

Muḥammad al-Ṭāhir ibn al-‘Āshūr’s Contribution to *Maqāṣid al-Sharī‘ah* in the Contemporary Times

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ABSTRACT

In the postcolonial times, Muslim majority lands witnessed an active and critical engagement between a section of Muslim scholarship and the incursions made by the colonial modernity, its various institutional manifestations in these lands in the socio-political, economic or religious contexts and importantly the legal restructuring in the Muslim majority countries in the twentieth century. In the backdrop of the assault of the colonial modernity, a need for a reformative model or framework to deal with the disputations of the modernity was felt like never before in history of Islamic people. Among all such reformative ideas, responses and the movements, Muḥammad ‘Abduh initiated a process of reformation rooted in Islamic theology, Islamic law and the inter links between the theology and the law. Succeeded by two of his illustrious students; Rashid Rida- a Syrian-Egyptian scholar and the main proponent of the reformative-*Salafi* paradigm and Muḥammad al-Ṭāhir ibn al-‘Āshūr – an erudite Tunisian scholar and a leading jurist of the school of Malik. This paper endeavors to present a succinct appraisal of the legal thought of ibn al-‘Āshūr who remains one of the most influential legal theorist and Qur’ānic exegete of the modern times. He came up with a very persuasive and original model of reformation and legal theory based in *Maqāṣid al-Sharī‘ah*.

Keywords: *Maqāṣid al-Sharī‘ah*, *Uṣūl al-Fiqh*, Postcolonial, *Maṣlahah*, Islamic Legal Theory.

1.1. Muḥammad al-Ṭāhir ibn al-‘Āshūr in the *‘ulamatic* (Scholarly) Context of Modern Tunisia

Muḥammad al-Ṭāhir ibn Muḥammad ibn Muḥammad al-Ṭāhir ibn al-‘Āshūr (1296-1394 A.H/ 1879-1973 C.E), popularly known as ibn ‘Āshūr, was born to a very influential and one of the most notable families of the city of Tunis in 1879 C.E. The family of ibn al-‘Āshūr’s, known as a very influential family in the sphere of

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spirituality early and later in the spheres of Islamic scholarly tradition and the Tunisian politics as well, originally of the Moroccan Idrisīd descent, migrated from Muslim Spain to settle in Tunis. Muḥammad ibn ‘Āshūr (b. 1030 A.H/ 1621 C.E in Morocco) settled in Tunis and with him the ‘Āshūrs started their endeavor in the spiritual circles. Among the ‘Āshūrs of fifth generation, three brothers Aḥmad (d. 1255A.H/ 1839 C.E), Muḥammad (d. 1265 A.H/ 1849 C.E) and importantly Muḥammad (d. 1284 A.H/ 1868 C.E) studied at the *Zaytūna* mosque, one of the greatest centers of Islamic learning in North Africa, to graduate as *‘ulamā*. Muḥammad al-Ṭāhir, the grandfather of the twentieth century scholar who goes by the same name, later became a chief Mālikī judge and most renowned among three brothers and was appointed as *mufti* in 1861 C.E. Ṭāhir ibn ‘Āshūr, born in 1296 A.H/ 1879 C.E, started his training at *Zaytūna* mosque in 1892 to become an *‘ālim*. Belonging to the influential families from both paternal and maternal sides, his paternal grandfather Muḥammad al-Ṭāhir ibn ‘Āshūr was a leading religious authority and a government official. While from his maternal side, his grandfather Muḥammad al-‘Azīz Bu ‘Attūr (1825-1907 C.E) worked as the first minister for ‘Ali Bey (r. 1882-1902).¹ In the modern era, the early efforts at modification and reorganization in Tunisia was started during the tenure of Aḥmad Bey (r. 1837-1855) deriving the inspiration from the Ottoman and the Egyptian modernization programs.

