a new movement of reform, initiated by ‘Abduh’s mentor Jamāl al-Dīn al-Afghānī (d. 1897), vis-à-vis traditionalist thinking. These studies, however, include only a limited treatment of the reformers’ legal thought. Examples of earlier writings on this subject include Charles C. Adams’ *Islam and Modernism in Egypt* (1933), Ignaz Goldziher’s *Die Richtungen der islamischen Koranauslegung* (1952), and H. A. R. Gibb’s *Modern Trends in Islam* (1947).[22]

The Critique of the *maqā□id* Reformers and their Consideration of *ma□la□a*

Other studies in the West of the legal thought of ‘Abduh and Ri□ā, which relate directly to the role of legal aims, have been undertaken by Malcolm Kerr, Albert Hourani and Wael Hallaq. Malcolm Kerr in his book, *Islamic Reform*: *The Political and Legal Theories of Mu□ammad ‘Abduh and Rashīd Ri□ā*, argues that the legal thought of both ‘Abduh and Ri□ā, which concerns itself with concepts of utility, need and necessity, is influenced by the Western understanding of “natural law” and “utilitarianism”. For

[22] These works and others are cited in the bibliography.

‘Abduh, argues Kerr, “ natural law is the moral code prescribed by the *sharī‘a* and by sound human faculties.”[23] “Rashiīd Ri□ā’s theories of jurisprudence”, observes Kerr, “generally follow logically from Mu□ammad ‘Abduh’s concept of the identity of natural law with the *sharī‘a*. He adopted this concept as his own and built upon it a liberal method of legal reasoning, in which the guiding principle was *ma□la□a*.”[24] “The entire structure of substantive law arising from the general textual foundations is dictated [in Ri□ā’s thought] by human need, whether under the name of public interest or necessity. This equation of interest and necessity, put forth in such a manner as to make formal deductions from the revealed sources [i.e. through *qiyās*] only a secondary confirmation of what the law should be, amounts to an affirmation of natural law.”[25]

Kerr’s conclusions about the legal thought of ‘Abduh and Ri□ā were adopted by both Albert Hourani and Wael Hallaq, but each took a different path in relating ‘Abduh and Ri□ā’s legal thinking to classical Sunnī legal theory. Hourani, in his *Arabic Thought in the Liberal Age*, observes that in ‘Abduh and Ri□ā’s legal thought, the concentration on the role of utility and the public interest in legal interpretation has its roots in classical legal theory and the juristic thinking of medieval Sunnī jurists, especially Ibn Taymiyya and Ibn Qayyim al-Jawziyya.[26] However, ‘Abduh and Ri□ā, observes Hourani, go beyond their medieval masters, “at least by making explicit what was half-hidden in their writings.” [27]

---

[23] Kerr, p. 131.
[24] Ibid., p. 187.
[25] Ibid., pp. 201-202.
[26] Albert Hourani, *Arabic Thought in the Liberal Age: 1798-1939* (London: Oxford University Press, 1962), p. 233. It should be noted that although Hourani’s book appeared in press before Kerr’s, Hourani had consulted Kerr’s Ph.D. dissertation, written in 1959 on the same subject as his book.
[27] Ibid.

In contrast to Hourani's conclusion, Hallaq, in his *A History of Islamic Legal Theories*, claims that the modern emphasis on the role of *ma□la□a*, articulated by 'Abduh, Ri□ā, Khallāf, al-Fāsī, al-Turābī and others, is a new development not articulated by traditional jurists, including Shā□ibī. Only □ūfī (d. 716/1316) might be a possible representative of modern reformers' view.[28] Classical Islamic legal theory, according to Hallaq, insists on the literal application of legal rules found in the sacred texts. Consequently, the concept of *ma□la□a*, as the most significant legal aim of the *sharī'a*, has limited application as a legal source, and was used only in non-textual cases by some of the Sunnī schools of jurisprudence. According to this understanding, a legal rule, approved by the Qur'ān or □*adīth*, has to be applied regardless of the benefit or interest gained or lost from this application. The *ma□la□a* can only be achieved through the literal application of a textual rule. This literal application represents the aim and intention of the Lawgiver. On the contrary, modern religious reformers' understanding and interpretation of Islamic law, according to Hallaq, are completely based on the notions of utility, public interest, and necessity, a utilitarian approach that runs against the classical understanding of Islamic law. Moreover, in order to achieve this utilitarian interpretation, religious reformers reshaped and molded classical Islamic legal theory to support their view, making the law "nominally Islamic and dominantly utilitarian."[29] In addition, "religious utilitarianists-Ri□ā, Khallāf and others-", insists Hallaq, "pay no more than lip service to Islamic legal values; for their ultimate frame of reference remains

[28] Najm al-Dīn al-□ūfī, in his treatise on a Prophetic tradition, regarded utility (*ma□la□a*) as the primary source of legislation. For him, even the application of textual rulings must follow the consideration of utility and the public good. His view, however, faced rejection from other medieval jurists because classical legal theory assigned the primacy to the sacred texts and their literal application. All other sources, such as the *ma□la□a* must follow textual evidence.

[29] Wael Hallaq, *A History of Islamic Legal Theories: An Introduction to Sunnī U□ul al-Fiqh* (Cambridge: Cambridge University Press, 1997), p. 224.

confined to the concepts of interest, need and necessity. The revealed texts become, in the final analysis, subservient to the imperatives of these concepts."[30]

As for the degree to which the concept of *maqā□id al-sharī'a* is rooted in classical legal theory, I would like to underscore the point that the aforementioned scholars, namely Kerr, Hourani, and Hallaq, have attempted to address the historicity of the legal aims, especially those related to the consideration of utility, interest, and the public good, through the development of the concept of *ma□la□a* in classical legal theory. Since *ma□la□a*, in its early formulation, represented a limited source for legislation and was used only in non-textual cases, these scholars concluded that the consideration of utility had little importance in classical legal theory. My argument against this approach is that while it traces the historical development of the concept of *ma□la□a*, observing its limited role in classical legal theory, this approach does not follow the relation of *maqā□id al-sharī'a* to the general understanding of utility in Islamic law.

It is true that *ma□la□a mursala*, before Shā□ibī, had a limited function as a legal source, being alien to the realm of textual rulings in classical Islamic legal theory. However, since the early days of its development, Islamic legal theory faced the challenge of practical situations that forced legal theorists to expand certain principles and sources for legislation. New cases, not directly covered by textual rulings, were legally decided, in the Sunnī schools, by using several sources of legislation other than the sacred texts. Some Sunnī jurists expanded the sources of legislation to include, in addition to *qiyās* (analogy), *isti□sān* (juristic preference), *'urf* (custom), *sadd al-dharāi'* (blocking the means to harms), and others. Although these sources of legislation were not

[30] Hallaq, p. 254.

called *ma□la□a*, and only the principle of *ma□la□a mursala* (utility unregulated by the sacred texts) makes a direct reference to *ma□la□a*, all of them, in fact, have utility and benefit as main factors in their legal function. *Isti□sān*, for example, is a case in which a *faqīh* might exclude a rule that is based on analogy (*qiyās*) in favor of another rule which he sees as reflecting more accurately the general aims of the *sharī'a* and public interest.[31] *'Urf* is also a legal source based on the consideration of customary practices and public interest. Thus, in the non-textual area of legal ruling, the consideration of utility and public interest by jurists and legal theorists was significant even before Shā□ibī, albeit in terms different from *ma□la□a*.

As for the cases that clearly fit in the area of textual ruling, classical legal theory offered legal principles known as *□arūra* (necessity) and *□āja* (significant need) as exceptions in which a jurist could suspend the application of textual rulings in cases of extreme hardship and necessity. The principle of *□arūra* is a Qur'ānic one, which dealt with specific cases at the Prophet's time. Later the *fuqahā'* expanded its application to include new cases of necessity not stated in the Qur'ān or *□adīth*. Here one can also observe how the jurists' understanding of utility and benefit was based on specific textual evidence but expanded to become a general principle. Several *fatāwā* issued by medieval jurists were based on the principles of *□arūra* and *□āja*.

It is worth noting that the use of the aforementioned sources in classical legal theory was always guided by general rules or legal maxims called *al-qawā'id al-fiqhiyya*. These general rules were formulated taking into consideration a general understanding of Islamic law. Each one serves as an instrument to achieve a particular aim of the *sharī'a*.

[31] Joseph Schacht stated "the term *isti□sān* came to signify a breach of strict analogy for reasons of public interest, convenience, or similar considerations." *The Origins of Muhammadan Jurisprudence* (Oxford: The Clarendon Press, 1975), p. 98.

A rule such as "necessities permit prohibitions," for example, serves to achieve the aim of *raf' al-□araj* (alleviating hardship). These rules also show how some medieval jurists, before Shā□ibī, included the consideration of utility, necessity, and public interest in their legal understanding.

I would like also to shed some light on Shā□ibī's project in particular, for he redefined all the aforementioned sources of legislation in the light of *ma□la□a*.[32] This endeavor will help in assessing the role of Shā□ibī's new theorization in the legal thinking of modern religious reformers. In Shā□ibī's terminology, *ma□la□a* encompasses all types of rulings, textual and non-textual. Shā□ibī gives examples from textual cases to show how the *sharī'a* is based on the consideration of *ma□la□a*. The Qur'ānic case of *□arūra*, for example, is one in which there is a tension between two types of *ma□la□a* and the intent of alleviating hardship by the Lawgiver takes precedence.[33] Therefore, in cases already regulated by textual evidence, what had been looked at from the angle of *□arūra* before Shā□ibī, is transformed in his analysis into an occasion for applying the concept of *ma□la□a*. It is unlikely that Shā□ibī intended, by his expansion of the role of *ma□la□a*, to transgress against the literal application of textual rulings. Rather, his aim was to show how textual rulings were based on the consideration of priorities of *ma□āli□* (utilities) so that contemporary jurists would use the *ma□la□a* more significantly in their legal opinions and not simply follow the opinions of earlier jurists.

---

[32] Abū Is□āq Ibrāhīm al-Shā□ibī, *al-Muāfaqāt fī U□ūl al-A□kām* (Cairo: al-Maktaba al-Tijāriyya, 1975).

[33] In the Qur'ān (2:173), the Muslim is permitted to eat forbidden food in circumstances of extreme hunger. Shā□ibī regards the utility of preserving life by eating forbidden food as more significant to the Lawgiver than the utility of abstaining from eating this food.

In the modern context, however, the religious reformers who are the subjects of this study have appropriated Shā□ibī's terminology to express their vision of reform. Therefore, the modern call for the primacy of *ma□la□a* as the foundational principle of legislation has to be understood in the light of this shift in terminology. It remains necessary, however, to determine whether the reformers' understanding of *ma□la□a* represents a continuation of Shā□ibī's thought or a restatement of □ūfī's position. The latter is famous for his call for the primacy of *ma□la□a* as a legal source even over textual evidence. This point will be investigated through the analysis of the reformers' understanding of *maqā□id al-sharī'a*.

As stated above, it is clear that Kerr, Hourani and Hallaq deal with the legal aims in the reformers' thought through the study of *ma□la□a* alone. It is my intention to demonstrate that the legal thought of modern religious reformers can better be understood if *ma□la□a* is treated as a component of the concept of *maqā□id al-sharī'a*. The legal aims, or the *maqā□id*, include the consideration of *ma□la□a* but they are not limited by it. Also, viewing the projects of reform as based on the consideration of *maqā□id al-sharī'a* would clarify their dialectic relationship with the sacred texts, while looking at them from only the angle of *ma□la□a*, an extra-textual source, would free these projects from the grip of textual evidence and make them appear, as Hallaq concludes, totally independent from the dictates of Qur'ānic verses and Prophetic traditions. This methodological position, which is fundamental to the dissertation, necessitates treating the legal thought of those reformers through the concept of *maqā□id al-sharī'a* and not merely the *ma□la□a*.

Chapter One

Reason and Revelation in Mu□ammad ‘Abduh’s Legal Thought

My goal in this chapter is to respond to Kerr’s assessments of ‘Abduh’s legal thought and the presumed effect of his theological views on shaping a naturalist theory of law. This analysis will be achieved by presenting first a general overview of ‘Abduh’s legal thought and his “rationalistic” interpretations.

Mu□ammad ‘Abduh was born in 1849 in the Egyptian village, Ma□allat Na□r.[34] Both of his parents were Egyptians though his father was of Turkuman descent. During his early childhood, he memorized the Qur’ān in a local *madrasa*. Then in 1862, his father sent him to the city of Tanta to study religious sciences in the school of the A□madī mosque. In 1864, he started to take special classes in this mosque to prepare himself for applying to al-Azhar university in Cairo. But ‘Abduh later writes that he very much disliked the “barren style of teaching” and decided after one year of study to return home and get married. He intended to work in farming with his father and brothers, but his father refused and insisted on sending ‘Abduh back to the A□madī mosque in

[34] The most extensive biography of ‘Abduh’s life is the one written by his student Rashīd Ri□ā. See *Tārīkh al-Ustādh al-Imām* (Cairo: Dār al-Manār, 1931), vol. I. Also, another student of ‘Abduh, Mu□□afā ‘Abd al-Rāziq, published a biography of him. See *Muhammad ‘Abduh* (Cairo: Maktabat al-Khānjī, 1939). The earliest accounts on ‘Abduh’s life in Western languages can be seen in Charles C. Adams, *Islam and Modernism in Egypt* ((London: Oxford University Press, 1933); Muhammed El-Bahay, *Muhammed ‘Abduh: eine Untersuchung seiner Erziehungsmethode zum Nationalbewusstsein und zur Nationalen Erhebung in Ägypten* (Hamburg, 1936); Osman Amin, *Muhammad ‘Abduh:Essai sur ses idées philosophiques et religieuses* (Cairo: Misr Press, 1944); Gibb, H. A. R. *Modern Trends in Islam* (Chicago: University of Chicago Press, 1947). Other sources on ‘Abduh’s life in Arabic and Western languages are cited in the bibliography.

□an□a. While he was at home, he met one of his father's uncles, Shaykh Darwīsh Khi□r, who was a Sufi affiliated with the Sanūsiyya Order. 'Abduh studied Sufism with him, and Shaykh Darwīsh convinced him to continue his religious studies, by acquiring a new spirit of learning, and apply to al-Azhar university. In 1866, 'Abduh started his studies at al-Azhar. 'Abduh narrates later that when he came to al-Azhar, there were in it two camps of religious scholars: a conservative one, very much attached to the literality of Islamic jurisprudence, and a Sufi camp of scholars with less conservative bent. Although 'Abduh studied with both, he associated himself with the Sufi camp. In 1871, while he was still a student at al-Azhar, 'Abduh met the reformist Jamāl al-Dīn al-Afghānī during the latter's second visit to Egypt. 'Abduh studied with him, and in 1872 'Abduh wrote an introduction to Afghānī's philosophical treatise, *Risālat al-Wāridāt*. In 1876, 'Abduh published a few articles in the Egyptian newspaper *al-Ahrām*. In 1877, he graduated from al-Azhar with the degree of *'ālimiyya* (religious scholarship). After his graduation, he taught logic and Islamic ethics at al-Azhar. In 1878, he was appointed as a history teacher in the *Dār al-'Ulūm* school. In this period, he became with his teacher, Afghānī, a member in an Egyptian party called *al-□izb al-Wa□anī al-□urr* (the Independent Nationalist Party), which propagated a more prominent role for Egyptians in administering their country by decreasing the Turkish influence. In 1879, Afghani was exiled from Egypt due to his political activity against the authorities. 'Abduh was dismissed from his position at *Dār al-'Ulūm*, and his residence was restricted to only his village. But in 1880, and due to the intervention of some people in the government, the Khedive Tawfīq pardoned 'Abduh and appointed him as an editor in the official newspaper, *al-Waqāi' al-Mi□riyya*. By the end of the same year, he was appointed as the

chief editor of the newspaper. In 1881, he joined the ‘Urābī movement against the Khedive and later participated in the revolution until its failure in 1882 and the consequent British occupation of Egypt. He was jailed for three months for his role in the ‘Urābī revolution and then exiled from Egypt for three years. After leaving Egypt, he went to Beirut in December 1882 and stayed there for about a year. But in 1883 Afghānī contacted ‘Abduh asking him to come to Paris and resume their activities. In Paris, they formed a secret organization, *al-‘Urwa al-Wuthqā*, which published a magazine by the same name. The magazine published only eighteen issues in 1884. ‘Abduh was its chief editor. In that period ‘Abduh visited London and met with British officials requesting an end to the occupation of Egypt. In 1885, he left Paris and returned to Beirut. According to Ri□ā, in Beirut ‘Abduh formed an organization that aimed at religious reconciliation among the followers of the three Abrahamic religions, Judaism, Christianity and Islam. He also wrote several articles during his residence in Beirut. He also wrote a report to reform the Ottoman education system. In 1889, and after an intervention from some of his Egyptian friends and students such as Sa‘d Zaghlūl, the Khedive Tawfīq pardoned ‘Abduh and he returned to Egypt. After his return, he established a friendly relationship with Lord Cromer, the British administrator in Egypt. In the same year after his return, ‘Abduh applied to teach again at *Dār al-‘Ulūm* but the Khedive refused and appointed him instead as a judge in the city of Banha. He then served as a judge in other cities until he was appointed as consultant in the Egyptian court of appeal in 1891. During the years 1891-1892, ‘Abduh received several letters from his teacher Afghānī, who resided in Istanbul at the time, expressing his discontent with ‘Abduh’s cooperation with British authorities in Egypt. In 1895, and after the death of the Khedive Tawfīq and the

inauguration of the Khedive ‘Abbās □ilmī, ‘Abduh convinced the latter to help him in reforming al-Azhar university, the Islamic endowment system (*awqāf*), and the *sharī‘a* courts in Egypt. In the same year, ‘Abduh became a member in the administrative council of al-Azhar. In 1899, ‘Abduh was appointed as the *muftī* of Egypt. This position allowed him to be a member in the highest council that oversaw Islamic endowments. In 1900, he formed an institution that aimed at editing and publishing old Arabic manuscripts by applying new methods of textual criticism. In 1903, he traveled to Europe and Sicily. In addition, starting from 1899, ‘Abduh gave lectures on Qur’ānic interpretation at al-Azhar and continued to do so until his death in 1905. His commentary on the Qur’ān covered the first two chapters and the third chapter up to verse 125. Ri□ā published ‘Abduh’s commentary on the Qur’ān in *Manār*, starting from its may 1900 issue and ending in its May 1912 issue. Then Ri□ā continued with his own commentary in later issues. During the last six years of his life, 1899-1905, ‘Abduh, in addition to issuing many *fatāwā* by virtue of his position as Egypt’s *muftī*, also wrote his latest works, such as his theological treatise, *Risālat al-Taw□īd*, and translated Herbert Spenser’s book on education from French to Arabic. In the last year of his life, 1905, and due to the deterioration of his relationship with the Khedive ‘Abbās □ilmī, ‘Abduh resigned from the administrative council of al-Azhar.

The characterization of ‘Abduh’s thought as more “rationalist” in contrast to a “traditionalist” one, in the fields of theology, Qur’ānic interpretation and law, is suggested by both followers and critics of ‘Abduh.[35] Most of the writers who use the classification of “rationalist” versus “traditionalist” to describe currents of thought in

[35] See, for example, William Montgomery Watt, *Islamic Fundamentalism and Modernity* (London: Routledge, 1988), 51-53; Sa‘īd Murād, *al-Imām Mu□ammad ‘Abduh* (Cairo: Maktabat al-Anglo al-Mi□riyya, 1989), pp. 9-58.

Islamic societies, past and present, tend to assign "rationalist" to any kind of free thinking or intellectual activity that is not dependent on either the literal meanings of the sacred texts of Islam (Qur'ān and □*adīth*) or the early interpretive traditions attributed to the Prophet's Companions and their Successors.[36] In the history of Islamic theology and ethics, for example, the Mu'tazilites are described by those modern scholars as "rationalists" in contrast to the "traditionalist" Ash'arites and □anbalites. While the Mu'tazilites affirmed the ability of human reason to know the good and contemplate the moral values independent from revelation, the Ash'arites and □anbalites insisted that the moral order could only be known through revelation.[37] In the field of legal theory, any legal activity that represents a kind of "independent reasoning" which ventures beyond the sacred texts is considered a "rationalist" one. Some modern historians of Islamic law argue that before the formalization of the Sunnī Islamic legal theory in the third-fourth/ninth-tenth centuries, by legal theorists such as al-Shāfi'ī, a "rationalist" legal thinking had existed among early Muslim jurists, such as Abū □anīfa, who were called *ahl al-ra'y* (people of opinion).[38] Later, the theorization of Shāfi'ī was successfully able to limit the role of reason in legal thinking only to the literal interpretation of the sacred texts based on early interpretive traditions and a form of legal analogy (*qiyās*) to discern legal rules in non-textual cases. But despite the insistence of Shāfi'ite and Hanbalite jurists on the limited role of human reason in legal interpretation, other schools of jurisprudence such as the □anafite and Mālikite schools continued to work through other

[36] For a clear description of this system of classification and its application in the fields of Islamic theology, ethics and law, see George Hourani, *Reason and Tradition in Islamic Ethics* (Cambridge: Cambridge University Press, 1985), 15-22; Majid Fakhri, *Ethical Theories in Islam* (Leiden: E. J. Brill, 1991), 1-8.
[37] For a historical account of the development of Islamic theology since the early days of Islam, see Tilman Nagel, *The History of Islamic Theology from Muhammad to the Present*, tr. Thomas Thornton (Princeton: Markus Wiener Publishers, 2000). Nagel adopts the same classification of "rationalism" versus "traditionalism" to describe the medieval theological currents of thought.
[38] Joseph Schacht, *The Origins of Muhammadan Jurisprudence*, 81.

legal methods, such as the aforementioned *isti□sān* (juristic preference) *and isti□lā□* (the consideration of *ma□la□a* or utility), that were considered more "independent" from the literal meanings of the sacred texts than *qiyās*, and thus more "rational."[39]

What is relevant to our topic in these classical debates is that some modern advocates of religious reform have envisioned a kind of "rational" reform in Muslim societies that starts with Mu'tazilite theology and ethics, and continues through "rationalist" expressions in Islamic legal theory and jurisprudence.[40] Mu□ammad 'Abduh is presented as a neo-Mu'tazilite and the modern precursor of this movement of "rationalist" reform. On the other hand, the neo- □anbalites, usually called the Salafīs, whose main geographical location today is in Sa'udi Arabia, reject this so-called "rationalist" reform on the very basis of its "independence" from the sacred texts and their interpretive traditions. Islamic theology, ethics and law, for the neo- □anbalites, have to be fully guided by the Qur'ān and Prophetic traditions (□*adīth*). 'Abduh is criticized by some Salafī writers as leaning toward Mu'tazilite ethics despite his Salafī convictions on some matters of theology. Since the movement of the consideration of *maqā□id al-sharī'a* in the twentieth century traces its roots into 'Abduh's works, whose legal thought is viewed by some modern scholars of Islam as a "rationalist" one, it is important, therefore, to examine this claim of "rationalism" in 'Abduh's thinking and its relevance in the discussion about *maqā□id al-sharī'a*.

Reason and Revelation in 'Abduh's Legal Thinking

[39] Hourani, *Reason and Tradition in Islamic Ethics*, 163-4. see also Kerr, pp. 75-78.
[40] For a description of this line of thought, see Richard Martin, Mark Woodward and Dwi Atmaja, *Defenders of Reason in Islam: Mu'tazi'ism from Medieval School to Modern Symbol* (Rockport, MA: Oneworld Publications Ltd, 1997), pp. 3-7.

It is clear that Kerr's evaluation of 'Abduh's legal thinking as different from the traditional Sunnī one is related to the presumed role of human reason through 'Abduh's internalization of the concept of "natural law" in his vision of legal reform. Although Kerr sees this "rational" element in 'Abduh's legal thinking as hindered by the restrictions of the divine law, it nevertheless leads 'Abduh to use more independent reasoning than the traditional Sunnī one, in which only deduction from the sacred texts through *qiyās* has been used. Also, by describing 'Abduh's legal thinking as "utilitarian," Kerr adds more emphasis to the role of independent reasoning in 'Abduh's legal interpretation at the expense of "traditionalist" thinking, which lacks any conception of natural law or utilitarianism and has assigned very limited role to human reason in legal theory and jurisprudence.[41]

Moreover, Kerr establishes a link between the "rational" legal thought of 'Abduh and the latter's theological positions. Kerr observes that 'Abduh espouses a theological view on "free will" and "predestination" that is more tilted toward the "rationalist" Mu'tazilite position than to the "traditionalist" Ash'arite one, to which most Sunnī jurists belonged. The Mu'tazilites believed that human beings created their own actions, while the Ash'arites professed a form of predestination through their belief that God created all human actions.[42] Human beings, according to the Ash'arite doctrine, could exercise only what they called the *kasb*, which amounts to limited human will to do the action but God was the actual creator of it.[43] What is relevant to our discussion in these medieval debates is that Kerr finds in 'Abduh's adoption of a Mu'tazilite doctrine of free will the first step

[41] Kerr, *Islamic Reform*, 143.
[42] For a Mu'tazilite view on "free will," see al-Qādi 'Abd al-Jabbār, *Shar□ al-U□ul al-Khamsa* (Cairo: Dār al-Ma'ārif, 1977), 64-70.
[43] See Abū al- □asan al-Ash'arī, *Maqālāt al-Islamiyyīn* (Cairo: al-Maktaba al-Salafiyya, 1967), 14-6.

toward producing "rationalistic" legal interpretations.[44] Thus, in order to analyze 'Abduh's legal thought and his conception of *maqā□id al-Sharī'a*, one has to confront the question of "rationality" in his thinking and decide whether his theological positions have contributed in any way to his views on law.

'Abduh faced the same dilemma that faced other Muslim reformers before and after him. On the one hand, there was in him a sense of urgent need to modernize Muslim societies so that they could establish technological, economic, legal and political independence from Western domination. At the same time, to establish this movement of modernization, there is a necessity, for 'Abduh and other religious reformers, to keep Islam as the main force that directs Muslim societies in terms of faith, law, social relations, economic and political activities. It is clear from 'Abduh's project that he and other religious reformers were very much troubled by secular reforms aiming at modernizing Muslim societies. Therefore, the idea of modernization for 'Abduh had to be internalized within the message of Islam so that purely secular elements would be rejected.

The main element in 'Abduh's thought that facilitates the internalization of the ideas of modernization is his call for the "rationality" of Islamic thought. His reading of Islamic history is that in the first three to four centuries of Islam, religious thought was very much "rational" but it declined into several forms of "traditionalism" through blind imitation (*taqlīd*) of earlier authorities until it reached in the pre-modern period into a stage of complete stagnation. This expression of rationality in 'Abduh's evaluation of Islamic thought, however, must be analyzed carefully because 'Abduh does not call for secular rationalism that gives human reasoning a completely independent role in the

[44] Ibid., 145-6.

study of theology, ethics and law. His "rationality" stems from his conviction that Islam, as both faith and practice, is based on the wise use of reason, and that reason represents the tool for establishing the religious excellence in the individual's personality and social relations. Therefore, for 'Abduh, reason becomes an essential component of religious education and the reform of the Muslim mind. But reason, according to 'Abduh, has to be guided by revelation.

Let us see first the range of the role of reason in 'Abduh's thought, and then focus on the limitation to this role by revelation. 'Abduh views human beings as empowered by God with the rational ability. This power of reason has to be used by each individual to establish the virtuous human society. A faithful Muslim must use his rational ability in all possible activities, whether individualist or societal. This rational activity should start from the contemplation of the existence of God to the understanding, interpretation, and application of the sacred text, the Qur'ān, in all aspects of the individual's life. But 'Abduh notices that the Muslim mind has been stagnant and almost irrational in many of its activities due to the dominance of blind imitation of earlier authorities. Through education, 'Abduh presents an attempt to revive the Muslim mind by reclaiming this lost rational element in human activity.

The limitation to the power of reason in 'Abduh's thought derives from the status of revelation as the guiding force par excellence. Although reason, according to 'Abduh, is capable of envisioning the moral order in society, it is nevertheless subjected to error.[45] Thus, the necessity of revelation is that it guides the rational ability toward its logical and proper ends. Revelation is responsible for affirming what "right" human reasoning

[45] Muhammad 'Abduh, *al-A'māl al-Kāmila*, vol. I, p. 44.

already established or can establish in terms of social ethics.[46] Revelation also tackles a field of enquiry that is beyond the scope of reason. That is the *ghayb* or the world of the unknown, i.e. the afterlife, the nature of God, etc. Therefore, revelation provides another source of religious knowledge that is beyond only affirming the rational conclusions but rather a type of knowledge that cannot be gained through reason alone.

But if in ‘Abduh’s thought there is an apparent polarity between reason and revelation, does that mean that when revelation speaks through the sacred text, reason should stop? In fact, there is a dynamic relationship, sometimes a tenuous one, between reason and revelation in ‘Abduh’s thought. He affirms first the primacy of revelation through the sacred texts over reason as the source of religious knowledge, but reason has an important role in understanding and interpreting God’s word. Here, ‘Abduh shows more interest in using his own interpretation of many Qur’ānic verses even though this interpretation runs against traditionalist ones. The primacy of the sacred text becomes a major theme in ‘Abduh’s school of Qur’ ānic interpretation, which after its actualization in *Tafsīr al-Manār*, continued through the works of several figures such as Sayyid Qu□b, Ma□mūd Shaltūt and others.[47]

The primacy of the Qur’ān has a central place in ‘Abduh’s construct of “rational revelation”. If reason has a prominent role in deciphering the meaning of God’s words in the Qur’ān, then the logical conclusion would be to allow the text to speak for itself so that the reader can comprehend the meaning through his rational ability. Although following traditions of earlier authorities does not lead necessarily to irrational or non-

[46] Ibid., p. 86.
[47] Although Sayyid Qutb expressed his rejection of what he called “the Cartesian method of Qur’anic interpretation used by ‘Abduh,” he nevertheless followed ‘Abduh’s notion of “letting the Qur’ān speaks for itself” and the very cautious use of extra-Qur’ānic material.

rational methods of interpretation, it should not, according to ‘Abduh, create a barrier between the Qur’ān itself and the modern reader. The only way to break this barrier is to let the modern interpreter use his rational abilities to understand the Qur’ānic text. Moreover, the interpreter has to acquire enough knowledge of Arabic language and its usage at the time of revelation. In sum, ‘Abduh grants the modern interpreter more freedom in using his or her own interpretation independent from many traditions that limit this interpretation within a specific line of meaning. And in this sense, ‘Abduh’s method can be recognized as rationally more independent than traditionalist ones. But this freedom of interpretation has to be conducted within the limits of the Arabic usage of the time of revelation, and also to take into account the context in which each verse is situated. ‘Abduh criticizes traditional commentators that they take Qur’ānic verses out of their context and use them to supply specific meaning that they already have imposed on the text.[48] By this hermeneutic movement, ‘Abduh has provided the cornerstone for a new method of Qur’ānic interpretation called “thematic interpretation” (*tafsīr mawḍū‘ī*). This method, after ‘Abduh’s early formulations, has been developed further and used by several Qur’ānic commentators and Muslim thinkers. It represents one of the important hermeneutic tools for the *maqāṣid* theorists.

In addition, in order to keep the meaning of the Qur’ānic text fully and clearly expressed by the text itself, ‘Abduh rejects the use of the languages of philosophy and scholastic theology (*kalām*) to impose a meaning that serves only dialectical arguments in the debates within these fields and does not respond to the context of meaning in a Qur’ānic unit (section or *sūra*). For example, Mu‘tazilite theologians argued against the Traditionists (*muḥaddithūn*) and Ash‘arites that the Qur’ānic verse which reads, “And

[48] ‘Abduh, *al-A‘māl*, vol. 4, p. 13.

We sent down iron, in which is great might, as well as many benefits for mankind," (Q. 57:25) show that the word *anzalnā* (to send down) can be used to refer to a created thing such as iron. Thus, the Mu'tazilites concluded that the same is true in regards to the Qur'ān because another Qur'ānic verse reads, "And We sent down to you the Book" (Q. 39:3). The Mu'tazilites contended that the Ash'arites used the word *anzalnā*, in relation to the Qur'ān, to argue that the Qur'ān was sent down from God to the Prophet, and by having this feature, it is not created. Sending down the Qur'ān does not contradict its created nature as the Traditionists and Ash'arites argued. 'Abduh rejects using this verse in such theological debates by simply arguing that the aim of the verse is not to answer a theological question. Rather, since the context in the *sūra* deals with God's power and blessings to human beings, sending down iron refers only to a blessing coming from God. The literal meaning of physically "coming down from God" is never intended.[49]

This "independent reasoning" that becomes, in 'Abduh's thought, the main player in understanding and interpreting the sacred text expresses itself further by asserting the primacy of the Qur'ān over other sources of religious knowledge, specifically Prophetic traditions, an interpretive move that challenges the dominant Sunnī doctrine. 'Abduh's elevation of the Qur'ān over the *sunna* as sources of religious knowledge does not stem from a disregard to Prophetic traditions. He clearly believes that the Prophet is the most qualified person to interpret the Qur'ān and guide Muslims toward full recognition of its message. Rather, the problem of Prophetic traditions for 'Abduh is that most of them, even those recorded in the canonical collections, cannot be authenticated with certainty similar to the Qur'ān. Here 'Abduh dwells on old debates about the degree of certainty and probability in considering the sources of religious knowledge. The probability in

[49] Ibid., 65.

authenticating the □*adīth* literature, for ‘Abduh, does not lead to full disregard but careful usage, especially when comparing it to the Qur’ān. The Qur’ān becomes, therefore, the standard by which Prophetic traditions must be evaluated. A □*adīth* that runs against a Qur’ānic injunction can be disregarded as unauthentic, unlike the traditionists who elevate the □*adīth* with sound chain of authorities (*isnād*) to the level of a Qur’ānic verse, especially in matters related to law. The famous medieval Traditionist al-Dārimī states that “*al-sunnatu qādiyatun ‘alā al-kitāb wa laysa’ l-kitābu bi-qā□in ‘alā’ l-sunna*” (the *sunna* judges the Qur’ān and not vice versa.) An isolated □*adīth*, in the school of Traditionists, can thus interpret, condition and shape the meaning of a Qur’ānic verse. An example of ‘Abduh’s disregard of Prophetic traditions that have been used to shape the meaning of Qurānic verses is his interpretation of verse seven in the first *sūra* (*al-fāti□a*). This verse refers to two groups of non-believers described as *magh□ub ‘alayhim* (those cursed by God) and □*āllīn* (those who went astray). Several traditional commentators mention a □*adīth* which interprets the *magh□ub ‘alayhim* as the Jews and the □*āllīn* as the Christians. ‘Abduh rejects this □*adīth* because he does not see the *sūra* clearly referring to these two religious communities. Rather, he prefers to keep the Qurānic meaning as general as it is without reference to any specific group of non-believers. But he dwells on the linguistic reference of these two words and concludes that the *magh□ub ‘alayhim* are those who have rejected the teachings of revelation while the □*āllīn* refers to those who did not receive any revelation from God and have depended solely on their own discretion in contemplating the moral order.[50]

Moving on to ‘Abduh’s legal interpretation, one needs to see how “independent reasoning” plays a role in his thought. First, ‘Abduh has a specific position toward the

[50] ‘Abduh, *al-A‘māl*, vol. 2, p. 47.

sources of religious knowledge, and here specifically legal rulings ascribed to Islamic law that claims to be God's divine law. This position departs to a great extent from the traditional Sunnī one which makes the legal sources as the Qur'ān, *sunna*, *ijmā'* (consensus), and *qiyās* (analogy). As stated before, Some Sunnī schools, such as the □anafites, added *isti□sān* (juristic preference) while others, such as the Mālikites, used *ma□la□a mursala* (utility or benefit unregulated by the texts). As explained above, 'Abduh argues first for the primacy of the Qur'ān in legal matters over other sources, including Prophetic traditions. He also rejects the sweeping use by early jurists of *ijmā'* and *qiyās*. For him, the consensus of religious scholars in one school of jurisprudence, such as □anafite or Shāfi'ite, had falsely functioned as a consensus of the whole community (of religious scholars), which is the real function of *ijmā'*. Also, using *qiyās* to extend the application of the divine law, according to 'Abduh, has been marred with rigidity and lack of consideration of the real purposes or the legal aims of the *sharī'a*. 'Abduh criticizes some medieval jurists and judges for their concealment of the circumstances of their legal rulings, specifically those based on *qiyās*, so that they can keep their authority over religious matters against a hostile political authority. Here 'Abduh sees a great failure of the old *fiqh* in its inability to show the historical perspective in applying the *sharī'a*.[51] It is important to notice, however, that 'Abduh does not deny the applicability of *ijmā'* or *qiyās* altogether but he redefines their function as legal sources in a way that limits to a great extent their traditional application. But *ijmā'*, for 'Abduh, can take a different mode in which it can be a consensus among the people of authority, *ahl al-□all wal 'aqd*, who are not necessarily religious scholars, on matters

[51] Ibid., vol. 5, p. 67.

pertaining to the public good and general policies in Muslim societies.[52] Clearly, ‘Abduh limits the applicability of traditional *ijmā‘*, in which only religious scholars concur on a *shar‘ī* ruling in regards to a legal question in which the divine law lacks any ruling.

With this position toward the sources of Islamic law, ‘Abduh creates a legal vacuum in the area in which the sacred texts do not offer clear rulings. If traditional Muslim jurists responded to this legal vacuum by extending the effect of *shar‘ī* rules through *ijmā‘* and *qiyās*, how could ‘Abduh’s limited usage of these sources respond to this legal vacuum? It is interesting to notice that ‘Abduh’s student and propagator of his thought, Rashīd Ri□ā, resorts clearly to the concept of limiting the legal effect of the sacred texts, following the □āhirite jurist Ibn □azm (d. 456/1064), to find a legal area that is beyond the applicability of these texts. The divine law is completed by the death of the prophet. Any legal case that is not regulated by a clear text from the Qur’ān or □*adīth* is beyond the dictates of the divine law; it is only linked to it through the rule of *ibā□a* (permission). The Muslim community, argues Ri□ā, can legislate for itself in these legal areas the laws that fit its needs and establish equality and justice in the Muslim society. It is beyond our purpose, at this stage of analysis, to deal with Ri□ā’s response to the legal vacuum created by ‘Abduh's methodology. What is relevant to ‘Abduh's thought is that he does not state clearly any limitation to the applicability of the divine law as Ri□ā does. ‘Abduh remains apparently loyal to the traditional Sunnī doctrine that the *sharī‘a* can provide a legal rule for new cases on the basis of the extension of God's law. How could ‘Abduh then reconcile these two contradictory positions in regards to new legal cases, unregulated by the sacred texts? On the one hand he calls for the extension and comprehensive applicability of God's law, and on the other he limits using the methods

[52] Malcolm Kerr, *Islamic Reform*, 22.

by which this extension can be made, namely, *ijmā'* and *qiyās*. Here 'Abduh relies heavily on the disagreement among the Sunnī schools of jurisprudence in relation to legal sources beyond the fourth one (*qiyās*). If one accepts some of these juristic methods, such as *isti□sān, isti□la□*, *'urf*, and *sadd al-dharāi'*, and allows them to be used as legal sources to extract *shar'ī* rules, then one has to acknowledge that these methods cannot be described, in terms of their function, as merely extending the effect of a textual rule to a non-textual case as *qiyās* does. *Isti□lā□* and *'urf*, for example, are based on the consideration of a utility that is beyond the direct effect of a specific textual rule. The *ma□la□a mursala* is supposedly a utility unregulated by the divine law and therefore it lies outside the direct function of the sacred texts of the Qur'ān and *□adīth*. It is only linked to the texts through the assumption that there is some textual evidence that calls upon jurists and judges to consider the benefits or public utilities for people as long as this consideration does not transgress against a textual rule. It remains an open question to say how much 'Abduh has filled the legal vacuum he creates, through the usage of these extra-textual sources such as *isti□sān, isti□lā□* and *'urf*. Looking at his legal opinions (*fatāwā*) on several legal questions, one can notice that 'Abduh does not bring these extra-textual sources to the discussion. In other words, he does not enumerate his legal sources beyond the Qur'ān and *□adīth* and clearly include those such as *ma□la□a mursala*, *'urf*, *Sadd al-dharāi'*. What is interesting about 'Abduh's formulation of his legal methods that are beyond the Qur'ān and *□adīth* is his continuous reference to human reason as a tool for discovering the *shar'ī* rule more than to a specific traditional method. Here, one has to be careful not to confuse his call for the use of reason in legal matters as a purely "rational" approach at the expense of the "traditional" attachment to

revelatory sources. ‘Abduh views this role of human reasoning as a continuation of his “independent” rational interpretation of the Qur’ān. This “independent reasoning” in the field of law remains, at least in theory, loyal to the clear Qur’ānic legal injunctions. In his call for the use of human reason in legal interpretation, ‘Abduh reiterates the traditional reference to *ijtihād* and *ra’y* as representing a human effort to discern the *shar‘ī* rules for the legal cases not considered by the sacred texts. Within this vision of the role of human reason, we see in ‘Abduh’s legal thinking an attempt to formulate another legal source that is based on the general purposes of Islamic law and the legal aims as stated in the Qur’ān. This effort represents the seedling of the modern *maqā□id* thought.

The Critique of ‘Abduh’s Legal Thinking

The critique of ‘Abduh’s legal thinking and his project of religious reform in general comes from two different camps. The first camp represents traditionalist Muslim scholars who see in ‘Abduh’s emphasis on the rationality of Islamic law and his method of Qur’ānic interpretation as an apologetic attempt to satisfy Western criticism of traditional Islamic law and theology. The role of reason (*‘aql*), according to its traditional Sunnī manifestation, has always been limited in usage, particularly in the field of theology and Qur’ānic interpretation. The Salafī movement in the twentieth century, which represents an extension of the Wahhābī movement in Sa’udi Arabia, insists that matters of dogmatics and methods of Qur’ānic interpretation have to be conducted following the early fathers (*salaf*), and in this regard they are “traditional” and not “rational”. This means that the Salafī school does not allow the Qur’ānic interpreter to

have his own "independent reasoning" in regards to the meaning of Qur'ānic verses unless this reasoning is conducted within the framework of Salafī traditionalist convictions. Therefore, for this camp of critics, 'Abduh's problem is not mainly in his legal opinions, but rather in his "rationalist" attitude of Qur'ānic interpretation leading to views that challenge traditionalist ones. The legal "deviation" from the "correct" traditionalist Salafī opinions is only a result of 'Abduh's "deviation" from the tradition in the field of Qur'ānic interpretation. Also, for the Salafī critics of 'Abduh, his elevation of the Qur'ān as the primary source of legislation at the expense of □*adīth* represents another error. Since □*adīth* is the Prophet's explanation of and comments on the Qur'ān, □*adīth* should have the role of interpreting Qur'ānic verses, and therefore should be put on equal footing with the Qur'ān as a legal source.[53] The legal content of the Qur'ān has to be established and viewed through the lens of □*adīth*.