Under the brief rule of Muḥammad Bey (r. 1855-1859) with the issuance of *‘ahd al-amān* and *al-qānūn al- asāsī* (the fundamental law), the reformist project took hold. Following the patterns of the Ottoman *firmāns* (Ottoman Sultanic declarations) issued in 1839 and 1856, *al-qānūn al-asāsī* pronounced the introduction of the concepts of political equivalence among the various groups of the populace and the citizenship. Under Muḥammad Ṣādiq Bey (r. 1859-1882), with the introduction of new constitution in 1860, the reform project touched its new heights, instituting the separation of powers, limiting the prerogatives of the Bey. With this a new court system was introduced and a high council was formed to act as parliament as well as Supreme Court.² Albert Hourani has written a chapter in his book about the development of earliest modern reformist roots among Muslim intelligentsia as ‘The First Generation: Taḥtāwī, Khayr al-Dīn and Bustāmī’³, implying at the first generation of the reformers who shaped the milieu for any future full-fledged

reformation process of Islamic thought, institutions and society. Khayr al-Dīn al-Tunīsī (1822-1889), a prominent reformist of the 19th century, was chosen as the first head of the High Council. He made attempts to make the council play the active role as defined by the constitution made him to face stiff resistance from the Bey, which resulted in the resignation of Khayr al-Dīn al-Tunīsī in 1862. In the course of next seven years, Khayr al-Dīn travelled between Tunisia, Istanbul and Europe and published a treatise in 1867, *Aqwām al-Masāliq fī Maʿrifā Aḥwāl al-Mamālik*⁴ (The Road Most Straight to Know the Conditions of the State). This volume, *Aqwām al-Masāliq fī Maʿrifā Aḥwāl al-Mamālik*, dominated the Tunisian political scene as well as the intellectual arena for more than a century. This book drew responses from various circles, illustrating the dissection within the Tunisian intellectual milieu including the Tunisian landscape of *ʿulamā* and the Tunisian political settings. In this treatise, *Aqwām al-Masālik*, Khayr al-Dīn al-Tunīsī focused on two major strands of the Tunisian community, firstly the enthusiastic among the statesmen and the *ʿulamā* and secondly the unmindful common masses. For the statesmen and *ʿulamā*, he urges them to exercise everything that may bring about the welfare in the Islamic community and development to the civilization. On the other hand, he tries to push and encourage the passive common masses against their unawareness and assumption of the dodging of every institution that is not found among Muslim people.

In 1869, Khayr al-Dīn al-Tunīsī returned back to political scene to chair the International Finance Commission, the time when Europeans intensified their incursions in Tunisian affairs. In 1873, the anti-reformist Prime Minister Khazāndār was replaced by Khayr al-Dīn.⁵ From 1873 to 1877, Khayr al-Dīn made efforts to implement the ideas he had formulated in *Aqwām al-Masālik* with respect to reform, to deter European intrusions and stabilizing the Tunisian government. While doing so the distinction between the Tunisian ruling elite, the *ʿulamā* and the notables became more obvious. Being the prime minister of the Tunisia, Khayr al-Dīn made efforts at new institutional establishment with religious symbols, involved the *ʿulamā* in the administration. To hint at the reformation rooted in Islamic tradition, the administration of the new public library was handed over to Muḥammad Bayram V and Maḥmūd ibn al-Khūjā, the two senior *ʿulamā* and the newly founded organ of the government, *al-Raʿīd al-Tunīsī*, was hand over to another group of *ʿulamā*.

They were also employed into the modern day Ṣadīqīyah College and were also engaged in the reorganized *awqāf* (religious endowments). While all these changes were taking place, *Zaytūna*- the university mosque stronghold of traditional Islamic education and of *'ulamā*, faced the changes in its educational system, albeit at a very low level.⁶

In response to the French occupation of the Tunisia, the greater majority of the *'ulamā* rose up against the French dominance. Many of the *'ulamā* encouraged armed struggle against the occupation and the others immigrated to the areas under Ottomans. Among the *'ulamā*, a good number of them chose to continue their teaching services at the Ṣadīqīyah college and it provided a space for interaction between the French and the Tunisian *'ulamā*. As the French didn't tinker with pre-occupation governmental structures and institutions, the *'ulamā* convinced themselves of serving the Tunisian authority of Bey, not the French occupying forces. But, the French establishment gradually started influencing the *'ulamā* spheres. Louis Machuel, in May 1883, was appointed as the Director education in Tunisia with experience in Algeria's French School system. Through his non-confrontational approach and cooperation with traditional Islamic Institutions, his first aim was to put the Ṣadīqīyah College under his own authority for some fundamental restructuring of the institution and the curriculum.⁷ He made a major attempt to control *Zaytūna*, which was confronted with stiff resistance from the *'ulamā*. However, in 1892, he was able to gain control over *madaris* (religious schools) affiliated with *Zaytūna* through manipulating the existing powers of the state. Hence exercising significant influence over the administration of the *Zaytūna*⁸ and because of his non-confrontational methods, it guaranteed as little resistance as possible from the local populace.

1.2. Muḥammad al-Ṭāhir Ibn al-ʿĀshūr: The Making of an *'Ālim* and an Intellectual

Muḥammad al-Ṭāhir ibn ʿĀshūr, after receiving his primary education of Arabic and French languages and Qur'ān in a traditional *kuttāb* (school) of Tunisia, joined *Zaytūna* in 1892. In Tunisia, he studied under some of the most eminent scholars (*'ulamā*) of the time which included Muḥammad al-ʿAzīz Bu ʿAttūr, ʿUmar ibn al-Shaykh (1822- 1911), Ṣāliḥ al-Sharīf (1869-1920), Muḥammad al-Nakhlī (1860-1924),

Salim Bu Ḥājib, Ibrāhīm al-Mirghānī (1863-1930), Maḥmūd ibn al-Khūjā (1854-1911), Muḥammad ibn Yusuf (1863-1939). All the teachers of ibn ‘Āshūr were all affiliates of the Māliki School, with the only exception of a Hanafi Shaykh al-Islam, Mahmud ibn al-Khūjā. When ibn ‘Āshūr joined *Zaytūna*, the French occupation of Tunisia had entered its second decade and by this time the active Tunisian resistance was dying out. All such existing circumstances pushed the ‘*ulamā* and the promising Tunisian intelligentsia to go for some soul-searching exercise. The reformist camp was reorganizing itself and asking for a restructuring of education and need for a reformation in the society. A group of French educated Tunisians, who were supporters of the reformist ‘*ulamā* like Muḥammad al-Sanusī and Salim Bu Ḥājib, launched a newspaper, *al-Haḍira* in 1887. It established the first marks in the revival of the reform debate.

The same bunch of individuals founded an institution, *al-Jāma‘īya al-Khaldūnīya*, in 1896. It included Muḥammad ibn Khūjā, Bashīr Safar and Muḥammad al-Asrām as its members and who were supported by some ‘*ulamā* like ‘Alī al-Sanūsī, Muḥammad al-Nakhlī and Salim Bu Ḥājib. Their major objective in establishing such an institution was to make additions and enhancements on the *Zaytūna* curriculum with ‘the universal sciences’. Both these projects were amply supported by the liberals in the French colonial administration. Besides the segment of ‘*ulamā* associated with *al-Haḍira*, *Jama‘īya al-Khaldūnīya* and the Ṣadiqīyah College, Shaykh Muḥammad al-‘Aziz Bu ‘Attūr, the maternal grandfather of ibn ‘Āshūr, was very cooperative as a prime minister during the 1890s. Shaykh Mahmud ibn al-Khūjā, among ibn ‘Āshūr’s teachers, was opposed to the reformist ideas. Besides the pro-reform teachers of ibn ‘Āshūr, he also learned under some anti-reformist ‘*ulamā* like Shaykh Mahmud al-Khūjā; in his earlier days a comrade of Khayr al-Dīn Tunīsī, later grew into more conservative in his outlook. Another of his teachers who protested against the idea of change and cooperation with French colonial authorities was Shaykh Salih al-Sharīf al-Tunīsī and he had to flee to Ottoman lands where he played a key role in the dialogue of reform and change.