Another manifestation of religious critique of 'Abduh's thought comes from the *madhhabī* religious scholars, those who are totally committed to the traditionalist affiliation with one of the legal schools of jurisprudence. Their critique of 'Abduh can be understood as related to the point of "independent reasoning" in his thought due to his refusal to adhere to only one school in his legal rulings, and in some cases even diverting from the opinions of the four established Sunnī schools. One needs to understand first that the *madhhabī* critique of 'Abduh is not only related to his views on matters of social relations and economic contracts (*mu'āmalāt*,) but in a more vigorous way to his views on the laws pertaining to religious rituals (*'ibādāt*). 'Abduh adopts the view of some medieval jurists, such as Ibn Taymiyya, Ibn Qayyim al-Jawziyya, and Shā□ibī in which

[53] This role of □*adīth* became more prominent by the time of the collectors of canonical books in the third/ninth c. See al-Dārimi's statement mentioned above.

two fields of Islamic law, namely *mu'āmalāt* and *'ibādāt*, are separated from each other in terms of their static or dynamic characters. As expressed clearly by Ibn Taymiyya, "*lā na'bud Allah illā bimā shara*'" (we do not worship God except according to what He legislated), *'ibādāt* (ritual practices) should be fixed according to the Qur'ān and the Prophet's *sunna*, and therefore they are not susceptible to change or addition. While in the case of *ma'āmalāt*, their laws can grow due to having new legal cases, and their application shows more flexibility than that of *'ibādāt*. The term *bid'a* (innovation) is introduced by the aforementioned jurists, depending on its usage in the □*adīth* literature, to refer to any new ritual practice that was not performed by the Prophet or unanimously approved by his Companions after his death. In the field of religious rituals, 'Abduh affiliates himself with this Salafī line of thought. He regards many practices in his time in Egypt as contrary to the Prophet's *sunna*, and also the *sunna* of the early fathers. On this point in particular, 'Abduh faced a harsh critique from the *madhhabī* religious scholars of al-Azhar. The Sunnī traditions, especially those immersed in Sufī convictions, developed many new practices in popular religion, such as visiting the tombs of saints. These were considered as *bid'a* □*asana* (good innovation in religion) and distinguished from *bid'a sayyi'a* (bad innovation).[54] The Salafī line of thought considers any kind of innovation in religion as abhorred and banned in Islamic law. 'Abduh adopts the same religious reasons, as did Shā□ibī and others before him, to reject any kind of innovation in religious rituals. 'Abduh's line of thought shows a rational attitude that viewed these practices as against "right" reasoning, and in a sense they contradict the rational spirit of

[54] For more information about the division of *bid'a* □*asana* and *bid'a sayyi'a*, see Ibn Baydakīn al-Turkumānī, *Al-luma' fi'l-*□*awādith wa'l-Bida'* (Cairo: Ma'had al-Dirasat al-Islamiyya, 1986), 3-ff.

Islam.[55] Moreover, ‘Abduh argues that such innovations lead non-Muslims, especially those in the West, to denigrate Islam as a savage, uncivilized religion. It remains necessary to mention that ‘Abduh admits in his reasoning that there could be a good innovation (*bid‘a □asana*) but he quickly disapproves all the aforementioned practices because there is no benefit to religion (or to Muslims) from having them. This implicit approval of some kind of new innovations in ritual practices on the basis of utility and benefit to Muslims might suggest that ‘Abduh is not fully committed to the Salafī line of thought which rejects any kind of innovation regardless of its possible utility or benefit to the public.

The next camp of critics represents some scholars of Islam in the West, whom I described before as critics of the *maqā□id* movement, especially the consideration of *ma□la□a* in the legal thought of ‘Abduh and his followers. More emphasis will be provided in the following pages to Kerr’s evaluation of ‘Abduh’s legal interpretation, which concludes that ‘Abduh’s “rationalist” attitude toward the law in addition to his religious program of reform have led to unsystematic line of thought and contradictory ideas that cannot be reconciled.

‘Abduh and Natural Law

Kerr’s evaluation of ‘Abduh’s legal thought affirms that ‘Abduh’s view of law is influenced by the idea of natural law. The idea of natural law, of course, was developed in the West and emphasized by some Christian theologians such as Thomas Aquinas

[55] See, for example, ‘Abduh’s rejection of the practice of *dawsa* in some Egyptian rural areas during his time. ‘Abduh, *A‘māl*, vol. 3, 11-12.

(1225-74 C.E.). In the history of Islamic theology and ethics, however, a form of natural law morality was manifested, in Mu'tazilite ethics for example, by affirming the ability of human reason to know the good and avoid wrong actions. But the main line of Sunnī theology and ethics follows the Ash'arite doctrine, which expresses only a form of divine command morality, excluding any independent role for human reasoning to command the good and forbid the evil. Kerr observes that by referring to the role of human reason in establishing the moral order, 'Abduh espouses a form of natural law ethics. Thus, 'Abduh, argues Kerr, divorces his position from the traditional Sunnī one and adopts a moral philosophy more aligned with that of the Mu'tazilites. But 'Abduh rejects being affiliated with the Mu'tazilites or any other school except Sunnī ones.[56] Kerr, however, does not engage himself in comparing 'Abduh's conception of natural law with that of the Mu'tazilites. Rather, his emphasis is only directed toward 'Abduh's natural law theory in opposition to the Ash'arite divine command ethics, and to a lesser extent to the Thomist natural law tradition in the West.

Kerr explains that since the Sunnī schools of jurisprudence follow the Ash'arite view of theology and ethics, the divine law is the basis of all moral judgments and encompasses all the fields of law. The role of reason is subsidiary to the role of the revealed texts. Reason is used only in the deduction of rules from revealed laws in order to apply them to new legal cases. Therefore *qiyās*, observes Kerr, was developed as a legal source after the Qur'ān and □*adīth* in the Sunnī schools of jurisprudence to limit independent reasoning in matters of law, while keeping only the deductive role of reason.[57] Without the divine law, human faculties are unable, according to the Ash'arite

[56] Kerr, *Islamic Reform*, 105-6.
[57] Ibid., 58-9.

doctrine, to contemplate the moral values. Hence, human beings are unable by nature to prescribe for themselves a code of morality unless they abide by sacred texts that reveal the will of God. ‘Abduh departs from this line of thought and affirms the ability of rational thinking to distinguish between the right and wrong. Divine law, for ‘Abduh, is a fulfillment of the natural law.[58]

But if ‘Abduh professes a form of natural law in his legal thinking, how could he reconcile his conception of natural law with that of the divine law? Here, Kerr observes that in the Thomist tradition in the West divine and natural laws are ascribed to different spheres of moral actions and therefore they do not overlap or compete with each other. While the divine law is concerned with matters of devotion and individualistic ethical norms, the natural law is applied in the field of social morality.[59] Contrary to this view, observes Kerr, ‘Abduh applies the divine and natural laws to the same spheres of human activity. In the field of *mu‘āmalāt*, both the divine law and natural law have an important function. On the one hand ‘Abduh uses a rational argument, based on a conception of natural law, which manifests itself through utilitarian ethics, to argue that matters of social morality should be decided according to the public utility (*ma□la□a*). Legislators, jurists and rulers should use their rational abilities to discern the law of nature, which represents the consideration of the public utility. On the other hand ‘Abduh affirms that all aspects of public life have to be regulated by the divine law of Islam (*sharī‘a*) and cannot be left to any secular legislation because Islamic law covers all aspects of life for the Muslim community.[60] But if the divine law depends on a “non-cognitive” source of knowledge, observes Kerr, natural law originates from rational and empirical sources,

[58] Ibid., 108, 131.
[59] Ibid., 107.
[60] Ibid.

and therefore this overlap between them in ‘Abduh’s legal thought represents an unsystematic and confusing conception of law in Islam.[61]

Kerr acknowledges that through the history of Sunnī legal theories, legal sources other than *qiyās* (analogy) were developed, such as *isti□sān* (juristic preference) and *isti□la□* (the consideration of *ma□la□a*). These sources, according to Kerr, require the use of more “independent reasoning” than *qiyās*. But this kind of independent reasoning, argues Kerr, remained very limited in its function, because the concept of *ma□la□a* was introduced first to the legal parlance within the discussions about the correctness of *qiyās*. In order for a *qiyās* to be correct, the jurist needs to discover the efficient cause (*‘illa*) for the textual rule, then prove that the same *‘illa* exists in the new case so that *qiyās* can be applied. The new case takes the legal rule of the textually-regulated one.[62] One of the necessary criteria to determine the *‘illa* is called *munāsaba*. This is a criterion by which the *‘illa* must be conducive to the benefit or utility that is expected in applying the textual rule. Thus, the *ma□la□a* was introduced as a checking element for the appropriateness of the *‘illa*. But the consideration of *ma□la□a mursala*, argues Kerr, never stood as an independent legal source acceptable by all Sunnī schools. Some medieval jurists such as Ibn Taymiyya rejected the strict, formal logic in the use of *qiyās* by the Shāfi‘ites, and called for a *qiyās* that is more linked to the *ma□la□a.*[63] Others, such as al-Ghazzālī, accepted *ma□la□a mursala* as a legal source only in case of extreme necessity. In the end, Kerr concludes that despite these exceptions, the use of “independent reasoning” was very much limited within Sunnī legal methodology.[64]

---

[61] Ibid., 105.
[62] See page 8 for a classic example of the use of *qiyās*.
[63] Ibid., 65.
[64] Ibid., 90, 101.

Contrary to the traditional Sunnī legal methodology, ‘Abduh’s adoption of a form of natural law, observes Kerr, manifests itself through his call for the consideration of public utility (*ma□la□a*) as the main legal source in the field of *mu‘āmalāt*. Whatever conforms to the utility of the Muslim community should be regarded as the legitimate law. In the final analysis, Kerr’s view of ‘Abduh’s legal reform is that through the concept of natural law ‘Abduh advances a legal interpretation that is immersed in utilitarianism, departing from the dictates of the divine law despite his theoretical acknowledgment that the *sharī‘a* covers all aspects of public life. Kerr gives an example of such an attitude of ‘Abduh in the latter’s *fatwā* (religious edict) in which he was asked whether a Muslim in a predominantly Christian country can wear a European-style hat despite the fact that there were Prophetic traditions which discouraged such actions of conformity (*tashabbuh*) with non-Muslims. Kerr notes that ‘Abduh ignores such traditions and argues that if such action of conformity does not lead to disloyalty to Islam and the action itself has a utility for Muslims, then such actions are permitted. Kerr views this opinion of ‘Abduh and several others as based on the sole consideration of utility. This “utilitarian” approach later became more apparent in the legal thought of ‘Abduh’s disciple Rashid Ridā.[65]

It is worth investigating to see how ‘Abduh views natural law in relation to the divine law, and whether he allows any existence of a human law besides the divine law. If one takes note of ‘Abduh’s conception of natural law, one can possibly assert that the “naturalist” element in ‘Abduh’s thought can be best viewed as representing “ethical

[65] Kerr, 145-6. It is worth noting that ‘Abduh issued these *fatāwā* when he was the *mufti* of Egypt, the highest ranking religious scholar who was officially responsible for issuing religious edicts. His *fatāwā*, however, were subjected to harsh critique from some religious scholars of al-Azhar university in Cairo during the last decade of the nineteenth century. See Rashid Ridā, *al-Manār wa’l-Azhar* (Cairo: Dār al-Manār, 1930), 70-3.

principles" rather than "law". These principles do not have the obligatory or coercive character unless they are substantiated by the divine law.[66] On this point ʻAbduh is careful to clarify his position because he is dealing with old debates that started among classical Islamic schools of ethics and theology. While the Muʻtazilites affirmed the existence and the obligatory character of natural ethics, and therefore the accountability in front of God even if there was no divine law, the majority of Sunnī theologians followed the Ashʻarite school that denied the possibility of having any ethical principles, except through the divine law. Within the Sunnī traditions, Abu Man□ur al-Māturīdī (d. 333/944) came up with the idea that human reason can know the good and avoid the evil, but no religious obligation would be assigned to a community unless through the reception of a divine law. This is the view of ʻAbduh. Thus, although the Muʻtazilites or any other school did not use the term "natural law" (*qānun □abīʻī*) in the classical debates, one can interpret Muʻtazilite ethics as acknowledging a form of natural law, which contains both the directive and coercive functions of the law. Therefore, the Muʻtazilites assume that people before revelation are held to account by God for their deeds because although they do not have a divine law, the existence of a natural law obligates them to do the good and avoid the evil.[67] On the contrary, the Māturīdite position, despite its acknowledgement of natural ethical principles, deny the obligatory character of any such natural ethic and assumes that God will not hold people accountable for their deeds unless they have a divine law.

For ʻAbduh, this position is important for his ethical and legal thinking. As stated above, ʻAbduh thinks that the natural law can be corrupted in some people due to desires

[66] ʻAbduh, *Aʻmāl*, vol. II, 65.
[67] Muhammad Sharīf Ahmad, *Fikrat al-Qānun al-Tabīʻī ʻinda al-Muslimin* (The Idea of Natural Law among the Muslims) (Baghdad: Dar al-Rashid, 1980), 5.

and evil intentions, and consequently the existence of a divine law is necessary to affirm the precepts of natural ethics. For ʻAbduh, the corruption exists through "human" laws that do not acknowledge the real principles of natural morality. Therefore, if natural ethics can be corrupted or misguided due to evil desires and misjudgments, the only way to express the real principles of natural ethics is through the divine law. In the final analysis, therefore, only the divine law has the ability to express and affirm the righteousness of natural ethics.[68] If this is the case, ʻAbduh's view of any society devoid of a divine law is that it could not achieve its full moral order depending on natural ethics alone. This view reflects how ʻAbduh assigns the divine law, i.e. the *sharīʻa*, a central role in Muslim societies against a secular approach which assumes the ability of human reason to form a well-working system of law without the need of the *sharīʻa*.

The assessment that it is more appropriate to describe the kind of natural morality espoused by ʻAbduh, as natural ethical principles rather than a form of "natural law" is crucial for understanding the relationship between divine law and natural ethics in his thought. As stated before, Kerr claims that there is an overlap between natural law and divine law in ʻAbduh's legal thought. It is important to note in this regard that if an action is regulated by two different levels of legal sources, such as "reason" in the case of natural law and "revelation" in the case of divine law, this multiplicity of sources does not necessarily represent a case of competition that leads to contradicting results. In ʻAbduh's thought, there is a theoretical assumption that all precepts (or principles) of natural ethics are included within the divine law. Thus, there is no possibility that either legal source might provide an ethical or legal rule different from the other in relation to the same conduct. In the final analysis, therefore, the divine law becomes the determinant

[68] ʻAbduh, *Aʻmāl*, vol. II, 67.

factor of what the primary or secondary precepts of natural law are, and any ethical judgment that contradicts the dictates of divine law would not be considered part of natural ethics. An example of how ‘Abduh shapes his natural ethics to fit the legal rules of Islamic law is that he considers the punishment of the murderer by execution as not only a legal rule in Islamic law but also as an ethical rule that a man can know by his nature.[69]

Thus, it is clear that in ‘Abduh’s thought primacy is given to the divine law over any possible contradiction with natural ethics. That is why he prefers not to elevate the principles of natural morality to a status of law in order to keep the centrality of the divine law. Natural morality in ‘Abduh’s thought serves only as a reminder that the divine law is the only legitimate enforcer of natural ethics. Also, if the source of natural ethical principles is human reason, the reclaiming of those by the divine law serves for ‘Abduh a role of presenting the *sharī‘a* as rationalistic.

The previous discussion shows that in the area in which there are clear textual rules of Islamic law, natural moral principles takes a secondary and complementary role, and they do not represent, at least in ‘Abduh’s theoretical discussion, any challenge to the dictates of the divine law. But another area of possible tension between reason and revelation in ‘Abduh’s thought is the one in which there are legal cases not regulated by clear textual rules of the *sharī‘a*. The area of concern is the field of social activity that creates many new legal cases not covered by the Qur’ān and Prophetic traditions. Throughout his writings, ‘Abduh emphasizes the role of “right reason” (*‘aql salīm*) in reaching decisions in the field of social morality. In many aspects of political, economic, and social activities, he calls for a more prominent role for human reason in shaping

[69] Ibid., vol. II, 70.

policies and advancing new ideas. This, of course, means that new legal decisions are going to be made according to rational enquiries in these matters. At the same time, ‘Abduh, as Kerr rightly observes, is not inclined to decrease the role of the *sharī‘a* in these fields, following the traditional Sunnī doctrine which states that every action must be legally regulated by a *shar‘ī* rule. Apparently, therefore, there should be a clear overlap between reason and revelation concerning legal decisions taken in the fields of political, economic, and social activities, in which there are no textual rules available. Kerr sees this phenomenon in ‘Abduh’s thought as reflecting a tension between natural law and divine law.

The first point that relates to this discussion is that ‘Abduh’s references to “right reason” do not necessarily entail stating naturalistic principles of morality. In other words, it should be clear enough to say that not every “rationalistic” legal discussion represents a precept or a principle of natural morality. Only in the case where the writer clearly indicates that an ethical or legal rule is instilled in human nature, which is the case in some of ‘Abduh’s references to reason, would this assessment be regarded as a natural law or natural moral principle. But beyond this clear reference, any indication of a rationalist effort to discern legal rules can be more appropriately understood as “human laws” that are based on the precepts of natural morality. Thus, the many references to the role of human reason in ‘Abduh’s writings can be equated with “human law”. But if ‘Abduh’s call for a “rationalist” approach in the field of social morality will necessarily lead to the legislation of human, secular laws, he is unwilling to concede the presence of purely human laws. Rather, he continues to refer to any legal activity in this field as

regulated by the *sharī'a.* 'Abduh states, for example, that he backs the ruler of Egypt in his time (the Khedive) as long as his decisions are according to the laws of the *shari'a*.[70]

In addition, the problem of the apparent tension between reason and revelation in 'Abduh's thought has to be addressed in the light of the specific nature of Islamic law as understood by medieval jurists and continued through the modern period. In classical Sunni legal theory, *sharī'a* has two levels of meaning. First, the legal part of revelation is included in the Qur'an and Prophetic traditions. This part of the *sharī'a* covers any legal case that is clearly regulated by a textual rule. The second part of the *sharī'a* covers the area in which legal cases are not decided clearly in the Qur'ān or □*adīth*. As stated before, Sunnī jurists used *qiyās* to extend the effect of textual rules to the legal cases in this area. It should be noted that although Sunnī jurists acknowledge that all human actions have to be regulated by *sharī'a* rules, they understand *qiyās* as a form of human reasoning (*ra'y)* or (*ijtihād)*. The most prominent Sunni jurist who started the theorization of *qiyās* as a legal source was al-Shāfi'ī in his *al-Risāla* and *al-Umm*. He clearly views *qiyās* as a type of *ra'y*, which is a form of human reasoning. But if this reasoning is legitimate and a correct one, it will lead to the extension of textual rules to be applied to new cases, and in this sense the new rules belong to the *sharī'a* because they are based on textual rules. Moreover, the Sunnī schools acknowledge that *qiyās* is a probable source of legal knowledge for deciding the *shar'ī* rule in non-textual legal cases. That is why it was not accepted by the Zahirite and Shī'ite jurists, because they viewed it as an arbitrary method by which new claims of divine laws are being made on cases not stated in the revealed law.

[70] 'Abduh, *A'mal*, vol.1, 96.

This specific nature of the *sharī'a* leads us to say that one cannot equate all parts of the *sharī'a* with divine law, in the sense that all its laws are revelatory and therefore coming from a "non-cognitive" source as Kerr suggests. As stated above, the Sunnī schools acknowledged that the second level of *sharī'a* could be attained only through the use of human reason. Therefore, if 'Abduh calls for the use of human reason to discern *shar'ī* rules in the field in which the textual evidence is limited, he is not deviating from the methodology adopted in classical Sunnī legal theory. But what makes the role of human reason more prominent in this field is that some Sunnī schools developed other methods of legal reasoning that served as legal sources beyond *qiyās*, such as *isti□sān* and *ma□la□a mursala*. The existence of these controversial methods of legal reasoning within the Sunni traditions have led 'Abduh to give human reason a role that goes beyond *qiyās* into a more independent one. Thus, the overlap between revelation and reason already existed in Sunnī legal thinking since the classical period. As I mentioned when dealing with the main features of 'Abduh's legal thinking, his attack on *qiyās* and *ijmā'* has led him to shift the role of reason in the field of non-textual legal activity to be closer to *ma□la□a mursala* and *isti□sān*. The legitimate question remains: to what extent is 'Abduh's use of human reason in the field of non-textual legal activity similar to or different from those medieval Sunni jurists who used *isti□sān* and *ma□la□a mursala*? This point will be investigated when dealing with 'Abduh's *maqā□id* thought. At this stage of enquiry, however, one more point, which relates to the "rational" element in 'Abduh's legal thinking, needs more analysis. That is a question of whether this "rational" element in 'Abduh's legal thinking has resulted from his adoption of

theological views that are more aligned with the Mu‘tazilites than with the Ash‘arites, as Kerr suggests in his book.

Theology, Ethics, and Legal Theory: A Necessary Connection?

Another important question relates to the discussion of theology, ethics and legal theory within the classical debates. If ‘Abduh’s emphasis on the role of human reason in the social sphere of life, i.e. *mu‘āmalāt*, is associated with theological and ethical positions that deviate from the Ash‘arite one, adopted by most Sunnī jurists, one might ask how much these theological debates were relevant in the field of juristic activity and legal theory? In other words, I would like to address the question: if Mu‘tazilite theology and ethical theory are regarded as more “rationalist” than the Ash‘arite, does that entail a more prominent role for human reason in the field of law? If the answer to this question is yes, then one has to decide to what extent ‘Abduh’s legal thought has become more “rationalist” due to the “semi-rationalist” theology and ethical theory of al-Māturīdī or the more “rationalist” one of the Mu‘tazilites? The answers to these questions, in my view, would be of great importance to evaluate ‘Abduh’s revision of the legal sources beyond the Qur’ān and □*adīth*.

The point about the relationship between theological debates and legal positions is important because, as it is apparent in Kerr’s treatment of ‘Abduh’s thought, other writers also make this connection between theology and law. In fact, it is a trend within the

liberal thought of some modern Muslim writers to show that one has to adopt Mu‘tazilite theology, with its “rationalist” features, in order to achieve social and legal reforms. The problems of traditionalist thinking and its inability to deliver in the field of social change and legal reform are attributed, in those writers’ view, to the “anti-rationalist” or “traditionalist” theology of the Ash‘arite and Traditionist schools, the two common positions of Sunnī scholars.

An example of this kind of linkage can be demonstrated in the writings of Nasr Abu Zayd. He argues that one of the main problems of modern traditionalist Islamic thought is that it is based on a theological position of the Ash‘arite and Traditionist schools in relation to the nature of the Qur’ān, as the eternal, uncreated word of God. In the classical debates, the Mu‘tazilites contended with this view by declaring that the Qur’ān was created, and therefore did not have eternal existence as an attribute of God. Although this Mu‘tazilite doctrine achieved prominence during the time of the ‘Abbāsid Caliphs al-Ma’mun (d. 218/833) and al-Mu‘tasim (d. 227/841), it nevertheless lost prominence later with the decline of the Mu’tazilites, and the doctrine of the eternal, uncreated Qur’ān became the dominant one in Islamic theology until the present day. What is significant for Abu Zayd in this theological debate is that the traditional Sunni dogma of uncreated, eternal Qur’ān has emphasized the sacredness of the Qur’ānic text at the expense of its “textuality.” Viewing the Qur’ān as a literary text, argues Abu Zayd, is crucial because revelation expresses itself through human language, and in this sense the Qur’ān should be studied as a “human text”. Adopting the theological position of the Mu‘tazilites, namely the created nature of the Qur’ān, observes Abu Zayd, will lead to the understanding that the Qur’ān is the human manifestation of the word of God. This

will lead contemporary interpreters to treat the Qur'ān as any other literary text, using modern literary theory and textual analysis to achieve the goal of interpretation. Without realizing the feature of "textuality," the Qur'ān remains situated within the confines of sacredness that discourage having new interpretations.[71]

In response to Abu Zayd's observation about the "creation" of the Qur'ān, one has to ask the question whether the Mu'tazilites, who believed in the created feature of the Qur'ān, had actually presented any kind of legal theory or jurisprudence that was significantly more "rationalist" than that of the established Sunnī schools. Although one has to acknowledge that Mu'tazilite thought was traditionally presented through the works of their Sunni opponents such as al-Baqillānī (403/1013) or al-Shahrastānī (d. 548/1153), the publication of some Mu'tazilite works in the twentieth-century, especially those of al-Qādī 'Abd al-Jabbār (d. 415/1024), can give a more objective view of their theology and ethics. What is interesting about 'Abd al-Jabbār, a later Mu'tazilite, is that his discussions always refer the reader to the positions of his teachers and earlier Mu'tazilite figures, such as al-Nazzām (d. 231/845) and al-Jubbā'ī (d. 303/916). Therefore, 'Abd al-Jabbār's account of Mu'tazilite theology and ethics represents also a good source for earlier Mu'tazilite figures whose works have been lost.

The major work to consult for our purpose is Abd al-Jabbār's *al-Mughnī fī Abwāb al-Taw□īd wa'l-'Adl*, specifically the volume on Islamic law entitled *al-Shar'iyyāt*. In this volume of *al-Mughnī*, a work dedicated to the first two principles of Mu'tazilite theology, namely, the unity and justice of God, 'Abd al-Jabbār instructs the reader that on some detailed legal questions, other works of his that deal specifically with jurisprudence

[71] Nasr Hamid Abu Zayd, *Mafhum al-Nass: Dirasa fi Ulum al-Qur'an* (Cairo: al-Hay'a al-Misriyya lil-Kitab, 1990), 10-11.

should be consulted. He apparently included this volume within *al-Mughnī* to answer questions of legal content that relate to his discussion of theology. But the amount of legal treatment in this volume of *al-Mughnī* is sufficient, in my view, to direct the reader toward understanding ‘Abd al-Jabbār’s philosophy of law.

One can observe first that ‘Abd al-Jabbār clearly states the Mu‘tazilite view of natural law. He uses the word *taklīf* (obligation) to refer to the moral values known through reason. Man has the rational ability to know the good and avoid evil acts. This knowledge is enforced, in ‘Abd al-Jabbār’s thought, by a principle of moral obligation which translates into a form of natural law theory. But similar to ‘Abduh, ‘Abd al-Jabbār argues for the necessity to have a divine law. For him, the divine law functions in two ways in relation to the natural law. First, the divine law provides some specific details about moral judgments which the natural law only considers in general. The second function of the divine law is that, according to ‘Abd al-Jabbār, certain moral precepts cannot be attained by reason alone. Only when the divine law prescribes it as moral can human reason realize such precepts. An example of this kind of moral act, observes ‘Abd al-Jabbār, is prayer. While by the faculty of reason alone, prayer is conceived as waste of time, the divine law instructs Muslims that prayer helps the person to avoid acts of mischief. Thus, by virtue of the divine law human reason can realize the moral value of prayer.[72]

What can be noticed in ‘Abd al Jabbār’s thought, as in that of ‘Abduh, is that natural law and morality are viewed through the lens of the divine law. Hence, the divine law becomes the sole arbiter in the fields of moral instruction in which the divine law has

[72] al-Qādi ‘Abd al-Jabbār, *al-Mughni fi Abwāb al-Tawhid wa’l-Adl* (Cairo: Wazarat al-Thaqafa, 1960), vol. 17, p. 13.

a voice. It remains interesting to see how human reason functions in ‘Abd al-Jabbār’s thought in the field of legal activity in which the divine law is silent. ‘Abd al-Jabbār shares with his Sunni counterparts the conviction that the Qur’ān and □*adīth* are the main legal sources in Islamic law. He accepts the view propounded by Sunnī jurists that an isolated □*adīth* (*ā*□*ād*) provides probable knowledge, but the uncertainty in its truth value does not prevent its application in practical matters. What is interesting about the construction of ‘Abd al-Jabbār’s legal thought is that he continues to bring rational proofs to advocate the primacy of the divine law (*sharī‘a*) and its established sources. For example, in arguing for accepting isolated □*adīths*, he shows that some rational proofs start with “certain” premises but end with “probable” conclusions. Similarly, if the religious knowledge in the Qur’ān is certain, by virtue of its certain authenticity, it is not irrational to have other “derivative” sources of religious knowledge that provide probable instructions such as □*adīth*.[73] By the same token, he defends the use of legal analogy (*qiyās shar‘ī*) by showing the rectitude of “rational analogy” (*qiyās ‘aqlī*). The use of *qiyās* as a method of legal reasoning in the Sunni schools is validated by ‘Abd al-Jabbār as legitimate if it is done according to certain conditions which ensure the rectitude of the analogical process. In addition, ‘Abd al-Jabbār approves the use of *ijmā‘* (consensus) as a valid method of legal reasoning similar to the Sunnī schools.

It is clear that the legal thought of ‘Abd al-Jabbār, from this volume of *al-Mughnī*, represents that of a Shāfi‘ite jurist. He refers to Shāfi‘ī in several places in way of reference and approval. What is worth mentioning, however, is that he makes an effort to show that in Islamic law four sources are legitimate, namely, Qur’ān, □*adīth*, *ijmā‘*, and *qiyās*. He argues extensively against those who disapprove of *qiyās* as an illegitimate

[73] ‘Abd al-Jabbār, *al-Mughni*, vol. 17, 32.

method of legal reasoning. As stated above, the debate about the legitimacy of *qiyās* or other methods of legal reasoning such as *'urf*, *isti□la□* and *isti□sān*, had to do with whether a jurist can use his personal judgment (*ra'y*) to reach to a legal rule that can be included within the *Sharī'a*. While the Zāhirites rejected any kind of personal judgments in matters of religion, the Sunni schools accepted the use of *ra'y* to extend the effect of the divine law to new legal cases. Among the Sunnī schools, the debate originated on what kind of *ra'y* or *ijtihād* is regarded as legitimate. 'Abd al-Jabbār agrees with his Sunni counterparts that *ijtihād* is illegitimate if it is used to override a textual rule. But he sticks to the Shāfi'ite position which contends that *qiyās* is the only legitimate method of *ijtihād al-ra'y* (the use of personal discretion or opinion) that has the ability to correctly extends the effect of the divine law. Therefore, his legal thought in *al-Mughnī* does not refer to any legal source, beyond the Qur'ān, *□adīth* and *ijmā'* except to *qiyās*.

This observation leads us to the conclusion that while 'Abd al-Jabbār's theology, including his conviction of the created nature of the Qur'ān, belongs to the Mu'tazilite school, his legal thought is that of a Shāfi'ite jurist. Hence, his legal thought can be regarded as less "rationalistic" than that of the Hanafite or Mālikite schools who allowed more methods of legal reasoning to be incorporated within the use of *ijtihād al-ra'y* than the Shāfi'ite school. Moreover, 'Abd al-Jabbār uses rational arguments to defend his Shāfi'ite position of legal reasoning.

It remains worth noting that one might object to the above conclusion by stating that 'Abd al-Jabbār's thought represents only a later Mu'tazilite view, which has to adapt, in the field of legal activity, to the dominant Sunnī theories of law, and that early Mu'tazilite theology might have produced a more "rationalist" theory of law than the

Sunnī ones. But if one assumes that ‘Abd al-Jabbār’s references to earlier Mu‘tazilite figures are genuine, then one cannot reach to a definite answer of what might be the legal thought of those figures. For example, ‘Abd al-Jabbār mentions that al-Nazzām argued against the legitimacy of *qiyās*.[74] But it is not clear in Abd al-Jabbār’s writings what kind of methods Nazzām would use to make a decision in legal cases not regulated by the sacred texts. In addition, some modern scholars of Islamic law indicate that early Mu‘tazilites rejected *hadith* as a valid source because of its uncertainty. The rejection of *hadith* literature altogether would certainly lead a jurist to fill many legal gaps with some form of reasoning that either depend on extending the effect of Qur’ānic legal rules, or through the use of *ijmā‘*, or a form of more independent reasoning such as the consideration of *maslaha* or *maqasid* in general. But according to my knowledge, the available sources on earlier Mu‘tazilite thought do not help enough in proving the real existence of a systematic legal treatment very much different from that of the Sunni schools.

But regardless of what might be the legal thought of earlier Mu‘tazilite figures, the case of ‘Abd al-Jabbār shows clearly that theological doctrines do not necessarily translate into the sphere of legal activity. If Sunni theologians believed in an eternal, uncreated Qur’ān and Mu‘tazilite theologians in a created Qur’ān, in the end both acknowledged that the word of God was revealed to the Prophet Muhammad in a specific moment of history, and that it took shape through an Arabic text. The sacredness of the Qur’ān was not abolished by the belief of a created word of God. Hence, the guidance of the Qur’ān to the Muslim community, including whatever legal rules there might be, is valid for both camps of the old theological debate. Moreover, the Ash‘arite and

[74] Ibid.

Traditionist doctrine that God is the actual creator of human actions, in contrast to the Mu'tazilite theology of "free will", did not lead to any effect in the sphere of legal activity. Clearly, in all the Sunni schools of law, human beings were treated as fully responsible for their actions.

The previous treatment of the possible connection between theology, ethics and legal theory has aimed to show that legal reform does not necessarily have to pass through theological positions aligned with those of the Mu'tazilites or any other form of the so-called "rational" theology and philosophical ethics in order to achieve its goals. This conclusion can be applied clearly to 'Abduh's thought. First, as previously demonstrated, 'Abduh's theological and ethical positions are not totally aligned with those of the Mu'tazilites, and his legal thought draws more from some Sunni schools than from 'Abd al-Jabbār or any other Mu'tazilite figure. Second, even on the points where 'Abduh's theology expresses more alignment with that of the Mu'tazilites than the Ash'arites, this theological position is not the main reason for 'Abduh's use of "independent reasoning" in the field of law. It will be demonstrated in the next chapter that one can regard "Abduh's theological positions as parallel to his legal thought in the sense that both emanate from his understanding of *maqasid al-Qur'an*, i.e. the true aims of revelation.

Chapter Two

'Abduh's '*maqā□id* Thought

Abduh's Literary Style and Its Effect on His *Maqā□id* Thought

It is important to analyze 'Abduh's legal writings in the light of their literary style. In the period in which 'Abduh lived, and throughout the twentieth century, many Muslim thinkers and reformers expressed their ideas through a very dense literary style of Arabic writing. This style is very much different from the dominant "academic" style used today in research centers and universities in the humanities and social sciences throughout the Middle East and North Africa.[75] The literary style attributed to 'Abduh and other thinkers tends to use several well-known literary devices to communicate the basic intended ideas.[76] Using several descriptive words or phrases to emphasize a certain idea, for example, would elongate the sentence, adding more emotional content to it. For an interpreter of such works, the reader has to decide or speculate whether these emotionally-loaded sentences, filled apparently with metaphorical expressions, are intended by the writer to communicate specific meanings. Since 'Abduh does not devote in his works a specific treatise for *maqā□id al-sharī'a*, my methodology in studying his *maqā□id* thought will depend largely on analyzing several passages in which he makes references to legal aims. But because of his literary style, such references might be

---

[75] This "academic" style of writing is usually called "scientific" in contrast to the "literary" in most books written throughout the twentieth century on modern Arabic literature. See, for example, A□mad al-Shāyib, *Al-Uslūb*, (Cairo: Dar al-Ma'ārif, 1975), pp. 8-15.

[76] On the main features of the literary style of nineteenth-century Egyptian writers, see John A. Haywood, *Modern Arabic Literature,1800-1970: An Introduction* (London: Lund Humphries, 1971), pp. 32-50.

expressed through terms other than *maqā□id al-sharī'a*. Moreover, some terms are used by literary writers to denote different senses of meaning. Here, one has to look into the context of such passages to discern 'Abduh's intended meaning as fully as possible.

A clear example of using terms for literary purposes can be seen in one of 'Abduh's passages. In the beginning of his lectures on Qur'ānic interpretation (*tafsīr*), as documented by his student Rashīd Ridā, he speaks of how contemporary Muslims do not understand the real meanings of the Qur'ān.[77] Their understanding of the Qur'ān, according to 'Abduh, is based on the "false" belief that if "such and such verses were written on a piece of paper and then immersed into a cup of water, this water would have a healing power for any sick person." Another misunderstanding of the religious function of the Qur'ān, observes 'Abduh, is the interest of many people during his time to listen to a beautiful Qur'ānic recitation, concentrating on the melodies and intonations without paying attention to the meaning. Then, 'Abduh concludes that this ignorance (*jāhiliyya*) of the real purpose of the Qur'ān is more severe than the ignorance at the time of the Prophet Mu□ammad. The polytheist Arabs, including Bedouins, used to listen to the Qur'ān and be affected by its meaning and style while contemporary Muslims do not.[78] This passage presents us with a possibility of interpreting 'Abduh's comparison of the current *jāhiliyya* with the old one as a reference to the state of Muslim societies during his time. If one interprets 'Abduh as saying that contemporary Muslim societies are more ignorant and unreceptive to the teachings of Islam than the polytheist society during the Prophet's time, could one then describe modern societies and their institutions as un-

---

[77] Mu□ammad Rashīd Ri□ā, *Tafsīr al-Manār*, (Cairo: Dār al-Manār, 1373/ 1953), fourth edition, pp. 26-8.

[78] Ibid.

Islamic by virtue of their "ignorance"? If this is the case, then many questions related to the legal status of living in such a *jāhilī* society and the social change needed to return it to the Islamic identity have to be addressed. One has to decide, therefore, what exactly 'Abduh means by declaring that the current *jāhiliyya* in Egypt and elsewhere is worse than that of the seventh-century polytheist Arabs.

This specific example of the kind of literary writings that 'Abduh and other Muslim thinkers engaged in is very important to analyze because it resurfaces in the works of a later figure, Sayyid Qu□b (d. 1966). Qu□b used the word *jāhiliyya* in a more vigorous way to denote current Muslim societies. He approached the meaning of an "Islamic society" by an allornone definition. An Islamic society, according to Qu□b, is a one in which all the individual feelings, thoughts, practices and institutions are derived from the *sharī'a*. A lack of any of these components would deem such a society a *jāhilī* one.[79] The highly emotionalized literary style of Sayyid Qu□b participated, without any doubt, in producing "extremist" interpretations by later militant Islamists, who delegitimized the Islamic identity of Muslim societies and called for either indiscriminate assassinations or a reenactment of the Prophet's immigration from the polytheist Meccan society.

The previous passage of 'Abduh, therefore, resonates in Sayyid Qu□b's writings, and in both figures one has to face the challenge of discerning the real, intended meaning of the author. In the case of Qu□b, and for reasons related mainly to his political activism against the Nasser regime in Egypt and his subsequent role as the father of Islamic "fundamentalism," several writers in the Middle East and the West debated his definition of Islamic versus *jāhilī* societies. While many writers see Qu□b's works as clearly

[79] See Sayyid Qu□b, *Ma'ālm fi'l □arīq*, (Beirut: Dar al-Shuruq, 1976), pp. 7-8.

delegitimating the Islamic identity of secular-ruled Arab societies, his brother Mu□ammad Qu□b, who also has written a book entitled "*Jāhiliyyat al-Qarn al-'Ishrīn*" (the *jāhiliyya* of the twentieth century), affirms that Sayyid Qu□b does not intend in his writings to denote modern Muslim societies with *jāhiliyya*.[80]

In the case of 'Abduh's reference to *jāhiliyya*, his writings in general, in addition to his political and social positions toward contemporary events, can indicate, in a clearer way than in Qu□b's case, that his intention is to emphasize what he sees as problems in contemporary Muslims' beliefs and practices without ignoring or delegitimating the Islamic identity of the Egyptian society or any other Muslim society. In other words, a more subtle reading of 'Abduh would render his writings as intended to reform an "ignorant" Islamic society to become an illuminated one, rather than to re-Islamize a non-Islamic society.

The conclusion that one might draw from the previous example is that the literary usage of the word *jāhiliyya*, which originally intended to designate the beliefs and practices of the polytheist Arabs during Mu□ammad's time, and consequently almost disappeared from usage in the writings of medieval and pre-modern Muslim jurists and theologians, is being reused by 'Abduh to emphasize a state of the Muslim mind and practice that is deviant from "pure" Islamic teachings. Thus, one has to analyze 'Abduh's linguistic references in the light of the context of a specific passage or piece of writing and his line of thought in general in order to avoid possible misinterpretation.

In addition, although both "academic" and literary styles incorporate specific technical terms pertaining to the subject, the literary style employs more synonyms to refer to the same concept. Therefore, it is my intention to be attentive to those stylistic

[80] Muhammad Qu□b, *Jāhiliyyat al-Qarn al-'Ishrīn* (Cairo: Dar Nasr, 1983), p. 3.

features in the writings of ‘Abduh and Ri□ā. This last point can be applied to the treatment of ‘Abduh’s conception of *maqā□id al-sharī‘a*. Despite the development of ‘Abduh’s writings from the old style of continuous rhythm (*saj‘*), which limits the usage of words that end the sentences only to those achieving specific rhythmic purposes, he expressed a freer style in his later writings.[81] But this free style is still imbued with many descriptive terms and the use of synonyms to refer to the same concept. ‘Abduh, however, is more committed to a systematic reference to technical terms in his pure legal writings, the *fatāwā*, than in his political or social ones. His commentary on the Qur’ān and theological works lie in-between.[82]

From the above description of ‘Abduh’s literary usage and style of writing, one has to analyze his conception of *maqā□id al-sharī‘a* not only by judging the frequency of his using this technical term but also to any other term or phrase that refers to the legal aims of the *sharī‘a*. His literary style presents us with several expressions of that nature, and following the context would be the best way to judge whether those expressions refer to *maqā□id al-sharī‘a*. It is also worth noting that the legal material that might be of interest to our purpose is not limited to ‘Abduh’s pure legal writings, the *fatāwā*, but also his Qur’ānic interpretation, works on theology, and social writings. In fact, for reasons that will be explained later, ‘Abduh’s philosophy of law and his interpretation of *maqā□id al-sharī‘a* are expressed more clearly in his lectures on Qur’ānic interpretation

---

[81] See Muhammad ‘Imāra’s comment on ‘Abduh’s early style in *A‘māl*, vol. I, p. 23.

[82] Regarding ‘Abduh’s commentary on the Qur’ān, one has to be careful not to mix his own words with those of Ri□ā. At least one can acknowledge ‘Abduh’s approval of the published volumes of *Tafsīr al-Manār*, during his life, as representing his own ideas and to a less extent his own style. On determining the parts that belong to ‘Abduh and not Ridā in *Tafsir al-Manār*, see Jacques Jomier, *Le commentaire coranique du Manâr; tendances modernes de l’exégèse coranique en Égypt* (Paris, G.-P. Maisonneuve, 1954), pp. 10-13.

and theology than the *fatāwā*. The latter follows a genre of writing that is dedicated as a response to specific questions, and consequently does not allow the writer to elaborate on his theoretical convictions.

'Abduh and the "Spirit" of Revelation

The first observation in our endeavor to determine 'Abduh's most frequently used terms to refer to the legal aims of the *sharī'a* is that he introduces the Arabic word *rū* (spirit) to refer to the inner meaning of any religious practice and revelation in general.[83] He states in *Risālat al-Taw īd*,[84] under the subheading of *Islam*, that "God made sincerity the spirit (*rū*) of worship, and what He made obligatory was for the reason of adopting good behavior." He gives as an example the Qur'ānic verse 29:45, which reads, "prayer restrains from shameful and unjust deeds."[85] Thus, he sees the "spirit" of prayer as the inner force that is capable of shaping moral behavior. 'Abduh, in the section entitled *Islam* in *Risālat al-Taw īd*, continues his description of the inner meaning and the wisdom of having prayer, fasting, and pilgrimage in Islam, adding that such rituals correspond positively to rational thinking, unlike some ritual practices of other religions. He then explains that

> the spirit ('*rū*') that God preserved in all His divine revelations includes the correction of human thinking and contemplation, disciplining the desires, knowing the right way to get into any concern, acquiring every liked thing through the right means, protecting the trust, the feeling of

[83] The word *rū* appears in the Qur'an in several verses, such as 17:85, in which spirit is contrasted to the body. There are also other meanings, but traditionally the term *rū* was not used to refer to the general principles or aims of the law.
[84] This theological work of 'Abduh has been translated into English by Ishaq Masa'ad and Kenneth Cragg. See *The Theology of Unity* (London:Allen & Unwin, 1966).
[85] 'Abduh, *A'māl,* vol. 3, p. 450.

> brotherhood, cooperation to do good deeds, giving advice in times of good and bad, and much more of such principles of virtues. This spirit is the source of the nations' life and the dawn of their happiness in this life and in the hereafter.[86]

It is clear that 'Abduh uses the word "*rū*" in this context to refer to the ethical content of revelation. It is not a direct reference to the spirit of Islamic law. But 'Abduh's emphasis on the inner meaning and the "spiritual" content of ritual practices and on ethical principles of human relations would be translated in other passages in his works into the core of his *maqā id* thought. This will be explained in the following pages.

'Abduh's usage of the Arabic word (*rū*) to describe the deep meaning or the inner truth of religion represents one of the early modern attempts to have an Arabic equivalent to the expression "spirit of the law" in Western languages. But despite 'Abduh's travel to Europe and his translation of Herbert Spencer's book on education from French to Arabic, one cannot affirm his reading of works such as Montesquieu's *Spirit of Laws* (*Esprit des Lois*) (1748).[87] But his usage of the word *rū* in ethical and legal contexts, which is lacking in medieval works, suggests having an influence from Western sources.

Abduh's Usage of the Term *maqā id al-sharī'a* and the Singulars *maq ad*, *maq ūd*, and *qa d* to Refer to the Legal Aims of Islamic Law

[86] 'Abduh, *'A'māl*, vol. 3, pp. 452-54.
[87] Ri ā mentions in his *Tārīkh* that 'Abduh translated Herbert Spencer's book on education without referring to its title and whether the translation was published or not. See *Tārikh al-Ustādh al-Imām*, vol. 1, p. 72. This book is most likely Spencer's *Education: Intellectual, Moral, and Physical* (New York: D. Appleton, 1889). Ridā also mentions that during 'Abduh's visit to southern England in August, 1903, he had lunch with Spencer and conversed with him about different topics.

It is worth noting that ‘Abduh does not frequently use the term *maqā□id al-sharī‘a*, despite the fact that he referred his readers to Shā□ibī’s *Muāfaqāt* in which the term is extensively used.[88] Here are examples of passages in which he directly refers to *maqā□id al-sharī‘a*. First, in a conversation between ‘Abduh and Ri□ā in the year 1903, documented by the latter in his *Tārīkh*, ‘Abduh speaks of the best ways to edit and present traditional books on □anafite jurisprudence. He brings an example of how some □anafite jurists followed faulty books on jurisprudence when they declared that “one cannot make ablution for prayer (*wu□ū’*) by using rose water.” ‘Abduh asks sarcastically, “Is there anything added to the water except some perfume, which is part of *maqā□id al-sharī‘a*?”[89] Here, ‘Abduh legitimizes the practice of performing ablution by using rose water on the basis of contemplating the legal aim of *wu□ū’*, which is purifying the body. Another example is found in ‘Abduh’s commentary on Q. 3:55, as documented by Ri□ā in *Tafsīr al-Manār*.[90] ‘Abduh addresses an old debate among Qur’ānic commentators whether this verse refers to the death and second coming of Jesus. One of the interpretations is that

> the future descent of Jesus (from heaven) and his rule on earth is an allegory for the dominance of the deep meaning of his message to people, which calls for mercy, love, peace, and taking *maqā□id al-sharī‘a* into consideration without stopping only at its literal meanings and sticking to its surface and not its core. This core is the wisdom (□*ikma*) and the reason for having the *sharī‘a*. The Messiah did not deliver to the Jews a new *sharī‘a*, but he came to them with what would move them from fixating on the word of Moses’ *sharī‘a*, emphasizing to them that they should have a deep knowledge of and contemplate its purpose. [91]

[88] ‘Abduh, *A‘māl*, vol. 3, p. 82. See Abū Is□āq al- Shā□ibī, *al- Muāfaqāt fī U□ūl al- Ahkām* (Cairo: Muhammad ‘Ali Sabih, 1969) vol. 2, pp 30-45.
[89] ‘Abduh, *A‘māl*, vol. 3, p. 196; cf. Rashīd Ri□ā, *Tārīkh al-Ustādh al-Imam,* vol. one, pp. 153-4.
[90] Rashīd Ri□ā, *Tafsīr al-Manār*, vol. 3, pp. 316-17.
[91] Ibid., p. 317.

'Abduh also uses the expression, *maqā□id al-tanzīl* (aims of revelation) in addition to *maqā□id al-sharī'a*. In his critique of some medieval Qur'ān commentators, for example, he states that they "occupied themselves with ways to divert the meaning from its clear reference, leading to interpretations that are very distant from *maqā□id al-tanzīl*."[92] Here, of course, the aims or purposes of revelation can refer to legal and non-legal texts. 'Abduh also uses the expressions *maqā□id al-dīn* (aims of religion) and *maqā□id al-wa□y* (aims of revelation). For the first term, in his commentary on Q. 2:29, which deals with the creation of the earth and heavens, 'Abduh comments that "the Qur'ān speaks of the gradual creation of the earth and heavens as a way of showing God's power and wisdom, and to show us His blessings, not for explaining the exact history of their creation because this is not one of the *maqā□id* of religion."[93] It is clear that Abduh's usage of *maqā□id al-dīn* in the previous example does not include any legal connotation. He, nevertheless, incorporates this expression into his legal parlance. In his commentary on Q. 3: 45-51, which mentions Mary and Jesus, 'Abduh repeats his conviction that

> the Jews, during Jesus' time, were holding to the literal meanings of the Book, and they were subjected to the interpretations of scribes and Pharisees until this situation caused them difficulties. They were crying from oppression and the severity of religious obligations. The Messiah lifted this burden from them by getting their attention back to the *maqā□id* of religion and the brotherhood that would lift oppression.[94]

Thus, *maqā□id al-dīn* in this context can refer to the spirit of Jewish law.

In addition, 'Abduh uses the word *maqā□id*, without adding *al-sharī'a*, to refer to the legal aims or the general purposes of revelation. In *Risālat al-Taw□īd*, for instance,

[92] Rashīd Ri□ā, *Tafsīr al-Manār*, vol. 1, p. 26.
[93] Ibid., vol. 1, p. 249.
[94] Rashīd Ri□ā, *Tafsīr al-Manār*, vol. 3, p. 305.

he comments on Q. 2:78, observing that the verse points out to some of the People of the Book "who used to read it without understanding its rulings and *maqā□id*. And if they intended to achieve such deep understanding, due to certain desire, they would wrongly divert the clear meaning into another and declare that it was intended by God."[95]

If 'Abduh's writings show a limited utilization of the term *maqā□id al-sharī'a*, the singulars *maq□ad*, *maq□ūd,* and *qa□d* appear frequently throughout his works. A few examples can suffice:

- On the question of polygamy, 'Abduh insists that the current status of polygamous relationships in Egypt does not conform to the *maq□ūd* of the permission in the Qur'ān. He writes in an article, published in the official newspaper *al-Waqāi' al-Mi□riyya* in its May 8, 1881 issue, that the practice of polygamy during his time was done without understanding the wisdom (*□ikma*) of the permission and with disregard to its real *maq□ad*.[96]

- On the Qur'ān in general, he refers to its *maq□ūd*.[97]

- On prayer, he mentions the *maq□ūd* of the formal movements required during its performance.[98]

'Abduh's Incorporation of the Term *□ikma* into His Legal Parlance

As indicated before, modern writers who emphasize the role of *maqā□id al-sharī'a* in their legal interpretation tend frequently to use the term *□ikma*, which refers to the wisdom behind the law or its purpose. This usage was adopted from the terminology

[95] 'Abduh, *A'māl*, vol. 3, p. 445.

[96] 'Abduh, *A'māl*, vol. 2, p. 83. This topic will be discussed in more detail later in this chapter.
[97] Rashīd Ri□ā, *Tafsīr al-Manār*, vol. 1, p. 18.
[98] Rashīd Ri□ā, *Tafsīr al-Manār*, vol. 1, p. 129.

used by some medieval legal theorists, who contrasted □*ikma* to *'illa* (efficient cause) and concluded that although □*ikma* is the attribute, pertaining to any specific legal rule, that refers to the intention and purpose of the Lawgiver, the *'illa* has a more appropriate role in achieving *qiyās* because of its measurability. Although the □*ikma* of any textual rule might be theoretically contemplated, it has only a very limited role in the application of textual rules and in conducting *qiyās* to expand the effect of such rules to new cases.[99] The question that relates to our topic is: what is the role of □*ikma*, as contrasted to *'illa*, in 'Abduh's legal thought?

'Abduh clearly uses the term □*ikma* in his theoretical legal writings and his *fatāwā* more than '*illa*. Does this observation necessarily indicate that his legal opinions depend less on *qiyās* and more on a consideration of the □*ikma* in individual texts that aim at building a system of *maqā*□*id al-sharī'a*? I'll attempt to answer this question later in this chapter. What concerns our purpose at this stage is that 'Abduh precisely uses the term □*ikma* as another reference to the purpose of having a specific law and the wisdom behind its legislation. Here are few examples:

- On the question of legal punishment, 'Abduh refers, in an article published in *Waqāi'* on December 26, 1880, to the great □*ikma* in applying the □*udūd* mentioned in the Qur'ān.[100]

- On the topic of polygamy, in the previously cited article in *Waqāi'*, dated May 8, 1881, he refers to the □*ikma* of permitting the practice of polygamy during the time of the Prophet.[101]

---

[99] For a discussion of the classical preference of *'illa* over □*ikma*, see Wael Hallaq, *A History of Islamic Legal Theories*, 1997, pp. 85-ff.
[100] 'Abduh, *A'māl* , vol. 2, p. 33.
[101] 'Abduh, *A'māl* , vol. 2, p. 83.

- On the theory of Qur'ānic interpretation, 'Abduh emphasizes the role of □*ikmat al-tashrī'* when interpreting verses related to theology, law, and morality.[102]

-On the philosophy of applying any legal rule, 'Abduh observes that if practical knowledge does not encompass the competing utilities and benefits, this defective knowledge can direct the will toward an action that opposes the *ma□la□a* and the □*ikma*, leading to mischief.[103]

Moreover, 'Abduh uses the plural of □*ikma*, □*ikam*, to refer mostly to the general purposes of the *sharī'a* or to the legal aims of more than one rule. Here are few examples. In his report on "reforming the Ottoman educational system," addressed to the Shaikh al-Islam in 1887, 'Abduh speaks of the need for a book on Islamic jurisprudence "which explains the □*ikam* of some religious rules and their benefits in human life."[104] He also refers to the □*ikam* of the Qur'ān, which, of course, deal with legal and non-legal texts. In a few places, such as in his comments on Q. 2:19-20, 'Abduh uses □*ikam* of the Qur'ān followed by the term *asrār* (deep meanings) or *a□kām* (rules).[105]

Using the Terms *haqīqa*, *u□ūl*, and *qawā'id* to Denote the Legal Aims of Islamic Law

'Abduh uses another term to refer to the "true" meaning of the *sharī'a*. This is *haqīqat al-shar'* (the deep truth of Islamic law or religion in general).[106] Two other terms,

---

[102] Rashīd Ri□ā, *Tafsīr al-Manār*, vol. 1, p. 25.
[103] Rashīd Ri□ā, *Tafsīr al-Manār*, vol. 1, p. 256.
[104] 'Abduh, *A'māl* , vol. 3, p. 80.
[105] Rashīd Ri□ā, *Tafsīr al-Manār*, vol. 1, p. 173.
[106] 'Abduh, *A'māl* , vol. 2, p. 55. This example is found in 'Abduh's article in *Waqāi'*, dated February 15, 1881, in which he declares that the practice of *dawsa* is anathema to *haqīqat al-shar'*. For a description of this practice, see footnote 109 below on page 76.

qawā'id and *u□ūl*, also appear frequently in his writings to refer to the general understanding or basic principles of the *sharī'a*. No reference in such places is made to a specific legal rule. For example, in an article published in the newspaper, *al-Waqāi' al-Mi□riyya*, May 19, 1881, he mentions "that some contemporary customs in weddings and funerals oppose the principles of morality and *qawā'id al-shar'*."[107] In another article published in *Waqāi'*, May 11, 1881, 'Abduh disparages the reading of books of legends that affirm what is against human reason and *qawā'id al-shar'*.[108] Moreover, in an article published in *Waqāi'*, April 3, 1881, 'Abduh deals with one of the current social practices in Egypt, called *al-dawsa*, and affirms that it is a religious innovation (*bid'a*) and that it is not aligned with *qawā'id al-shar'*.[109] In a conversation between 'Abduh and Rashīd Ri□ā, documented by the latter in 1903, 'Abduh replies to a question addressed by Ri□ā on how to abridge and clarify traditional □anafite books of jurisprudence. 'Abduh suggests first that one needs to depend on some good medieval works, such as Zayla'ī's (d. 743/1343), and not the unbalanced ones, such as the *Kanz* and the *Tanwīr*.[110] Second, he emphasizes that all the legal rules pertaining to a specific topic must be related to *qawā'id kulliyya* (general principles) in the beginning and then one can list all the rules in the most possible way of clarification.[111]

---

[107] 'Abduh, *A'māl*, vol. 2, p. 100.

[108] 'Abduh, *A'māl*, vol. 3, p. 50.

[109] 'Abduh, *A'māl*, vol. 2, 56. According to 'Abduh's description of this practice in his article, some people in Egypt believed that one of the late revered Sufis, by the name Shaikh Yunis, used to ride his horse over sheets of glass without breaking them. They regarded this as *karāma* and accordingly reenacted this practice by having a horse walk over the backs of men who had lain down in a row. In front of the horse and behind it several men also stepped with their shoes over the lying-down men. 'Abduh's article aimed at denigrating those who requested reinstatement of the practice, during the *mawlid* of Shaikh Yunis, after it was banned by the authorities.

[110] The reference here is to Zayla'ī's *Nasb al-Rāya,* a well-known □anafite source. The other two books are *Kanz al-Daqāiq* by 'Abdullāh al-Nasafi (d. 710/1310) and *Tanwir al-Absār* by Muhammad al-Haskafi (d. 1088/1677).

[111] 'Abduh, *A'māl*, vol. 3, p. 196.

In the same article about the practice of *dawsa*, ‘Abduh mentions that it is the policy of the Khedive of Egypt to purify religion from innovations and distasteful customs that are against its clear and well-based *qawā‘id*. Also, in the aforementioned report addressed to the Shaikh al-Islam in Constantinople, signed by ‘Abduh and other people in 1887 and containing suggestions to reform the Ottoman education system, ‘Abduh talks about the topics that should be taught to teachers. One of those topics is the theory of Islamic law (*u□ūl al-fiqh*), and he suggests that teaching this subject must emphasize the role of *kulliyyāt al-sharī’a* (general principles of the *sharī’a*) so that the detailed rules can be correctly understood. He recommends Shā□ibī’s *Muāfaqāt* as the best book to achieve this goal.[112]

One might be tempted to assume that ‘Abduh’s usage of the term *qawā‘id* (bases or principles) is similar to the classical reference to *al-qawā‘id al-fiqhiyya*, which are legal maxims developed by medieval jurists to be used in specific cases and therefore do not necessarily refer to the legal aims or purposes of the *sharī’a*.[113] One of these maxims, for instance, is *al-□arūrāt tubī□ al-ma□□ūrāt* (necessities permit prohibited deeds). This legal maxim is applied in specific cases that lie within the scope of *□arūrā* (necessity), such as the Qur’ānic permission of eating pork meat in the case of extreme hunger. It cannot be viewed, according to traditional theorization, as a general principle that must be applied to any case of prohibition.[114] Rather, ‘Abduh’s usage of *qawā‘id al-shar‘* and *qawā‘id al-dīn* is a very general one, and he does not refer in such places to any

---

[112] ‘Abduh, *A‘māl*, vol. 3, p. 82.
[113] Wolfhart P. Heinrichs, “*Qawā‘id* as a Genre of Legal Literature”, in *Studies in Islamic Legal Theory*, Bernard G. Weiss, ed. (Leiden: Brill, 2002), p. 365.
[114] For the traditional limitation of applying the case of necessity (*□arūrā*), see ‘Abd al-Karim Zaydān, *Halat al-□arūra fi’l- Sharī’a al-Islamiyya* (Baghdad: Maktabat al-Quds, 1976). However, it will be explained later that Ri□ā generalizes the application of cases of necessity to any textual rule of obligation.

specific legal maxim included within the traditionally-defined *al-qawā'id al-fiqhiyya*. Therefore, one can suggest that the word *qawā'id* is used by 'Abduh to refer to the general principles or the basic concepts of the *sharī'a*. If this is true, then one has to find such references as related to the legal aims and purposes of legislation in Islam.

The Practical Significance of 'Abduh's References to *maqā□id al-sharī'a*

If the aforementioned references by 'Abduh to the legal aims of the *Sharī'a* can clearly reflect the centrality of *maqā□id al-sharī'a* in his legal thought, it remains necessary to see if such references are only theoretical in nature or represent a real attempt to view Islamic law and its modern application in the light of well-defined legal aims, and hence having a practical effect and not only theoretical formulations. This point is particularly important because, as explained above, there is a tradition of theoretical discourse in which the legal aims and purposes of the *sharī'a* are contemplated as a means for encouraging or enforcing the literal application of legal rules rather than presenting a systematic theorization in which the legal aims must guide the application of textual rules and the juristic effort to decide rules for new cases.

The *maqā□id* of the Qurān as the Source of *maqā□id al-sharī'a*

From the previous examples, in which 'Abduh uses the terms, *maqā□id*, *qa□d*, *maq□ūd*, *□ikma*, and *qawā'id*, one can note first that 'Abduh views the significance of realizing *maqā□id al-sharī'a* as an integral part of a very deep reading of the Qur'ān. As I mentioned in the context of having a general outlook at 'Abduh's legal thought and the

"rational" component of it, he views the Qur'ān as the primary source of religious knowledge, while assigning Prophetic traditions a supportive and explicative role.[115] Thus, the Qur'ān projects itself to the Muslim as the main medium through which he/she can communicate God's intentions for the human experience and His message to build a pious society. Thus, 'Abduh's project of religious reform starts with the conviction, along the line of Ghazzālī's *I□yā' 'Ulūm al-Dīn*, that many contemporary Muslims, including some religious scholars, ignore the deep meanings (*asrār*) and purposes *(maqā□id*) of the Qur'ān. Any vision of religious reform, for 'Abduh, has to acknowledge first and foremost this directive role of the Qur'ānic text. 'Abduh's uses the word □*ikma* to refer to the deep meaning and wisdom behind any Qur'ānic verse or chapter, whether such reference deals with theological, ethical or legal questions. 'Abduh insists that this □*ikma*, attributed to each verse, has to fit within the general framework of *maqā□id al-Qur'ān*, i.e. the higher aim of communicating a divine message to humanity to attain happiness in this life and in the hereafter. The legal, ethical, and theological content of the Qur'ān has to be understood within this general framework, which is already stated and explained clearly in the Qur'ān itself, a feature that should discredit any attempt to impose extra-Qur'ānic elements to reshape its clear content. I stated before that in order to understand 'Abduh's theological positions toward questions of free will and pre-destination, for example, one has to highlight his rejection of the medieval scholastic theological discourse, be it Ash'arite or Mu'tazilite, because for him freewill is clearly stated in the Qur'ān. There is no need to abuse the meanings of Qur'ānic verses by extracting them from their context and using them to support the theological arguments

[115] On the religious authority of the Qur'ān, compared to *hadith* and other traditions, see Yusuf H. Seferta, "The Concept of Religious Authority according to Muhammad 'Abduh and Rashid Ridha", *Islamic Quarterly*, 30, 1986, pp. 159-164.

of *kalām*. Here, ‘Abduh insists that the *maqsūd* of such verses and their □*ikam* must be understood as part of the Qur’ān’s role as guidance for humanity.

Therefore, the content of Qur’ānic verses that deal with legal and ethical matters is also part of this general framework of meaning. ‘Abduh criticizes some medieval Qur’ān commentators for producing very dry interpretations that concern themselves mostly with grammar and philology. He states that this is the first kind of Qur’ānic interpretation. The second and true kind of Qur’ānic interpretation is the one that focuses on understanding the intention (*murād*) of the speaker (God) and □*ikmat al-tashrī‘* (wisdom of rulings) in theology, ethics, and law in a way that lead a person to act accordingly.[116]

For ‘Abduh, therefore, understanding the □*ikma* of legal rules in the Qur’ān is not different from or less important than the □*ikma* of theological statements or purely ethical instructions. In fact, □*ikma*, *ghara*□ (purpose), *maq*□*ūd*, and *qa*□*d* are all mentioned by ‘Abduh as a way of showing how the *sharī‘a* calls upon human reason to take an important role. As a rational being, any person needs to understand the wisdom or the purpose of any action in order to continue practicing it. Here, realizing the □*ikma* becomes the key feature for any Muslim, whether a religious scholar or not, to avoid blind imitation (*taqlīd*) in their daily religious practices. One can assume, however, that if ‘Abduh’s emphasis on □*ikma* has any practical effect beyond his theoretical formulations, it will logically lead to the consideration of □*ikma* as the main attribute that governs the application of any rule rather the traditional insistence on a literal application of the divine law. One needs at this juncture to examine some of ‘Abduh’s legal opinions

[116] Rashīd Ri□ā, *Tafsīr al-Manār*, vol. 1, p. 15.

on specific questions in Islamic law to see if his theoretical emphasis on the □*ikma* of textual rules has any practical effect.

On Marriage and Polygamy

One example of how the determination of the □*ikma* plays a central part in defining and understanding a legal rule in ‘Abduh’s legal discourse can be drawn from his writings on marriage and polygamy. He first juxtaposes the definition of marriage as found in some medieval works on jurisprudence with what he sees as the Qur’ān’s definition.[117] While the juristic definition states that marriage is a “contract by which a man owns the right of sexual intercourse with a woman,” the Qur’ān reads, “And among His Signs is this, that He created for you mates from among yourselves, that ye may dwell in tranquility with them, and He has put love and mercy between your (hearts): verily in that are signs for those who reflect.” (30:21) ‘Abduh notes that the juristic definition of marriage does not contain any word that points out to other than sexual desire, such as the moral duties that are expected in a relationship between two civilized persons. Here ‘Abduh emphasizes the idea that the □*ikma* of marriage, as stated in the Qur’ān, is to have a long lasting relationship between a man and a woman based on love and mercy. A marital relathionship lacking this attribute would be a failure. Then, based on the consideration of this □*ikma*, ‘Abduh argues against the dominant practice of arranged marriages, in which the man and the woman cannot see and talk to each other before the marriage contract has been concluded.[118] He reminds his readers that in order to establish marital relationships based on the □*ikma*, mentioned in the Qur’ān, the man

[117] ‘Abduh, *A‘māl*, vol. 2, p. 72.
[118] ‘Abduh, *A‘māl*, vol. 2, p. 73.

and the woman have to meet with each other before the conclusion of the marriage contract to make sure there is a desire from both sides to commit themselves to such a permanent bond. ‘Abduh further strengthens his argument by declaring that in all schools of Islamic jurisprudence, the woman has the right to see the man who proposed for her.

‘Abduh advances further his contemplation of the □*ikma*, or □*ikam*, of marriage by declaring that in order to establish a long lasting, successful marital relationship between a man and a woman, based on love and respect, this relationship, similar to any other contract between two parties, has to be based on the principle of justice (*‘adl*). Justice can be achieved only if the rights of the woman in this relationship are fully observed, similar to the man’s rights. The Qur’ān clearly states: “And women shall have rights similar to the rights against them, according to what is equitable...” (2:228) One of these rights is, according to the Qur’ān that their husbands should “live with them on a footing of kindness and equity.”[119] ‘Abduh further mentions Prophetic traditions that illustrate the Prophet’s just treatment of his wife ‘Āisha.[120] Thus, ‘Abduh sees equity in the marital relationship, or justice, as one of the □*ikam* or the legal aims intended by the Lawgiver. But equity or justice cannot be achieved, according to ‘Abduh, without the proper education of women in Muslim societies. Without this education, women are likely to be oppressed by their husbands.[121]

Thus far, it is clear that ‘Abduh relies heavily on his interpretation of Qur’ānic verses, and not the traditional juristic discourse, to highlight first the legal aims or *maqā□id* of marriage, and then translate this emphasis on these aims in his legal

[119] Rashīd Ri□ā, *Tafsīr al-Manār*, vol. 1, p. 19.
[120] ‘Abduh, *A‘māl*, vol. 2, p. 75.
[121] ‘Abduh, *A‘māl*, vol. 2, p. 76.

opinions, that are to some extent either different from the dominant juristic views or contrary to the accepted customs in late nineteenth-century Egypt.

In addition, the aim of achieving justice envisioned by ‘Abduh as one of the *maqā□id* of marriage resurfaces in dealing with another legal problem, polygamy. The juristic view on polygamy is based on Q. 4:3, which permits a Muslim man to marry up to four wives.[122] Most likely what caused ‘Abduh to engage himself in this legal matter is first the social problems that he found existing in the Egyptian society, especially in rural areas, due to the free practice of polygamy. The second reason for ‘Abduh’s engagement in addressing the problem of polygamy is that the attempt by the Egyptian government to intervene in regulating this practice was very much hindered by the view of traditional jurists. In an article published in *Waqāi‘*, 1881, ‘Abduh describes some social problems associated with the practice of polygamy in contemporary Egypt.[123] First, he notes that in a polygamous relationship, many problems between the wives are abundant in contemporary marriages. Because of the attempt of each wife to be in a better standing compared with the other wife (or wives), the husband in many cases physically and verbally abuses one of the wives to satisfy the other. In addition, because these wives expect at any moment that their husband might divorce them, they try to keep for themselves as much as they can from the husband’s money or other properties without his knowledge. If the husband knows about such actions by his wives, he most likely abuses them verbally and physically or refrains from providing for them. Moreover, because of this hateful and unbalanced relationship between the husband and his wives, each of them instills hate in her children’s minds against his/her half sisters and brothers. The resulting

[122] For the medieval juristic view on polygamy, see Ibn Qudāma al-Maqdisī, *al-Mughnī*, (Beirut: Dār al-Fikr, 1983) vol. 2, pp. 70-75.
[123] ‘Abduh, *A‘māl*, vol. 2, pp. 80-83.

quarrels between the children from different wives lead to quarrels between the wives themselves. In many cases, especially those seen in the rural areas of Egypt, the husband, observes ʻAbduh, solves the continuous problems between his wives by either divorcing all or one of them. The divorced wife takes all her children with her to her family's home. When she feels, after several months, that her father and the rest of her family are very much uncomfortable with the presence of her children, she sends them back to their father knowing in advance that the other wife will mistreat them. In some cases the divorced wife is not accepted at her father's home and she has to find another place to stay with her children.

ʻAbduh continues his description of the current situation of the polygamous marriages in contemporary Egypt by pointing to an objection that the *sharī'a* has obligated the husband to spend on his divorced wife and her children in a way that ensures they are properly raised, and that if she decided to marry another man after the waiting period (*'idda*), the *sharī'a* obliges the husband to find a woman that takes her role in raising the children. ʻAbduh reminds his readers that despite this religious obligation, the husband does not follow the *sharī'a* and does not spend on his divorced wife unless he is coerced to do so. In many cases the woman cannot ask for her rights in front of a *sharī'a* court judge either because the court is very distant from her family's home, and she has to leave her children for a week or two in order to travel to where the court is located, then remain there until the judge succeeds in bringing her husband to the court. If this happens, she might return home with a written pledge from the husband that he is going to pay her alimony each month according to the judge's decision. But the husband most likely would refrain from paying the alimony either because he is sure that

his divorced wife cannot return to the court due to her weak health, being occupied with work to support her children, or because she will feel ashamed to ask for her alimony. Here ʻAbduh notes that the people in the rural areas regard the woman's request for her alimony a very shameful act. Many women prefer to work hard by themselves to support their children instead of being ashamed and humiliated due to their request for alimony from their ex-husbands. ʻAbduh argues further that a divorced woman cannot find another husband, and if she does, he would be less qualified than her former husband or a very old man who cannot provide well for her and her children.

ʻAbduh concludes his description of the current polygamous relationships in Egypt by replying to an objection that such unjust treatment of the divorced wife is only done by "low and uncivilized people," and that those with high social status spend well on their divorced wives and their children. Thus, according to this objection, no harm will occur for those people if they decide to marry up to four wives and to divorce any one of them if they deem necessary. ʻAbduh notes that such people think that by having more than one wife, they are following the Prophetic tradition "marry and multiply because I will show you to other nations on the day of resurrection." The negative behavior of the "low" people should not be a basis for preventing the practice of the Prophet and the early Muslim generations, especially when there is a Qur'ānic verse that permits this practice. This Qur'ānic verse is not abrogated according to the unanimous opinion of Muslim jurists.

ʻAbduh starts his reply to this objection by noticing first that many rich husbands get rid of their wives and children. Consequently, the children are raised, in many cases, by people who do not take good care of them. We see many fathers, observes ʻAbduh, get

rid of their adult children to satisfy their new wives. Sometimes the main reason for the husband to marry a new wife is to hurt and humiliate his old wife. Moreover, ‘Abduh argues that if one assumes that the people of high social and financial status are fulfilling their obligations in terms of spending on their wives and children, the reality is that spending, and fulfilling the other rights of the wife, is not equally distributed and observed among his wives.

At this juncture, one can see how ‘Abduh emphasizes the role of the “just” treatment as the factor that must be taken into account in permitting polygamous marriage in early Islam. He states in the same article that the Qur’ān makes “justice” a condition, the lack of which the practice of polygamy must cease to exist. In Q. 4:3, after stating the permission of marrying up to four wives, the verse conditions this practice by declaring: “But if ye fear that ye shall not be able to deal justly (with them), then only one.” ‘Abduh then sheds some light on how the medieval jurists interpreted the demanded “just” treatment of several wives. Most jurists declared that the husband should divide his time and money equally between his wives. □anafite jurists stated that this Qur’ānic verse entails that the husband’s obligations toward his wives include providing them with what is necessary to sustain a healthy and good life. If the husband does not treat his wives justly, and his case were submitted to a judge, the judge has to warn him of punishment. But ‘Abduh returns to his previous observation that only a few people can achieve such a just treatment that reflects the true aim (*maq□ad*) of marriage, which is the cooperation in living and the good treatment of each other. In the end of this article, ‘Abduh clearly declares in juristic terms that the first part of verse 4:3, which permits polygamy, is conditioned (*muqayyad*) by the second part, which demands justice

in treatment. Therefore, to achieve the □*ikma* of permitting polygamy, Muslims should either refrain from this practice or learn how to achieve just treatment, which is a feature of only a few wise, pious Muslims.[124]

'Abduh's treatment of the practice of polygamy is thus far concentrated on the ethical responsibility of Muslim men in contemplating the possibility of having a polygamous marriage. Justice is portrayed as one of the important legal aims that is in practice very hard to achieve except by a few people. But in response to the question of whether the government can or should regulate this practice, 'Abduh responds with a *fatwā*, published later by Ridā in *Manār*, 1927,[125] in which he replies first to the question: what was the status of polygamy in the lands of the Arabs (or the East in general) before the time of the Prophet? He notes first that the practice of polygamy was not historically limited to the Arabs or people of the East, and that several European societies also engaged in this practice. In many societies throughout history, especially in those where the number of women was larger than men, people of authority and financial ability tended to practice polygamy. In Arabia, men used to have an unlimited number of wives. When Islam appeared in Arabia, some Arab men had ten wives. It is narrated that the Prophet ordered his Companion, Ghaylān, to keep only four wives and divorce the others. Since the Arabs before Islam used to fight each other constantly, many men were killed and many women remained without marriage. Men used to exploit this situation by having many wives. Also, wars led to enslavement of women of the enemy and expanded the effect of polygamous practices. When Islam appeared in Arabia, it was the intention of the Lawgiver to have the *sharī'a* as merciful to women, affirming their rights

[124] 'Abduh, *A'māl*, vol. 2, p. 83.
[125] 'Abduh, *A'māl*, vol. 2, p. 90.

according to just decisions. The reason for having the verse in Q. 4:3, which permits polygamy, is that some Arab men used to adopt orphan girls. When such a person liked the orphan girl or wanted to acquire her property, he married her and then gave her a very low dowry. The Qur'ān clearly prohibits such practices and orders those who adopt orphan girls to give them their property (4:2). Then, in the following verse, the Qur'ān affirms that if the weakness of orphan girls leads you to oppress them, or transgress against their rights, and you feared that if you were to marry them, then you would commit injustice against them, then you can marry other women, as many as four, but on the condition that you treat them justly. Therefore, the permission is conditioned by just treatment. In another verse, Q. 4:129, it is declared that "Ye are never able to be fair and just as between women, even if it is your ardent desire." 'Abduh then asks: if this verse clearly indicates that achieving justice between several wives is unattainable, and the other verse conditions the permissibility of practicing polygamy with achieving justice, then a Muslim man should refrain from marrying more than one wife.

'Abduh continues his discussion in the same *fatwā* by addressing the claim of some contemporary pro-polygamy people who argue that this practice was very much alive during different periods of Islamic history, and that many Muslims used to have not only more than one wife but also an unlimited number of concubines. In his reply to this claim, 'Abduh reiterates his methodology in dealing with Islamic history. He first assigns a very specific status to the Prophet's life and actions in which such actions are fully isolated from those of the rest of the community. In a previous article, he mentions how the Prophet used to treat his wives justly. The rest of Mu□ammad's Companions followed his example, although the Prophet's case of polygamous marriage cannot be

fully applied to his Companions. By focusing on the Prophet and his Companions vis-à-vis later generations of Muslims, ‘Abduh wants to emphasize the difficulty in attaining justice in polygamous contracts of marriage. In this *fatwā*, however, ‘Abduh affirms that the practice of many medieval Muslims in which they have had many wives and concubines should not set an example or a moral reference because such a practice abused the tenets of religion. Those medieval and early modern Muslims misinterpreted the Qur’ānic verses that permit marrying women captives, such as Q. 4:3, which reads: “But if ye fear that ye shall not be able to deal justly (with them), then only one, or (a captive) that your right hands possess. That will be more suitable to prevent you from doing injustice.” ‘Abduh points out that the permission to acquire concubines was limited, during the time of the Prophet, to women captives in a legitimate war against unbelievers. Those captive women were non-Muslim. But the later practice of slavery, in which Muslim women were being sold by their fathers or relatives, does not represent Islamic teachings, and therefore cannot be used as an example of unconditionally permitting polygamous marriages.

Lastly, ‘Abduh states his legal opinion in this *fatwā*, which is as follows. First, if the permission to practice polygamy is clearly conditioned by achieving justice, and one can only find one out of a million people who can fulfill this condition, then the political authority or the religious scholar can prohibit this practice by taking into consideration the majority of cases in which injustice has been committed. Second, because of the current mischief in most polygamous relationships, the political authority or the religious scholar can prohibit having more than one wife or concubines in order to achieve justice in the family relationship. But ‘Abduh keeps the door open for the permission to marry

another wife in a few cases, such as a man whose wife is barren. This is because one of the aims of marriage is to reproduce.[126] Thus, the judge can interfere in these cases and allow such a marriage out of necessity.

What is important in ‘Abduh’s legal interpretation, as expressed in his treatment of the practice of polygamy, is that what is permitted in the *sharī‘a* can be either prohibited or disliked according to the resulting harms (*mafāsid*) and benefits (*ma□āli□*). The harms of the current polygamous marriages, argues ‘Abduh in another article, have led to many transgressions against *shar‘ī* obligations.[127] The political authority can prevent practicing polygamy to preserve the public good.

The possibilities that face us in terms of judging the rationale behind ‘Abduh’s legal thinking in dealing with the case of polygamy can be contemplated before moving to other legal cases. ‘Abduh clearly presents a legal opinion, or a *fatwā*, that runs against the traditionally unconditional permission of this practice by judges and political authorities. The question is whether ‘Abduh reaches his untraditional opinion by adhering to the traditionalist methodology as stated in classical Sunnī legal theory, or by adopting a new methodology. If he resorts to a new legal methodology, then one can think of either a reliance on the role of utilities involved, *ma□āli□*, or on the consideration of *maqā□id al-sharī’a*. In other words, one has to contemplate whether the main theoretical justification of his opinion on polygamy is the legal principle which states “any permitted action in the *sharī’a* can be legally prohibited or discouraged if the judge or the religious scholar observes that more harms result from the action than benefits.” If this observation is true, then one has to confront the question whether this legal principle is a

[126] ‘Abduh, *A‘māl*, vol. 2, p. 95.
[127] ‘Abduh, *A‘māl*, vol. 2, p. 88. For traditional views on this topic, see Ibn Qudāma al-Maqdisī, *al-Mughnī*, vol. 7, pp. 22-26.

theoretical construct derived from ‘Abduh’s legal thinking or from the contribution of medieval jurists. If the latter is true, then why did those jurists not apply this principle during their time in which, according to ‘Abduh’s description, the Qur’ānic injunctions on polygamy were very much abused and misinterpreted?

It is clear that ‘Abduh emphasizes the role of “justice” in his interpretation of the Qur’ānic verses on polygamy. Whether this was contemplated by some earlier jurists or not, he establishes the theoretical justification of conditioning the effect of the permission to practice polygamy. Some jurists before him acknowledged the right of the judge to take action against a husband who did not offer his wives equal treatment in terms of financial support. ‘Abduh’s criticism of this approach, however, is that it limits the conception of the just treatment to matters related only to financial support or sexual intercourse. This was done because of the deficiency in the definition of marriage as offered by early jurists. Thus, if the □*ikma* or aim of the marriage contract is to establish a permanent relationship between a man and a woman based on mutual desirability and love, in which financial support is only a part, then the scope of the intended justice in having the marriage contract will be larger. With this interpretation, the achievement of justice in polygamous marriages becomes harder.

On the Prohibition of Making Statues

After the exposition of ‘Abduh’s legal opinion on marriage in general and polygamy in particular, I would like to shed some light on his opinions on other legal questions and contemplate the role of *maqā□id al-sharī‘a* in his thinking. In one of

several articles published in *Manār*, which describe his travel to Sicily, ‘Abduh mentions how the people of Sicily have a great interest in preserving the works of art, especially painting and statues.[128] He points out that the reason for such an interest is similar to the early Arabs’ conservation of their poetry, especially the interest of Muslims in the early centuries of Islam to collect and preserve pre-Islamic poetry. “Painting is a kind of poetry that can be seen but not heard, while poetry is a kind of painting that can be heard but not seen.” These paintings and statues, observes ‘Abduh, have, like poetry, preserved different manifestations of the lives of individuals and communities. They can truly be called a book of human conditions. They portray a human being or an animal in the cases of happiness, satisfaction, and surrender. ‘Abduh addresses his reader by noting that

> you might think those words are very much synonymous in their meanings, but when you look at different paintings, you can see the difference very clearly. Describing a man in the case of deep sadness (*jaza‘*) and fear (*faza‘*) might seem similar. But when you look at the painting, which is a silent poetry, you can see clearly the difference, and enjoy yourself with such an artful expression. It is similar to your interest in describing a courageous man by saying: I saw a lion, and you refer to that man. If one looks at the Sphinx besides the great pyramid, one can see a lion man or a man lion.

‘Abduh then declares his conclusion that the preservation of such historical artifacts is in fact a preservation of the knowledge of past individuals and communities. It is also an appreciation of the artist who has excelled in his art.

After this appreciation of the works of art and their resemblance in ‘Abduh’s eyes to the works of poetry, he then addresses the question whether such works of painting and sculpture are religiously forbidden, permitted, disliked, encouraged, or obligatory? ‘Abduh answers the question by affirming first that his observation of the benefit of the

---

[128] ‘Abduh, *A‘māl*, vol. 2, p. 204.

works of art is true and cannot be disputed. Secondly, he explains that the meaning of worship and religious veneration of such statues and paintings have been absent in the minds of the people in contemporary times. ‘Abduh then addresses the point that if such a question is presented to a *muftī*, the inquirer might refer to some religious texts that prohibit making statues. One of such texts is the □*adīth*, “the people who get the worst chastisement on the day of resurrection are the painters and statue makers (*mu*□*awwirūn*).” Most likely the *muftī* would answer that this □*adīth* was said during the time of paganism. The statues and paintings were produced at that time for two reasons: first, unnecessary obsession, and second, receiving the blessing from seeing or touching the statue or painting of a deceased pious man. As for the first reason, it is disliked by religion, and the second reason is the cause for Islam’s prohibition. In both cases, the statue maker is either occupying himself and others with what alienates them from the remembrance of God, or adding a step toward polytheism. If both of these obstacles were removed, and the benefit is sought, portraying human beings would be similar to portraying plants. Drawings of plants were added to the margins of Qur’ānic pages and the beginning of chapters, and no one of the religious scholars has prohibited such a practice despite the fact that the benefit of illuminating Qur’āns is controversial. But the benefit of statues and paintings is not controversial, as mentioned previously.