Ibn ‘Āshūr under the tutelage of so many diverse teachers certainly got influenced to engage with the issue of reform and seems to have made the decision for himself in his early life. He completed his basic studies from *Zaytūna* in 1896 and soon got appointed as an auxiliary professor. In 1900, he was appointed as a lecturer at

Ṣadīqīyah College. In 1903, at the age of twenty-four he passed the oral examination to be appointed as a first class professor at *Zaytūna*. Next year, he was designated with the position of state deputy at the *nizāra* of the mosque-university. It was at this position ibn ‘Āshūr took his first steps to reform *Zaytūna* curriculum/education, what later got converted into a lifelong project of ibn ‘Āshūr.⁹

Ibn ‘Āshūr’s tilt towards reformist branch of the Tunisian ‘*ulamā* became apparent in 1903 when Muḥammad ‘Abduh visited Tunisia to call for financial support for his journal *al-Urwah al-Wuthqā*. Being very familiar with the Tunisian ‘*ulamā* landscape, Muḥammad ‘Abduh seen as the master architect of Islamic reformism, was received warmly. In many of his encounters with the Tunisian ‘*ulamā*, of which many were attended by ibn ‘Āshūr, he deliberated upon educational reforms and was very critical of traditional pedagogical methods. He advocated the legacy of ibn Taymiyyah (d. 728 A.H/ 1328 C.E), the famous fourteenth century polymath from Syria. Subscribing to the *ijtihād*-centric ideas of ibn Taymiyyah meant an assertion of reconstruction of the religious thought of Islam primarily rooted in the Qur’ān and Sunnah combined with his own reformist ideas. It started a debate accusing Muḥammad ‘Abduh of Wahhābism. Amidst all this controversy, ibn ‘Āshūr published a write-up in *al-Manār* (the famous journal founded and edited by Rashīd Riḍa, a disciple of Muḥammad ‘Abduh) strongly defending Muḥammad ‘Abduh and his reformist project, albeit anonymously.¹⁰ Ibn ‘Āshūr kept writing for *al-Manār* anonymously; the reason for staying anonymous has been argued with many possibilities like the claim of Arnold Green¹¹ for the strength of the conservative ‘*ulamā*, or the ibn ‘Āshūr’s own non-belligerent nature. Although being a contemporary of scholars who remained politically active like Rashīd Riḍa and ‘Abd al-Ḥamid Bādīs (1889-1940), ibn ‘Āshūr chose to be a non-activist reformist, a somewhat detached intellectual. His aristocratic family background, the structural interests that crafted and connected his social context with the power centers, Tunisian or French, influenced his outlook and left him with few choices to choose from. Ibn ‘Āshūr grew into a politically conscious scholar and socially indecisive.¹²

Well, it is argued that ibn ‘Āshūr was influenced by three spheres of influences. First is from his background of the aristocratic family. Secondly is by the institution of the ‘*ulamā* of Tunisia, where he was trained and educated from and remained its associate for all his life. Thirdly, it is from the developments in the political and

social spheres of Tunisia and the world around like the sway of imperialism, modernization and the development of the sentiment of independence.¹³ Ibn ‘Āshūr critically engaged with all these powerful centers and came out successfully as an original thinker, an educationist, an exegete, a reformist and a legal philosopher.