‘Abduh addresses also the objection that according to tradition, the two angels who write down the bad deeds committed by any person do not enter into a place where statues and paintings (of human or animal forms) are present. Consequently, this would lead some people to commit bad deeds in such places. ‘Abduh replies to this objection by affirming that God is watching what people do regardless of the presence of angels. He

further argues that if the *muftī* was told that the statue or painting presented a possibility for worshipping it in the future, the *muftī* would answer that if the tongue presented a possibility for lying, would it be obligatory to tie it so it could not speak? The fact of the matter is that the tongue can utter both truth or falsehood.

Finally, ʻAbduh concludes that in his judgment, the *sharīʻa* does not prohibit any method for seeking knowledge after making sure that it does not represent any harm to religion, whether in beliefs or practices. He reminds his readers that many contemporary Muslims ask disapproving questions on matters that benefit them while ignoring the existence of faulty practices. Why then, asks ʻAbduh sarcastically, they do not ask about the legitimacy of visiting the tombs of venerated people, especially when some of those venerated people are not known very well in historical sources. Those contemporary Muslims do not ask whether their veneration practices at the tombs, their gifts presented to them, and their fear of them are compatible with the belief in the unity of God. ʻAbduh declares that while the belief in the oneness of God and such practices cannot be combined within Islam, there is no antagonism between the belief in one God and the painting of human or animal forms to express knowledge and portray the mental images.[129]

If one analyzes ʻAbduh's theoretical justification of legitimizing the production of such works of art, despite the traditional prohibition based on the aforementioned Prophetic tradition, one can see that his main point of reference is contemplating the reasons and purpose of such prohibition in early Islam. Although such □*adīths* do not declare clearly that the prohibition has been made so that people do not worship such statues, ʻAbduh argues that the historical circumstances of paganism before Islam cannot

[129] ʻAbduh, *Aʻmāl*, vol. 2, p. 206.

be ignored as the main reason for this prohibition. The legal rule, therefore, solely depends in its interpretation and application on its purpose or legal aim. The question that will be addressed later is to what extent ‘Abduh’s reference to the benefits of having such works of art plays a role in determining his legal judgment.

The Transvaal *fatwā*[130]

Another example of ‘Abduh’s consideration of *maqā□id al-sharī‘a* in his legal thinking is the famous Transvaal *fatwā*. The question is posed by a Muslim living in the Transvaal, which is dominated by non-Muslims, and has three parts. First, can Muslims in the Transvaal wear hats similar to non-Muslims? Second, if non-Muslims in the Transvaal slaughter their animals, such as cows and sheep, without mentioning the name of God, can a Muslim eat from the meat of these slaughtered animals? Third, can a Shāfi‘ite Muslim pray behind a □anafite *imām* and vice versa? ‘Abduh’s reply to the first question is that if “the Muslim in the Transvaal does not intend, in wearing the Western-style hat, to convert from Islam to another religion, then this practice does not lead to apostasy. And if wearing this hat is done for the reason of preventing sunlight, avoiding harm or bringing benefit, then this practice is permitted because there is no intention to emulate non-Muslims in their dress.”[131] Although ‘Abduh does not elaborate on his opinion in this *fatwā*, apparently restricted by the concise style of *fatāwā* writing, his few words, nevertheless, can indicate that his opinion is based on a consideration of *maqā□id al-sharī‘a* that pertain to the relevant question. His reasoning reflects the point that it is permitted for a Muslim to choose a style of clothes, which are different from the

[130] For a complete English translation of this *fatwā*, see C. C. Adams, “Muhammad ‘Abduh and the Transvaal Fatwa”, *Macdonald Presentation*, vol. 3, 1933, pp. 12-29.
[131] ‘Abduh, *A‘māl*, vol. 3, p. 515; vol. 6, p. 255.

culturally accepted ones in his/her community, and similar to those of non-Muslims for reasons of benefit and interest provided that this emulation does not carry any religious meaning of converting from Islam, or might lead to this possible conversion. ‘Abduh mentions the Arabic term used to refer to this religious emulation, *tashabbuh*. There are well known Prophetic traditions that warn Muslims not to practice *tashabbuh*, which is clearly an instruction by the Prophet to his Companions to look different from non-Muslims during his time. ‘Abduh clearly understands this warning as intended to prevent any kind of religious affiliation that might lead to conversion from Islam. Therefore, ‘Abduh’s *fatwā* is based on his interpretation of the legal aim of such texts that prohibit emulating non-Muslims in clothing or general appearance.[132] As for the other two questions, although ‘Abduh’s opinion is in favor of eating the meat of the People of the Book and the absolute validity of a Shāfi‘ite’s prayer behind a □anafite *imām* and vice versa, his answers represent a direct application of texts and do not necessarily express a type of reasoning based on the *maqā□id.*

On the Question of Getting Assistance from Non-Muslims

Another example that demonstrates the centrality of *maqā□id al-sharī‘a* in ‘Abduh’s legal thinking is his opinion on a question addressed to him by a group of Indian Muslims. It is a query on the legitimacy for Muslims to obtain assistance from unbelievers and heretics to achieve noble goals that benefit Muslims. The inquirers also questioned whether this practice was done in the first three centuries of Islam, and accordingly, if it was legitimized, what would be the rule in relation to those who accuse

[132] On the influence of ‘Abduh’s conception of *tashabbuh* on later Muslim thinkers, see Ibrahim M. Abu-Rabi‘, “The concept of the ‘other’ in modern Arab thought: from Muhammad ‘Abdu to Abdallah Laroui”, *Islam and Christian-Muslim Relations*, 8 I, 1997, pp. 85-95.

modern Muslims who sought assistance from non-Muslims of being unfaithful or apostates?[133] The fact that the query came from Indian Muslims reflected, as ‘Imāra noted, a political situation in which India, similar to Egypt, was under the British occupation.[134] The writers of this inquiry reflect the opinion of some Muslims in India that they can achieve benefits for Muslims through their cooperation with the occupying British authorities, a position that resonates with ‘Abduh’s in the last decade or more of his life. But neither the inquirers nor ‘Abduh directly referred to the British occupation. Rather, they posed the question and its answer in general terms. What pertains to our topic is how ‘Abduh responds to the question and injects his *maqā□id* thought into the discussion.

First, ‘Abduh asserts that those Muslims who have sought assistance from non-Muslims to achieve benefits for the Muslim community are in fact doing what God has ordered in Q.3:104, which reads: “Let there arise out of you a band of people inviting to all that is good, enjoining what is right, and forbidding what is wrong: They are the ones to attain felicity.” As for their adversaries, observes ‘Abduh, they have not followed God’s prohibition when saying: “Be not like those who have divided amongst themselves and fall into disputations after receiving clear signs: For them is a dreadful penalty.” According to □anafite opinion, those who declare Muslims to be apostates are considered unbelievers due to their misjudgment. The least punishment for those who accuse faithful Muslims of apostasy and unbelief is the one mentioned in Q. 24:19, which reads: “Those who love (to see) scandal broadcast among the believers, will have a grievous penalty in

[133] ‘Abduh, *A‘māl*, vol. 1, p. 709.
[134] See ‘Imāra’s introduction to *A‘māl*, vol. 1, p. 15.

this life and in the hereafter: God knows, and ye know not." It is considered to be one of the Great Sins.

Second, after this extreme warning from ʻAbduh not to pass judgments of unbelief and apostasy on those Muslims who cooperate with non-Muslims, he states that those "ignorant" Muslims who accuse others of apostasy always refer to Qur'ānic verses that apparently prohibit having friendly relations with non-believers. Such verses are Q. 3:118, which reads: "O ye who believe! Take not into you intimacy those outside your ranks: they will not fail to corrupt you. They only desire your ruin..."; Q. 58:22, "Thou wilt not find any people who believe in God and the Last Day, loving those who resist God and His messenger, even though they were their fathers or their sons, or their brothers, or their kindred..."; and Q. 60:1, "O ye who believe! Take not my enemies and yours as friends (or protectors)- offering them (your) love, even though they have rejected the Truth that has come to you, and have (on the contrary) driven out the messenger and yourselves (from your homes), (simply) because ye believe in God your Lord! If ye have come out to strive in my way and to seek my good pleasure, (take them not as friends), holding secret converse of love (and friendship) with them…" After stating those verses, ʻAbduh argues that there is no possibility in interpreting them that allow "ignorants" to depend on such verses and judge their fellow Muslims as unbelievers or mischievous. A Qur'ānic verse, 60:9, clearly declares that "God forbids you not with regard to those who fight you not for (your) faith nor drive you out of your homes, from dealing kindly and justly with them: For God loveth those who are just. God only forbids you, with regards to those who fight you for (your) faith, and drive you out, of your homes, and support (others) in driving you out, from turning to them (for friend

thou hast no knowledge, obey them not; yet bear them company in this life with justice (and consideration)..." He further explains that Muslims should follow the instruction in this verse to treat unbelievers justly and kindly despite their lack of belief in Islam. He also refers to the Qur'ānic verse which permits marrying a Christian or Jewish women, and concludes that such permission leads to family relations that cannot be maintained without friendly and kind treatment.

Third, after listing verses from the Qur'ān, 'Abduh declares that

> the true meaning of prohibiting friendly relations with unbelievers is related to giving or requesting help and support in matters pertaining to religion. It is a prohibition against supporting unbelievers who intend to harm Muslims. But if one is sure that no harm to Muslims can happen due to such a relationship and the benefits are more apparent than harm, and if this relationship does not transgress against the limits of the *sharī'a,* then seeking help from non-Muslims is permissible. Anyone who seeks good is not only permitted but in fact obligated to achieve this good by any means that lead to it, provided that no harm is expected either to religion or to the life of Muslims.[135]

Fourth, 'Abduh then lists several examples that show how the Prophet and his Companions, and later the Umayyad and 'Abbāsid Caliphs, engaged in the practice of seeking assistance from non-Muslims in matters that benefited the Muslim community and did not transgress against any religious value. The Prophet, for instance, sought assistance from □afwān b. Ummayya (d. 41/661), who was a polytheist at the time, in the battle of Hawāzin and other battles. The caliph 'Umar b. al-Kha□□āb instituted the *dīwān* and books for writing down the amounts of land tax and the expenditure of *bayt al-māl*. Since most Arabs were illiterate, he sought assistance from the Byzantines and Persians. 'Abduh quotes Ibn Khaldūn (d. 808/1406) to show that the *dīwān* of Iraq remained written in Persian and the *dīwān* of Shām in Latin until the time of the

[135] 'Abduh, *A'māl*, vol. 1, p. 712.

Umayyad Caliph ‘Abd al-Malik (86/705), who ordered his deputies to translate them into Arabic. Ibn Khaldūn also mentions how some Muslim kings in North Africa had European soldiers in their armies to benefit from their style of fighting. ‘Abduh then quotes Abū al-□asan al-Ba□rī’s *al-A□kām Al-Sul□āniyya* in which he declares that it is permissible for the caliph to appoint or *dhimmī* vizier to assist him in the administration. ‘Abduh concludes his legal opinion by arguing that the evidence from the Qur’ān, □*adīth*, and the practice of early Muslims clearly permit seeking assistance from non-Muslims to bring good and benefit to the Muslim community.

It is clear that ‘Abduh’s opinion of permitting cooperation and seeking assistance from non-Muslims is based on his interpretation of the aforementioned Qur’ānic verses, and to a lesser extent from the Prophetic practice and that of early Muslim rulers. If ‘Abduh’s opponents read such Qur’ānic verses in a way that reject any kind of cooperation and friendly relationships with non-Muslims, due to the latter's unbelief, he commits himself to a different reading that underscores the role of the legal aims intended by the lawgiver. The legal aim of the verses that prohibit establishing a cooperative relationship is stated by ‘Abduh as related to following the unbeliever’s religion or intending to harm Muslims. ‘Abduh enlists verses that permit such a relationship, such as Q. 60:9, to prove that his interpretation is correct. In most of these verses, there are phrases that explain the rationale or □*ikma* of the prohibition or permission. His account of the Prophetic practice and that of early Muslim caliphs help to support his interpretation of those Qur’ānic verses.

Enforcing the Literal Application of Some Textual Rules in ‘Abduh’s *maqā□id* Thought

The previous examples of ‘Abduh’s legal opinions on specific questions that request a *shar‘ī* rule, which reflect his consideration of *maqā□id al-sharī‘a* and specifically the *□ikma* in each case, share a common feature of providing an opinion that mostly differs from the dominant traditional one. But the *maqā□id* thought of ‘Abduh is not limited to cases in which his opinions are different from traditional one(s). In fact, in some cases his concentration on the legal aims and purposes of the law enforces the “literal” application of textual rules. For example, following Ghazzālī’s *I□yā’*, ‘Abduh speaks of the *maq□ūd* of prayer, and regards “enforcing and developing the relationship with God and its consequences of doing good deeds” as the “spirit of prayer for which it is instated in the *sharī‘a* and not for the sake of only performing the required formal movements.”[136] In many verses in the Qur’ān, ‘Abduh observes, the call for regular prayers (*□alāt*) is preceded by the word *wa-aqīmū*, which means to be steadfast in prayer. This *iqāma* reflects the aim of prayer as the spirit of worship and sincerity to God. This understanding of prayer enforces the significance of the religious ritual and does not lead to any deviation from the literal application of prayer.

However, ‘Abduh’s emphasis on the spiritual aim of prayer and not the formal movements has led him, in response to some legal questions, to interpretations that favor one traditional opinion over the other. On the question of whether a non-Arab Muslim can pray without uttering any Arabic words, for example, ‘Abduh favors ‘Abu □anīfa’s opinion that validates a prayer performed with uttering words in a language other than

[136] Rashīd Ri□ā, *Tafsīr al-Manār*, vol. 4, p. 163.

Arabic. For him, as long as the spirit of prayer has been lived by the worshiper, then the prayer establishes its purpose and consequently its validity. ‘Abduh also contemplates the reasons for the prohibition in the *sharī‘a* to destroy or damage temples and places of worship for the people of the Book because although the prayers in such places are different from Muslim prayers in form and appearance, they all share a common purpose and the same spirit.[137] The respect for such places of worship, despite its roots in traditional Islamic jurisprudence, is based on ‘Abduh’s interpretation of the spirit of prayer which he sees as found in all temples of worship to God, unlike some jurists who refuse to make such a connection. Another example of how ‘Abduh’s emphasis on the *maqā□id* plays a role in enforcing the application of textual rules can be demonstrated in his treatment of the obligation of alms-giving (*zakāt*). He underscores the necessity to give the *zakāt* in order to help needy people and establish social justice.[138] He very much abhors the opinions of some contemporary *fuqahā’*, who have found excuses for rich people not to pay the *zakāt* based on legal stratagems (*□iyal shar‘iyya*). Although ‘Abduh does not give a specific example of a stratagem that is used by rich people to refrain from paying the obligatory *zakāt*, he nevertheless deals with this problem within the larger context of practices of many contemporary Muslims that are legitimized by such stratagems. He claims that such faulty interpretations that deviate from the clear meanings of textual rules are found in some religious books and advocated by those who appear as scholars of Islam. This problem, according to ‘Abduh, has led to very negative influences on lay people to legitimize what is clearly prohibited in the *sharī‘a.* He gives an example of how some *‘ulamā’* are approached by people who want them to be

[137] Rashīd Ri□ā, *Tafsīr al-Manār*, vol. 4, p. 163.
[138] Rashīd Ri□ā, *Tafsīr al-Manār*, vol. 4, p. 227.

witnesses in court to prove their innocence or to show that injustice has been inflicted on them by the other party in a law suit. What those *'ulamā'* do is to fold the paper in which their false testimony is written, so that they would not see the writing, and then sign the lower portion of the paper as if they had signed a blank paper. 'Abduh asks sarcastically whether those *'ulamā'* do not know the meaning of the Qur'ānic verse 25:72, which reads, "those who witness no falsehood…", and verse 16:105, "It is those who believe not in the signs of God, that forge falsehood: It is they who lie!" Also, according to a Prophetic tradition, false testimony is regarded as one of the Great Sins. It is clear that many legal rules in the Qur'ān and Prophetic traditions reiterate the significance of applying such rules constantly. 'Abduh's emphasis on the legal aims of alms-giving and testimony, therefore, is the main reason for his attack on the so-called legal stratagems.

On the Obligatory Character of Political Consultation (*shūrā*)

An example of 'Abduh's emphasis on the role of legal aims in his political thinking is related to the question of whether political consultation (*shūrā*) has an obligatory character in Islamic law or only a recommended one. In three articles, published in *Waqāi'* in 1881, he deals with political authority and consultation. 'Abduh observes that there are Qur'ānic verses and Prophetic traditions that clearly call on rulers to consult the community at large on matters related to the public good. For example, Q. 3:159 reads, "...and consult them in affairs (of moment), then when thou hast taken a decision, put the trust in God..." Some jurists concluded from such verses that it is recommended for a ruler to consult his people and that even if he chooses to consult on such matters, he retain the right to reject the requested advice. But 'Abduh elaborates on the previous Qur'ānic verse by commenting that it means that after you conduct

consultation, then you decide and apply the decision. ‘Abduh confirms that the consultation mentioned in the Qur’ān is intended as obligatory practice, as some early Qur’ānic commentators concluded, and not merely recommended.[139] For our purpose, however, it is important to show how ‘Abduh’s emphasis on the obligatory character of political consultation is part of his *maqā□id* thought.

‘Abduh contemplates the purpose of political consultation as an instrument to limit the authority of rulers and make their decision in alignment with the law of the land. He embarks on a philosophical analysis that shows how in any nation laws must reflect and originate from the public will. Any legal rule that only reflects the narrow interests of the political authority at the expense of the public good does not have the real status of law.[140] ‘Abduh’s rationale for this position is that consultation assures the right application of the law, and that no law is legislated or enacted in a way that contradicts the public good. Within this general understanding, ‘Abduh looks into the role of *shūrā* in the Islamic context. Islam is very much against political tyranny because a tyrant would not abide by Islamic law, which represents the public good, and therefore the private interests of such rulers would lead to decisions that transgress the limits of the *sharī‘a*. For this reason, and in order to ensure the just application of the *sharī‘a*, *shūrā* has to be obligatory on the part of political authorities. The aim of political consultation, which is to ensure that the ruler’s decisions are in fact reflecting the public will, cannot be achieved without framing the *shūrā* within the obligations of the political authority. But to achieve this goal, ‘Abduh declares that since there are no specific measures in the Qur’ān or Prophetic traditions that state clearly the way *shūrā* can be practiced, it is

[139] ‘Abduh, *A‘māl*, vol. 1, p. 354.
[140] ‘Abduh, *A‘māl*, vol. 1, p. 362.

possible to adopt new ways of political representation from Western models. In sum, one can notice that ‘Abduh’s reasoning about the obligatory character of *shūrā* is very much influenced by his understanding of the purpose of such an institution and what is expected from executing the rule of *shūrā*.

‘Abduh’s Report on Reforming the *sharī‘a* Courts in Egypt

There is another area of legal activity in which ‘Abduh also offers an understanding that is based on *maqā□id al-sharī‘a*. In 1899, the Egyptian government assigned ‘Abduh to inspect the *sharī‘a* courts and write a report to explain what was needed to reform the *sharī‘a* court system. After several visits to courts around Egypt, he submitted his report to the minister of justice in November, 1899.[141] What is relevant to our topic in ‘Abduh’s report is that he more than once instructs the judges to consider *maqā□id al- sharī‘a* in their decisions. For example, he declares in the beginning of his report that “the *sharī‘a* has, in the field of family law, deep meanings that only those who have knowledge of its general rules and studied correctly its *maqā□id* can pay attention to.”[142] In another place of his report, ‘Abduh complains that “most of the problems in religious culture come from people who think that *sharī‘a*, in the field of *mu‘āmalāt*, is only words that needed to be memorized without paying attention to their meanings and *maqā□id*, and without consideration of the interests of the people and how to establish justice.”[143] But in addition to having such general instructions to judges to take *maqā□id al-sharī‘a* into consideration when making decisions, one needs of course to examine in more detail ‘Abduh’s report to substantiate those general observations.

[141] ‘Abduh, *A‘māl*, vol. 2, p. 217.
[142] ‘Abduh, *A‘māl*, vol. 2, p. 219.
[143] ‘Abduh, *A‘māl*, vol. 2, p. 251.

Before we delve into ‘Abduh’s report to reform the *sharī‘a* courts, it is imperative at this juncture to provide an historical background to the status of *sharī‘a* courts in Egypt by the end of the nineteenth century vis-à-vis the so-called *ahliyya* courts and the general picture of Egyptian legal system at the time.[144] This historical background is essential to understand ‘Abduh’s concerns and his commitment to reform the *sharī‘a* courts. The first observation that one encounters in reading ‘Abduh’s report is how much the □anafite school of jurisprudence dominated the *sharī‘a* court system. This is, of course, due to the great influence of the Ottoman authorities. We know from historical sources that after conquering Egypt in 923/1517, the Ottoman Sultan Salīm at first accepted the system of four independent chief justices, overseeing the judges who ruled according to the four established Sunnī schools. However, he later gave the □anafite chief justice more powers to oversee the judges of other schools. During the reign of the Ottoman Sultan Sulaymān, a Turkish Ottoman judge was appointed as the only chief justice in Egypt, and the system of having four chief justices was abolished. Since that time the Ottoman chief justice, and consequently the □anafite school of jurisprudence, used to dominate judicial activities in Egypt. But jurists and judges from other Sunnī schools still existed, having many followers from the people of Egypt.

When Mu□ammed ‘Ali ruled Egypt in 1816, he started to adopt European laws in some fields, such as commerce, aiming to modernize Egypt. Since that time, a new source of legislation came into existence in Egypt in addition to the *sharī‘a*. Following this endeavor, Rifā‘a al-□ah□āwī (d.1873) translated the French civil law into Arabic.

[144] For a general source on the development of the modern Egyptian judicial system, see Adel Omar Sherif, *The Origins and Development of the Egyptian Judicial System* (The Hague: Kluwer Law International, 1996).

Also, some European penal codes were introduced into the Egyptian legal system. In 1856, during the reign of Sa'īd Pasha, the Egyptian government established new courts called *majālis ma□alliyya*. In 1876, during the reign of Ismā'īl Pasha, the so-called mixed courts (*mukhtala□a*) were established. The law code in these courts and their judicial system was taken from French, Italian, and Belgian sources. These courts were specialized in legal cases, whether civil or commercial, either between foreign residents in Egypt or between those and Egyptian citizens. In 1883, the Khedive Tawfīq ordered the establishment of a new system of courts, called *ahliyya*, that followed the example of the *mukhtala□a* courts. These courts were opened for adjudication in the same year, 1883, in lower Egypt, and in 1889 they were opened in upper Egypt. [145]

By establishing the *ahliyya* courts, which mainly ruled according to French law, the role of the *sharī'a* was limited to personal-status law. All the laws pertaining to civil, commercial, marine, litigation, and penal cases were taken from French law. But some civil matters remained within the authority of the *sharī'a* courts such as *waqf* (Islamic endowment) and *hiba* (gift). A few matters that related to penal laws also remained within the adjudication of the *sharī'a* courts, such as blood money given to the deceased's family in cases of murder among Muslims.[146] In sum, in the last quarter of the nineteenth century, three judicial systems existed in Egypt: the *mukhtala□a* courts, the *ahliyya* courts, and the *sharī'a* courts. For the latter, their first official regulatory code was established in 1856, in which the judges were ordered to rule only according to the

---

[145] Enid Hill, *Mahkama: Studies in the Egyptian Legal System Courts and Crimes, Law and Society* (London: Ithaca Press, 1979), pp. 1-3. On introducing French codes in Egyptian legal system, see R. Peters, "Islamic and secular criminal law in nineteenth century Egypt: The Role and Function of the Qadi", *Islamic Law and Society*, 4 I, 1997, pp. 80-90.

[146] R. Shaham, *Family and the Courts in Modern Egypt: A Study based on the decisions by the Shari'a Courts, 1900-1955* (Leiden: Brill, 1997), pp. 13-14.

□anafite school. In later regulations, 1880 and 1897, the judges were instructed to rule according to the established opinions within □anafite jurisprudence.

But the regulation that attempted to keep the *sharī'a* courts within the confines of □anafite jurisprudence, apparently to achieve a sense of social and legal unification across Egypt, did not solve the discrepancies in the judicial system of the *sharī'a* courts. According to Rashīd Ridā, the reason for the Khedive 'Abbās's instruction to 'Abduh to inspect and reform the *sharī'a* courts is that many people complained about their dysfunction and some legal experts even suggested abolishing those courts or subsuming their work under the *ahliyya* courts. Let us look into 'Abduh's attempt to reform the *sharī'a* courts and the main points suggested in his final report.

'Abduh's report encompassed eighty-three pages and dealt with several aspects that related to the functions and procedures of the *Sharī'a* courts in Egypt. For example, he spoke of the need for such courts and their expected functions, the judges, contracts, clerics, the process of litigation, witnesses, lawyers, and the past regulations issued by the ministry of justice. He highlighted some procedural problems such as the difficulty for many people to deal with the courts' clerics, the long time many cases take in court, and the obscurity of the procedures of litigation even for those who were knowledgeable of the *sharī'a* rules. 'Abduh also noted that the salaries of the judges in the *sharī'a* courts were very much less than those in the *ahliyya* courts and suggested a raise in their salaries.

In addition to the previous procedural suggestions, 'Abduh's report demands three major changes or reforms. First, the expansion of the specialization of the *sharī'a* courts through the inclusion of several civil cases. Second, the judges do not have to be

followers of the □anafite school. A Shāfi'ite jurist can understand the opinions of the □anafite school and rule accordingly if he is appointed as a judge in the *sharī'a* courts. Third, 'Abduh suggests that there is a need to form a committee of scholars to write a book on *mu'āmalāt* that fits the needs and requirements of the people. He recommends having a book similar to the Ottoman *Majalla*, a work dedicated to codify the *sharī'a*. This book cannot achieve its goals, argues 'Abduh, unless the legal rules are based on all the established schools and not just the □anafite. He reminds his readers that this inclusive work does not necessarily lead to the arbitrary eclectic procedure, known as *talfīq*, which many medieval jurists rejected.

In general, 'Abduh's reform project of the *sharī'a* courts, as he stated in his introductory pages of the report, stems from the importance of these courts as a legal apparatus that "keeps families intact and prevents social problems." He also mentions that the absolute aim of the courts is "the protection of life and social honor." Thus, if the judicial system fails to preserve human life, dignity, and the family institution, this system would not function as the lawgiver intended. But to achieve these final goals, there must be an application of justice in the judicial process. Justice becomes one of the *maqā□id* in 'Abduh's thought, without which the final *maqā□id*, namely, the preservation of life, dignity, social honor, and the family institution, cannot be achieved. 'Abduh reminds the judges that their rulings must be guided by both the *sharī'a* and principles of justice.[147]

If achieving justice becomes one of the crucial legal aims that 'Abduh envisages in the judicial process, and if it is mentioned several times in his writings in conjunction with the term *sharī'a*, which leads us to assume that "justice" has criteria that can be

[147] 'Abduh, *A'māl*, vol. 2, pp. 215, 285.

known and applied even in a human law and not only in the divine law, then one has to examine ‘Abduh’s conception of the judicial justice. In his report, he refers to the principles of justice and how it can be achieved in the *sharī‘a* court system, but he does not offer a general conception of what justice is and how it can be defined. However, in his commentary on Q. 4:58, published in *Manār*, he provides a detailed description of what constitutes justice and how it can be achieved in judicial decisions. The verse reads: “God doth command you to render back your trusts to those to whom they are due; And when ye judge between man and man, that ye judge with justice...” ‘Abduh comments on this verse by observing that

> God ordered the one who rules between people that he judges with justice. Judging between people has several ways, such as political authority, jurisdiction, and the agreement between the two parties in a conflict to refer to a third party to rule in a specific case. So everyone who judges (between people) is obligated to be just. God also commands justice in other verses, such as “God commands justice...” (Q.16:90), “O ye who believe! Stand out firmly for God, as witnesses to fair dealing, and let not the hatred of others to you make you swerve to wrong and depart from justice. Be just: that is next to piety...” (Q.5:8), and “O ye who believe! Stand out firmly for justice...” (Q.4:135). God also prohibited committing injustice and assigned punishment for it in many Qur’ānic verses. But the definition of justice and its interpretation is not mentioned in the Qur’ān or □*adīth*. Justice, however, depends on two points. First, the judge should know the rule legislated by the Lawgiver (God) so that disputes between people can be solved accordingly. Examples of such rules are the verse “O ye who believe! Fulfill (all) obligations” (5:1), which obligates us to fulfill whatever contracts we conduct, and the verse “And do not eat up your property among yourselves for vanities, nor use it as bait for the judges with intent that ye may eat up wrongfully and knowingly a little of (other) people’s property” (1:188), which prohibits illegally acquiring another’s property and giving bribes to judges. This is also reported in sound □*adīths* about the rulings and judgments of the Prophet. Therefore, it is incumbent on a judge to rule according to what he knows of the ruling of God and His messenger. The application (of such rulings) might be literal but in some cases there might be a need for using analogy and deduction. Thus, this kind of justice is well-known to people, but it should be mentioned only to remind people and make them attentive to it. The second kind of justice has two components. One of them is understanding

> the legal case according to the claim of the plaintiff and the defense of the defendant so that (the judge) can know objectively the subject of the litigation based on the evidence presented by the litigants. The second component is the objectivity of the judge and his lack of bias toward any one of the litigants and his personal desire such as disliking one party or the other. This kind of justice is well-known to people. Thus, the two kinds of justice are well known, and therefore justice is mentioned in the Qur'an without definition because it is self-defined and known in a way similar to sensing the light. In sum, justice is the quality of giving the right to the one who deserves it through the least difficult method. This cannot be achieved without fulfilling the two kinds of justice mentioned above. Any kind of decision that does not fulfill them represents injustice. If the judge, for example, postpones a lawsuit because of formalities and customs that do not lead to establishing justice, or if the judge does not accept a testimony because it has not been done according to specific wording even if this testimony represents clear evidence that can lead the judge to know the truth about the case, does such a judge achieve justice in his ruling? If we acknowledge that and contemplate the judicial decisions in our time, do we see them conducted properly based on the principles of justice? We find that our *sharī'a* courts have conditions on how to bring a lawsuit and how to conduct the testimony of witnesses based on specific wording such as "I witness", "this", or "the mentioned." In cases that relate to property disputes, the court obligates the litigants to precisely state the type of coins (used during the sale) and the place they were produced even if the value is already known to both the judge and the defendant. All these terms more often prevent establishing justice because the lawsuit or the testimony is rejected due to its inconformity with the technical terms despite that the meanings are the same. In addition, everything that prevents people from understanding the *sharī'a* will be one of the reasons for lacking justice in the system. There is no excuse for people being ignorant because they are obligated to understand the *sharī'a*, and this requires abolishing all the technical terms that prevent them from understanding it.[148]

The previous passage helps us to understand 'Abduh's conception of justice as a legal aim that judges in the *sharī'a* courts ought to achieve. It is clear from this quotation that although 'Abduh sees justice as a legal aim commanded by the Lawgiver in the Qur'ān, some components of justice in the judicial system are in fact general principles

---

[148] Rashīd Ri□ā, *Tafsīr al-Manār*, vol. 5, p. 236.

that can be known and ought to be observed in any court of law, whether guided by the *sharī'a* or not. But it is also imperative to note that justice in the *sharī'a* courts depends largely on the judges' ability to apply the *shar'ī* rules in matters of disputes. In other words, the judge must follow the positive legal code in which the function of the court is defined.

The previous quotation also gives a glimpse into 'Abduh's concerns about achieving justice in contemporary *sharī'a* courts. His examples of faulty procedures in these courts highlight a theme that is very much discussed in his report, namely, the strict formality of the procedures to the extent that justice in the judicial system has not been served. Let us view some of the examples that 'Abduh cites in his report. In the section on "agency in litigation" (*tawkīl*), 'Abduh deals with a major problem. He observes that most judges in the *sharī'a* courts do not accept a written document signed by the plaintiff or the defendant authorizing another person to be their agent. The judges claim that, according to the *sharī'a*, two witnesses have to testify for affirming such an agency. 'Abduh contends that there is nothing in the *sharī'a* which limits the legal proof of the agency to only having two witnesses. He explains that if the judge's purpose is to make sure that a certain person validly represents another as his agent, then a document that indicates such agency, which lacks any sign of forgery, might be more authentic as evidence than having two witnesses who might be bribed by the plaintiff to testify. 'Abduh contends that the judges even reject documents issued by other courts or government agencies and insist on the presence of two witnesses. 'Abduh also argues that while the judges refuse to accept written documents as proof of agency, they contradict the very procedure through which they have become judges. The judge is appointed by

the Khedive of Egypt through a governmental document that states such appointment and is not based on listening to the khedive's instruction to him to assume such an office. Clearly this example represents for ʻAbduh a strict formality that leads to many delays in lawsuits because of the difficulty in bringing witnesses to the court, compared with a written document, and hence the possibility of having false witnesses.[149] He concludes that such practices have turned people away from the *sharīʻa*, attributing to it what is not part of it. The fundamentals (*u□ūl*) of the *sharīʻa* are still preserved, clear and pure, available for the one who wants to understand them.

Another problem that ʻAbduh contends with in his report is mentioned in the section on "trial" (*murāfaʻa*). ʻAbduh observes that it is a common practice in the *sharīʻa* courts that the judge asks the litigants about their full names, and they should present witnesses to verify their full names, including the names of their grandfathers. If the witnesses were not present, the case would be postponed until they could bring witnesses who verify the litigants' full names even if those witnesses were false ones. In some cases the judge might dismiss the lawsuit when he sees that the name of the grandfather of one of the litigants is not written down in the official record without attempting to ask the litigant himself about the name of his grandfather. ʻAbduh mentions a strange case in which the judge dismissed a lawsuit because the plaintiff allegedly did not state the full name of the agent who was appointed by the judge himself to represent the other party. ʻAbduh contends that such practices run against reason and the *sharīʻa*.[150] In another case, a man presented himself in front of the judge as an agent for his sister. He said, "I

---

[149] ʻAbduh, *Aʻmāl*, vol. 2, p. 254.

[150] ʻAbduh, *Aʻmāl*, vol. 2, p. 261.

am so and so," and mentioned his full name. He also said, "I represent my sister so and so," and he did not mention her full name because he already mentioned his full name. The judge regarded the case invalid due to the absence of the sister's full name. In another case the lawsuit was dismissed because the full name of the wife was not declared, though the name of her husband was known to the judge.

'Abduh begins his critique of such practices by arguing that the two litigants' declaration of the names of their fathers and grandfathers, especially if both of them are present in front of the judge, does not have any basis in the *sharī'a*. It is ignored in the main medieval legal sources, and also in the Ottoman *Majalla*. 'Abduh takes the reason for this lack of reference to be that both litigants are already known to the judge and present in front of him. Medieval jurists only stated the necessity to declare the full names in cases of property ownership. However, they disagreed on the issue. Abū □anīfa said, "The name of the grandfather must be stated, because with it a full recognition (of the property's owner) can be achieved." 'Abduh notes that Abū □anīfa's opinion provides an evidence that stating the name of a party in a lawsuit aimed at distinguishing the person from others, especially at a time when the grandfather's name represented the family name. Many people were recognized by their family name. That is why jurists clearly indicated that there was no need in the case of a well-known property to ask about specific details to define it, or to ask a well-known person about his family name or his lineage. 'Abduh continues his discussion by arguing that in contemporary times a person can be known to people through one name, a family name, his house, or his vocation. All these things make this person very much known to people to the degree that he would not be confused with any other person. Many people nowadays, 'Abduh observes, do not

know the names of their grandfathers or family names. He concludes from dealing with this problem that such formalities elongate the time of trials and cause harm to people, which might lead them into falsehood and forged testimonies. This is exactly what the *sharī'a* prohibits. Thus, it is imperative to follow only what is ruled in the *sharī'a* on this matter.[151]

As for requiring witnesses to authenticate the litigants' names, 'Abduh states that the judges in the *sharī'a* courts have exaggerated its significance. "If one asks those judges, 'Are you obligated by the *sharī'a* to do so?', they would answer, 'We do not know any basis in the *sharī'a* for such an obligation, but it is rather a custom'." 'Abduh notes that he was told by one of the judges that the latter accepted in a lawsuit the testimony of people who lived in a different city from the litigants'. The judge then was admonished by a higher official in the ministry of justice, and he was instructed that he should only accept a testimony to verify the name of a litigant from people who resided in his city and not in other cities. 'Abduh contends that it is mentioned in the regulatory law of the *sharī'a* courts that such testimony would only be required if necessary. "The jurists mentioned that the one who is a defendant in a lawsuit must be well-known or defined. If a man says, 'I am suing one of the people in the village,' without declaring who he is, his case would be invalidated."[152]

It is important to note that 'Abduh's focus, in all such legal practices, is on the purpose intended to achieve justice in trials. He concludes this section with a statement that "medieval jurists established methods of verification in lawsuits, and some of these

---

[151] 'Abduh, *A'māl*, vol. 2, p. 262.

[152] 'Abduh, *A'māl*, vol. 2, p. 262.

methods can be understood by both litigants. As for such contemporary restrictions, one cannot attribute them to the *sharī'a* and its Arabic usage. What is important is how terms can lead to understanding and disclosing what is intended." What relates to our topic is that 'Abduh's focal point is how the judicial system, including its linguistic content, can achieve the goal of just litigation. For him, what matters is whether the litigants are known to the judge and not confused with others. The formality of procedures becomes secondary to the intended purpose.

'Abduh mentions another problem that relates to calling witnesses for testimony. He notes that the *sharī'a* courts do not officially contact a witness asking him to testify in front of the judge because the judge assumes that the witness' religious conscience should prevent him from declining to testify. And if he refuses to come to court, he would commit a sin, and therefore can be called a *fāsiq*. This status makes his testimony invalid. 'Abduh argues that many people are accustomed not to come by themselves to courts to testify unless they are officially requested to do so by the court. He asks sarcastically, "Who is concerned today about committing such a sin by not testifying? There is no harm in addressing the witness and reminding him of his obligation."[153]

In the section with the subject heading *al-A□kām* (the rulings), 'Abduh states that there are many contemporary matters for Muslims in which necessity requires paying attention to them. It is important to explicate rulings in such matters that prevent harm and achieve justice and do not contradict the *sharī'a* but rather are an essential part of the *sharī'a*. He gives examples of rulings that relate to the cases of the one who has disappeared (*ghā'ib*) and the one who is lost (*mafqūd*) who left property, and whether it is

[153] 'Abduh, *A'māl*, vol. 2, p. 269.

permitted to appoint an agent (*wa□ī*) who represents such a person in court and preserves his/her property and defends him/her against accusations. Such questions are controversial in the schools of jurisprudence, and judges are confused about how to rule in such cases.

Another problem is the case of the wife whose husband left her without any financial resources and disappeared. Or his residence might be known, but even if the court ruled that he must pay alimony to his wife, there is no hope to contact him. Or he might be imprisoned for a long period and his wife has no financial resources, even a loan. Or the husband is residing with his wife but does not spend anything on her. Another case is of the woman whose husband does not give her marital (sexual) rights. ‘Abduh claims that all these cases troubled many people and caused many complaints in all parts of the country. This situation has led many women to commit adultery out of necessity to provide for themselves and their children because with the current state of the *sharī‘a* courts, they could not find any way to solve their problems. He concludes with the question: “Isn’t it obligatory to consult the pure *sharī‘a* and find in it the way to preserve sexual honors and lives, knowing that preserving them is one of the most important *maqā□id* of religion and the *sharī‘a*? We do not expect not to find in *sharī‘a* texts a way to achieve what is most important of its goals.” Here, ‘Abduh suggests that “there is a need to have a committee of scholars who can provide *shar‘ī* rulings that cure the illnesses of the Muslim nation in all subjects of *mu‘āmalāt*, especially in the areas that relate to the function of the *sharī‘a* courts, namely, the laws of personal status and religious endowment (*waqf*). They can collect their findings in a book that also includes a section on litigations in the *sharī‘a*.” ‘Abduh suggests that this book should become

officially binding for judges, and if they have further questions or matters of obscurity, they can refer to the *muftī* of the ministry of justice or the *muftī* of Egypt.[154]

In conclusion, ‘Abduh’s report to reform the *sharī‘a* courts in Egypt underscores the centrality of *maqā□id al-sharī‘a* in his legal thinking and provides several examples of how he envisions the judicial system in those courts to serve and achieve justice. “Justice” as a legal aim is presented in the report as a means to achieve the highest goals of preserving life, honor, and the social institution of the family.

‘Abduh’s Official *fatāwā*

Another body of literature that can, to some extent, shed more light on ‘Abduh’s legal thinking is the collection of his *fatāwā*, published in part by ‘Imāra in *A‘māl*.[155] On June 3, 1899, an official decree signed by the Khedive ‘Abbās □ilmī instated ‘Abduh as the *muftī* of Egypt.[156] ‘Imāra mentions that according to the records of *Dār al-Iftā’*, ‘Abduh issued 944 *fatāwā* between 1899 and 1905. His *fatāwā* span several topics such as inheritance, Islamic endowment, sale contracts, loans and financial transactions, marriage and divorce, and punishment for crimes.[157]

---

[154] ‘Abduh, *A‘māl*, vol. 2, p. 276.
[155] Muhammad ‘Imara published in ‘Abduh’s “Complete Works” (*A‘māl*) only 184 *fatāwā*. He asserts that the rest are mainly “traditional” *fatāwā* in which ‘Abduh mostly followed the letter of □anafite jurisprudence. See *A‘māl*, vol. 6, p. 244. Andreas Kemke analyzed 402 of ‘Abduh’s *fatāwā* on *Waqf*. My study depends mainly on these two sources which, in my view, provide enough samples for analyzing ‘Abduh’s *maqāsid* thought.
[156] On the circumstances of ‘Abduh’s appointment as *muftī* of Egypt, see Jacob Skovgaard-Petersen, *Defining Islam for the Egyptian State: Muftis and Fatwas of the Dār al-Iftā* (Leiden: Brill, 1997), pp. 119-20.
[157] ‘Abduh, *A‘māl*, vol. 6, p. 243.

One has to acknowledge first that since the position of the *muftī* of Egypt was designed to provide *fatāwā* according to the □anafite school of jurisprudence, ‘Abduh’s opinions were very much in line with the □anafite views.[158] In other words, the *fatāwā* represent a restricting element to ‘Abduh’s legal thinking. He clearly acknowledges this restriction in his *fatwā*, dated 1318/1901 and related to the question of the inability of an imprisoned husband to provide for his wife while at the same time refusing to divorce her. In this *fatwā*, ‘Abduh chooses to address not only this specific question but rather to deal with the social problem in general. Many cases include the following: either the husband is serving a long time in prison or has disappeared without leaving anything to provide for his wife and children. Other cases are of a husband who is available and living with his wife and children but mistreating them and either unable or unwilling to spend on his family what is necessary to sustain their lives.[159] Through the several pages of ‘Abduh’s response to the question, he acknowledges that the khedive is the one who appoints the judges and instructs them to follow a specific school of jurisprudence in their decisions. But ‘Abduh addresses the point as to whether a □anafite jurist can rule on a specific question according to another school. He mentions that there is a disagreement among medieval □anafite jurists on the permission to rule according to a different school and whether such ruling can be applied or not. Most of them, ‘Abduh declares, think that such ruling can be applied. He cites the author of *Fat□ al-Qadīr* stating that “it is permitted to rule according to another school because the judge is instructed to consult, and the result of such consultation might be different from the dominant opinion of his

[158] ‘Abduh’s commitment to □anafite jurisprudence in his *fatāwā* is attested by Andreas H. Kemke in his study on ‘Abduh’s *fatāwā* on religious endowment (*waqf*). See Kemke’s *Stiftungen im muslimischen Rechtsleben des neuzeitlichen Ägypten: Die schariatrechtlichen Gutachten (Fatwas) von Muhammad ‘Abduh (st. 1905) zum Wakf* (Frankfurt: Peter Lang, 1991), p. 109-17.

[159] ‘Abduh, *A‘māl*, vol. 6, p. 379.

school." ‘Abduh argues that it is clear from the □anafite jurists' reasoning about their opinions that the real disagreement is on the ruling of a judge, appointed by a higher authority, to rule according to the □anafite school, in which his opinion discards the □anafite one without having a case of necessity (□*arūra*). But if such an opinion has an authorization from the one who appoints the judge or it has been issued due to clear necessity, then there is no disagreement on the validity and applicability of such a decision.[160]

It is clear from ‘Abduh's reasoning that he is suggesting that there might be some cases in which he, as a *muftī* of Egypt, can issue a *fatwā* based on the opinion of a school other than the □anafite one. It also illustrates the difficulty ‘Abduh faces in advancing such view. The main reason for raising the question of following the opinion of a school other than the □anafite one is the fact that the □anafite opinion on the case of the woman, left by her husband without financial support, is nothing but waiting until the husband either is freed from imprisonment or has returned back after a long period of disappearance. ‘Abduh clearly presents such questions as reflecting a very serious social problem that require an appropriate ruling based on necessity. In the beginning of his response, he mentions that he was recently asked about the case of a woman who converted from Islam because of the mistreatment of her husband and another woman who intended to convert from Islam because she was forced to remain the wife of the man who had killed her father. ‘Abduh adds that while he was writing this *fatwā*, a complaint came to him from a woman whose husband was unable to provide for her. "As for the complaints from the wives of those who disappeared or who are unable to spend

[160] ‘Abduh, *A'māl*, vol. 6, p. 381.

on their families, many of them were sent to me."[161] 'Abduh argues that the only way to solve this problem is for the judge to divorce the wife from her husband, and to regard the man who disappears for a long time as a deceased husband. This is a case of necessity that must be considered according to the Qur'ān, the *sunna*, and the consensus of scholars. To issue a decision based on necessity is not a type of *ijtihād*, because in *ijtihād* the jurist is free to choose from several points of view. Therefore, it is permitted to the judges who follow the school of Abū anīfa to rule according to necessity, after making sure of its presence. This procedure does not contradict the anafite school, but in reality many anafite judges shy away from taking such decisions.[162]

'Abduh states that for the aforementioned reasons, it is obligatory to follow the Mālikite school in rulings related to such cases. He mentions in his *fatwā* that he had consulted both the Grand Sheikh of al-Azhar and the Mālikite *muftī* in Egypt and both approved his *fatwā*, following the Mālikite school. He provides eleven points in his *fatwā* for which the wife can get a divorce from the court in such cases of long disappearance of the husband, his incarceration, his inability to financially support his wife and children, or his mistreatment of his wife.

What relates to our topic in this *fatwā* is that 'Abduh finds the achievement of justice and the preservation of the rights of the wife, sanctioned by the *sharī'a*, as a legitimate reason to issue a *fatwā* according to the Mālikite school and not the anafite one. His point that following the case of necessity does not represent an *ijtihād* is meant to show that his *fatwā* does not invalidate his job title as a *muftī* of Egypt who is appointed by the Khedive to issue *fatāwā* according to the anafite school.

---

[161] 'Abduh, *A'māl*, vol. 6, p. 380.
[162] 'Abduh, *A'māl*, vol. 6, p. 380.

But despite this clear divergence from the □anafite view in the previous *fatwā*, ‘Abduh commits himself throughout the majority of his *fatāwā* to □anafite opinions. In many *fatāwā* he refers in the beginning to “the opinions of our scholars,” namely, the □anafites, and then proceeds with his legal opinion, referring to the main sources of □anafite jurisprudence, such as *al-Is‘āf*, *al-Ba□r*, and *al-Ashbāh*.

In a few cases, when there is a disagreement within the □anafite school itself on the related question, ‘Abduh states his preference. For example, on the question of a man who intentionally suffocated a woman, ‘Abduh states that ‘Abū □anīfa’s opinion is that killing with suffocation or drowning is different from killing with stabbing, and therefore there is no execution (*qawd*), while Abū □anīfa’s students, Mu□ammad al-Shaybānī (d. 189/804) and Abū Yūsuf (d. 182/798), think that both types of killing are the same, similar to other schools. ‘Abduh states that he prefers the opinion of Abū □anīfa’s students because the punishment (*qi□ā□*) is mentioned in the Qur’ānic verse 1:179 in general terms. As for the □*adīth* which Abū □anīfa used to solidify his opinion, ‘Abduh states that it is not a sound □*adīth*.

‘Abduh’s commitment to □anafite opinions clearly represents a jurist or *muftī* who is imitating or using *taqlīd* to rule in different matters according to this school. Thus, despite his critique of medieval jurists in his theoretical writings, he remains committed to □anafite jurisprudence in his *fatāwā*. One might conclude, therefore, that ‘Abduh’s *maqā□id* thought does not lead necessarily, as stated before, to new legal opinions or a new method of legal interpretation that eclectically chooses from different schools without being committed to any one of them.

Chapter Three

Rashīd Ri□ā's Legal Thought and His Consideration of *maqā□id al-sharī'a*

Mu□ammad Rashīd Ri□ā was born in 1865 in the Syrian village of Qalamūn near Tripoli, where he spent most of his childhood years.[163] He started his elementary education in a public school in Tripoli, in which teaching was offered in the Turkish language. Then he registered in an Arabic school, *al-Wataniyya al-Islamiyya*, established by the well-known religious scholar □usayn al-Jisr (d. 1327/1909). Ri□ā recalls in one of his articles that he studied in this school, among other things, Gazzālī's *I□yā'*, to which he constantly refers in his later writings. In 1884, after Afghani and 'Abduh published their magazine, *al-'Urwa al-Wuthqā*, in Paris, Ri□ā was able to read its first issues when he found them in al-Jisr's library. Ri□ā writes later in *Manār* that "after reading *al-'Urwa al-Wuthqā*, he discovered a new way of understanding Islam and that it is not only a religion of spiritual guidance but also a complete way of life."[164] He also read, during those years of his education under the guidance of al-Jisr, the magazine *al-Muqtataf*, which focused on the latest developments in science. In 1896, Ri□ā got his licence as a teacher graduating with the degree of *'ālim* (religious scholar) from the *Wataniyya* school. After his graduation, he first tried to contact Afghani to study with him, but after his failure to do so, he decided to travel to Egypt to meet 'Abduh. He arrived in Egypt in January 1898. After meeting 'Abduh, Ri□ā suggested to him to publish a magazine that advocates Afghani and 'Abduh's reformist ideas. 'Abduh agreed to the suggestion,

---

[163] Ridā provides us with some accounts on his life published in *Manār*. Another Arabic source on Ridā's life is the biography made by his friend Shakib Arslan, *Rashid Ridā wa Ikhā' Arba'in 'Aman* (Beirut: Dār al-Jil, 1955). Earliest accounts on Ridā's life include C. C. Adams, *Islam and Modernism in Egypt*, 1933 and J. Jomier, *Le Commentaire coranique du Manar* (Paris: G-P Maisonneuve, 1954).

[164] Ridā, *Manār*, vol. 19, 1916, p. 112.

naming the magazine *al-Manār*. In the same year, 1898, the first issue of *Manār* was published. Ri□ā writes later that when *Manār* appeared in circulation, it followed the reformist line of *al-'Urwa al-Wuthqā* except for the latter's anti-British tone. He also adds that he accepted 'Abduh's suggestion to soften the *Manār*'s political voice against the Ottoman Sultan 'Abd al-Hamid, aiming at having a more consultative system of government.[165] From 1898-1908, Ri□ā stayed in Egypt, but after 'Abd al-Hamid was deposed in 1909, he traveled to Istanbul, Turkey. During his visit to Istanbul, he met with representatives of the political organization that ruled Turkey, *al-Ittihad wa'l Taraqqi*. Moreover, he met with Shaykh al-Islam and discussed with him the possibility of establishing a new religious school in Egypt in which Ri□ā would teach the students according to his reformist line of thought.[166] Later in the same year, 1909, an Ottoman administrative order was issued to form an organization called *Jam'iyyat al-'Ilm wa'l Irshad*, but Ri□ā did not like, according to his account in *Manar*, its administrative structure which made the school under the supervision of *Shaykh al-Islam* and affiliated with the Ottoman educational system.[167] But his objection was not taken into consideration by Ottoman authorities. He later traveled to India, and after his return to Egypt he established an organization and school called *Jam'iyyat al-Da'wa wa'l Irshad*. It opened its doors to students in 1912.[168] Ri□ā worked for three years as the principal of the school, but because World War One had started and the school could not get any more funding from the Egyptian government, it closed in 1916. Ri□ā narrates in *Manar* that while he was before the War very much against any attempt to abolish the Ottoman

[165] Ridā, *Manār*, vol. 12, 1909, p. 706.
[166] Ridā, *Manār*, vol. 13, 1910, p. 465.
[167] Ibid.
[168] Ridā, *Manār*, vol. 15, 1912, 9-10.

Empire, based on his pan-Islamic conviction inherited from Afghani and ‘Abduh, he nevertheless found that after the War he believed that the best for the Arabs is to get full independence, whether from the Turkish authorities or the Occupying Europeans.[169] He mentions that he and other Syrian dignitaries had sent a letter to the president of the United States asking him to help the Syrians to get their independence from France. He also supported Sharif Husayn, the *Amir* of Mecca, in the latter’s revolt against Ottoman authorities. Later, and until his death in1935, Ri□ā supported King ‘Abd al-‘Aziz, the founder of modern Sa‘udi Arabia.

Ri□ā’s Vision of Religious and Social Reform

Rashīd Ri□ā’s vision of religious and social reform stems from his conviction that religious reformers, in Egypt and elsewhere, represent a line of thought situated in the middle of two extremes. On the one hand there are those religious scholars who are fully committed to *taqlīd*, “the blind imitation of earlier authorities,” and on the other hand, there are the secularist thinkers who see in Islamic law a force of backwardness and call for legal and social reforms through the adoption of European models. His reasoning is that the stagnant nature of the legal thinking of the former group has led to the prominence of the latter. In his *Yusr al-Islam wa U□ūl al-Tashrī‘ al-‘Ām*, Ri□ā provides an historical background to the status quo of the three groups mentioned above. He begins his account by declaring that

> The illiterate Arabs accepted the Book of God and the *sunna* of His messenger without having any religious philosophy that analyzes and judges the religion of God’s unity and of virtue, after the tree of

[169] Ridā, *Manār*, vol. 1, 1898, p. 257.

> polytheism was uprooted. They also did not have legislative customs that complicated the just and pure *sharī'a* of God. Thus, it was easy for other nations and peoples to understand it, and they accepted from the Arabs the *sharī'a*. Thousands of non-Arabs, since the first and second centuries of Islam, became experts in the language of the religion and understood God's revealed Book. They participated with their Arab teachers in propagating the call (for Islam) and the writing down of Arabic usage and the *sunna* of the Prophet. This required the conquering of cities and the spread of God's religion in many places.[170]

After this account on early Islam, Ri□ā explains how things went wrong:

> Then the centuries of religious innovation happened to Muslims, and the philosophy of other nations and their customs came to them from everywhere. The Muslims needed to expand civil, judicial, and political legislation. They accordingly founded the science of jurisprudence to respond to the needs of rulers. They also founded *kalām* to protect beliefs from innovations and different philosophical theories. Consequently, Islamic beliefs and rules of practice were mixed with external ones, and its teachings were converted from the sphere of easiness, simplicity, and accommodation into the limitations of complications and difficulty. The Bedouin Arab, during the time of the Prophet, used to learn from personal religious rituals in one gathering what made him a Muslim. Later, it became difficult for a Muslim who was raised among Muslims to know his inherited religious teachings in several years because the legal rules had increased due to the analogies of the schools of jurisprudence, and (such rules) could not be easily understood due to the weakness of the style used by the authors.[171] This situation led to the fact that only a few people became interested in gaining and learning such rules, only some people in the main Islamic cities. Most of them sought such knowledge for benefit and not for pure religious purposes. This conduct led to what I mentioned about one of the "certain" features of Islam that was in perfect form before any of such treatises were written.[172]

Ri□ā continues his historical account by observing that after the first three centuries of Islam (7th-9th C.E), attested as the best in the narrated □*adīth*,[173] Muslims took different positions toward such traditional treatises. "Some have criticized the

[170] Ri□ā, *Yusr al-Islam*, p. 5.
[171] It is not clear to what Ri□ā refers by claiming that early works on *fiqh* suffered a weakness of style. He does not give either in the *Yusr* or his other writings concrete examples of such stylistic problems.
[172] Ri□ā, *Yusr*, p. 6.
[173] The reference here is to the famous □*adīth*, "The best among people (Muslims) are those in my century, the following century then the next." See, for example, *Sa□i□ Muslim* (Beirut: Dar Ibn Hazm, 1995), vol. 4, p. 1559.

existence of many books and say, 'either most of what in such books is not part of religion, or religion itself is not true.' Others still say, 'What is declared in such books is God's religion which any Muslim must follow or else become an apostate.' " Moreover, Ri□ā observes that some contemporary Muslim jurists declare that whoever seeks guidance from the Qur'ān and *sunna* without checking the traditional books on *kalām* and *fiqh* is an apostate.[174]

Ri□ā then clearly states his typology of the currents of thought in contemporary Muslim societies:

> First, there are those who call for the blind imitation of whatever is found in the traditional books that belong to different schools, such as Sunnī, Zaydī Shī'ite, Imāmī Shī'ite, and Ibā□ī Shī'ite. Their argument is that the knowledge of the *sharī'a* that is found in the Qur'ān and *sunna*, whether concise or in detail, is incorporated into these books. Anyone who does not follow one of such schools is not a Muslim. Second, are those who call for modern civilization, civil systems, and human laws. They say that the *sharī'a*, as written down in those books, is not fitted to our time. They also say that no government can effectively function by following the *sharī'a*, and the needs of the nation cannot be satisfied with its application. Therefore, we must dismiss the *sharī'a* and use instead European laws. Or any Muslim nation can independently come up with a new legal code that fits its needs. Third, are those who call for Islamic reform and believe that it is possible to revive Islam and renew its right guidance by following the Qur'ān, authentic *sunna*, and the guidance of the righteous early Muslims (*salaf*). They also call for benefiting from all the available knowledge of different schools of jurisprudence without committing themselves to specific books of those schools as the first group has done. This third group believes that it is possible to bring together Islam and the best methods of civilization and organization, which are requested by the second group. The representatives of the third group also believe that such conjugation between Islam and modern civilization enforces and honors Islam, the religion of the first era of Muslims, purifies modern people from the materialistic excesses of the current civilization, and saves them from the chaos of communist freedom and the dangers of materialistic philosophy.[175] On the other hand, the sciences and arts of modern civilization appear through the inimitability of the Qur'ān and God's signs

[174] Ri□ā, *Yusr*, p. 6.
[175] This part of the *Yusr* first appeared in the *Manār*, vol. 19, pp. 32-5. It is clear that Ri□ā's views on communism are based on literary sources and not direct observation of communist or socialist countries.

> in the universe, which make the belief (in God) "certain" and direct the powers of these sciences toward development and benefit for humanity.[176]

After his categorization of three distinct groups of Muslims, Ri□ā explains that there are people whose thoughts have originated from one group or the other but they are in between, not committing themselves to any one of them. He adds:

> There are some who disparage *taqlīd* and claim to have *ijtihād*, but they are not reformers. Rather, they are propagating mischief. They claim that they would follow the knowledge of the Qur'ān and *sunna*, and they claim also that they are qualified to practice unlimited *ijtihād* (*ijtihād mu□laq*) in the rulings of the *sharī'a*. But they are not equipped to do so because they do not have the Arabic linguistic skills and knowledge. They also lack knowledge of the principles and branches of *fiqh.* This additional subgroup of Muslims might refer to the benefit of the *sharī'a* against the first group of blind imitators but they rule in the religion without knowledge. Some of those use only in their arguments what they understand from the Qur'ān and reject all Prophetic traditions.[177]

In contrast to this group of false reformers, Ri□ā observes, there are those who claim that they follow the early Muslims and regard themselves as Traditionists, but they take only the literal sense of all narrated traditions, including those that are false or strange in their content. They might also follow certain currents of thought that contradict principles mentioned in the Qur'ān or that are based on rational certainties. Ri□ā equates this last subgroup with the first one in terms of being blinded by certain books, whether those of jurisprudence and theology or of □*adīths*. Ri□ā argues that both groups, the staunch *madhhabī* and false *salafī*, reject the sciences of modern civilization, even the necessary organization to develop the nation and well-experienced theories of legislation or historically proven archeological evidence. Such sciences are regarded by them as

[176] Ri□ā, *Yusr*, p. 8.
[177] Ri□ā, *Yusr*, pp. 8-9.

belonging to the unbelievers, and therefore are prohibited to Muslims.[178] Ri□ā concludes in this section of *Yusr al-Islam* that only the moderate reformers represent the people of the middle way (*wa□a□*) and not the aforementioned groups.

The previous quotations from *Yusr al-Islam* show how Ri□ā's discourse on religious reform is distinguished from 'Abduh's. While 'Abduh clearly agrees with Ri□ā's typology of the three main groups of Muslims, namely, conservatives, secular, and reformers, his writings, nevertheless, do not present the same detailed description of the three groups and the extra two subgroups of "false reformers" and "false *salafīs*" as Ri□ā's do. One reason for having a more vivid description of attitudes toward Islamic reform in Ri□ā's writings is the fact that unlike 'Abduh, who committed himself to a government-appointed job of *muftī* in the last six years of his life, Ri□ā was very much an independent scholar who expressed his ideas freely in the *Manār*. In some sense, he was a spokesman for 'Abduh and a propagator of his ideas, and he was definitely in a less- restricted position to criticize those who rejected 'Abduh's ideas of reform.[179] After 'Abduh's death in 1905, Ri□ā continued his journalistic rebuttals against the Azharite scholars who rejected his reform program and also the secularists who called for the abandonment of the *sharī'a* altogether. In his book, *al-Khilāfa*, published first periodically in the 23rd and 24th volumes of the *Manār*, Ri□ā speaks in more detail than in the *Yusr* about the groups that oppose religious reform. He mentions that the Muslims who assume a leading role in politics and the status of decision making (□*all wa 'aqd*) in Muslim societies that are outside the Arabian peninsula represent three groups: First are those who blindly follow the traditional books of *fiqh*. Second are those who imitate

[178] Ri□ā, *Yusr*, p. 9.
[179] In his *Tārīkh*, Ri□ā mentions the circumstances of publishing the *Manār* and 'Abduh's supporting role. See *Tārīkh al-Ustādh al-Imām* (Cairo: Matba'at al-Manār, 1931), vol. 2, pp. 1000, 1005.

European laws and their systems. Third is the party of reform which combines the independence of understanding religion and the rules of the *sharī'a* with the core of European civilization.[180] This party of reform is the only one, in Ri□ā's account, that is capable of getting rid of disagreements among Muslims and establishing again the office of the *Imām* (i.e. caliph) because this party can attract both the religious and the secular. He declares that the name of the reform party must be the party of the Ustādh Imām (i.e. 'Abduh) since 'Abduh can be regarded as the leader of reform in all Muslim countries. At this juncture, Ri□ā speaks about Muslims in India and how it is expected that they will support the reform party. Then he calls for an urgent conference of Muslim leaders and scholars to decide on the question of *khilāfa*.

On the status of the secular group, Ri□ā acknowledges that there are plenty of Muslims, especially among those who studied in Europe or in local schools that teach modern sciences and European languages, who believe that religion cannot be joined with politics, science, and civilization. He observes that this party is well organized in Turkey but not in Egypt. It is also weak in Syria, Iraq, and India. Then he speaks in more detail about this party in contemporary Turkey. After the secularist party, Ri□ā deals with the party of the □*ashwī fuqahā'*.[181] He declares:

> All religious scholars and most of the lay people who follow them wish to have a real Islamic government. But the Turks insist that this government must follow the □anafite school. Some of them do not see any reason for rejecting some *shar'ī* rules taken from other Sunnī schools, but they fail in making the military, financial, and political rules based on traditional *fiqh*. They also reject the unlimited *ijtihād* in all fields of *mu'āmalāt*. If they were to control the government, they would fail miserably.[182]

[180] Ri□ā, *al-Khilāfa aw al-Imāma al-'U□mā* (Cairo: Matba'at al-Manār, 1341/1923), p. 62.
[181] Ri□ā's use of the term □*ashwī* to denote his conservative adversaries reflects the polemical character of his writing in *Khilāfa*.
[182] *Khilāfa*, p. 64.

Morever, in his *al-Manār wa'l-Azhar*, Ri□ā writes a detailed account of his encounter with some Azharite scholars through their periodical, *Noor al-Islam*.[183] While 'Abduh acknowledges, without giving many details, that reforming al-Azhar's curriculum cannot be achieved in the near future, Ri□ā engages himself in a critique of al-Azhar's administration under the leadership of Mu□ammad al-□awāhirī (d. 1944).[184] He argues that due to 'Abduh's effort, the government agreed to issue new regulations that aimed at achieving reform in the Azharite system. When Mu□ammad M. Al-Marāghī (d. 1945) was appointed as the rector of al-Azhar in 1928, he attempted to enforce this new system of reform but he faced great opposition from some government officials who tried to exert their own influence on al-Azhar. Later, al-Marāghī resigned and Muhammad A. al- □awāhirī was appointed as rector in 1929.[185] Ri□ā observes that □awāhirī became an instrument of the government at the expense of al-Azhar's independence as a religious institution. These accounts and others show how Ri□ā defines his school of reform through his rebuttals against opposing figures such as □awāhirī. This atmosphere of confrontation came to be reflected in Ri□ā's and other reformers' ideas of legal reform, particularly their *maqā□id* thought, in the sense that their legal opinions were proclaimed in the midst of critiques and counter-critiques.

It is also worth noting that Ri□ā's clear distinction of his line of legal and social reform as situated in the middle of two extremes and his usage of the Arabic terms *wa□a□* or *wa□a□iyya*, taken from a Qur'ānic verse, represent a beginning of a tradition

[183] *Noor al-Islam* was first published in 1929.
[184] □awāhirī was appointed as rector of Azhar in 1929.
[185] *Al-Manār wa'l-Azhar*, p. 12.

that would continue throughout the twentieth century.[186] It serves to seek religious legitimacy while at the same time alienating other groups' ideas as being un-Islamic or illegitimate.

The previous quotations from Ri□ā's writings also shed some light on the main difference between his core ideas of reform and those of 'Abduh. In other words, while Ri□ā is clearly setting his reformist thinking following the footsteps of his teacher, 'Abduh, his central idea of reform is articulated on a different level from that of 'Abduh. If one reiterates 'Abduh's definition of religious reform and its fundamental principle, it is correct to say that such a principle can be defined as the "right correlation between reason and revelation in Islam." Rational thinking, for 'Abduh, is part of the natural composition of the human intellect, and therefore must be nurtured and developed through a process of education. This rational education (*tarbiya 'aqliyya*) can lead to building the rational mind. But the rationality that 'Abduh espouses, as indicated before, is very much guided and limited by revelation, particularly the Qur'ānic text.[187] As a source of religious knowledge, the Qur'ān, and to a lesser extent Prophetic traditions, has *maqā□id* (or purposes) that must be understood rationally and applied in the life of Muslims. 'Abduh's legal thought, and specifically his emphasis on *maqā□id al-sharī'a*, is situated within the larger understanding of *maqā□id al-Qur'ān*, one of which is the call for rationalistic modes of thinking, beliefs, and practices. Thus, when 'Abduh rejects religious innovation in ritual practices, for example, his rationale is built on both lack of

[186] Q. 2:143 reads, "And We have made you (Muslims) a nation of the middle way (*ummatan wa□a□an*) so that you become witnesses for the people and the Prophet as your witness."
[187] It is also worth noting that what stands against 'Abduh's category of "rational" is not the "non-rational" (i.e. the "supernatural") but rather the "irrational". It also can be contrasted to the "emotional".

authentic legitimization from the Qur'ān and *sunna* and his claim that such practices contradict "right" reason.[188]

In contrast to 'Abduh's central idea of the conjugation between reason and revelation, Ri□ā's core idea of reform is centered around the legal sense of *ijtihād* and *taqlīd*. While 'Abduh's references to *taqlīd*, for example, are not limited to its legal sense but rather to a more general attitude of a deficit in rational thinking, Ri□ā clearly limits his usage of *taqlīd* to its legal connotation. In other words, while 'Abduh's religious thought aims at reforming not only Islamic law but also the ethical and theological components of modern Islamic thought within a "rational" framework of theory and practice that is based on his specific reading of the Qur'ān, Ri□ā's reform project is mainly legalistic. It is true that Ri□ā, similar to 'Abduh, deals in his writings with questions on theology, ethics, and Qur'ānic hermeneutics, but these are presented as ad hoc additions to his legal discourse. When he rejects religious innovative practices, for instance, he does not express his disdain for such practices because of their contradiction to rational thinking as 'Abduh does. Rather, he declares that such practices must be rejected because there is no evidence that the Prophet or his Companions did engage in them. Moreover, this religious illegitimacy is linked strongly to his legal idea that in the field of *'ibādāt*, no new practices are allowed. The same is true in relation to Ri□ā's theological writings. Unlike 'Abduh, who presents his theological convictions as reflecting a deep reading of the Qur'ān, Ri□ā's ideas are saturated with references to Ibn Taymiyya to show a commitment to a very literal interpretation.

[188] See, for example, 'Abduh's disparaging account of the religious custom, *dawsa*, in which he vehemently rejects its practice due to the lack of rational reasons.

In *Yusr al-Islam*, Ri□ā enumerates the basic principles of religious reform as professed by what he calls "the moderate party of reform." These can shed more light on the centrality of legal reform in his thinking. The first principle is that whatever is indicated in the Qur'ān, in a "certain" (*qa□ ʻī*) way, and according to its classical language, must be accepted and followed theoretically or practically. But as for those verses in the Qur'ān which have "probable" meanings, any legal content of such verses can have more than one interpretation. Second, Mu□ammad b. ʻAbdullāh is the Messenger of God and His last Prophet. God ordered Muslims to obey the Prophet in matters of religion, whether through his sayings, practices, or judgments. Third, whatever was agreed upon by the early Muslims on matters of religion is considered "certain" knowledge which cannot be rejected or misinterpreted. An example of this early Muslim consensus is the fact that there are five obligatory prayers and that the dawn prayer has two *rakʻas*, etc. Ri□ā notes that any Muslim who rejects one of these three principles becomes an apostate. Fourth, the sound Prophetic traditions that most early Muslims accepted are considered authentic and must be applied. The few among early Muslims who rejected them have no weight and must not be considered. Fifth, the isolated □*adīths* that were not authenticated and applied by the majority of early Muslims (*salaf*) are open for *ijtihād* in terms of their chains of authorities, content, and wording. The reason is that the □*adīths* with authentic chains of authorities might be true only for the ones who narrated them and therefore must not be made as general rules for all Muslims to follow. Sixth, the decisions taken by the Prophet's descendants (*ahl al-bayt*) and the founders of other schools of jurisprudence must be preserved and applied by the current Muslim governments. These decisions and *fatāwā* can be applied in relation to questions that are

not addressed in the Qur'ān or □*adīth* and no consensus of the Companions is found or no opposition to the public good will result from such application. But all these decisions and *fatāwā* must not be considered a religious obligation or revealed law that is applied to all Muslims. [189]

This sketch of Ri□ā's six principles of religious reform reflects the centrality of legal discourse and also forms an introductory remark to his sophisticated legal theorization. The main message of religious reform can be achieved, according to Ri□ā, through the right application of "independent legal thinking," i.e. *ijtihād*, in contrast to the blind imitation (*taqlīd*) of later generations. At least part of the Qur'ān and Prophetic traditions, in addition to the consensus of early Muslims, are sources of "certain" knowledge. Some Qur'ānic verses, many isolated Prophetic traditions, and decisions of early Muslims are open to limited *ijtihād* and must be considered as the second level of religious knowledge despite their "probable" authentication. The third level of *ijtihād* is only alluded to by Ri□ā in the sixth principle, which is the consideration of public interest (*ma□la□a 'āmma*). Thus, this system of religious knowledge represents the cornerstone of Ri□ā's vision of religious reform.

In *Mu□āwarāt al-Mu□li□ wa'l-Maqallid*, Ri□ā explains, through the voice of his young reformer,[190] that the basic fundamentals of religion are right beliefs, moral purification, worshiping God in the way that He established and accepted, and the general rules of *mu'āmalāt* such as the preservation of human life, dignity, and property. All

[189] Ri□ā, *Yusr,* pp. 10-11.
[190] The *Mu□āwarāt* is structured as a dialogue between a young reformer (*mu□li□*) and a traditionalist jurist (*muqallid*). Ri□ā's ideas are expressed through the argumentation of the young reformer against his adversary. See *Mu□āwarāt al-Mu□li□ wa'l-Maqallid* (Cairo: Matba'at al-Manar, 1906).

these fundamentals were completed during the time of the Prophet.[191] That is why during the Prophet's last pilgrimage to Mecca, a Qur'ānic verse was revealed to him which reads, "This day I have perfected your religion for you, completed my favor upon you, and have chosen for you Islam as your religion" (5:3). Therefore, Ri□ā observes, the beliefs and religious rituals were completed in all their details in a way that no addition or subtraction is permitted. Anyone who adds to or subtracts from such rituals is changing Islam into another religion. But for the rules of *mu'āmalāt*, after declaring the fundamentals of virtues, such as the obligation of justice in rulings, equality in rights, the prohibition of injustice, transgression, and the instated penalties (□*udūd*) for some crimes, and after the establishment of the rule of consultation (*shūrā*), the Lawgiver authorized the decision-making people, whether religious scholars or political rulers, to rule based on consultation whatever achieves the common good according to the time. Ri□ā adds that the Prophet's Companions understood these principles without a specific reference from the Prophet. But one can refer to the □*adīth* in which it is narrated that when the Prophet sent Mu'ādh b. Jabal (d. 18/639) to Yemen, the Prophet asked him if he was faced with a question that has no answer in the Qur'ān or the *sunna*, what would he do? Mu'ādh replied that he would use his personal opinion to rule in such matters. The Prophet validated his answer. Moreover, argues Ri□ā, it is transmitted from the Companions that if they see a public benefit in anything, they would rule accordingly even if such ruling was against the practice (*sunna*) of earlier Muslims. [192] This understanding, Ri□ā observes, reflects the Companions' view that the main principle is to rule according to *ma□la□a* and not necessarily follow traditional legal rulings.

[191] It will be explained later that such general rules or principles of *mu'āmalāt* represent the core idea in Ri□ā's *maqā□id* thought.
[192] Ri□ā, *Mu□āwarāt*, pp. 58-9.

Another example is narrated in the □*adīth* collections of Muslim (d. 261/875), Abū Dāwūd (d. 275/889), al-Nasā'ī (d. 303/915), al-□ākim (d. 405/1014), and al-Bayhaqī (d. 458/1066), on the authority of Ibn 'Abbās, that he said, "The triple divorce (uttered in one time by a man to his wife) was considered, during the reign of the Prophet, Abu Bakr, and the first two years 'Umar, as only one divorce. Then 'Umar said, 'The people used to be more patient, in uttering words of divorce, and now they have become impatient, so we must consider uttering the triple divorce at one time as three consecutive divorces'." Ri□ā mentions further the decision of the Prophet, which clearly runs against 'Umar's. The latter's ruling on the triple divorce illustrates, according to Ri□ā, an example of how the Companions ruled according to the public good (*ma□la□a*), even in a few cases where the Prophetic *sunna* was different. Ri□ā clearly regards this action of 'Umar as lying within the part of *mu'āmalāt* that is susceptible to *ijtihād*. He further argues that the □anafites acknowledged this understanding and consequently regarded the "clear *qiyās*" (*qiyās jalī)* as a better source for ruling than an isolated □*adīth*. They also preferred personal opinion, which they called *isti□sān*, over *qiyās*. Ri□ā argues that *isti□sān* in this context means choosing a decision that clearly achieves the public good. It is not what the later □anafites characterized as a "hidden *qiyās*" (*qiyās khafī*). Ri□ā explains that those later □anafites resorted to such definition of *isti□sān* to escape the accusation of the Traditionists and other scholars that the □anafites had added a new source of religious knowledge and that they preferred personal opinion over □*adīth*.[193]

What is striking about Ri□ā's legal theorization is that he presents his ideas as the fulfillment of the legal interpretations of the early Muslims, in contrast to the classical

[193] Ri□ā *Mu□āwarāt*, p. 60.

theories of the Sunnī schools. This fact has led Ri□ā to suggest producing works of Islamic jurisprudence that can benefit from all schools but do not commit to any one of them. In other words, Ri□ā's legal thought calls for a *salafī*, non-scholastic legal interpretation. In his writings about Muslim unity, he envisions Muslim religious scholars who follow the Qur'ān, □*adīth*, and their own consensus if possible.[194] To achieve the goal of a non-scholastic Islamic jurisprudence, Ri□ā faced the accusation of using *talfīq*, the practice of arbitrarily choosing from different schools. In the *Mu□āwarāt*, he explains, in response to the author of *al-Durr al-Mukhtār*, that any ruling based on *talfīq* is unanimously considered invalid, that the medieval □anafite abhorrence of *talfīq* might be to prevent *taqlīd* because *talfiq* itself is a kind of blind imitation (*taqlīd*) which is invalid.[195] But the real answer to the question of the validity of *talfīq,* according to Ri□ā, is that the claim of consensus on the matter is not correct. The disagreement on the validity of *talfīq*, according to Ri□ā, is mentioned in several books that are taught at al-Azhar such as □*awāshī al-Amīr* and □*awāshī al-Bājūrī 'alā Jawharat al-Taw□īd* by Qānī. Ri□ā claims that the author of *al-Durr al-Mukhtār*, has ignored the tradition of □anafite *fiqh* which validates the practice of *talfīq*. The □anafite school itself is composed of the opinions of three scholars. Ri□ā also explains that one of the proofs that □anafite scholars did not invalidate *talfīq* was that the medieval □anafite *mujtahid*, Ibn al-Humām (d. 861/1457), attributed such invalidation to the Mālikite Qarāfī (d. 684/1285). Ri□ā argues that if this practice was not valid according to □anafite jurisprudence, why did Ibn al-Humām not refer to such rejection in his own school? As for the actual *fatāwā* based on *talfīq*, Ri□ā mentions that there are many in the □anafite

[194] Ri□ā *Mu□āwarāt*, p. 67.
[195] Ri□ā *Mu□āwarāt*, pp. 84 ff.

school. One of those is the legitimacy of assigning a transferred property as an endowment (*waqf*) to oneself. It is a *talfīq* from the opinions of Abū Yūsuf who declared the legitimacy of having an endowment to oneself except for a transferred property, and of Mu□ammad al-Shaybānī's, who legitimized the endowment of a transferred property except to oneself. Ri□ā explains that al-□arsūsī (d. 758/1357) declared that this *fatwā* was based on *talfīq* and he mentioned that in the *Munyat al-Muftī*, which is an acknowledgment of the legitimacy of a ruling that is composed of two different opinions. This is what the later □anafite jurist Ibn 'Ābidīn (d. 1252/1836) mentioned in his *Tanqī□ al-□āmidiyya.* The same *fatwā* was given by Abū al-Su'ūd (d. 1172/1758).[196]

After giving another example of a □anafite *fatwā* based on *talfīq,* the *muqallid* in Ri□ā's *Mu□āwarāt* objects to the previous examples by declaring that Ibn 'Ābidīn clearly states that if the practice of *talfīq* is done within the opinions of scholars who belong to the same school, this is acceptable because all the opinions are based on the principles of their *imām* (i.e. the founder of the school). Ibn 'Ābidīn also claims that *talfīq* between different schools is an invalid practice. Ri□ā replies to this objection by declaring that Ibn 'Ābidīn's distinction between intra-scholastic and inter-scholastic *talfīq* is not always valid. The same principle, proclaimed by a founder of one school, cannot have two contradictory meanings, as in the case of allocating as endowment a transferred property. One has to assume in such cases that if there are two contradictory traditions of an earlier jurist, then one of them must have been ignored later.[197] Ri□ā further argues that there are many aspects of Islamic jurisprudence in which Abū □anīfa and Mālik, for example, are more in agreement with each other than in some cases of Abū □anīfa and

[196] Ri□ā *Mu□āwarāt*, p. 85.
[197] Ri□ā *Mu□āwarāt*, p. 86.

his two students, Abū Yūsuf (d. 182/798) and Shaybānī (d. 189/804). All schools agree on the fundamentals of religion, whether beliefs or legal rulings. Thus, why not treat the jurists who belong to different schools as similar to those within one school?

The main reason for Ri□ā's emphasis on the permissibility of *talfīq* is to show that many medieval jurists resorted to some legal opinions that are more in line with other schools rather than theirs. He mentions figures such as al-Baghawī (d. 510/1117), Ghazzālī, and al-Nawawī (d. 676/1277) who did not follow in some questions the opinions of their Shāfi'ite school. Al-Zamakhsharī (d. 538/1144) is mentioned as having some opinions different from his juristic allegiance to the □anafite school. All these examples serve to show, in Ri□ā's legal thinking, that Muslims can achieve unity by adopting a system of legal interpretation that does not commit itself to one school.

In Ri□ā's legal theorizing, therefore, it is clear that while the field of religious rituals (*'ibādāt*) is very much fixed and its rulings cannot be changed, the field of *mu'āmalāt* is open for *ijtihād*. But one has to acknowledge that Ri□ā presents this "independent thinking" in more than one form and according to specific guidelines. First, Ri□ā explains that there are general rules or principles, clearly stated in the *sharī'a*, that govern the detailed rulings in *mu'āmalāt*. Also, criminal punishments (□*udūd*), clearly stated in the Qur'ān, are considered by Ri□ā to be a fixed and unchangeable part of *mu'āmalāt.* Beyond this limitation, any ruling in *mu'āmalāt* must aim at achieving the public good or the *ma□la□a* of the Muslim community. Ri□ā clearly argues that this legal understanding represents that of the early Muslim community and also early □anafite jurisprudence. His message of reform is based on an attempt to rejuvenate this

mode of legal interpretation and solve many problems that faced the contemporary application of the *sharī'a*.

It is necessary to try to understand Ri□ā's ideas about this field of *mu'āmalāt* that is, on the one hand, limited and guided by the aforementioned general rules and on the other, very flexible and amorphous, provided the rules achieve the public good. It seems that the field of *mu'āmalāt* in Ri□ā's legal theory encompasses all possible activities and human dealings except for religious rituals. Political, economic, social relations, and personal customs (*'ādāt*) are all included in this field. In other words, any kind of practice that can be regulated through a rule of conduct is considered part of *mu'āmalāt*, except the general tenets of Islamic ethics and religious rituals. In addition, one has to ask the question as to whether Ri□ā regards the legal cases in this field of *mu'āmalāt* as regulated or unregulated by the *sharī'a*. In other words, does the realm of *mu'āmalāt*, which is beyond the basic principles and □*udūd*, lie outside religion, and if so, is it part of the *sharī'a* or not?