1.3. *‘Ilm Uṣūl al-Fiqh* and *‘Ilm al-Maqāṣid al-Sharī‘ah*

Maqāṣid al-Sharī‘ah was the next big thing to happen in the arena of *Uṣūl* studies after *Uṣūl al-fiqh* itself. The discipline is meant to study the sources and methodologies of Islamic law and is also being called as philosophy of law.¹⁴ While *uṣūl al-fiqh* concerns itself with the subject of legal theory and the methodologies employed in determining the sources of the law and the methodical procedures of the derivation of the legal rulings therefrom; *Maqāṣid al-Sharī‘ah* essentially concerns the philosophy and the intents and ends of the law.¹⁵ In the modern times, el-Mesawi opines, ibn ‘Āshūr is the major proponent of reformulation of *Maqāṣid* studies not just as a central theme in *uṣūl al-fiqh* but to establish *maqāṣid al-Sharī‘ah* as an independent discipline of learning and inquiry to be studied under the title of *‘ilm al-maqāṣid al-Sharī‘ah*.¹⁶ In the debate of *uṣūl al-fiqh* and *maqāṣid al-Sharī‘ah* and their inter-relationship, ibn ‘Āshūr contends for his prompt position of distinguishing *‘ilm al-maqāṣid al-Sharī‘ah* from *‘ilm uṣūl al-fiqh*. He argues for *maqāṣid al-Sharī‘ah* as an independent branch of knowledge unlike the discipline of the principles of the legal theory (*‘ilm uṣūl al-fiqh*) for the very evident reason of being two dissimilar sciences addressing two very different subjects, employing two distinct methodological paradigms rooted in distinctively different epistemologies.¹⁷

Ibn ‘Āshūr first makes the position of *uṣūl al-fiqh* clear. Its focus is pronunciation of the methods and modes of derivation of legal pronouncements and identification of *al-adillah al-fiqhiyyah* (legal indicants) and argues for the *zanni* (probable) nature of the *uṣūl* (principles) arrived at by the legists (*uṣūliyyun*) against the popular claim of the *qati* (categorical/ certain) nature of the *uṣūl* (principles); the postulate proposed by the likes of abu al-Ma‘ali al-Juwayni¹⁸ (d. 1085 C.E) and Abu Ishaq al-Shatibi¹⁹ (d. 1388 C.E). Ibn ‘Āshūr contends this statement by claiming too much difference of opinion among the scholars on almost every aspect of the science of principles of legal theory. He alleges, to claim certainty in this science is to position principles of legal theory in the same vein of the fundamentals of faith (*uṣūl al-Dīn al-sam‘iyyah*).²⁰

After stating his position on the *‘ilm uṣūl al-fiqh*, ibn ‘Āshūr makes advances to define *‘ilm al-maqāṣid al-Sharī‘ah* as a distinct science, the science of the intents/ purposes of the law which is meant to put forward *uṣūl al-qati’yyah* (the definite principles). These principles define the epistemological frame of understanding the religion of Islam.²¹ Ibn ‘Āshūr prioritizes *‘ilm al-maqāṣid al-Sharī‘ah* over *‘ilm uṣūl al-fiqh* from the reference point of epistemological soundness and reliability and degree of certainty in the knowledge corpus of Islamic history. He explains the knowledge obtained by inductive (*istiqrā*) reading of the Qur’ān and the authentic Sunnah of the Prophet pertaining to the higher intents of the law, *hikam* (wisdom), *maṣlaḥa* (welfare) and *mafsada* (mischief) in relation to legal pronouncements of *Sharī‘ah* are known with certainty (*yaqīn*). Its goal is to achieve the general welfare of the legal subjects- individual or the community, and by default the possible check at everything harmful and mischievous (*mafsada*). So, the inference stands that the *Sharī‘ah* is purportive in its very nature with certainty, albeit human cognizance or realization of the individual or specific intents/ aims might fall short of certainty.²²