If one leaves terminology aside for the sake of understanding Ri□ā's theorization, his previous example of 'Umar's ruling on the triple divorce is a clear indication that he sees an aspect of *mu'āmalāt* as regulated by either Prophetic traditions or later scholastic opinions. But he sees this kind of regulation, even if Prophetic, as aiming to achieve the public good, and therefore, it can be overridden by a new rule if the traditional one fails to achieve the *ma□la□a* in a contemporary situation. But this move would make Ri□ā accused of ignoring sound Prophetic traditions for the sake of *ma□la□a*. Also, there is a problem of limitation, namely, where can jurists differentiate between the fixed, general part of *mu'āmalāt* and the detailed one that is susceptible to change? Ri□ā's enumeration

of the levels of religious knowledge, in terms of their truth value as either "certain" or "probable", and the consequent role of using *ijtihād* might present us with his reply to the above accusation. The rulings related to *mu'āmalāt*, whether clear Qur'ānic verses or widely accepted Prophetic traditions, are considered by virtue of their "certain" or "highly probable" authentication and clarity of meaning as part of the general rules of *mu'āmalāt*. But the second level, which includes isolated Prophetic traditions or Companions' judgments, represents the kind of rulings that may change. Thus, Ri□ā, for example, considers the rules of inheritance, which are clearly stated in the Qur'ān as part of the general rules of *mu'āmalāt* and therefore do not endure change regardless of the benefits involved in their application.[198]

At this stage of analysis, one needs to decide if Ri□ā's theorization is different from that of the classical one(s), and if so, to determine the practical consequences of such a shift in theory. We know that Ri□ā did not come up with the categories of *'ibādāt* and *mu'āmalāt*, and that in fact such differentiation between these two main fields of legal activity existed since the formative period of Islamic legal theories. But it is also true to say that in the four established Sunnī schools of jurisprudence, the procedure has been the same for *'ibādāt* and *mu'āmalāt* in order to achieve a *shar'ī* rule. Any legal case has to be decided according to the available evidence from the Qur'ān, □*adīth*, consensus, or analogy. No special status is theoretically given to *mu'āmalāt* in which traditions from the Prophet or the Companions or later jurists would be overridden for the sake of the public good. In contrast, Ri□ā's theory suggests that as long as the traditional rules of cases in *mu'āmalāt* are derived from isolated □*adīths*, Qur'ānic verses with

[198] It will be discussed later in this chapter that all textual rules of prohibition that are considered "certain", according to Ri□ā, can only be suspended in their application in cases of absolute necessity (□*arura*).

probable multiplicity of meaning, and opinions of Companions, Successors, and the subsequent scholastic traditions, then decision-making people can override the legal effect of such traditions for the sake of the public good. 'Umar's decision on the triple divorce is presented by Ri□ā as the perfect example of such consideration of *ma□la□a*. Ri□ā, of course, claims that this special status of part of the *mu'āmalāt* has its roots in earlier scholastic traditions, specifically the early □anafite adoption of *isti□sān* to override in some cases not only *qiyās* but also isolated Prophetic traditions. But Ri□ā acknowledges that later □anafite jurists rejected this interpretation of *isti□sān* for the favor of a more rigid one. Moreover, in his *fatāwā*, published separately in six volumes by Salāh al-Dīn al-Munajjid and Yūsuf Khūrī, Ri□ā acknowledges that his view on the status of *mu'āmalāt* does not resonate clearly with the works of traditional jurists, but he finds a similar line of thought in Ibn Taymiyya's writings.[199] In this particular *fatwā*, however, Ri□ā does not refer his reader to any of Ibn Taymiyya's legal opinions but rather to his student, Ibn Qayyim al-Jawziyya. Ri□ā notes that in *I'lām al-Muwaqqi'īn* Ibn al-Qayyim addresses the question of the prohibited practice of *ribā al-fa□l*.[200] Although this economic transaction is clearly prohibited, argues Ibn al-Qayyim, the Prophet legitimized some practices that fit the description of *ribā al-fa□l* because of extreme need (*□āja).* Ibn al-Qayyim declares then that what is prohibited based on the principle of "closing the means to harm" (i.e. *sadd al-dharāi')* can be legitimized for the sake of a common good.[201] Although Ri□ā's reference to Ibn al-Qayyim will be

[199] Ri□ā, *Fatāwā*, Vol. 2, p. 528.
[200] *Ribā al-fa□l* refers to an economic transaction in which there is an unlawful advantage by way of excess of one of the exchanged counter values. See Nabil A. Salih, *Unlawful Gain and Legitimate Profit in Islamic Law*, 2nd edition (London: Graham & Trotman, 1992), p. 17.
[201] Ri□ā, *Fatāwā*, vol. 2, p. 531.

addressed later when analyzing some of his *fatāwā* on usury, my interest here is to show that Ri□ā's reading of Ibn al-Qayyim's legal theorization is similar to his.

It is clear that the previous quotations from Ri□ā's works indicate that he bases his legal theory on the definition of "religion" and consequently what constitutes a non-religious realm of legal activity. Ri□ā equates religion (*dīn)* with the first level of legal knowledge, namely, the "certain" in terms of authentication and content. This is what constitutes *dīn* in Ri□ā's thinking. No addition, subtraction, or change can affect this category. If religion as such, having very fixed and immutable legal rules, is clearly indicated in the Qur'ānic verse (5:3), according to Ri□ā's interpretation, and has been completed during the time of the Prophet, what constitutes then any kind of legal activity that is beyond religion? Anything beyond religion, Ri□ā argues, is a matter of worldly affairs (*dunyā*). Even if there are Prophetic traditions that instruct Muslims to act in a specific way in response to specific questions on worldly affairs, the bottom line is that any legal rule in this realm has to achieve the public good, bring benefit, and prevent harm. Ri□ā's definition of what constitutes worldly affairs is based on his interpretation of some of the Prophet's teachings. A case in point is Ri□ā's reference to the □*adīth*, "you know best your worldly affairs." Ri□ā explains that medieval legal theorists agreed that there are some Prophetic sayings and actions that aimed at instructing people to act accordingly without having any religious value, whether obligation or prohibition. These Prophetic traditions, found in □*adīth* collections, are not part of religious knowledge. Rather, they represent a human response by the Prophet to his life situations. But even isolated Prophetic traditions that have religious value must be understood as aiming to achieve the public good in matters related to worldly affairs. Thus, they are not part of

religion. In sum, it is clear that Ri□ā's differentiation between *dīn* and *dunyā* is not conducted according to the kind of activity involved, such as religious rituals, economic, political, etc. The main factor according to which religion is distinguished from worldly affairs is the scheme of religious knowledge in terms of "certainty" or "probability." Whatever is "certain" is part of religion. Whatever "probable" is related to worldly affairs. This is, of course, only in *mu'āmalāt*.

But despite Ri□ā's inclusion of isolated Prophetic traditions in *mu'āmalāt* under the rubric of achieving the public good, he nevertheless insists on applying those traditions, especially if they explain or give details of general Qur'ānic rules. This application, however, acts as the first step in dealing with cases in question. In other words, the dynamic that governs applying legal rules in *mu'āmalāt* that can achieve the public good must, in Ri□ā's thinking, start with the available sound □*adīths*. This is because the probability of sound isolated □*adīths* means that most likely, but not certainly, they can be traced to the Prophet. Ri□ā argues that all legal theorists concurred that sound isolated □*adīths* must be applied to practical matters.[202] But since this application is in the field of *mu'āmalāt*, it must be in line with the legal aim of achieving the public good.

Another aspect of Ri□ā's legal interpretation that is different from traditional Sunnī ones is related to the legal cases in the field of *mu'āmalāt* in which there are no Qur'ānic or Prophetic rules. It is clear that in formal legal discourse, all the four established Sunnī schools found in *qiyās* the ultimate method to extend the *sharī'a* to novel cases. If other methods were introduced by the □anafites or Mālikites, such as *isti□sān* and *ma□la□a mursala*, they were kept, according to the formal discourse, in the

[202] Ri□ā, *Fatāwā,* vol. 1, p. 272.

background of *qiyās*. Ri□ā, on the contrary, argues that those legal cases that are not regulated by the Qur'ān and □*adīth* in the field of *mu'āmalāt* must be judged according to the aim of achieving the public good or the *ma□la□a*. All other methods, including *qiyās*, must be used in accordance with this principle. It is worth noticing that in the sixth principle of religious reform, mentioned by Ri□ā in *Yusr al-Islam*, he regards the *fatāwā* of the four well-guided caliphs and those of later jurists pertaining to such cases of *mu'āmalāt* as outside the realm of religion, and therefore they cannot be imposed on the Muslim nation.[203]

Then, Ri□ā elaborates in the *Yusr* on the non-religious value of legal opinions in *mu'āmalāt* through his commentary on Q 5:101-2, which reads, "O ye who believe! Ask not questions about things which, if made plain to you, may cause you trouble. But if ye ask about things when the Qur'ān is being revealed, they will be made plain to you, God will forgive those: for God is oft-forgiving, most forbearing. Some people before you did ask such questions, and on that account lost their faith." He observes that these two verses are part of a *sūra* that was the last to be revealed to the Prophet. In addition, the same *sūra* has in the beginning the verse which declares that the religion was completed during the time of the Prophet (Q. 5:3).[204] Ri□ā argues that the above two verses, 5:101-2, have to be interpreted in the light of verse 5:3, despite the distant places they occupy in the fifth *sūra*. He observes that it is one of the stylistic features of the Qur'ān that verses related to the same topic may be dispersed within one or many chapters. How, then, can one interpret Q. 5:101-2 in the light of Q. 5:3? Ri□ā first enlists several traditions, found in □*adīth* collections or narrated by Qur'ān commentators, such as Ibn Jarīr al-□abarī (d.

[203] Ri□ā, *Yusr*, p. 11.
[204] Ri□ā, *Yusr*, p. 12.

310/923), that explain the reasons for revealing the two verses. The most accepted one, according to Ri□ā, is a tradition narrated by the Companion Abū Hurayra (d. 59/679) that

> while the Prophet was giving a sermon to his Companions, he said, "O people, God has made pilgrimage to Mecca obligatory so make the □*ajj*." A man replied by asking the Prophet, "shall we make □*ajj* every year?" The Prophet remained silent until the man repeated his question three times. The prophet then said, "If I said yes it will be obligatory on you to make □*ajj* every year and you would not be able to do so." Abu Hurayra said, "Then the Prophet said, 'Do not ask about things that I do not tell you, because people before you were condemned due to their many questions to and arguments with their Prophets'."[205]

Ri□ā then quotes □abarī's comment that "God instructed the Companions in these two verses not to ask the Prophet about whatever actions that are not mentioned in the Qur'ān because doing so might lead them to regard such actions as either obligatory or prohibited, and consequently cause hardship to the Companions. But if they ask about a matter that has been already regulated or talked about in the Qur'ān, then this will be clarified to you." In addition, Ri□ā quotes a □*adīth* stating that "God made certain actions obligatory, thus do not miss them. He also prohibited things, and hence do not commit them. And He made limits, so do not transgress them. He ignored things, without forgetting, so do not ask about them." Ri□ā concludes that the wisdom behind those two verses, in the light of Q. 5:3, is that if God perfected and completed religion through the Qurānic revelation and the Prophet's instructions, then why would a Muslim want to expand the field of religious legislation by asking about matters not addressed in revelation? If the Companions were instructed in those two verses not to raise questions about the religious value of actions not regulated in the Qur'ān or mentioned by the Prophet, then later Muslims must do the same. But Ri□ā notes that many medieval

[205] Ri□ā, *Yusr*, p. 15.

jurists, with their extensive use of *qiyās*, expanded the sphere of religious obligations leading to hardship, which is prohibited by clear texts. This situation has led many Muslims, including their governments, to abandon the *sharī'a* altogether and open the door to its critique.[206]

Ri□ā, at this stage of his argumentation in *Yusr al-Islam*, introduces his *maqā□id* thought in a very vigorous way to argue against the extensive use of *qiyās* in favor of a consideration of the public good that is guided by *maqā□id al-sharī'a*. He observes that any addition to the Lawgiver's texts and proclaiming an authority in religious matters by using personal opinions to decide the form and content of religious rituals and the rules pertaining to what is religiously obligated or forbidden, would be an infringement on the easiness of Islam and its legal aim (*maq□ad*). Then he elaborates on this point by presenting several principles to which he refers as *maqā□id* (purposes or aims) and not *wasāil* (methods).[207] In other words, he regards those principles as the main purposes or aims of Islam as a religion and a *sharī'a*, rather than procedural points that can be ignored. In the first principle, Ri□ā reiterates his point about the completeness, and consequently the limitation, of religion based on his interpretation of Q. 5:3.[208] The second principle is that the religion of Islam is based on easiness and hence does not call for any hardship. Ri□ā refers to the verse in the fifth *sūra* (5:6), in which there is an instruction on how to perform ablution for prayer, which ends with the declaration, "God doth not wish to place you in difficulty, but to make you clean, and complete His favor to you, that ye may be grateful." He also refers to the verses on fasting in the second *sūra*

[206] Ri□ā, *Yusr*, p. 23.
[207] This reference is also taken from Ibn Qayyim's differentiation between what is prohibited for its essence and what is prohibited because it leads to prohibited actions.
[208] Ri□ā, *Yusr*, p. 24.

(Q. 2: 183-187) in which it is stated that "God intends every facility for you; He does not want to put you in difficulties." Moreover, Ri□ā refers to the verse Q. 22:78, in which it is stated, after calling on Muslims to strive in God's cause, "He has chosen you, and has imposed no difficulties on you in religion." Ri□ā's last reference is to Q. 87:8, which reads, "And We will make it easy for thee (to follow) the simple (path)." In addition, to press his point on the significance of the principle of easiness in Islam, Ri□ā comments on the last Qur'ānic verse by stating that the reference is to the *sharī'a* that is better than others in the quality of easiness. Thus, the Prophet called the *sharī'a hanīfiyya sam□a*, i.e. that which calls for worshiping God alone in a simple and easy way. The Prophet also said, "This religion is easy, and any one who makes it hard, religion will be harder for him." The Prophet also instructed his Companions by telling them to "call for easiness and not hardship, invite people to the good tidings and do not alienate them."[209]

Ri□ā's third principle is that the Qur'ān is the fundamental text of religion and its basis. That is why the Qur'ān says, "Nothing have We omitted from the Book" (6:38), and "We have sent down to thee a Book explaining all things, a guide, a mercy and glad tidings to Muslims" (16:89). As for the Prophet, Ri□ā explains, he is the one who conveyed the Qur'ān to the people and explicated its meanings, especially in the verses where the references are general and without details (*mujmal*). Medieval jurists, Ri□ā notes, disagreed on the status of Prophetic traditions that contain legal rules, not mentioned in the Qur'ān, whether they represent personal opinions of the Prophet or another form of revelation. Can one regard the Prophet as continuing religious legislation beyond the Qur'ān? Ri□ā observes that Shāfi'ī preferred the latter point of view. In addition, he quotes what the famous Traditionist al-Bukhārī (d. 256/870) introduced in

[209] Ri□ā, *Yusr*, p. 24.

one of the sections of his □*a*□*i*□: "The section on what the Prophet was asked about in which he did not have a Qur'ānic revelation, and he used to reply, 'I do not know' or stay silent until he received revelation, and that he did not offer his personal opinion or use *qiyās*." Ri□ā concludes that the disagreement among medieval jurists on the status of Prophetic traditions was only in the field of pure religious rulings. As for civil, political, and military affairs, it was clear that based on a Qur'ānic instruction (3:159), the Prophet had consulted with his Companions. He used to have an opinion on a specific matter and then retract it, preferring the opinion of his Companions. "God admonished the Prophet on some actions that resulted from his personal opinions, and it was clear that his opinion was not revealed from God."[210]

Ri□ā's fourth principle is that the Prophet is infallible in whatever he conveys from God and however he explains His religion. That is why in dealing with a question raised to him about how palm trees produce their fruit, he gave an opinion that turned out to be inaccurate and consequently the inquirer lost his dates for the season. The Prophet then said, "I instructed you about what I thought was right, but if I inform you of what God wants, then you must listen and obey because I am not a liar."

The fifth principle is that God has endowed Muslims to manage their individual and social worldly affairs on the condition that their mundane life (*dunyā*) does not negatively affect their religion (*dīn*) and the guidance of their *sharī'a*. Therefore, God has made everything fundamentally lawful when He says, "It is He who hath created for you all things that are on earth" (Q. 2:29), and "He has subjected to you, as from Him, all that is in the heavens and on earth" (45:13). Ri□ā adds that God also made the affairs and policies of the Muslim nation and its government depend on consultation when he said,

[210] Ri□ā, *Yusr*, p. 25.

"Those who harken their Lord, and establish regular prayer; who (conduct) their affairs by mutual consultation" (42:38). Muslims are also instructed in the Qur'ān, in matters that are related to policy making, warfare, and administration, to follow the Prophet's instructions and those of the leaders who can make the best decisions. God also has given the Muslim nation the "scales of justice" (*mīzān*) in addition to the Qur'ān, as he did with prophets before.[211] Ri□ā notes that the "balance" means what can achieve justice and equality in rulings based on the evidence that knowledgeable people can extract from texts or based on the principle of justice and the public good. Ri□ā elaborates that this understanding is very clear in the life of the Prophet and his consultation with his Companions in matters such as warfare, peace making, and domestic policy. The Prophet also said, "If a judge ruled in a dispute and his decision was correct, he would get two rewards. And if he ruled and his decision was errant, he would get one reward."[212]

Ri□ā's sixth principle is that God instituted Islam and His straight path in order to perfect the life of human beings in their spiritual and material affairs so that this will lead to happiness in this life and in the hereafter. But since spiritual matters, which lead to happiness in the hereafter, such as beliefs and religious rituals, do not change in time or place, God completed their rules, whether in principles or details. The texts cover all such matters, and no one after the Prophet can add to or subtract from them. In contrast, worldly affairs, whether judicial or political, change from time to time and place to place. That is why Islam clarified the most important of these principles and whatever details were needed during the time of revelation. It is one of the features of this religion that

[211] The reference here is to Q. 57:25 which reads, "We sent aforetime Our messengers with clear signs and sent down with them the Book and the Balance (of right and wrong), that men may stand forth in justice…" .

[212] Ri□ā, *Yusr*, p. 26.

whatever is mentioned in the texts agrees with the benefits for human beings in every time and place, and guide decision-making people to the best ways to achieve the "balance" based on consultations and *ijtihād*.[213]

The seventh principle deals with the main point in Ri□ā's argument in *Yusr al-Islam*, which is "the Prophet's dislike of many questions on matters that require more rules and lead to strictness in religion. This is because such questions might result in having rules in the field of worldly affairs, and not religion, that are appropriate for the Prophet's time but not for later Muslims."[214]

The eighth principle is related to Ri□ā's view on early Islamic history in which he notes that the "venerated fathers" disliked any innovation in religion, and they instructed their followers not to resort to personal opinions and *qiyās* in matters related to religion. They were very reluctant to issue *fatāwā*, especially on hypothetical questions. But some scholars of the *sharī'a* opened the door for *qiyās* and personal opinions. This led to many detailed rules in both *'ibādāt* and *mu'āmalāt*. Some of those detailed rules contradicted clear Prophetic traditions, and others are not mentioned in the Qur'ān or □*adīth* but were intentionally left without regulation. Those jurists also structured theoretical principles and general rules for legal interpretation, but some of them have no basis of evidence in the texts. Ri□ā concludes that such development expanded the *sharī'a* and made it difficult to apply.[215]

The ninth principle is Ri□ā's assertion that although Islam is a religion of unity and cooperation, Muslims throughout the centuries quarreled with each other because of such personal opinions in matters pertaining to religion. The early Muslims, such as the

[213] Ri□ā, *Yusr*, p. 26.
[214] Ri□ā, *Yusr*, p. 26.
[215] Ri□ā, *Yusr*, p. 27.

people of opinion and the *people of □adīth*, disagreed on some matters of interpretation but agreed upon following Prophetic traditions and not imitating others.

In the tenth principle, Ri□ā calls for the use of *ijtihād* which follows the *sunna* and not blind imitation of earlier authorities without any evidence from the texts.[216] The tenth principle portrays Ri□ā's conviction that the medieval expansion of the *sharī'a* was done either by using personal opinions or *qiyās* in religious rituals and matters of *□alāl* (religious permission) and *□arām* (religious prohibition) that do not require such expansion, or through their extensive use of *qiyās* in the field of *mu'āmalāt*, which produced a corpus of fixed rules that claimed to be part of the *sharī'a* by virtue of their deduction from the texts, while the perfect and more legitimate method is to use *ijtihād* to extrapolate rules in such matters that achieve *maqā□id al-sharī'a*, namely, justice and the public good. Therefore, Ri□ā's legal discourse in *Yusr al-Islam* strives against this "excessive" application of *qiyās* by first focusing on the rejection of *qiyās* in *'ibādāt* and consequently following instead sound Prophetic traditions, and second, by limiting the use of *qiyās* in *mu'āmalāt* and its inclusion under the consideration of *ma□la□a*.

To achieve this goal, Ri□ā first quotes Ibn □azm, who argues against the legitimacy of *qiyās* and insists on the close-ended feature of the *sharī'a*. The *sharī'a* for Ibn □azm is subsumed under religion (*dīn*). If religion has been completed by the time of the Prophet, then no one can add any legal rule beyond the Qur'ān, *□adīth*, and the Companion's consensus and claim it as a *shar'ī* rule. Ibn □azm's attack on *qiyās* serves Ri□ā's assertion that whatever is outside the realm of the sacred texts cannot be claimed to have the religious value of obligation or prohibition. He also agrees with Ibn □azm that on many questions related to *'ibādāt* and *mu'āmalāt*, some medieval jurists resorted

[216] Ri□ā, *Yusr*, p. 28.

to *qiyās* and personal opinions while there were sound Prophetic traditions that addressed such questions and hence must be applied.

But Ri□ā does not fully commit his legal theorization to that of Ibn □azm's. He further quotes Ibn Qayyim al-Jawziyya in his *I'lām al-Muaqqi'īn* and agrees with the latter's very-conditioned approval of the use of *qiyās*. After refuting both the opponents and proponents of *qiyās*, Ibn al-Qayyim approves only a *qiyās* in which the *'illa* is clearly stated in the textual rule and that there is no doubt in having the same *'illa* in the new case. This is exactly what Ri□ā accepts, which is only the clear *qiyās* (*qiyās jalī*) and not the hidden one (*qiyās khafī*). Ri□ā also quotes Shawkānī's (d. 1250/1834) *Irshād al-Fu□ūl* in which the latter argues similar to Ibn al-Qayyim that only a very clear *qiyās* is a legitimate one.

After the quotations from Ibn □azm, Ibn al-Qayyim, and Shawkānī to argue against the extensive use of *qiyās* as many medieval jurists did, Ri□ā introduces his idea that in the field of *mu'āmalāt* the main principle is to achieve the public good. He finds support for his view in Mālik's use of *ma□la□a mursala* despite the latter's insistence on following texts in the field of *'ibādāt*. Then, Ri□ā quotes □ūfī's treatise on *ma□la□a* and Shā□ibī's *Muāfaqāt* to argue that in the part of *mu'āmalāt* where there is no specific rule taken from the Qur'ān or □*adīth*, a jurist, judge, or ruler must make a decision that can achieve the public good. Ri□ā insists that this kind of legal activity lies outside the realm of religion and therefore the legal rules cannot be assigned a strict religious value.[217]

In the light of Ri□ā's previous reasoning, it is worth asking the question whether Ri□ā's theorization allows a "human law", in *mu'āmalāt*, to be side by side with the

[217] Ri□ā, *Yusr*, p. 78.

"divine law" in *'ibādāt* and basic rules of *mu'āmalāt*. In other words, if the classical view of the established Sunnī schools is that the *sharī'a,* as being God's law, covers all instances of legalization or adjudication in a way that does not allow a competing human law to exist, does Ri□ā's view on *mu'āmalāt* legitimize human, "secular" laws to fill the area in which the *sharī'a* is silent? Does the consideration of the public good transform Ri□ā's religious reform project into a secular one?

I shall attempt, at this stage of inquiry, to address Ri□ā's terminological differentiation between *dīn, sharī'a*, and *qānūn* (human or secular law). This analysis will help in understanding Ri□ā's view on the possibility of having a "human law." It is clear from the previous treatment of Ri□ā's definition of religion (*dīn)* that it has a fixed corpus of rules and principles that are found only and clearly in the Qur'ān and □*adīth* collections. As explained before, the legal content of religion represents rules that define and delimit religious rituals, Islamic ethical values, and some rules in *mu'āmalāt*. Beyond this field of religious obligation and prohibition, legal rules do not have strict religious values of □*alāl* and □*arām*. But are these "non-religious" rules part of the *sharī'a* in Ri□ā's thinking? Ri□ā, in fact, fluctuates in his answer between two positions. On the one hand, he continues to regard rules, based on the consideration of *ma□la□a* as part of the *sharī'a* in the same sense used by earlier jurists, and on the other he sees such rules as human laws (*qawānīn*) that stand outside the *sharī'a*.[218] However, in order to understand Ri□ā's oscillation in his terminology, one first needs to analyze his view on *maqā□id al-sharī'a*.

[218] Ri□ā, *Mu□āwarāt*, p. 136.

Ri□ā and *maqā□id al- sharī'a*

Ri□ā is clearly interested in the concept of *maqā□id al-sharī'a*. In several places of his writings, he refers to the *maqā□id* and envisions Islam as aiming to achieve certain goals and purposes. In his *fatwā*, known as the "*fatwā* on the Parisian questions," he replies to the question on the definition of *ijtihād* and the requirements of the *mujtahid.* After quoting from Tahānawī's (ca. 1158/1745) *Kashshāf* and Mārghinānī's (d. 593/1197) *Hidāya* and a reference to Shā□ibī, Ri□ā states that *ijtihād*, according to medieval jurists, is

> contemplating the legal sources, which are the Qur'an, *sunna*, *ijmā'*, and *qiyās*, and to know the detailed rules that are not found in the "certain" sources. The main requirement of a *mujtahid* is to be able to understand the Qur'an and *sunna*, to know *maqā□id al-sharī'a*, and to realize peoples' life situations and customs. This is because the rules of the *sharī'a*, especially in *mu'āmalāt*, depend on achieving what is good for the people in this life and in the hereafter on the basis of the principle "preventing harm and bringing benefit."[219]

Ri□ā notes that after his answers to the Parisian questions were published in *Manār*, 'Abduh told him that what he wrote was the best at explaining the principles of Islam and its *maqā□id.*[220] In addition, in his editorial article of *Manār*, 1316/ , Ri□ā declared, "whoever looks carefully at *maqā□id al-sharī'a*, he will know that religion spreads through propagation and not compulsion."[221]

Also, in an article entitled "Religious Reform," published in *Manār*, 1316/ , Ri□ā asserts that "the *sharī'a* is the guide of reformers because any good for human beings,

[219] Ri□ā, *Mu□āwarāt*, p. 134.
[220] Ri□ā, *Mu□āwarāt*, p. 140.
[221] Ri□ā, *Manār*, vol. 1, p. 765.

which relates to this life or the hereafter, has been acknowledged in Islam and regarded as one of its *maqā□id.*" Moreover, in another article published in *Manār*, and entitled *al-Tashabbuh wa'l-Iqtidā'*, Ri□ā regrets that many Muslims during his time do not accept any kind of art or science coming from Europeans because they regard it as a way of imitating non-Muslims, an act abhorred in Islam. Ri□ā explains that

> the most important pillar to preserve religion and spread its correct teachings among non-believers is jihad, which depends on acquiring such sciences. Whatever is needed to get an obligation is an obligatory action. But ignorance became pervasive in our time and fanaticism against non-Muslims without understanding and knowledge of *maqā□id al-shar'* and the lack of knowing harms and benefits are the cause for accusing the wise people among the Europeans of bad intention.[222]

In addition to the many references of Ri□ā to the term *maqā□id al-sharī'a* or *maqā□id al-shar'*, one can attain a better understanding of his *maqā□id* thought through his treatment of *maqā□id al-Qur'ān* found in his *al-Wa□y al-Mu□ammadī*.[223] Following the footsteps of 'Abduh in the latter's introduction to *Tafsīr al-Manār*, Ri□ā assigns a whole chapter in his book to *maqā□id al-Qur'ān*. His treatment of the subject is far more detailed than that of 'Abduh. He starts the chapter by declaring that the *maqā□id* or aims of the Qur'ān are intended to reform individuals and social behavior, achieve brotherhood and unity among peoples, and purify their souls through spirituality.[224] Then, Ri□ā enumerates nine *maqā□id*, some of which can be regarded as *maqā□id al-sharī'a* because they directly relate to legal rulings. The first *maq□ad* of the Qur'ān is the three pillars of belief, namely, belief in God, the day of resurrection, and good deeds as a proof of right belief. The second *maq□ad* is to prove prophecy in general and the miracles of

[222] Ri□ā, *Manār*, vol. 1, p. 554.
[223] Ri□ā, *al-Wa□y al-Mu□ammadī* (Cairo: Wazarat al-Awqaf, 2000).
[224] Ri□ā, *Wa□y*, p. 124.

prophets in particular. The third *maq□ad* is to purify and perfect the human soul and personality. This can be achieved through the call for *□ikma*, which, according to Ri□ā, is synonymous with practical philosophy and psychology, ethics, and the general rules of social relations. Ri□ā defines *□ikma* as "to know something according to its essence and what it has of benefits that inspire action." He says that the word *fiqh* in the Qur'ān refers to *□ikma* and not to the juristic meaning of specific rules of practice.[225] The third *maq□ad* also includes the Qur'ān's instruction about independent reasoning and its disparagement of *taqlīd*. Ri□ā notes that while European educational systems emphasize the role of independent reasoning and logical thinking, only few Muslims, including the *'ulamā'*, practice Islam in away that reflects its real "rational picture."[226]

The fourth *maq□ad* of the Qur'ān is to call for social and political reform in a way that leads nations to unity and equality. The other form of unity is a legal one in which Ri□ā envisions all those under Islamic rule would be equal in their civil rights according to the principle of justice among believers and non-believers, rich and poor, and a ruler and ordinary people.[227] Also, Ri□ā includes within this *maq□ad* an understanding that the places of worship of non-Muslims living under Islamic rule must be respected and no one should enter such places without the consent of the people in charge. In addition, the fourth *maq□ad* of the Qur'ān also encompasses the principle of judicial independence and the equality of all people in front of the just *sharī'a*. But Ri□ā notes that legal cases, pertaining to non-Muslims, that relate to personal and family matters must be excluded from the influence of Islamic courts, and must be judged by the leaders of each religious community, according to their religious traditions. But if such

[225] Ri□ā, *Wa□y*, p. 184.
[226] Ri□ā, *Wa□y*, p. 188.
[227] Ri□ā, *Wa□y*, p. 193.

people decided to litigate in front of a Muslim judge, then the *sharī'a* must be applied. Ri□ā refers here to Q. 5:42, 48, and 49.[228]

The fifth *maq□ad* is titled, "the general features of Islam in the field of personal obligations and prohibitions." Ri□ā enumerates within this *maq□ad* ten rules, many of which deal directly with legal theory. First, based on Q. 2:143, Islam stands in the middle of all religious traditions in terms of its balance between the right of the soul and that of the body, and the good in this life and in the hereafter.[229] Second, the objective of Islam is to help human beings to achieve happiness in this life and in the hereafter through spiritual purification, right belief, good deeds, and ethical behavior. The third rule is that the aim of Islam is to call on human beings to know each other and establish good relationships. The fourth rule is that Islam is a religion of easiness and does not call for hardship in religious practices. He refers to Q. 2:286, 2:220, 2:185, 22:27, and 5:7. One of the results of this general rule is that "a religious obligation which causes hardship would be mitigated into either a less difficult obligation or totally cancelled, such as fasting the month of Rama□ān for the one who suffers from a long-term illness. In such a case, the ill person can feed a poor person each day in Rama□ān as a substitute for fasting."[230] As for a prohibited action, Ri□ā adds, it can be permitted in cases of necessity, as clearly stated in the Qur'ān. If the prohibition is based on the principle of "closing the means to harm," then it can be permitted in cases of extreme need (□*āja*) and not only necessity. The fifth rule, included within the fifth *maq□ad*, prohibits perceiving religion as a way of self-torture by denying what God has permitted. This is

[228] Ri□ā, *Wa□y*, p. 194. The verse (5:48) reads, "So judge between them (non-Muslims) by what God hath revealed…"
[229] Ri□ā, *Wa□y*, p. 198.
[230] Ri□ā, *Wa□y*, p. 199.

based on Q. 7:31.[231] The sixth rule is that Islam has only a few religious obligations and they can be easily understood. But traditional jurists increased religious obligations through their opinions, so that knowing all such rules became difficult, and practicing all of them was impossible. Ri□ā gives examples of daily prayers and the ablution before prayer to argue that such practices can be easily learned without difficulty.[232] The seventh rule is that religious obligation can be divided into obligation (*'azā'im*) and mitigations (*rukha□*). Ibn 'Abbās (d. 68/687) used to prefer mitigations while Ibn 'Umar (d. 73/692) preferred obligations. Ri□ā refers to Q. 35:32 which enumerates three kinds of believers according to their degrees of commitment to religious practices.[233] The eighth rule states that the texts of the Qur'ān and *sunna* have degrees of authenticity. Whatever is "certain" in these texts is considered the general framework of religious knowledge. Whatever is "probable" in its authenticity or meaning allows degrees of interpretations. The Prophet in such cases of possible multiplicity of meaning used to acknowledge all the opinions of his Companions. When the Qur'ānic verse in the second *sūra* (2:219) was revealed, and it mentioned the harm in drinking wine without clear prohibition, some Companions quit drinking wine while others continued. The Prophet accepted both positions until the verse in the fifth *sūra* (5: 90) was revealed, which clearly prohibited such practice. Ri□ā explains that religious obligations and prohibitions cannot be authenticated except through "certain" texts that are understood by everyone. The Qur'ānic verses that have "uncertain" meanings and isolated □*adīths*, whether in their chains of authorities or meanings, depend in their application on whether they are accepted or not by specific

[231] Q. 7:31 reads, "O children of Adam! Wear your beautiful apparel at every time and place of prayer: eat and drink: but waste not by excess, for God loveth not the wasters."
[232] Ri□ā, *Wa□y*, p. 200.
[233] Ri□ā, *Wa□y*, p. 201.

jurists and on the *ijtihād* of decision-making people in the field of judicial rulings and political matters.[234] The ninth rule is that no one shall be punished for what is in his or her heart or mind. Punishments are exclusively applied in cases of specific crimes or infringements on practical rules related to the public good and rights. The last rule, included in the fifth *maq□ad*, states that religious rituals are decided according to what we know of the Prophet's practice, and no one can add or change them according to one's personal preference. These rituals have the goals of spiritual purification and remembrance of God. Ri□ā concludes, after enumerating the ten rules, that each one of them is liable to be regarded as a special *maq□ad* of the *maqā□id* of revelation.[235]

It is clear that the ten rules that compose the fifth *maq□ad* of the Qur'ān present a general understanding of the *sharī'a* according to Ri□ā's view. The remaining five *maqā□id* deal with the general rules that pertain to specific fields of legal activity, namely, political and international, financial, warfare and peace making, the status of women and their rights, and slavery.

The sixth *maq□ad* of the Qur'ān is entitled, "Explaining Islamic political and international rule: its kind and general principles." There are several rules and principles that pertain to this topic. Ri□ā notes that the first fundamental rule of Islamic government is that the person who heads the government in Islamic society, whether called an *imām* or caliph, is entitled to execute the *sharī'a*. The *umma* has the right to appoint him and remove him from office. Ri□ā quotes Q. 42: 38 and 3:159 to support his view.[236] The Prophet, Ri□ā argues, used to consult with his Companions in matters pertaining to

[234] Ri□ā, *Wa□y*, p. 201.
[235] Ri□ā, *Wa□y*, p. 202.
[236] Q. 42:38, for example, reads, "Those who harken to their Lord, and establish regular prayer; who (conduct) their affairs by mutual consultation…"

political, military, and financial affairs that were not regulated in the Qur'ān. The wisdom behind calling for practicing *shūrā* in a general way is to allow Muslims to choose the best method, according to their time and place, that achieves the goal of consultation.[237] Ri□ā continues his discussion by noting that one of many religious proofs that political and judicial legislation is the right of the *umma* is that the Qur'ān, when speaking on such matters, always addresses the Muslim community at large. Such references are found, for example, in the first verse of the ninth *sūra*, which reads, "A (declaration) of immunity from God and His Messenger to those of the..." and Q. 49:9 which reads, "If two parties among the believers fall into a quarrel, make ye peace between them: but if one of them transgresses beyond bounds against the other, then fight …" Such a reference to the community at large is also found in the verses that address the rules related to properties, booty, and the status of women.[238] Ri□ā adds that some great legal theorists declared that sovereignty in the Islamic state is the right of the *umma* through the role of the *ahl al-□all wa'l-'aqd*, who should be responsible for appointing caliphs and *imāms* or remove them from office if the public good requires such a decision. Imām Rāzī (d. 606/1210) defined *khilāfa* as "general leadership given to one person according to specific conditions."

Rāzī stated in the last condition that the "*umma* has the right to remove the *imām* from office due to mischief." Moreover, al-Sa'd al-Taftāzānī (d. 793/1390) said in his *Shar□ al-Maqā□id* as a commentary on Rāzī's definition, "what he meant by the *umma* is the *ahl al-□all wa'l-'aqd*." Ri□ā observes that such a basic rule of the Islamic state is the greatest political reform which the Qur'ān declared in a time when all nations were

[237] Ri□ā, *Wa□y*, p. 202.
[238] Ri□ā, *Wa□y*, p. 203.

enslaved by tyrannical governments. This rule was applied first by the Prophet and then by the four well-guided caliphs. Ri□ā adds that the Qur'ān describes how the Queen of Sheba consulted with her people to bring an example of the best policy.[239] But some medieval jurists, Ri□ā observes, made *shūrā* only recommended, without any obligatory status, to satisfy the will of kings and princes.[240]

The second principle that relates to the sixth *maq□ad* encompasses the "fundamentals of legislation in Islam." Here, Ri□ā repeats his dominant idea that after consulting the three main sources of Islamic law, namely, Qur'ān, *sunna*, and *ijmā'*, rules that pertain to political activities can be achieved through *ijtihād.* However, Ri□ā quotes for the first time in his *Wa□y* a □*adīth* in which the Prophet said to one of his military commanders, "If you surround a fortress, and the people inside ask you to rule according to God's law, do not do that, but apply your own judgment, because you do not know if you can achieve treating them in accordance with God's law or not." Ri□ā comments on the □*adīth* that this is one of the clearest □*adīths* that gives the right to make decisions in political and military affairs to the caliphs and leaders because they are part of the general benefits (*ma□āli□ 'āmma*) that change according to time and place.

Then, Ri□ā adds an important paragraph in which he divides the legal rulings of the Qur'ān and *sunna* into two categories. First, are rulings that deal with specific actions and events. These are composed of two types. First are rules that have a "certain" quality in terms of their authenticity and meaning, and therefore do not allow any *ijtihād* and must be applied unless there is a *shar'ī* reason to prevent such an application. Examples of such exceptional reasons are the lack of a condition necessary for applying the rule

[239] The reference here is to Q. 27:32 in which the Queen said, "Ye chiefs! Advise me in my affair: no affair have I decided except in your presence."
[240] Ri□ā, *Wa□y*, p. 204.

such as abandoning the application of a Qur'ānic rule of punishment (□*add*) due to doubt or a case of necessity. Here Ri□ā brings again the example of 'Umar's decision not to apply the □*add* for thieves during the year of famine. The other type of specific rulings, mentioned in the Qur'ān and Prophetic traditions, include rules that have only "probable" quality in terms of either authenticity or meaning. Those are applied according to the *ijtihād* of the decision-making people as described before.

Ri□ā introduces in this section of *Wa□y*, for the first time, the second category of Qur'ānic and Prophetic rules. These are described as "general rules" of all legal rulings. The most important of them are the search for truth and justice; equality in rights, testimonies, and rulings; the preservation of *ma□āli□* and prevention of *mafāsid*; the consideration of local custom (*'urf*) according to its conditions; the abandonment of applying □*udūd* in cases of doubt; necessities permit prohibitions; necessity has to be determined according to its conditions; the main aim of *mu'āmalāt* is gaining virtues and avoiding vices; and lastly the prohibition of injustice.[241] It will be more clear through Ri□ā's legal opinions and *fatāwā* that the kind of free *ijtihād* that he envisions in the field of *mu'āmalāt* is very much directed by such general rulings that he enlists as part of the *maqā□id* of the Qur'ān. Ri□ā, however, covers only a few of those general rules in his treatment of the sixth *maq□ad*. He quotes Qur'ānic verses that call for achieving justice and equality when judging between people and also the prohibition of injustice.[242] But he elaborates on the rule, which states "the aim of the *mu'āmalāt* is to achieve virtues and prevent vices." Ri□ā declares, "Whoever uses induction (*istiqrā'*) in studying the rulings of the *sharī'a* finds that all rules, mentioned in the Qur'ān or the *sunna*, whether related

[241] Ri□ā, *Wa□y*, p. 210.
[242] Ri□ā, *Wa□y*, p. 210.

to personal, civil, political, or military matters, are aimed at the achievement of the goals of truth, justice, trust, keeping promises, mercy, love, tranquility and avoiding injustice, lying, mistrust, usury (*ribā*), and bribery."[243]

After stating the specific and general rules of the *sharī'a*, Ri□ā claims that penal laws in Islam are constituted of two kinds. First are the □*udūd*, which means the obligation to apply a specific punishment for a specific crime according to the text, such as the execution of murderers to keep the life of the community, the punishment of adultery to preserve the family honor and progeny, the punishment for stealing to preserve security, and the punishment for intoxication to preserve the mind. Ri□ā explains that some jurists do not regard the punishment for intoxication as a □*add* because it is not mentioned in the Qur'ān and not determined in the *sunna*. The wisdom behind applying the □*udūd*, Ri□ā observes, is to deter criminals and other non-virtuous people. But in the case of punishment for adultery, Ri□ā comments that jurists made conditions to apply the □*add*, which rarely can be achieved except through confession. It is also narrated in a □*adīth* that the one who commits adultery should hide his problem and he or she is not encouraged to confess. In the end, Ri□ā notes that the application of □*udūd* is the right of the caliph or the *imām*, and no one else can apply such penal laws. The second type of criminal laws are those called *ta'zīr* (disciplinary punishment), which depend solely on the *ijtihād* of rulers, in the light of the general rules mentioned above.

The seventh *maq□ad* of the Qur'ān is related to "directions toward financial reform." Ri□ā argues that this *maq□ad* deals with one of the major social problems which is "the tyranny of wealth". The other three social injustices are: "the aggression of war and its severity", "the injustice against woman", and "the injustice against the weak

[243] Ibid.

and captives by denying their freedom." For each of these four social ills, Ri□ā dedicates a separate *maq□ad.* The main general rules or principles related to financial reform are encouraging spending for the sake of God to support the poor; being wise in spending; the protection of private property; the obligation to pay the *zakāt* (alms giving); the obligation to spend on one's wife and family; and spending on the poor as an obligation to expiate one's sins. Ri□ā quotes Qur'ānic verses to support his claim that all these principles are declared in the Qur'ān. What is more related to our topic, however, is that Ri□ā regards those principles or general rules as part of the *maqā□id* of the Qur'ān through his quotations of verses that deal with specific questions. For example, he quotes Q. 65:7, which reads, "Let the man of means spend according to what God has given him." Ri□ā argues that although this verse was revealed to deal with the question of spending on the divorced wife during her grace period (*'idda*), the instruction is general. He refers to a principle in Islamic legal theory which states that "the main reference in any verse is to the general meaning and not just to the specific reason of revelation."[244] Ri□ā also declares that if one does not interpret Qur'ānic instructions on financial matters according to their □*ikam*, '*illal*, and benefits, God's word would not be called □*ikma*. Ri□ā quotes Q. 17:29 which reads, "Make not thy hand tied (like a niggard's) to thy neck, nor stretch it forth to its utmost reach, so that thou become blameworthy and destitute," and comments that God made the reason for the negative value of spending without limits the end result of such action, which is to be blameworthy and destitute.

Therefore, Ri□ā, following the footsteps of Abduh, finds that Qur'ānic verses cannot be called "words of wisdom" (□*ikma*) unless they refer to general principles that guide humanity as well as to the aims or purposes of legal rules. But a legitimate

[244] Ri□ā, *Wa□y*, p. 221.

objection to Ri□ā's principles of financial reform, included within the seventh *maq□ad*, is that most of them do not constitute specific rulings that can bring change and achieve real reform in Muslim societies. This objection, which is related to Ri□ā's *maqā□id* thought in general, as portrayed in *al-Wa□y al-Mu□ammadī*, will be checked through his *fatāwā* to see if such general rules and principles can in fact generate legal opinions on specific questions.

In the eighth *maq□ad*, Ri□ā deals with the "reformation of the warfare system and the prevention of its vices and conditioning its legitimacy on what brings benefit to humanity." The subtitle of this *maq□ad* is "a general outlook at the philosophy of warfare, peace making, and treaties." It is clear from the title and the subtitle that the main topic of this *maq□ad* is more specific than the previous one. One can clearly note that Ri□ā's writings on this topic reflect the events of his day, mainly the post-World War One colonization of Muslim countries by European powers. He declares first that if warfare reflects a struggle to achieve justice and bring good to people, then it can be legitimized according to the Qur'ān. But if it aims at the occupation of other nations and the oppression of the weak by the strong, as the European powers did, then warfare must be stopped because it is unjust. In addition, he notes that the aim of peace treaties should be achieving reform, justice, and equality among people and not the domination of one nation over the other. He cites the treaty of Versailles, after World War One, as an example of an ill-advised treaty. Then, Ri□ā states what he calls "the most important rules of warfare and peacemaking in Islam." These rules are the following. The first rule permits fighting aggressors in order to stop their aggression, but prohibits Muslims from starting any aggression against non-Muslims. Ri□ā quotes Q. 2:190, which reads, "Fight

in the cause of God those who fight you, but do not transgress limits; for God loveth not transgressors," and comments that this verse is *mu□kam* (clear in meaning) and cannot be abrogated. The Prophet's wars were defensive in nature. Second, the positive aim of fighting in Islam, after facing aggression and injustice, is the protection of the followers of all religions from being oppressed or compelled to convert to another religion. Ri□ā cites Q. 22: 39-40, which read, "To those against whom war is made, permission is given (to fight), because they are wronged-and verily, God is most powerful in defiance of right- (for no cause) except that they say, 'Our Lord is God.' Did not God check one set of people by means of another there would surely have been pulled down monasteries, churches, synagogues, and mosques, in which the name of God is commemorated in abundant measure..." Third, peace is the original state of relationships between nations, and warfare is only a necessity that might be conducted to achieve good and prevent injustice. Ri□ā cites Q. 8:61 which reads, "But if the enemy inclines towards peace, do thou (also) incline towards peace, and trust in God...", to prove that peace is preferred over war. Fourth, the perfect preparation for the war should be in a way that might prevent it. The fifth rule is entitled "Mercy with Captives." Ri□ā cites Q. 8:67 stating, "It is not fitting for a Prophet that he should have prisoners of war until he hath thoroughly subdued the land."[245] The sixth rule is "fulfilling the obligations of treaties without any violations." Here Ri□ā cites Q. 16:91, which states, "Fulfill the covenant of God when ye have entered into it, and break not your oaths after ye have confirmed them..." The seventh and last rule, related to the eighth *maq□ad* of the Qur'ān, states that "the poll tax (*jizya*) is a consequence to fighting and not a cause." Ri□ā comments on Q. 9:29, which reads, "Fight those who believe not in God nor the last day, nor hold that forbidden which

[245] Ri□ā, *Wa□y*, p. 233.

hath been forbidden by God and His messenger, nor acknowledge the religion of truth, from among the People of the Book, until they pay the *Jizya* with willing submission, and feel themselves subdued..." He argues that this verse calls on Muslims to fight those mentioned when there is a legitimate reason to do so, such as an aggression against them or their country, or oppressing them and denying religious freedom to Muslims. This is the case of the Byzantines against Muslims during the time of the Prophet and leading to the battle of Tabūk, with which the verse is dealing.[246] The poll tax was instituted in such cases to ensure first the security of Muslims and also to place an obligation on them to protect and defend the People of the Book who paid the poll tax. Ri□ā adds that the □*ikma* of the *jizya* is that it was not a tax of conquerors on the conquered people in order to subjugate them under their will. Rather, it is an obligation on Muslims to defend against any aggression those non-Muslims who paid the poll tax. "This is well known from the behavior of the Prophet's Companions who were the most knowledgeable of *maqā□id al- sharī'a* and the most just in applying them. He cites some examples from Balādhurī's (d. 279/892) *Futū□ al-Buldān* and Azdī's (c. 165/782) *Futū□ al-Shām* in which the Companions gave back the amount of the poll tax taken from the People of □im□ because the Muslims could not protect them from the Byzantines during the battle of Yarmūk. Therefore, Ri□ā observes, warfare in Islam is limited to preventing harm and achieving good for human beings. As for the non-Muslim states with whom the Islamic state has peace treaties, they are called *ahl al-'ahd* and the peace arrangement must be fulfilled.

The ninth *maq□ad* of the Qur'ān is "giving women all human, religious, and civil rights." Ri□ā emphasizes in this *maq□ad* the right of women to acquire and manage

[246] Ri□ā, *Wa□y*, p. 234.

properties, their rights in dowry and inheritance, and their complete independence in representing themselves in courts. All these rights are compared to the status of Arab women before Islam. Ri□ā adds that although Islam placed the right of divorce in the hand of the husband, it also gave the right to the woman to condition her marriage contract with the right of initiating divorce if she wanted. This is based on the opinion of some jurists that any condition (*shar□*) in a contract is a legitimate one unless it contradicts a "certain" text in the Qur'ān or *sunna*.[247]

The tenth *maq□ad* is entitled "The emancipation of slaves." Ri□ā argues that the *sharī'a* ensured the just treatment of slaves during the time of the Prophet, and included rules that can gradually lead to the abolition of slavery. The way to do that was first to limit slavery to war captives with the encouragement to free them, and second, the gradual emancipation of the old slaves. This is clear in the actions of the Prophet during and after the battles of *Banī al-Mu□□alaq*, *Fat□ Mecca*, and *Ghazwat □unayn*. In those three military exhibitions, Ri□ā notes, the Muslims were victorious, and the Prophet's wish to free the war captives showed that "the spirit of the *sharī'a* calls for the freedom of slave captives without any gain for Muslims except doing a good deed."[248] Based on this spirit, Ri□ā enlists several cases in which Islamic law ensures the freedom of slaves and regards this action as a religious act of devotion to God. In several cases of expiation of certain sins, the Qur'ān prescribes freeing slaves as either an obligatory or an optional act to fulfill this expiation.[249]

Ri□ā's *maqā□id* thought in *al-Wa□y al-Mu□ammadī* presents a general outlook on the *sharī'a* in which principles and general rules are mentioned and authenticated as

[247] Ri□ā, *Wa□y*, p. 234.
[248] Ri□ā, *Wa□y*, p. 246.
[249] See, for example, Q. 58:3 and 4:92.

"certain" by virtue of their Qur'ānic origin. All rulings on *mu'āmalāt* have to achieve the goal of being in line with such general rules and guiding principles. Ri□ā's method of formulating such principles follows 'Abduh's in first the thematic character of dealing with each question of inquiry by collecting all or most of Qur'ānic verses on the subject, and second through the concentration on the □*ikma* of any Qur'ānic rule. The phrases in such Qur'ānic verses that focus on the rationale behind having the rules are emphasized in the interpretive process and then generalized into guiding principles or rules of action. In addition, Ri□ā presents in his writings on *maqā□id al-Qur'ān* a new genre of religious writings, practiced mostly by later *maqā□id* thinkers, in which different sections of *fiqh*, or Islamic jurisprudence, are introduced by an enumeration and elaboration on the main *maqā□id* of the *sharī'a* that relate to the specific section, such as financial, political, etc. However, it remains worth attempting to see if such theorization can be translated into a practical effect in Ri□ā's *fatāwā*, but at least one can confidently declare such an effect in his writing on *maqā□id al-Qur'ān*, such as in the cases of slavery and warfare and peacemaking in Islam.

Ri□ā's *fatāwā*

Ri□ā's *fatāwā* appeared as a special section in his *Manār*, from 1903 to 1935, to answer questions on different topics of Islamic jurisprudence. According to al-Munajjid and Khūrī, who published Ri□ā's *Fatāwā* in six volumes, the latter issued 1061 *fatāwā* in the *Manār*. Some of these, for sure, are questions about Ri□ā's opinions on matters related to dogmatics, reason and revelation in Islam, how to achieve Muslim unity and

the like. That is why Ri□ā did not name this section in the *Manār* as dedicated for *fatāwā* in the early issues but rather a section for "questions and *fatāwā*." However, in his fourteenth issue of the seventh volume of the *Manār*, he named the section "*bāb al-fatwā*" (the section on *fatwā*). Thus, not all the 1061 entries, which are listed in Ri□ā's *fatāwā*, deal with legal questions. In addition, to know the limits of Ri□ā's *fatāwā* and their degree of technicality, he explains in his *fatwā* on "the fundamentals of Islam", dated 1926, that the aim of the section on *fatāwā* in the *Manār* is to provide concise answers to legal questions and to decline from delving into very detailed points of Islamic jurisprudence.[250] Since Ri□ā, throughout his *fatāwā*, refers his readers to his theoretical works, published first periodically in *Manār*, such as *Yusr al-Islam*, *Mu□āwarāt*, and *Khilāfa*, he undoubtedly expects the inquirer to get a more detailed answer to the theoretical part of his question in such works.

Another feature that very much distinguishes Ri□ā's *fatāwā* from 'Abduh's, is that while the latter resorts to *taqlīd* in most of his *fatāwā*, due to the restrictive status of his position as Egypt's *muftī*, Ri□ā clearly shows a methodology of *ijtihād*. No matter what the topic of the *fatwā* is, whether in *'ibādāt* or *mu'āmalāt*, he attempts to analyze the question and enlists some of the Sunnī schools' opinions without showing any commitment to or affiliation with anyone of them. In many of his *fatāwā*, the inquirer apparently is affiliated with either the □anafite or Shāfi'ite school. Ri□ā usually responds to such questions by informing the inquirer of the established opinion according to the latter's school, but then he evaluates freely such an opinion vis-à-vis the opinions of the other schools and issues the *fatwā* based on his preference. In some cases he

[250] Ri□ā, *Fatāwā*, vol. 5, p. 1871.

concludes with an opinion that is different form those of the four established Sunnī schools.

Another salient feature of Ri□ā's *fatāwā* is that he commits himself to the polar distinction between *'ibādāt* and *mu'āmalāt* as attested in his theoretical writings. In all his *fatāwā* that deal with questions on religious rituals, he consistently rejects any of such practices except those authenticated in the Qur'ān or □*adīth*. He declares in his *fatwā* dated 1928, for example, that no one can make *qiyās* in *'ibādāt* and adopt new forms of religious practices.[251] However, he explains in the *fatwā* on the "applicability of □*adīth*," dated 1930, that religious practices, defined through the maxim *lā na'bud Allah illā bimā shara'a* (we do not worship God except according to what He legislated), are two kinds: general and particular.[252] The particular ones include the number of prayers for each day, for example, or the main physical movements in prayer. These cannot be altered and must be practiced according to tradition. The second kind, however, such as the non-obligatory prayers, can be performed without specifying a number, and consequently the Muslim can choose the frequency and time of worship. What mostly relates to our topic is that in *fatwā* 814, published in the *Manār*, 1930, Ri□ā declares that "one of the rulings of *maqā□id* (of the *sharī'a*) is that the authentication of *'ibādāt* requires a "certain" text.[253]

Therefore, this fixation of *'ibādāt* is, for Ri□ā, one of *maqā□id al-sharī'a*. In addition, in *fatwā* 925, published in *Manār*, 1931, Ri□ā refutes a traditional view that an innovation in religious practices (*bid'a)* can be divided into either good (*bid'a □asana*)

[251] Ri□ā, *Fatāwā*, vol. 5, p. 2076.
[252] Ri□ā, *Fatāwā*, vol. 6, p. 2291.
[253] Ri□ā, *Fatāwā*, vol. 6, p. 2260.

or bad (*bid'a sayyi'a*).[254] He obdurately rejects such a division in *'ibādāt* declaring that any innovation in religion is a legislation of what is not permitted by the Lawgiver.[255]

But despite the fixation of *'ibādāt*, Ri□ā introduces in *fatwā* 685, dated 1926, a notion that while there is no possibility of *ijtihād* in legislating *'ibādāt*, there is room for multiplicity of opinions in the actual execution of religious practices.[256] Thus, whatever disagreements there might be among jurists on how to perform ablution for prayer or fasting, for example, these lie within the sphere of performance and do not affect the legality of the practice itself. He addresses the objection, attributed to some □anafite and Shāfi'ite jurists, that while there is no evidence in □*adīth* literature that the Prophet performed twenty *rak'a* (prostration) of *tarāwī*□ prayer in the month of Rama□ān, 'Umar b. al-Khattāb, however, approved this practice by saying "*ni'mat al-bid'a*" (what a good innovative practice). Those jurists used this incident to argue for the approval of new religious practices, not performed by the Prophet, as long as they achieve a spiritual goal. Ri□ā contends that 'Umar and other Companions who prayed twenty *rak'as* of *tarāwī*□, after the death of the Prophet, did not come up with a new *'ibāda*. Rather, the *tarāwī*□ prayer was already approved by the Prophet without limiting it to a specific number of *rak'as*. Thus, such a decision lies within the sphere of execution of such practices that allow some flexibility.

Similarly to what appears in his theoretical writings, Ri□ā sees the *maqā*□*id* of *mu'āmalāt* as achieving the public good. While we find in *Yusr al-Islam*, *al-Wa*□*y al-Mu*□*ammadī*, and other theoretical treatises of Ri□ā an attempt to link this non-

[254] Ri□ā, *Fatāwā*, vol. 6, pp. 2401-3.
[255] For an exposition of the traditional view on "good" and "bad" innovative religious practices, see Ibn Baydakin al-Turkumani, *Luma'*, vol. 1, pp. 5-7.
[256] Ri□ā, *Fatāwā*, vol.5, p. 1872.

traditional line of thinking to early manifestations of Sunnī Islamic jurisprudence, such as the early □anafite use of *isti□sān* or the Mālikite *isti□lā□*, in the *fatāwā*, Ri□ā, very much ignores his claim about the early □anafite *isti□sān*, preferring to focus on *ma□la□a mursala* as developed within the Malikite school. Here one can see many references to Shā□ibī's *I'ti□ām* and *Muāfaqāt* as the expounders of Mālikite doctrines. But such reference to the principle of *ma□la□a* within a Malikite context takes a new form of legal theorizing in several of Ri□ā's *fatāwā*, in which Ri□ā's vision of *maqā□id al-sharī'a* in particular and his legal theory in general are presented as the perfect manifestation of Mālik's doctrines as narrated to us by Shā□ibī. A case in point is *fatwā* 685, mentioned above, in which he clearly states that Mālik's doctrine is that "there is no *ijtihād* in *'ibādāt* because religious rulings depend on texts of the Qur'ān and *sunna*, but judicial rulings are based on the consideration of *ma□āli□*."[257] In *fatwā* 700, dated 1927, he adds that according to the opinion of Mālik, in *mu'āmalāt* the texts should be judged according to *ma□la□a*.[258] Moreover, in *fatwā* 724, dated 1927, and related to the question of triple divorce, Ri□ā argues that according to Mālik, jurists have to consider *maqā□id al-sharī'a* in rulings pertaining to *mu'āmalāt.*[259] Thus, if the aim of having the triple feature of divorce in Islamic law is to give time for the husband to keep the marriage intact while at the same time directing his attention to the danger of divorcing his wife repeatedly, then uttering a triple divorce in one time does not achieve this aim. That is why the evidence shows that the Prophet regarded such divorce as only one and not three. But because people, during the time of 'Umar, became incautious in uttering the triple divorce, he, based on the *ma□la□a*, decided to regard such divorce as triple in

[257] Ri□ā, *Fatāwā*, vol. 5, p.1873.
[258] Ri□ā, *Fatāwā*, vol. 5, p.1920.
[259] Ri□ā, *Fatāwā*, vol. 5, p. 2007.

effect. Ri□ā observes, however, that some of the Companions, such as Ibn ʻAbbās (d. 68/687), did not approve of ʻUmar's decision. Ri□ā concludes with the *fatwā* that in modern times one should follow the Prophet's decision to keep families intact, a position called for by Ibn Taymiyya and rejected by the dominant views of Sunnī schools.

It is clear from the previous example that Ri□ā's reference to Mālik and his school is mainly theoretical because the Mālikite opinion on the triple divorce differs from his. But as indicated before, Ri□ā's reading of Shā□ibī's works leads him to declare that not only *ma□la□a* should be considered in rulings pertinent to *muʻāmalāt*, according to Mālik, but also *maqā□id al-sharīʻa* in general. This assessment situates the consideration of *ma□la□a* within the larger context of *maqā□id al-sharīʻa* in the field of *muʻāmalāt*. This last point needs further explanation.

In *fatwā* 685, mentioned above, Ri□ā asserts that "civil and political rulings must be based on the prevention of harm (*mafāsid*) and the preservation of *ma□ali□*. The judicial rulings must be based on justice and equality, and the obligation to preserve religion, life, mind, property, and honor."[260] In *fatwā* 201, dated 1906, Ri□ā argues that the aim of *muʻāmalāt* rulings is to prevent injustice from being committed among people.[261] He also states in *fatwā* 243, dated 1907, that "the pillars of judgeship and political rule in Islam are the Qur'ān, *sunna*, *ijtihād*, and consultation. These are based on the maxim: preventing the *mafāsid* and preserving the *ma□āli□*."[262] In addition, in *fatwā* 304, dated 1909, Ri□ā writes that "on questions related to worldly affairs in *muʻāmalāt*, the jurist should not look only to the literal meanings (□*awāhir*) of the Qur'ān and *sunna*

[260] Ri□ā, *Fatāwā*, vol. 5, p. 1873. These five *ma□ali□* are considered by Shā□ibī as the necessary ones which the *sharīʻa* strives to preserve. See Shā□ibī's *Muafaqat*, vol. 2, pp. 9-ff.
[261] Ri□ā, *Fatāwā*, vol. 2, p. 527.
[262] Ri□ā, *Fatāwā*, vol. 2, p. 627.

but also to analyzing the cases in question, to know their actual circumstances, by using induction and research."[263] Here, it becomes clear that Ri□ā's call for the consideration of *maqā□id al- sharī'a* in *mu'āmalāt* in this *fatwā* is translated into a clear reference to the "spirit" of Islamic law that might be realized through a non-literal sense of textual meanings. Thus, Ri□ā's methodology in *mu'āmalāt*, through his consideration of *maqā□id al-sharī'a*, is not limited to using *ma□la□a mursala* as the main tool to achieve his goal. First, as the case of triple divorce indicates, some of his *fatāwā* on *mu'āmalāt* are based on his specific interpretation of Qur'ānic or □*adīth* texts in which the aim of the legal rule becomes the central focus in his decision. Second, in his response to several questions that lie outside the realm of textual evidence, he not only employs the principle of *ma□la□a mursala* but also *sadd al-dharāi'* (closing the means to harm) to actualize the maxim of *daf' al-mafāsid*, which is considered one of *maqā□id al-sharī'a.*

Examples of cases in which Ri□ā clearly interprets the texts in a way that focuses on the legal aims are the *fatāwā* on the prohibition of using gold and silver plates and ornaments; eating the meat of animals slaughtered by the People of the Book; the question of bank interest and the prohibition of usury; making statues and paintings of human and animal forms; using alcohol for medical reasons; accepting evidence in court based on a telegraphic message; listening to singing and music; the prohibition of gambling; the dissolution of marriage contracts due to a physical or mental defect of the husband or wife.

[263] Ri□ā, *Fatāwā*, vol. 3, p. 838.

On the Prohibition of Using Gold and Silver Plates and Ornaments

Several questions addressed to Ri□ā in the *fatāwā* section of *Manār* relate to the well-known prohibition of using gold and silver plates.[264] The narrated □*adīths*, most of them accepted by all schools, prohibit men to wear gold ornaments. There are also □*adīths* that allow men to wear silver ornaments, and others that prohibit the use of gold and silver utensils (*āniya*). Some of the questions that appear in the *fatāwā* enquire about the prohibition itself, and Ri□ā responds clearly with listing such □*adīths*, calling for their literal application. But when Ri□ā is asked about cases such as whether it is permitted for the Islamic state to use gold or silver medals to praise civil or military servants, or whether a Muslim can eat from a gold or silver plate offered in the house of the People of the Book, his response is very much influenced by his consideration of the *maqā□id* of such prohibitions. In *fatwā* 608, dated 1923,[265] Ri□ā responds to the questions of using gold and silver utensils or wearing gold medals (or silver watches), by declaring first that even if a jurist can use *qiyās* to argue that the *'illa* in the prohibition of using gold and silver utensils is the same in using gold and silver medals, and consequently the validity of this *qiyās*, □āhirite jurists and some Traditionists concluded that no religious prohibition can be reached through *qiyās*. In other words, Ri□ā is saying that even if *qiyās* in such cases is valid, we will end up with a prohibition or disliked action which cannot be included within the category of "□*arām*" since religious prohibition has to be indicated through "certain" texts and not through human *ijtihād*.

[264] See, for example, Ibn Qudama, *Mughni*, vol. 2, pp. 169-171.
[265] Ri□ā, *Fatāwā*, vol. 4, p. 1635.

Although the end result of such distinction will be the same in the sense that such an action will still be prohibited, the lack of religious character of the prohibition can make room for the consideration of *ma□la□a* when it is relevant to do so.

But Ri□ā, in relation to this question, does not stop at attacking the "religious" content of *qiyās*. Rather, he looks into the reason for the prohibition and concludes that it is to avoid an extravagant way of life. In *fatwā* 76, published in the *Manār*, 1904, Ri□ā, after enlisting some of the juristic opinions on the *'illa* of the prohibition, declares that

> the □*adīth* which shows that using gold and silver is the feature of the People of Paradise indicate that the Muslim is prohibited from a lavish and extravagant way of life until he or she ignores their religious obligations and is in a state of weakness in the face of his/her enemies. This extravagant way of life causes the decay of nations and the destruction of cities, and it is the *'illa* of injustice, mischief, and the instigation of quarrels and transgression among people.

Ri□ā adds that if this is the *'illa* of the prohibition, then it is not a "religious" prohibition that must be extended to any kind of use. Thus, if a Muslim drinks from a gold or silver utensil in the home of a non-believer, or even a Muslim, without intending to mimic such way of life, his action does not violate a religious prohibition.[266] But how can one decide if a certain use of gold or silver commodities is lavish or not? For Ri□ā this depends on the customs in each society. If a society is very poor, then most of such uses would be regarded as lavish. This was the reason for the Shāfi'ite jurists to prohibit any kind of use except what is stated in Prophetic traditions. Ri□ā also observes that the modern scholars of political economy studied the effect of manufacturing plates, furniture, etc. for aesthetic purposes and whether there is any harm in doing so. They found that societies can benefit from such kind of production because it is a way for rich people to spend their money and this creates vocations for less fortunate people. This is the kind of benefit that

[266] Ri□ā, *Fatāwā*, vol. 1, p. 189.

the people call *kamāliyyāt* and Shā□ibī in *Muāfaqāt* calls *ta□sīniyyāt*. Therefore, there is a *ma□la□a* for the *umma* in having gold or silver commodities but on the condition that it must be within the ethical framework. But Ri□ā concludes that for precautionary reasons, it is better for the Muslim to avoid the kind of use clearly mentioned in the □*adīths* and consider the *ma□la□a* elsewhere.[267] In *fatwā* 117, published in the *Manār*, 1904, Ri□ā responds to the question of medals, especially gold or silver ones. He argues that this practice was not mentioned in the *sunna*, and therefore its rule depends on the maxim: the prohibition of every harmful act and the permission of every benefit. Then he reminds his reader that although in some cases offering such medals might be a benefit to the society, the current situation in Egypt being that gaining such medals means getting honorary titles in the government. This leads to the fact that people became obsessed with getting such medals even if they pay bribes. Therefore, Ri□ā concludes, the current use of such medals must be prohibited.[268]

On the Permission to Eat the Slaughtered Animals of the People of the Book

In *fatwā* 154, published in the *Manār*, 1905 (1/352), a Muslim from Singapore informs Ri□ā that he received a book, written by an Egyptian and called *al-Ta'ādīl al-Islamiyya*, in which the author repudiates 'Abduh's *fatwā* on the permission to eat from the meat of animals slaughtered by the People of the Book.[269] He then asks Ri□ā whether the Qur'ānic permission is conditioned on specific ways of slaughtering animals that

[267] Ri□ā, *Fatāwā*, vol. 1, p. 190.
[268] Ri□ā, *Fatāwā*, vol. 1, p. 266.

[269] The inquirer in Ri□ā's *fatwā*, 154, also asks him whether 'Abduh permitted eating the meat of animals killed by violent blow (*mawqūdha*), which is prohibited in Q. 5:3.

were known during the time of the Prophet and were followed by the People of the Book at that time. Ri□ā responds first that the question of eating the food of the People of the Book is not a "*ta'abbudī*" one (i.e. not considered fixed in form as a religious obligation similar to *'ibādāt*). He also observes that "nothing related to the details of the legal case that is attached to the spirit (*rū*□) of religion and its essence except the prohibition of offering a slaughtered animal to other than God, because this is one of the rituals of pagans and the rites of the polytheists. Therefore, Muslims are prohibited from eating such animals or contributing to such practices. Ri□ā adds

> God wanted us to differentiate between polytheists and the People of the Book, and therefore He permitted their food for us without any condition, similarly to the permission to marry from them while Muslims are prohibited from marrying polytheists. Thus the □*ikma* of this permission is to have a good relationship with the People of the Book and not because they slaughter their animals in a certain way.[270]

It is clear that those jurists who objected to 'Abduh's Transvaal *fatwā* were arguing that although there is a Qur'ānic verse (5:5) which clearly permits eating the meat slaughtered by Christians and Jews, current Christians and Jews do not slaughter their animals similar to what their ancestors did during the time of revelation, and consequently one should not eat from the food of contemporary Christians and Jews. Ri□ā, after reminding his readers of the Qur'ānic verse, argues that this verse is general in its meaning and we cannot condition its effect based on an assumption that the way in which past Christian and Jews slaughtered their animals was different from our contemporaries, and therefore we should not eat the meat offered by them. If such logic is true, Ri□ā argues, then we should look into every ruling of the *sharī'a* and say that the permission or prohibition is conditioned by the way such a ruling was applied during the time of the Prophet. "Do we have to say,

[270] Ri□ā, *Fatāwā*, vol. 1, p. 353.

for example, that we should have a Friday prayer with an exactly similar mosque to that of the Prophet or a similar number of people attending the service?" As for the objection that 'Abduh's *fatwā* permits eating from the meat of an animal hacked to death (*mawqūdha*) by the People of the Book, a state of killing the animal that is prohibited in the Qur'ān, Ri□ā contends that 'Abduh's *fatwā* did not permit eating from the meat of such animals but on the general observation that the People of the Book in our time slaughter their animals before eating their meat. Ri□ā concludes that his argumentation on this question is supported by the evidence from the Qur'ān, *sunna*, and the deep understanding of the *sharī'a*.[271]

It is clear from the previous exposition of Ri□ā's *fatwā* on the permission to eat from the meat of animals slaughtered by Christians and Jews that he sees the intention of the Lawgiver regarding eating such meat of non-Muslims as similar to eating any other kind of food which does not have a religious component. The only religious prohibition is against eating from the meat offered to deities other than God. The fact that Qur'ānic texts prohibit eating only from such meat slaughtered by polytheists without stating any prohibition of eating from the meat of their animals, if not offered to their deities, indicates clearly that eating meat is not different from eating other kinds of food except for the obvious religious reason of sacrifice. The only exception to this general permission is to know that the animal was killed in a way prohibited in the Qur'ān, i.e. not slaughtered. Therefore, the reasoning behind Ri□ā's argument is to focus on the purpose of the prohibition and the permission, although his argument follows the literal understanding of the Qur'ānic verse related to the People of the Book.

[271] Ri□ā, *Fatāwā*, vol. 1, p. 354.

On Making Statues and Paintings of Human and Animal Forms

In more than one *fatwā*, Ri□ā was asked about the prohibition of making statues and paintings of human and animal form in Islam.[272] While 'Abduh dealt with this issue only in his articles describing his trip to Sicily, and therefore did not offer a sophisticated legal discourse on this legal question, Ri□ā in *fatwā* 547, published in the *Manār*, 1917, engages in a very detailed treatment of the subject. After listing fifteen □*adīths* on the subject and then enumerating thirteen points on the opinions of early jurists regarding those □*adīths*, Ri□ā concludes with what he thinks is the main instructions in those □*adīths*. First, the *mu□awwirūn* (those who make statues or paintings of human and animal forms) will be chastised on the Day of Judgment and will be ordered to resurrect into life what they made because of their intent to challenge the creation of God by producing a similar form.[273] Second, the *mu□awwir* is cursed in the □*adīth*, like those who made the graves of their Prophets as places of worship to God. The □*adīth* mentions that the latter people used to make statues and paintings of the pious among them and put them in their temples. They are described as the worst of creation. Third, it is prohibited to hang curtains that have such paintings, and must be torn apart or removed. Fourth, the reasoning behind the prohibition is mentioned in one □*adīth* that "we are not obliged to make shapes from rocks and clay." In another □*adīth*, Ri□ā adds, it is stated that paintings distract the Muslim who is making prayer if they are located in front of him or

[272] For the traditional Sunnī views on the subject, see Jazīrī, *Al-Fiqh 'Ala al-Madhahib al-Arba'a* (Beirut: Dar al-Thaqalayn, 1998), vol. 2, pp. 73-75.
[273] The Arabic word, used in those □*adīths* to denote the intention of statue makers, is *yu□āhūna*. Some traditional jurists understand the meaning as "to make a similar creation." But for Ri□ā and other jurists, the verb has the connotation of intending to challenge God's creation.

her. It is also stated in a □*adīth* that "the angels do not enter a house which has a statue or a dog." Fifth, one can also conclude from the □*adīth* literature that it is permitted to wear clothes or have pillows that contain pictures of animal forms, and that the Prophet used such pillows, as in the □*adīth* narrated by Ahmad b. Hanbal (d. 241/855).[274] Sixth, changing the picture of an animal to make it similar to a tree by removing its head, for instance, will permit its use. Seventh, if there is any shape of a cross in a painting or a picture, it must be removed.[275]

Ri□ā then states his conclusion that the reason for the expected severe punishment on the Day of Judgment for *ta□wīr* is twofold: first due to an intent to challenge God's creation by having a similar one, and second to prevent the worshipping of statues of prophets and pious people, although the maker of such statues did not intend to do so. Thus, the second reason of the prohibition is based on *sadd al-dharāi'*. Ri□ā quotes Ibn □ajar al-'Asqalānī (d. 852/1449) in the latter's commentary on Bukhārī's (d. 256/870) □*a□ī*□, that the reason for the prohibition of *ta□wīr* is similar to those who were cursed by God because they built places of worship to God on the graves of their prophets, and later their posterity worshipped those graves. Ibn □ajar declares that the prohibition of having graves of pious people in mosques is based on *sadd al-dharāi'*, and if one is sure that there is no danger of worshipping such graves, then one can permit such practice. Ri□ā adds that applying the rule of *sadd al-dharāi'* differs from time to time and the kind of *ta□wīr* existing. Because the statues, which were venerated before Islam to the level of worship, were of human and animal forms, the Companion Ibn 'Abbās permitted the one who asked him about painting the shapes of trees to do so. But

[274] The reference here is to A□mad b. □anbal's *Musnad* (Cairo: Dar al-I'tisam, 1974), vol. 2, p. 107.
[275] Ri□ā, *Fatāwā*, vol. 4, p. 1411.

since the pictures that portray human and animal forms became used only for aesthetic reasons, and the possibility of worshipping them disappeared, some of the *salaf* put such pictures in their houses. However, Ri□ā observes, the possibility of worshipping pictures of prophets and saints is still valid, similarly to what some Muslims were doing at the tombs of venerated people. Ri□ā concludes that except for the prohibition of portraying prophets and venerated people, there is no harm in having statues and paintings of human and animal forms because there is no intention to sanctify certain people or animals by making statues and paintings, which later might become objects of worship. In fact, Ri□ā adds, there are many benefits from having such pictures such as knowing what animals and plants look line when listed in a dictionary, in the sciences of natural history, medicine, anatomy, and for military purposes. Moreover, modern governments need such pictures in their political and administrative activities.

This *fatwā* shows that Ri□ā's reasoning is very much based on his contemplation of the □*ikma* of the legal rule pertaining to making statues and pictures of human and animal forms. If the practice leads to worshipping such works of art, then it must be prohibited. But since there is no intention by the artist to either challenge God's creation or offer such statues for people to worship, then Muslims are permitted to have such a practice, and in fact they are encouraged to do so if there are benefits for the Muslim community.[276]

On Consuming Alcohol for Medical Reasons and its Use as a Component in Perfumes and Other Chemicals

[276] Ri□ā, *Fatāwā*, vol. 4, p. 1417.

In *fatwā* 607, Ri□ā deals with questions addressed to him from India in which a *muftī*, named Mu□ammad Shafīq al-Ra□mān, issued a *fatwā* prohibiting the use of alcohol for medical treatment.[277] He also prohibited the use of any chemical, such as paints, in which alcohol is a component. His reasoning is based on a claim of consensus among Muslim jurists that *khamr* is impure (*najis*), and consequently if any intoxicating material is used as a component in any chemical, the end product will be impure and hence cannot be used. This prohibition mostly applied to using chemicals that contain alcohol to paint mosques. The impurity of *khamr*, according to the Indian *muftī*, is mentioned in the Qur'ānic verse which prohibits the consumption of *khamr* by describing it as *rijs*, a term that denotes impurity.[278] Ri□ā first rejects the claim of the consensus that *khamr*, whether made of grape wine or not, is physically an impure material. He contends with the Indian *muftī* that the term *rijs* in the Qur'ān does not refer only to *khamr* but also to gambling (*maysir*) among other prohibited practices. No one can say that there is a physical impurity in gambling but rather a moral impurity of the practice itself. This is true also for *khamr*. He mentions that the question of whether *khamr* is pure or impure is a matter of disagreement among Muslims jurists. But even with the assumption of impurity, adding an impure material to others does not make the end product necessarily impure. In fact, alcohol is used for cleaning and disinfecting and cannot be declared religiously impure, especially because it is different from *khamr* (i.e. fermented grape wine) in its chemical composition. What mostly relates to our purpose, however, is that Ri□ā looks into the reasons behind the prohibition, which are declared in the Qur'ān as causing quarreling among Muslims and forgetting to remember God and the prayer (Q.

[277] Ri□ā, *Fatāwā*, vol. 4, p. 1609-1634.
[278] The reference here is to Q. 5:90.

5:91). If the consumption of *khamr* is intended for its effect of intoxication, then using a little amount for medical reasons, providing that there is no other medicine available, is permitted because this will not lead to intoxication and consequently to the negative effects mentioned in the Qur'ān. The same is true in using chemicals with alcoholic components in paints and other materials.

One can see that the □*ikma* of the prohibition is taken into consideration in Ri□ā's reasoning. In juristic terms, Ri□ā argues that materials such as paints are not *khamr* because they do not intoxicate if consumed even if alcohol is a component of them, and therefore they are not included in the prohibition. As for alcohol in perfumes, it is treated in a way that if consumed, it might cause intoxication but also severe medical problems. It is thus not intended for consumption and cannot be regarded as *khamr*. For the case of using *khamr* for medical reasons, Ri□ā explains that it is a matter of disagreement among jurists. It depends on whether one can regard such use as a case of necessity or not. Al-Shāfi'ī, for example, did not regard the case of a person dying from thirst as a necessity that allows him to drink wine to preserve his life similar to the permission to eat pork meat in such a case. Abū □anīfa permitted such action by considering it a case of necessity. Ri□ā quotes the Qur'ānic verse, "And He hath mentioned to you whatever He prohibited, except for what you do out of necessity," to argue that any rule of prohibition in the *sharī'a* can endure a case of necessity because the *sharī'a* is based on easiness. On the question of the medical consumption of alcohol, Ri□ā reiterates his conviction that taking a medicine that has an alcoholic component is not intended for intoxication and does not lead to the harms of such consumption, mentioned in the Qur'ān. But if one takes large amounts of such medicines in order to be

intoxicated, then this is definitely prohibited.[279] Finally, Ri□ā draws on Shā□ibī's *Muāfaqāt* to show that the *sharī'a* aims at preserving the necessary *ma□ali□*, which are the preservation of religion, life, honor, and property. According to this understanding, Ri□ā argues, the permission for having alcoholic drug for medication lies within the aim of preserving life in Islam. The other uses of materials that have an alcoholic component are permitted based on Shā□ibī's reference to the "needed" and "complimentary" *ma□ali□* that the *sharī'a* also aims to achieve.[280]

On the Question of Bank Interest and the Prohibition of Usury

Ri□ā received several questions about 'Abduh's *fatwā* which apparently allowed taking interest in a savings account established through post offices in Egypt. According to many Muslim jurists, this transaction is prohibited because it is described as a usurious contract included in what the Qur'ānic prohibition called *ribā*.[281] Any guaranteed profit that does not have the possibility of loss is considered *ribā*, and therefore banned in Islamic law. Ri□ā responds to these questions by first arguing that there are several conditions which medieval jurists put forward to validate contracts.[282] These conditions should not be considered religious rulings (*ta'abbud*) but rather an interpretive effort based on *ijtihād*. Thus, in order to determine the definition of *ribā*, one needs to look into the Qur'ānic injunctions first and foremost, then to Prophetic traditions that are sound and authoritative. Ri□ā quotes □abarī's commentary on the Qur'ān to argue that the Qur'ānic

[279] See *fatwā* 6, Ri□ā, *Fatāwā*, vol. 1, pp. 31-2.

[280] For more details on Shā□ibī's triple system of *ma□ali□*, see Muhammad Khalid Masud, *Islamic Legal Philosophy*, pp. 5-15.

[281] For the definition of *ribā*, as mentioned in the Qur'ān, see Frank E. Vogel, *Islamic Law and Finance: Religion, Risk, and Return* (The Hague: Kluwer Law International, 1998), pp. 62-3.

[282] Ri□ā, *Fatāwā*, vol. 2, pp. 596-ff., *fatwā* 230.

prohibition of the practice of *ribā* is precisely a prohibition of what is known as *ribā al-jāhiliyya*, a usurious practice that was dominant among Arabs before Islam. According to □abarī and other sources, *ribā al-jāhiliyya* is a transaction through which a lender agrees to postpone the payment of a loan for the borrower, which already contains a profit for the lender, on the condition that the profit is substantially increased. This situation, argues Ri□ā, caused a serious economic problem for poor people because they could not repay their loans and they continued to be in debt for the rest of their lives. In juristic terms it is called *ribā al-nasī'a*.[283] Ri□ā also quotes Ibn Qayyim al-Jawziyya in his *I'lām al-Muaqqi'īn*, who argues that the prohibited *ribā* in the Qur'ān is *ribā al-nasī'a*. As for having a loan with an original interest, this is called *ribā al-fa□l*. According to Ibn al-Qayyim, this kind of contract is prohibited in Prophetic traditions not because of its essence as an invalid transaction but rather because its practice will lead into having *ribā al-nasī'a*. Thus, according to Ibn al-Qayyim, *ribā al-fa□l* is prohibited based on the principle of *sadd al-dharāi'*. Ibn al-Qayyim concludes that whatever is prohibited in the *sharī'a* for its own essence (*mu□arram li-dhātihī*) can be permitted only in case of absolute necessity (□*arūra*). But whatever is prohibited based on *sadd al-dharāi'*, such as *ribā al-fa□l*, can be permitted in cases of necessity and need (□*āja*). That is why the Prophet permitted the sale of *'arāyā* despite its clear inclusion within *ribā al-fa□l*.[284]

Ri□ā, however, after referring to Ibn al-Qayyim's theorization, advances his own view based on his consideration of *maqā□id al- sharī'a*. He argues that the □*ikma* of the prohibition of *ribā al-nasī'a* in the Qur'ān is clearly mentioned in 2: 279. The injustice committed by one party against the other is the main reason for the prohibition of

[283] See Vogel, *Islamic Law and Finance*, pp. 74-5.
[284] See Ibn al-Qayyim, *I'lām*, vol. 2, pp. pp. 15-17.

usurious contracts. The bank interest in a savings account does not lead to injustice, which is mentioned in the Qur'ān as the reason for prohibiting usurious contracts. But the interest is still included within *ribā al-fa□l*. This analysis leads Ri□ā to say that, based on Ibn al-Qayyim's theorization, if there is extreme need in modern Muslims societies to such transactions, they can be permitted based on the principle of *□āja*. However, Ri□ā insists that 'Abduh's *fatwā* to legalize bank interest on savings accounts was issued after 'Abduh asked the relevant authorities to invest the saved money in a legitimate business, and therefore the savings can be regarded as a form of investment and not a loan to the bank. Ri□ā adds that during the last few years of 'Abduh's career as Egypt's *muftī*, his relationship with the Khedive had deteriorated. The Khedive's supporters spread a rumor that 'Abduh has given a *fatwā* to legitimize *ribā* without mentioning his attempt to reform the bank system in a way that makes saving accounts totally legitimate in Islamic law.[285]

On Accepting Evidence in Court Based on a Telegraphic Message

In *fatwā* 98, Ri□ā received a question that inquired about the validity of using a telegraphic message as evidence in court.[286] He replies first by declaring that most contemporary judges do not accept a statement of a witness in a lawsuit received through a telegraphic message, just as they do not accept written documents. Rather, they strictly require that witnesses must be present in person in front of the judge. Ri□ā then argues that "if we go back to the fundamentals of the Qur'ān, *sunna*, and the *□ikam* of the *sharī'a*, we know that evidence (*bayyina*) includes everything which helps to establish truth in a way that the judge trusts." He adds that the current government sends

[285] See *fatwā* 526, Ri□ā, *Fatāwā*, vol. 4, pp. 1340-42.
[286] Ri□ā, *Fatāwā*, vol. 1, pp. 228-9.

telegraphic messages on a continuous basis to their agents as a way of instruction. Merchants make deals with each other through such messages. This is a clear proof that it is considered a trusted way of communication. Therefore, it should be included within judicial practices.