1.4. Ibn ‘Āshūr’s views on *Maqāṣid al-Sharī‘ah*

In his scheme of Islamic legislation (*tashri’ al-Islami*), ibn ‘Āshūr distinguishes legal theory (*uṣūl al-fiqh*) from the intents/ purposes of the law (*maqāṣid al-Sharī‘ah*). He argues that the general purposefulness of the *Sharī‘ah* is to assure the preservation of the order (*nizam*) of the Muslim community (*ummah*), maintenance of the welfare (*salah*) of the *ummah* and the welfare of humankind at the individual level.²³ Ibn ‘Āshūr delving deep into the nature of *Sharī‘ah* proposes the all-inclusive rule being the accomplishment of the *Maṣlaḥah* (welfare) and the aversion of the *mafsadah* (mischief) in the process of legislation.²⁴ Ibn ‘Āshūr constructs upon the theory of *maqāṣid* as theorized by al-Ghazali²⁵ (d. 505/1111) in terms of *Maṣlaḥah* and *mafsadah* and their consequent role in Islamic legislation; the five universals that need to be safeguarded at every level of human existence, *al-darurat*, the traditionally accepted five principal denominations of the preservation of religion, life, intellect, progeny and property. But, ibn ‘Āshūr was not a passive adherent of the classical formation of the strict *maqāṣid* theory, rather walking more the footsteps of ibn ‘Abd al-Salam (d. 660/1263) and al-Shatibi, he had more of the liberating and inclusivist tendencies to take *‘ilm al-maqāṣid al-Sharī‘ah* to next level. So, in the estimate of ibn ‘Āshūr for a

precise and broader definition of *maqāṣid al-Sharīah*:

From a comprehensive thematic analysis of the textual sources of the *Sharīah* pertaining to the objectives of legislation (*tashri'*), we can draw the following conclusions. Both its general rules and proofs indicate that the all-purpose principle (*maqṣad 'amm*) of Islamic legislation (*tashri' al-islami*) is to preserve the social order (*nizam*) of the community (*ummah*) and ensure its healthy progress by promoting the well-being and righteousness (*salah*) of that which prevails in it, namely, the human species. The well-being and virtue of human beings (*maṣlaḥah*) consist of the soundness of their intellect, the righteousness of their deeds as well as the goodness of the things of the world where they live that are put at their disposal.²⁶

As the basic premises of the theory of *maqāṣid al-Sharīah* are rooted in the age old discourse of *maṣlaḥah* and *mafsadah*, the universal intent in the process of legislation being the realization of *maṣlaḥah* and elimination of *mafsada*, ibn 'Āshūr also offers some important comments on it. He broadly classifies *maṣlaḥah* as a distinctive feature of the action that leads to *salah* (probity/ suitability) from which benefit emanates out either in absolute sense or principally for the society and for the individual. On the other hand, *mafsadah* is an act that leads to *fasad* (corruption), the result being *darar* (harm) predominantly or every-time and everywhere. It effects the whole society and the individual.²⁷ In the nature of such *maṣlaḥah* and *mafsada*, it can be 'amm (general) or khass (specific), influencing the society or an individual.²⁸

Ibn 'Āshūr is the advocate of broadening the characterization of the *maqāṣid al-Sharīah* beyond its traditional delimitations of preserving the necessary five universals; religion, life, intellect, progeny and property, that primarily concern the individual subject of the law. Ibn 'Āshūr argues for the more universal values like equality (*musawat*) and freedom (*hurriya*) and these belong to the *maqāṣid al-asliyyah* of the *Sharīah* just as the five *darurat* (essentials) belong to this category.²⁹ In his categorization of *maqāṣid al-Sharīah*, ibn 'Āshūr differentiates the *qariba* (immediate) objectives from the 'aliya (higher) objectives. The *qariba* objectives are the ones with universal appeal and the 'aliya objectives are with relation to higher universals, meant for the attainment of *maṣlaḥah* and the elimination of the *mafsada* at the communitarian level.³⁰

In El-Mesawi's assessment if ibn 'Āshūr's attempt to establish *'ilm al-maqāṣid al-Sharīah* as an independent discipline of inquiry and learning to engage more meaningfully and efficiently with the challenges of modernity, the study of ibn 'Āshūr's views on *fiṭrah* (primordial human nature) stands appropriate. Ibn 'Āshūr tries to attempt an analysis of the deep crises inflicted by modernity on contemporary human subjectivity, their collective psychology and identity in terms of disengagement of modern man with value system and expressive loss of meaning manifested at various levels of individual and collective life, through linking of the subject of primordial human nature (*fiṭrah*) with the *maqāṣid al-Sharīah* (higher intents and objectives of the *Sharīah*).³¹ All this strenuous endeavor in ibn 'Āshūr's thought seems to work out the core concern of reviving the natural disposition of the human existence (*fiṭrah*) and its correlation with the cosmic principles arrived at and recognized through *'ilm al-maqāṣid al-Sharīah* to strike the common ground where human existence willfully submits to the *Sharīah* to realize and actualize the objectives intended by the Law-Giver (*Shari'*), working in tandem, to derive good and welfare for an individual and the community in this world and world hereafter.