On Listening to Singing and Playing Musical Instruments

Ri□ā received several questions in his *fatāwā* section of the *Manār* about the legality of singing and playing musical instruments. Many traditionalist jurists strictly prohibited singing, especially if accompanied by musical instruments. The prohibition is based on several □*adīths* and on traditions of early religious authorities. In *fatwā* 185, Ri□ā first enlists most of the □*adīths* and early traditions about the case.[287] He then concludes that the number of sound □*adīths* that permit singing is actually larger than those prohibiting the practice. But even if there are some sound □*adīths* that prohibit singing and playing musical instruments, this is because such practices were associated, during the time of the Prophet, with drinking wine and committing great sins. He quotes in his *fatwā* Ghazzālī's *I□yā'*, in which the latter's reasoning is similar to that of Ri□ā. Ghazzālī argues that "the reason for prohibiting the use of certain musical instruments, such as the *'ūd* and *mizmār*, is because they were associated with the gatherings of drinking wine. On the contrary, □*abl* and *duff* were permitted in the □*adīth* because they were mostly used during weddings." Ghazzālī continues his argumentation by noting that "God has permitted every good thing (□*ayyibāt*) except if the permission leads to mischief. The sounds played by musical instruments are not prohibited to listen to because of their quality as musical intonations. If this is the case, then listening to the

[287] Ri□ā, *Fatāwā*, vol. 2, p. 474.

singing of birds must be prohibited. The prohibition, therefore, has to be for other reasons, which is the association with gatherings in which great sins are committed." Ri□ā depends on Ghazzālī's analysis to argue that if the use of any kind of musical instruments is not associated with sinful actions, then there is no harm in permitting listening to singing and music, on the condition that it should not lead to indulgence that affects one's remembrance of God or his/her recitation of the Qur'ān. Ri□ā concludes that "every action that is harmful to religion, mind, self, property, or honor is prohibited, and there is no prohibited action that is not harmful."[288] It is clear that Ri□ā's *fatwā*, and his legal interpretation of singing and music, reflects his interest in considering the reasoning behind the prohibition and consequently deciding the application of the legal rule accordingly.

On the Dissolution of a Marriage Contract due to Previously Unknown Mental or Physical Defect in the Husband or Wife

In *fatwā* 539, Ri□ā replies to a question concerning a matter of disagreement among the Sunnī schools of jurisprudence.[289] The question is, if the newly married husband or wife discover that his/her partner suffers from an illness such as a skin disease or insanity, can the contract be dissolved accordingly? The jurists agree that if there is a condition, related to the physical appearance or health of the wife, for example, which is stated in the contract, then the husband has the right to dissolve the contract. But if there is no stated condition in the contract, and after the conclusion of it, a defect appeared in the husband or the wife, then the disagreement is on the legality of invalidating the

[288] Ri□ā, *Fatāwā*, vol. 2, p. 493.
[289] Ri□ā, *Fatāwā*, vol. 4, pp. 1370-76. For traditional views on the subject, see Ibn Qudama, *Mughni*, vol. 9, pp. 471-ff.

contract through divorce. For □āhirite jurists, such as Dāwūd al- □āhirī (d. 270/884) and Ibn □azm (d. 456/1064), the contract cannot be dissolved because there is no clear Qur'ānic text or a □*adīth* which permits such an action. The □anafites and Shāfi'ites each included only specific defects and not others. The established □anbalite opinion includes more possible health problems than both the □anafites and Shāfi'ites but is also limited to a specific number. The reasoning behind the disagreement is that the evidence mainly comes from opinions of the Companions and whether one can make *qiyās* to add more defects or health problems to the list. However, the enquirer who addressed the question to Ri□ā was concerned about whether one can also include diseases and permanent health problems that have become well-known and documented in modern medicine but were not known to medieval jurists. Ri□ā's view is that the narrated traditions from the Companions or the Successors, related to the case in question, are based on the main principles of the *sharī'a*, such as the prevention of deception and negating the acceptance of harming oneself or others (*lā □arar wa lā □irār*). Therefore, Ri□ā observes, there is no reason to limit the defects to specific instances. What is interesting in this *fatwā* is that Ri□ā quotes Ibn al-Qayyim's *Zād al-Ma'ād* in which the latter explains that

> any kind of defect which leads the husband or the wife to stay away from the other, and with its presence the aim (*maq□ūd*) of marriage, which is the mercy and love between them, will not be achieved, is considered a legitimate reason for the dissolution of the contract. Whoever contemplates *maqā□id al- sharī'a* through its sources and finds justice, wisdom (□*ikma*), and the consideration of *ma□ali□*, would definitely realize that this opinion (on the specific question) is the one that is based on the fundamentals of the *sharī'a*.[290]

[290] Ri□ā, *Fatāwā*, vol. 4, p. 1374.

There are other examples of *fatāwā* in which Ri□ā's opinions largely depend on interpretations of texts or traditions in a way that focus on the role of *maqā□id al-sharī'a*, such as his opinions on slavery, polygamy, war and peace, and political consultation in Islam. But these are explained previously in the section on *maqā□id al-Qur'ān* of Ri□ā's *al-Wa□y al-Mu□ammadī*.

As for cases that are not governed by or related to Qur'ānic verses or Prophetic traditions, there are several *fatāwā* in which Ri□ā applies the principle of "bringing benefits and preventing harm." It all depends on whether an action is considered of benefit to the Muslim community or not. The guiding principle for Ri□ā, as stated before, is that in *mu'āmalāt* every action or practice is considered valid unless proved to be harmful. In such a case of harm, a prohibition can be declared but is not considered a religious one. A clear example of Ri□ā's prohibition of an action, based on its harmful effect, is his opinion on smoking and consuming drugs such as morphine. He declares in *fatwā* 576 that in matters related to drinking and eating, everything that God created is permitted for use except those stated in the Qur'ān or *sunna.* There are no texts that rule specifically on smoking cigarettes or injecting morphine to the body. But a jurist can depend on the general principles of the *sharī'a*, such as the one stated in the □*adīth* "*lā □arar wa lā □irār*," that whatever action that causes harm to the body must be prohibited.[291]

[291] Ri□ā, *Fatāwā*, vol. 4, pp. 1546-1547.

Conclusion

The dissertation has attempted to strive towards two main goals. First, to analyze ‘Abduh and Ri□ā’s conception of *maqā□id al- sharī‘a* by examining their theoretical works and some of their *fatāwā*, and see how their line of thought is compared to traditional theorization and legal opinions of Sunnī Muslim jurists. Second, the analysis of Ri□ā and ‘Abduh’s legal thought provides an evaluation of their projects of religions reform that fundamentally differs from the conclusions reached by some scholars in the West, namely Kerr, Hourani, and Hallaq.

One of the main points that I conclude from this dissertation is the inadequacy of Kerr’s assessment that ‘Abduh’s legal ideas represent an extension of his theological views, hence perpetuating a line of thought that calls for the adoption of a “rationalist” theology to achieve legal reforms in Muslim societies. My objection is that ‘Abduh’s legal thinking is linked to his theological views, not as a necessary connection or consequence, but rather as two levels of inquiry that originate from his peculiar reading of the sacred text of Islam, the Qur’ān. The importance of addressing the claim of the necessary connection among theology, ethics, and law stems from the fact that Kerr’s assessment of ‘Abduh’s “rationalist” theology has also led to a more “rationalist” conception of law by espousing a form of natural law. In addition, by focusing on *ma□la□a*, ‘Abduh’s legal thinking becomes more detached from the textual sources of the Qur’ān and □*adīth* unlike the traditional Sunnī commitment to *qiyās*, a mere deduction from the texts. If Kerr’s view is correct, then ‘Abduh’s legal reform alienates

Islamic legal thought from its religious texts, and hence lead to a secularized conception of law. This conclusion, if true, would discredit ‘Abduh and Ri□ā’s claim of “religious” reform.

I argue in the dissertation that ‘Abduh’s emphasis on *ma□la□a* is a component of his understanding of the legal aims intended by the Lawgiver. His conception of *maqā□id al- sharī‘a* stems from his interpretation of the Qur’ānic text. The Lawgiver, in ‘Abduh’s view, wants Muslims, whether jurists or not, to contemplate the □*ikma* or the rationale behind any legal rule and to focus on the general principles of the *sharī‘a*, in which the consideration of *ma□la□a* becomes a significant part.

The theoretical claim made in this dissertation is that ‘Abduh and Ri□ā’s legal thought flows from their understanding of the *maqā□id* of the Qur’ān, i.e. the general aims and purposes of revelation. For ‘Abduh’s legal thought, it stems from the contemplation of the □*ikma* of any legal or non-legal ruling (□*ukm*) in the Qur’ān. This reading is very much free from the limitation of traditional commentaries but it is committed to the linguistic content of the Qur’ānic text. If the Qur’ānic text explains itself clearly without heavy dependence on extra-Qur’ānic material, including Prophetic traditions, then one has to focus more on the idea of how the Qur’ān interprets itself. Here, ‘Abduh resorts to the “thematic” method in which all or most of the verses that pertain to a specific topic can be collected and analyzed in a way that seeks harmony among their meanings. But despite the primacy of the Qur’ān at the expense of other legal sources, ‘Abduh and Ri□ā’s legal theorization allows a secondary role for Prophetic traditions and other levels of scholarly traditions. One can realize from ‘Abduh and Ri□ā’s treatment of the role of □*adīth* that it is not considered as “revelation” per se,

unlike the dominant view in the Sunnī traditions which elevate □*adīth* into "revelation in meaning" but not in wording, as the case for the Qur'ān. It is worth noting that while 'Abduh avoids discussing the status of Prophetic traditions in his theoretical writings, preferring instead to focus more on the primacy of the Qur'ānic message as "revelation" par excellence, Ri□ā, on the contrary, reminds his readers that the juristic schools disagreed on the question of the revelatory nature of Prophetic traditions. However, Ri□ā does not clearly announce his position, although he calls for applying all sound □*adīths* by virtue of their probable authenticity but insists on their secondary role to the Qur'ān.

The dissertation, therefore, attempts to respond to the claim made by Kerr and Hallaq that the focus on *ma□la□a* in 'Abduh and Ri□ā's legal thought is in fact a point of departure from traditional legal theorization in which 'Abduh and Ri□ā's legal interpretation became more "distant" from the texts of the Qur'ān and □*adīth*. This has been done in two ways according to Kerr and Hallaq. First, in the legal cases that are regulated by textual rulings, the literal meaning and legal value of the text were ignored for the favor of necessity and need. Second, for the novel cases that have no ruling in the Qur'ān or □*adīth*, *ijmā'* and *qiyās* were suspended and *ma□la□a* became the prominent source instead. My response to Kerr and Hallaq's line of theorization is expressed in the dissertation on two levels, textual and non-textual. On the textual level, I have argued that 'Abduh and Ri□ā's focus on the legal content of Qur'ānic and □*adīth* texts clearly focus on the legal aims or the *maqā□id* of the rulings as part of *maqā□id* of the Qur'ān. Necessity and need come into the discussion only when interpreting Qur'ānic verses that clearly allow for taking necessity and need into consideration. 'Abduh and Ri□ā view this resort to the case of necessity or need as part of *maqā□id al- sharī'a*. Ri□ā bases his

view on some medieval juristic opinions that generalized the principle of necessity to possibly include cases of prohibition not mentioned in the Qur'ān as suspended for the existence of necessity such as eating forbidden food. Ri□ā's *fatwā* that legitimizes using alcoholic drug for medication, for instance, is based on the principle of necessity. Deciding the existence of necessity is based on Ri□ā's assessment that there is no non-alcoholic medication available and the fact that one of the primary legal aims of the *sharī'a* is to preserve life. 'Abduh's view on polygamy, for example, stems from his interpretation of the Qur'ānic verses that mention the aims of marriage and also the condition of justice that is associated with the permission of polygamous marriages. The same is true in relation to Ri□ā's view on slavery. He sees the Qur'ān as encouraging freeing slaves and hence expressing the spirit of Islam, which is to free slaves.

As for the area of legal activity that is not governed by texts, I tried to show that although *ma□la□a* is prominent in 'Abduh and Ridā's interpretation, its legitimacy stems from Qur'ānic verses that call for the consideration of *ma□la□a* in the sense that in *mu'āmalāt*, the aim of the Lawgiver is to achieve the public good. In terms of the commitment to the classical doctrines of legal theorization, 'Abduh and Ri□ā's line of thought against *ijmā'* and *qiyās* is based on their view that there are no clear Qur'ānic or □*adīth* references to the commitment to the scholarly consensus or analogy as the only two legal sources after the Qur'ān and □*adīth*. In addition, they find in their reading of the Qur'ān a clear call to consider the public good which is described as whatever brings benefit to individuals and the community at large and prevent harm and danger. The highest legal aims in Ri□ā's theorization are taken from Shā□ibī, which are the

preservation of religion, life, mind, offspring, and honor. Other intermediate aims that lead to the final aims include justice and equality.

'Abduh's report to reform the *sharī'a* courts in Egypt sheds light on his conception of justice and how judges ought to achieve this aim in their legal proceedings. 'Abduh's *fatwā* to permit Muslims to wear European hats for benefit is a case in which 'Abduh does not see any transgression against the religious texts while at the same time achieving the good for Muslims. One has to note that Kerr refers to the Transvaal *fatwā* as the main legal case in which 'Abduh expresses his legal opinions based on *ma□la□a.* Hallaq, in contrast only affirms Kerr's conclusions about 'Abduh and offers a discussion of Ri□ā's legal thought. Hallaq's main example of Ri□ā's "utilitarian" legal interpretation based on *ma□la□a* is the case of *ribā al-fa□l*. It is important to note that while the case in question, such as wearing a Western style hat or having a savings account in a bank, are not regulated by the texts, in the sense that there are no Qur'ānic or □*adīth* rulings that specifically address the question of a Western hat or the validity of a savings account, it remains crucial for a jurist to see if these cases can be judged by using *qiyās*. Although 'Abduh does not give a detailed account of the reasoning behind his *fatwā* of permission, he is clearly distancing such a practice by a Muslim in a dominantly non-Muslim society from the case of *tashabbuh*, the kind of emulation in appearance and style of clothing which is prohibited in several □*adīths*. Ri□ā provides us with an analysis in which he argues that the prohibition is meant for the one who is religiously imitating non-Muslims and that the available □*adīths* do not enforce on Muslims a specific clothing style that must be observed at all times. Thus, 'Abduh and Ri□ā's argument on such cases is to show that no valid analogy to the cases of *tashabbuh* during

the time of the Prophet can be made. If *qiyās* is excluded, what would be the rule pertaining to the case then? Here Ri□ā's answer is to say since the case lies in the sphere if *mu'āmalāt*, and it is within the part of *mu'āmalāt* that is not regulated in religion, i.e. it is a worldly affair, then the rule is that whatever brings benefit to the Muslim and prevents harm is considered permitted.

As for the case of interest on saving accounts, Ri□ā interprets 'Abduh's *fatwā* of permission as based on □*āja* (need) and not □*arūra* (necessity). It is important to know that although 'Abduh and Ri□ā's legal theorization might not be clearly expressed in classical Sunnī theorization , they are committed to the texts of the Qur'ān, and as Ri□ā clearly argues, even isolated hadiths in *mu'āmalāt* ought to be applied if they have sound chains of authorities but on the condition first that they should not contradict the Qur'ān, and second that the application itself must achieve the public good based on the evidence from Qur'ānic and □*adīth* texts that call for this consideration and regard it as part of *maqā□id al- sharī'a*. This understanding gives 'Abduh and Ri□ā the right to challenge certain traditional views based on what they think of as the spirit of revelation.

Selected Bibliography

‘Abd al-Jabbār, al-Qādi. *al-Mughni fi Abwāb al-Tawhid wa’l-Adl* (Cairo: Wazarat al-Thaqafa, 1960).

‘Abduh, Mu□ammad. *al-A‘māl al-Kāmila lil-Imām Mu□ammad ‘Abduh*, ed. M. ‘Amāra, 6 vol. (Beirut: al-Mu’assasa al-‘Arabiyya lil-Dirāsāt wal-Nashr, 1972-74).

al-Islām wal-Na□rāniyya ma‘ al-‘lm wal-Madaniyya (Cairo: al-Mu’tamar al-Islāmī, 1955).

Risālat al-Taw□īd (Cairo: al-Ma□ba‘a al-‘Āmira al-Khayriyya, 1324/1906).

Abu-Rabi‘, Ibrahim M. “The concept of the ‘other’ in modern Arab thought: from Muhammad ‘Abdu to Abdallah Laroui”, *Islam and Christian-Muslim Relations*, 8 I, 1997, pp. 85-95.

Abu Zayd, Nasr Hamid. *Mafhum al-Nass: Dirasa fi ‘Ulum al-Qur’an* (Cairo: al-Hay’a al-Misriyya lil-Kitab, 1990).

Adams, Charles C. *Islam and Modernism in Egypt: A Study of the Modern Reform Movement Inaugurated by Muhammad ‘Abduh* (London: Oxford University Press, 1933).

Muhammad Abduh and the Transvaal Fatwa, *Macdonald Presentation*, Vol., 1933, pp.11-29.

Ahmad, Muhammad Sharīf. *Fikrat al-Qānun al-Tabī‘ī ‘inda al-Muslimin* (The Idea of Natural Law among the Muslims) (Baghdad: Dar al-Rashid, 1980).

al-‘Ālim, Yūsuf Hāmid. *al- Maqā□id al-‘Āmma lil-Sharī‘a al-Islāmiyya* (Herndon, VA: The International Institute of Islamic Thought, 1994).

al-‘Alwānī, □āhā Jābir. *al-Ijtihād wal-Taqlīd fī al-Islām* (Cairo: Dār al-An□ār, 1979).

I□lā□ al-Fikr al-Islāmī: Madkhal ilā Ni□ām al-Khi□āb fī al-Fikr al-Islāmī al-Mu‘ā□ir (Cairo: al-Ma‘had al-‘Ālamī lil-Fikr al-Islāmī, 1996).

“Madkhal ilā Fiqh al-Aqalliyyāt al-Muslima,” *al-Masār*, 2 (2000): 5-26.

Maqā□id al-Sharī‘a (Beirut: Dār al-Hādī, 2001).

The Qur’ān and the Sunna: the Time-Space Factor (Herndon, VA: International Institute of Islamic Thought, 1991).

Source Methodology in Islamic Jurisprudence: U□ūl al-Fiqh al-Islāmī (Herndon, VA: International Institute of Islamic Thought, 1994).

Amīn, ‘Uthmān. *Rāid al-Fikr al-Mi□rī al-Imām Mu□ammad ‘Abduh* (Cairo: Dār al-Ma‘ārif, 1962).

Anderson, J. N. D. “Is the Sharī‘a Doomed to Immutability?’’ *Muslim World*, 56 (1966): 10-13.

“Islamic Law Today: The Background to Islamic Fundamentalism,” *Arab Law Quarterly*, 2 (1987): 339-51.

Law Reform in the Muslim World (London: Athlone Press, 1976).

Azami, M. M. *On Shacht’s Origins of Muhammadan Jurisprudence* (New York: John Wiley, 1985).

al-Azmeh, Aziz. “Islamic Legal Theory and the Appropriation of Reality,” in Aziz al-Azmeh, ed., *Islamic Law: Social and Historical Contexts* (London: Routledge, 1988): 250-65

Bagby, Ihsan A. “The Issue of *Ma□la□a* in Classical Islamic Legal Theory,”

International Journal of Islamic and Arabic Studies, 2 (1985): 1-11.
Baljon, J. M. S. *The Reforms and Religious Ideas of Sir Sayyid Ahmad Khan* (Leiden: E. J. Brill, 1949).
"□anafī *U□ūl al-Fiqh* through a Manuscript of al-Ğa□□ā□," *Journal of the American Oriental Society*, 105 (1985): 623-35.
Brunschvig, Robert. "Rationalité et tradition dans l'analogie juridico-religieuse chez le mu'tazilite 'Abd al-Jabbār," *Arabica*, 19 (1972): 213-21.
al-Bukhārī, Mu□ammad ibn 'Abd al-Ra□mān. *Ma□āsin al-Islam* (Baghdad: Maktabat al-Sharq al-Jadīd, 1989).
Burton, John. *The Sources of Islamic Law: Islamic Theories of Abrogation* (Edinburgh: Edinburgh University Press, 1990).
al-Bū□ī, Mu□ammad Sa'īd. □*awābī□ al-Ma□la□a fī al-Sharī'a al-Islāmiyya* (Beirut: Mu'assasat al-Risāla, 1977).
Calder, Norman. "*Ikhtilāf* and *Ijmā'* in Shāfi'ī's *Risāla*," *Studia Islamica*, 58 (1984): 55-81.
Studies in Early Muslim Jurisprudence (Oxford: Clarendon Press, 1993).
sciences juridiques, economiques at politiques, 10 (1973): 563-71.
Coulson, N. J. *Conflicts and Tensions in Islamic Jurisprudence* (Chicago: University of Chicago Press, 1969).
A History of Islamic Law (Edinburgh: Edinburgh University Press, 1964).
El-Affendi, Abdelwahab. *Turabi's Revolution* (London: Grey Seal, 1991).
Encyclopedia of Islam, new (2nd) edition (Leiden: E. J. Brill, 1960-).
Encyclopedia of Islamic Law: A Compendium of the Major Schools, trans. Laleh Bakhtiar (Chicago: Library of Islam, 1995).
Fadel, Mohammad. *Adjudication in the Mālikī Madhhab: A Study of Legal Process in Medieval Islamic Law* (Ph.D. dissertation: University of Chicago, 1995).
"The Social Logic of *Taqlīd* and the Rise of the *Mukhta□ar*," *Islamic Law and Society*, 4 (1996): 193-233.
al-Fāsī, Mu□ammad 'Allāl. *Maqā□id al-Sharī'a al-Isāmiyya wa Makārimuhā* (Casablanca: Maktabat al-Wa□da al-'Arabiyya, 1963).
Frank, Richard M. "Reason and Revealed Law: A Sample of Parallels and Divergences in Klām and Falsafa," *Recherches d'islamologie* (Louvain: Peeters, 1977): 123-38.
al-Ghazālī, Mu□ammad. *Azmat al-Shūrā fī al-Mujtama'āt al-'Arabiyya wal-Islāmiyya* (Cairo: Dār al-Sharq al-Awsa□ lil-Nashr, 1990).
□*uqūq al-Insān bayna Ta'ālīm al-Islām wa I'lān al-Umam al-Mutta□ida* (Cairo: Dār al-Kutub al-Islāmiyya, 1984).
al-Islām wal-Istibdād al-Siyāsī (Cairo: Dār al-Kutub al-Islāmiyya, 1984).
Na□wa Tafsīr Maw□ū'ī li-Suwar al-Qur'ān al-Karīm (Cairo: Dār al-Shurūq, 1993).
Gibb, H. A. R. *Modern Trends in Islam* (Chicago: The University of Chicago Press, 1947).
Mohammedanism (London: Oxford University Press, 1962).
Goitein, S. D. "The Birth-Hour of Muslim Law," *Muslim World*, 50, 1 (1960): 23-9.
Studies in Islamic History and Institutions (Leiden: E. J. Brill, 1966).
Goldziher, Ignaz. *Introduction to Islamic Theology and Law*, trans. Andras and Ruth Hamori (Princeton: Princeton University Press, 1981).

Muslim Studies, ed. S. M. Stern, trans. C. R. Barber and S. M. Stern, 2 vols. (London: Allen & Unwin, 1967-71).

Die Richtungen der islamischen Koranauslegung (Leiden: E. J. Brill, 1952).

The □āhirīs:Their Doctrine and their History, trans. Wolfgang Behn (Leiden: E. J. Brill, 1971).

Guillaume, Alfred. *The Traditions of Islam: An Introduction to the Study of the Hadīth Literature* (Oxford: Clarendon Press, 1924).

Hallaq, Wael B. *Authority, continuity and change in Islamic law* (Cambridge: Cambridge University Press, 2001).

"Considerations on the Function and Character of Sunnī Legal Theory," *Journal of the American Oriental Society*, 104 (1984): 679-89.

"From *Fatwās* to *Furū'*: Growth and Change in Islamic Substantive Law," *Islamic Law and Society*, 1 (February 1994): 17-56.

A History of Islamic Legal Theories: An introduction to Sunnī U□ūl al-Fiqh (Cambridge: Cambridge University Press, 1997).

Haram, Nissreen. "Use and Abuse of the Law: A Muftī's Response," in Muhammad Khalid Masud, Brink Messick and David Powers, eds., *Islamic Legal Interpretation: Muftīs and their Fatwās* (Cambridge, Mass: Harvard University Press, 1996), 72-86.

□asanī, Ismā'īl. *Na□ariyyat al- Maqā□id 'inda al-Imām Mu□ammad al-□āhir ibn 'Āshūr* (Herndon, VA: The International Institute of Islamic Thought, 1995).

Heinrichs, Wolfhart P. "*Qawā'id* as a Genre of Legal Literature", in *Studies in Islamic Legal Theory*, Bernard G. Weiss, ed. (Leiden: Brill, 2002).

Herr, Nicholas L. ed., *Islamic Law and Jurisprudence: Studies in Honor of Farhat J. Ziadeh* (Seattle and London: University of Washington Press, 1990).

Hill, Enid. *Mahkama: Studies in the Egyptian Legal System Courts and Crimes, Law and Society* (London: Ithaca Press, 1979).

Hourani, Albert. *Arabic Thought in the Liberal Age: 1798-1939* (London: Oxford University Press, 1962).

Hourani, George. "The Basis of Authority of Consensus in Sunnite Islam," *Studia Islamica*, 21 (1964): 11-60.

□usayn, Mu□ammad Mu□ammad. *al-Islam wa'l-□a□āra al-Gharbiyya* (Beirut: Dār al-Irshād, 1971).

Ibn 'Āshūr, Mu□ammad al-□āhir. *Maqā□id al-Sharī'a al-Islāmiyya* (Tunis: al-Sharika al-Tūnisiyya lil-Tawzī', 1978).

Ibn □azm, Muhammad. *al-I□kām fī U□ūl al-A□kām* (Beirut: Dar al-Fikr, 1978).

Ibn Qayyim al-Jawziyya, *I'lām al-Muwaqqi'īn 'an Rabb al-'Alamīn*, ed. Muhammad 'Abd al-Hamid, 4 vols. (Beirut: al-Matba'a al-'Asriyya, 1987).

Ibn Taymiyya, Taqī al-Dīn. *al-'Ubūdiyya* (Cairo: al-Dār al-Salafiyya, 1966),

Ismā'īl, Sha'bān Mu□ammad. *Al-Imām al-Shawkānī wa Manhajuhu fī U□ūl al-Fiqh* (Daw□a: Dār al-Thaqāfa, 1989).

'Izziddin, Mawil ?, Maslaha, in *Studies in Honor of Clifford Edmond Bosworth*, vol. I, I. R. Netton, ed., 2000.

Jackson, Sherman. "*Taqlīd,* Legal Scaffolding and the Scope of Legal Injunctions in Post-Formative Theory: *Mu□laq* and *'Āmm* in the Jurisprudence of Shihāb al-Dīn al-Qarāfī," *Islamic Law and Society*, 4 (1996): 165-92.

Johansen, Baber. "Legal Literature and the Problem of Change: The Case of the Land Rent," in Chibli Mallat, ed., *Islam and Public Law* (London: Graham & Trotman, 1993), 29-47.

Jomier, J. *Le Commentaire coranique du Manar* (Paris: G-P Maisonneuve, 1954).

Juynboll, G. H. A. *Muslim Tradition: Studies in Chronology, Provenance and Authorship of Early □adīth* (Cambridge: Cambridge University Press, 1983).

"Some Notes on Islam's First *Fuqahā* Distilled from Early □*adīth* Literature," *Arabica,* 39 (1992): 287-314.

Juynboll, G. H. A., ed. *Studies on the First Century of Islamic Society* (Carbondal: Southern Illinois University Press, 1982).

Kamali, Abd Allah Ya□yā. *Maqā□id al-Sharī'a al-Islāmiyya fī □aw' fiqh al-Muwāzanāt* (Beirut: Dār Ibn Hazm, 2000).

Kamali, Mohammad Hashim. *Principles of Islamic Jurisprudence,* revised edn. (Cambridge: Islamic Texts Society, 1991).

Kemke, Andreas H. *Stiftungen im muslimischen Rechtsleben des neuzeitlichen Ägypten: Die schariatrechtlichen Gutachten (Fatwas) von Muhammad 'Abduh (st. 1905) zum Wakf* (Frankfurt: Peter Lang, 1991).

Kerr, Malcolm. *Islamic Reform: The Political and Legal Theories of Mu□ammad 'Abduh and Rashīd Ri□ā* (Berkeley: University of California Press, 1966).

Khadduri, Majid. "The *Ma□la□a* (Public Interest) and '*Illa* (Cause) in Islamic Law,"
New York University Journal of International Law and Politics, 12 (1979): 213-17.

War and Peace in the Law of Islam (Baltimore: Johns Hopkins University Press, (1955).

Khadduri, Majid and H. J. Liebesny, eds. *Law in the Middle East: Origins and Development of Islamic Law* (Washington, D.C.: Middle East Institute, 1995).

Khallāf, 'Abd al-Wahhāb. *'Ilm U□ūl al-Fiqh* (Cairo: Ma□ba'at al-Na□r, 1954).

Ma□ādir al-Tashrī' al-Islāmī fīmā lā Na□□a Fīh (Cairo: Dār al-Kitāb al-'Arabī, 1955).

Kīlānī. 'Abd al-Ra□mān Ibrāhīm Zayd. *Qawā'id al-Maqā□id 'inda al-Imām al-Shā□ibī* (Damuscus: Dār al-Fikr, 2000).

Layish, Aharon. "The Contribution of the Modernists to the Secularization of Islamic Law," *Middle East Studies,* 14 (19780: 263-77.

Mahmassani, S. *Falsafat al-Tashrī' fi al-Islām,* trans. F. Ziadeh, *The Philosophy of Jurisprudence in Islam* (Leiden: E. J. Brill, 1961).

Makdisi, George. "Ethics in Islamic Traditionalist Doctrine," in R. G. Hovannisian, ed., *Ethics in Islam* (Malibu: Undena Publications, 1985):47-63.

"Freedom in Islamic Jurisprudence: *Ijtihad, Taqlid,* and Academic Freedom," in *La notion de liberté au moyen age: Islam, Byzance, Occident,* Penn-Paris-Dumbarton Oaks Colloquia (Paris: Société d'Edition des belles letters, 1985):79-88.

"The Juridical Theology of Shāfi'ī: Origins and Significance of *U□ūl al-Fiqh*," *Studia Islamica,* 59 (1984):5-47.

Makdisi, John. "Formal Rationality in Islamic Law and the Common Law," *Cleveland State Law Review,* 34 (1985-6): 97-112.

"Hard Cases and Human Judgment in Islamic and Common Law," *Indiana International and Comparative Review,* 2 (1991): 191-219.

"Legal Logic and Equity in Islamic Law," *American Journal of Comparative Law,* 33

(1985): 63-92.
Makdisi, John and Marianne Makdisi. "Islamic Law Bibliography: revised and Updated List of Secondary Sources," *Law Library Journal,* 87 (1995): 69-191.
Margoliouth, D. S. "Omar's Instructions to the Kadi," *Journal of the Royal Asiatic Society* (1910): 183-305.
Martin, Richard, Mark Woodward and Dwi Atmaja, *Defenders of Reason in Islam: Mu'tazi'ism from Medieval School to Modern Symbol* (Rockport, MA: Oneworld Publications Ltd, 1997).
Masud, Muhammad Khalid. *Islamic Legal Philosophy: A Study of Abū Is□āq al-Shā□ibī's Life and Thought* (Islamabad: Islamic Research Institute, 1977).
"The Shari'a: A Methodology or a Body of Substantive Rules?" in Heer, ed., *Islamic Law and Jurisprudence,* 177-98.
Melchert, Christopher. *The Formation of the Sunnī Schools of Law: Ninth-Tenth Centuries C.E.* (Ph.D. dissertation: University of Pennsylvania, 1992).
Meron, Y. "The Development of Legal Thought in Hanafi Texts," *Studia Islamica,* 30 (1969): 73-118.
Modarressi, Hossein. "Some Recent Analyses of the Concept of *majāz* in Islamic Jurisprudence," *Journal of the Arabic Oriental Society,* 106 (1986): 787-91.
Mughniyya, Muhammad Husayn. *'Ilm U□ūl al-Fiqh fī Thawbihī al-Jadīd* (Beirut: Dār al-Mashriq, 1975)
Peters, Rudolph. *"Ijtihād and Taqlīd* in 18th and 19th Century Islam," *Die Welt des Islams,* 20 (1980): 131-45.
"Islamic and secular criminal law in nineteenth century Egypt: The Role and Function of the Qadi", *Islamic Law and Society*, 4 I, 1997, pp. 80-90.
Powers, David S. "The Exegetical Genre *nāsikh al-Qur'ān wa-mansūkhuh,"* in Andrew Rippin, ed., *Approaches to the History of the Interpretation of the Qur'ān* (Oxford: Clarendon Press, 1988): 117-38.
Studies in Qur'an and □adīth: The Formation of the Law of Inheritance (Berkeley: University of California Press, 1986).
al-Qara□āwī, Yusuf. *'Awāmil al-Sa'a wal-Murūna fī al-Sharī'a al-Islāmiyya* (Cairo: Dār al-□a□wa, 1985).
Dawr al-Qiyam wal-Akhlāq fī al-Iqti□ād al-Islāmī (Beirut: Mu'assasat al-Risāla, 1996).
Fatāwā Mu'ā□ira lil-Mar'a wal-Usra al-Muslima (Cairo: Dār al-Isrā', 1986).
al-Fatwā bayna al-In□ibā□ wal-Tasayyub (Cairo: Dār al-□a□wa, 1988).
al-Fiqh al-Islāmī bayna al-A□āla wal-Tajdīd (Cairo: Dār al-□a□wa, 1986).
Rahman, Fazlur. "Functional Interdependence of Law and Theology," in G. E. von Grunebaum, ed., *Theology and Law in Islam,* Wiesbaden: Otto Harrassowitz, 1971): 89-97.
"The Impact of Modernity on Islam," *Islamic Study,* 5 (1966): 117-28.
Islam (Chicago: University of Chicago Press, 1979).
"Islamic Modernism: Its Scope, Method and Alternatives," *International Journal of Middle East Studies,* 1 (1970): 317-33.
"Law and Ethics in Islam," in R.G. Hovannisian, ed., *Ethics in Islam* (Malibu: Undena Publications, 1985): 3-15.
"Revival and Reform in Islam," in *The Cambridge History of Islam,* IIB, P.M. Holt,

Ann K. S. Lambton, and B. Lewis, eds., *Islamic Society and Civilization,* (Cambridge: Cambridge University Press, 1970), 632-56.

al-Raysūnī, A□mad. *Na□ariyyat al-Maqā□id 'inda al-Imām al-Shā□ibī* (Rabat: Dār al-Amān, 1991).

Reinhart, A. Kevin. "Islamic Law as Islamic Ethics," *Journal of Religious Ethics,* 11 (1983):186-203.

Ri□ā, Mu□ammad Rashīd. *Fatāwā* (Beirut: Dār al-Kitāb al-Jadīd, 1970).

□uqūq al-Nisā' fī al-Islām: Nidā' lil-Jins al-la□īf (Beirut: al-Maktab al-Islāmī, 1975).

al-Khilāfa aw al-Imāma al-'U□mā (Cairo: Ma□ba'at al-Manār, 1341/1923).

Khulāsat al-Sīra al-Muhammadiyya wa Haqīqat al-Da'wa al-Islāmīyya wa kulliyyāt al-Dīn wa Hikamuh (Cairo: Dār al-Manār, 1953).

*al-Manār (*Cairo: Dār al-Manār, 1898-1935).

al-Manār wal-Azhar (Cairo: Dār al-Manār, 1352/1930).

The Muhammadan Revelation. Trans. Yusuf T. DeLorenzo (Alexandria, VA: al Saadawi Publications, 1996).

Mu□āwarāt al-Mu□li□ wa'l-Maqallid (Cairo: Matba'at al-Manar, 1906).

Tafsīr al-Manār (Cairo: Dār al-Manār, 1947-1954).

Tārīkh al-Ustādh al-Imām al-Shaykh Mu□ammad 'Abduh (Cairo: Dār al-Manār, 1906).

Yusr al-Islām wa U□ūl al-Tashrī' al-'Āmm (Cairo: Ma□ba'at Nah□at Mi□r, 1375/1956).

al-Sarakhsi, Abu Sahl. *al-Usul*, ed. Abū al-Wafā al-Afghāni, 2 vols. (Cairo: Dār al-Ma'rifa, 1973).

Schacht, Joseph. *An Introduction to Islamic Law* (Oxford: Clarendon Press, 1964).

"Modernism and Traditionalism in the History of Islamic Law," *Middle Eastern Studies,* 1 (1965): 388-400.

The Origins of Muhammadan Jurisprudence (Oxford: Clarendon Press, 1975).

"Problems of Modern Islamic Legislation," *Studia Islamica*, 12 (1960): 99-129.

Seferta, Yusuf H. "The Concept of Religious Authority according to Muhammad 'Abduh and Rashid Ridha", *Islamic Quarterly*, 30, 1986, pp. 159-164.

Shaham, R. *Family and the Courts in Modern Egypt: A Study based on the decisions by the Shari'a Courts, 1900-1955* (Leiden: Brill, 1997).

Shaltūt, Ma□mūd. *al-Fatāwā* (Beirut: Dār al-Shurūq, 1974).

al-Da'wa al-Mu□ammadiyya wal-Qitāl fī al-Islām (Cairo: al-Ma□ba'a al-Salafiyya, 1352/1934).

al-Islām wal-'Alāqāt al-Duwaliyya fī al-Silm wal-□arb (Cairo: Ma□ba'at al-Azhar, 1951).

al-Islām wal-Wujūd al-Duwalī lil-Muslimīn (Cairo: al-Maktab al-Fannī lil-Nashr, 1958)

al-Shā□ibī, Abū Is□āq. *al- Muāfaqāt fī U□ūl al- Ahkām* (Cairo: Muhammad 'Ali Sabih, 1969) vol. 2, pp 30-45.

Shehaby, Nabil. "*'Illa* and *Qiyās* in Early Islamic Legal Theory," *Journal of the American Oriental Society*, 102 (1982): 27-46.

Sherif, Adel Omar. *The Origins and Development of the Egyptian Judicial System* (The Hague: Kluwer Law International, 1996).

Skovgaard-Petersen, Jacob. *Defining Islam for the Egyptian State: Muftis and Fatwas of the Dār al-Iftā* (Leiden: Brill, 1997).

Smith, Wilfred C. "Law and Ijtihad in Islam," *International Islamic Colloquium* (Lahore: Panjab University Press, 1960): 111-14.
Tibi, Bassam. *The Crisis of Modern Islam*, trans. J. von Sivers (Salt Lake City: University of Utah Press, 1988).
al-Turābī, □asan. *al-Dīn wal-Tajdīd* (Tunis: Dār al-Rāya, 1982).
"Principles of Governance, Freedom, and Responsibility in Islam," *American Journal of Islamic Social sciences*, 4 (1987): 1-11.
Qa□āyā al-Tajdīd: Na□wa Manhaj Usūlī (Cairo: Dār al-Ahrām, 2000).
Tajdīd al-Fikr al-Islāmī (Rabat: Dār al-Qarāfī lil-Nashr wal-Tawzī', 1993).
Tajdīd U□ūl al-Fiqh al-Islāmī (Beirut and Khartoum: Dār al-Fikr, 1980).
al-Turkumānī, Ibn Baydakīn. *Al-luma' fi'l-□awādith wa'l-Bida'* (Cairo: Ma'had al-Dirasat al-Islamiyya, 1986).
Vogel, Frank E. *Islamic Law and Finance: Religion, Risk, and Return* (The Hague: Kluwer Law International, 1998)
Wakin, Jeanette. "Interpretation of the Divine Command in the Jurisprudence of Muwaffaq al-Dīn Ibn Qudāma," in Heer, ed., *Islamic Law and Jurisprudence*, 33-52.
Watt, W. M. *Islamic Fundamentalism and Modernity* (London: Routledge, 1988).
Weiss, Bernard. "Exotericism and Objectivity in Islamic Jurisprudence," in Heer, ed., *Islamic Law and Jurisprudence*, 53-71.
"Interpretation in Islamic Law: The Theory of *Ijtihād*," *American Journal of Comparative Law*, 26 (1978): 199-212.
"The Primacy of Revelation in Classical Islamic Legal Theory as Expounded by Sayf al-Dīn al-Āmidī," *Studia Islamica*, 59 (1984): 79-109.
The Search for God's Law: Islamic Jurisprudence in the Writings of Sayf al-Dīn al-Āmidī (Salt Lake City: University of Utah Press, 1992).
The Spirit of Islamic Law, (Athens, GA: The University of Georgia Press, 1998).
Wiederhold, Lutz. "Legal Doctrines in Conflict: The Relevance of *Madhhab* Boundaries to Legal Reasoning in the Light of an Unpublished Treatise on *Taqlīd* and *Ijtihād*," *Islamic Law and Society*, 4 (1996): 234-304.
al-Yūbī, Mu□ammad. *Maqā□id al-Sharī'a al-Islāmiyya wa 'Alāqatuhā bil-Adilla al-Shar'iyya* (Riyad: Dār al-Hijra, 1998).
Zayd, Mu□□afā, ed., *al-Ma□la□a fī al-Tashrī' al-Islāmī*, 2nd edn. (Cairo: Dār al-Fikr al-'Arabī, 1348/1964).
Zaydān, 'Abd al-Karīm. *Majmū'at Bu□ūth Fiqhiyya* (Baghdad: Maktabat al-Quds, 1976).
Halat al-□arūra fi'l- Sharī'a al-Islamiyya (Baghdad: Maktabat al-Quds, 1976).
Zebiri, Kate. *Ma□mūd Shaltūt and Islamic Modernism* (Oxford: Clarendon Press, 1993).
al-Zu□aylī, Wahba. *al-'Alāqāt al-Duwaliyya fī al-Islām: Muqārana bil-Qānūn al-Duwalī al-□adīth* (Beirut: Mu'assasat al-Risāla, 1981).
Āthār al- □arb fī al-Fiqh al-Islāmī (Dār al-Fikr, 1966).
Juhūd Taqnīn al-Fiqh al-Islāmī (Beirut: Mu'assasat al-Risāla, 1987).
Na□ariyyat al-□arūra al-Shar'iyya: Muqārana ma'a al-Qānūn al-Wa□'ī (Damascus: Dār al-Fikr, 1997).
al-Rukha□ al-Shar'iyya: A□kāmuhā, □awābi□uhā: Bu'ithtu bil-□anīfiyya al-Sam□a (Beirut: Dār al-Khayr, 1993).

al-Tafsīr al-Wasī□ (Beirut: Dār al-Fikr al-Mu‘ā□ir, 2000).
Tajdīd al-Fiqh al-Islāmī (Beirut: Dār al-Fikr al-Mu‘ā□ir, 2000).
U□ūl al-Fiqh al-Islāmī, 2 vols. (Damascus: Dār al-Fikr, 1986).
Zysow, Aron, *The Economy of Certainty: An Introduction to the Typology of Islamic Legal Theory* (Ph.D. Dissertation: Harvard University, 1984).