Ibn 'Āshūr engaged with this idea of *fiṭrah* extensively in his works. As a basic concept, ibn 'Āshūr refers to the concept of *fiṭrah* as the natural disposition or order that God has created the humans upon. Henceforth, the idea of *fiṭrah* has an inward and outward character; inwardly the expression of *fiṭrah* at the intellectual level and outwardly the expression of *fiṭrah* at the physical level. Exemplifying this conceptualization of the primordial God-centric nature manifests itself in a variety of ways; to walk on the feet is an act of one's physical natural disposition (*fiṭrah*) but anything contrary to it like using feet to hold things goes against one's state of *fiṭrah*. In the same line, identifying correct analogical relationship between the effect and the cause and deducing inferences from their proper premises is an act of intellectual natural disposition (*fiṭrah*) while as attempting deduction of inferences from irrelevant assumptions and illogical causes goes against intellectual natural disposition (*fiṭrah*). Thus, making a point that things have an inbuilt and inherent meanings of their own, independent of our perceptive potentials of cognition of things, is also a part of intellectual disposition (*fiṭrah*).³²

While developing his argument of the nature of relationship between *Sharī'ah* and human natural disposition, ibn 'Āshūr argues that the *Sharī'ah* was revealed for the restoration of the primordial nature (*fiṭrah*) of the humans through its commandments in totality. As an example, the institution of marriage, the idea of the protection of life and lineage, collaborating in the pursuits of the common good and survival are all the eminent real manifestations of human natural disposition. Of the same manifestation scheme is to engineer a moral human civilization and so is the pursuit of knowledge advantageous for humanity- the way to express the natural disposition through the intellectual creative-imaginative frame and its novel inventive potentials.³³ Ibn 'Āshūr thus states that as Islam is very organically related to the natural disposition of human existence or its primordial nature, the revealed *Sharī'ah* too is considered as the expression of this very nature or a heavenly confirmation of nature of humans by revealing a complete congruous system of living.³³

As discussed above that in ibn 'Āshūr's thought, primordial nature of humans (*fiṭrah*) is closely linked with the nature of *Sharī'ah*. Hence, we try to understand its close correlation with another important Qur'ānic concept related to ontology of human existence namely the event of sacred covenant (*mīthāq*), as mentioned in Qur'ān³⁴:

When your Lord brought forth off-spring from the loins of the children of Adam and made them bear witness about themselves, He said, "Am I not your Lord?" They replied, "We bear witness that You are." This He did lest you should say on the Day of Resurrection 'we had no knowledge of that.'³⁵

Talking of the idea of *mīthāq*, ibn 'Āshūr constructs a comprehensive perspective about primordial nature of humans and its relation with the *Sharī'ah*. In it the holistic concept of *fiṭrah* is emphasized, the transcendental and metaphysical dimensions of man without divorcing him from the material side of his existence and material world and its realities that takes care of both the strengths and weaknesses of human nature are also touched upon. While delineating this relationship between human nature and religion, ibn 'Āshūr addressed it in full awareness of the philosophical developments and debates and various philosophical positions taken in post-Enlightenment European thought, in particular the contributions made by various French philosophers, engaging critically with the likes of Voltaire, Rousseau etc.³⁶

From the Qur'ānic perspective, it is in the very natural instinct of the man's cognition of God to submit before His will, deeply embedded in the very essential metaphysical reality related to the human being's ontological (*kawni*) bond with God. This is expressed in the 07:172 verse of the Qur'ān; wherein it reads the offsprings of the Adam were brought forth and asked to bear witness about themselves: 'Am I not your Lord?' They answered, "Yes, we do bear witness thereto".³⁷ Here, ibn 'Āshūr observes, it is an allegorical representation describing the metaphysical situation illustrating God's creational power in determining the essence and qualities of the created cosmos in accordance to His Will. It shows something whose essential nature cannot be tampered or abused by human intelligence.³⁸ Ibn 'Āshūr comments about this metaphorical representation of the ontological bond between God and man as the God's impression in man by His creation as the ability to recognize the signs of *tawhīd* (oneness) of Allah and the natural inclination put in man's natural intelligence for the quest of acquiring such knowledge, provided his natural tendency is free from the corrupting effects of certain factors that might play bad with his natural inborn temperament.³⁹

The Islamic idea of being human, the nobility attached to it, his position in the realm of created cosmos and his mission is embedded in the Islamic concept of *mīthāq* (primordial covenant) and its relationship with *fiṭrah* (primordial human nature), so as to stand up amongst all creatures to bear God's trust,⁴⁰ as His *caliph* (steward or vicegerent) on the Earth. To deprive humanity of these facets and these concepts is to plunder them of their meaning, dignity and their purpose, reducing them to a mere object of 'gut and sex', a hedonistic purposeless being sans any spiritual sense, a two-fold activity meant for physical maintenance and biological sustenance; implying at a circular function aimed at producing and procreating to consume, and consuming and producing to procreate.⁴¹ By forming such a correlation in between human beings, nature and Islam, the Qur'ānic intent seems to express the congruity of the innate natural capacities and the revealed religion-*Sharī'ah*, which follows the natural description of Islam being *din al-fiṭrah*, the revealed way of life authorized by the primordial nature of man. Hence solidifying the relationship between the ethical values and ontological realities.⁴²

1.5. Ibn ‘Āshūr and the Concept of *Maṣlaḥah*

Expounding upon the theory of *maqāṣid*, the concept of *maṣlaḥah* finds the central place throughout the Muslim legal scholarship from the pre-modern to modern times. It acts as the corner-stone of the theory of *maqāṣid*. The concept of *maṣlaḥah* is so wide-ranging in Islamic legal thought that it embraces every idea of human good or human prosperity at both the individual and collective levels. Ibn ‘Āshūr does discuss this concept of *maṣlaḥah*,⁴³ he starts his discussion of *maṣlaḥah* with a general overview of the descriptions of *maṣlaḥah* offered by the previous jurists of pre-modern era, he makes mention of ibn Ḥājib, his commentator ‘Adud al-Dīn al-‘Ijī, ‘Izz al-Dīn ibn ‘Abd al- Salām and Abū Ishāq al-Shāṭabī. In the estimate of Ibn ‘Āshūr, *maṣlaḥah* should be defined as:

Maṣlaḥah means the utmost righteousness and goodness (*ṣalāh*). For this, it has been expressed in the morphological form *maḥalah* connoting the place in which there is intensity of the meaning from which this form is derived, which is here an allegorical place. It likewise appears to me that *maṣlaḥah* can be defined as being an “attribute of the act (*fi’l*) whereby righteousness and goodness (*salah*) takes place, that is to say utility and benefit (*naḥ*) always or mostly for the public or individual. By ‘always’ I refer to the *maṣlaḥah* that is absolute and regular, while by ‘mostly’ I mean the *maṣlaḥah* that is predominant in most of the cases. As for the expression ‘for the public or individual,’ it means that *maṣlaḥah* is of two kinds.⁴⁴

He further elucidates about the categorizations of *maṣlaḥah*:

From the previous definitions, it appears that *maṣlaḥah* is of two kinds: public and private. Public interests (*maṣlaḥah ‘āmmah*) consists of what is beneficial and useful for the whole or most of the community, and does not concern individuals only in so far as they are members of the whole. Private interest (*maṣlaḥah khāṣṣah*) consists of anything that benefits the individuals. It is concerned with the righteousness and goodness of the individual’s acts as a means to the righteousness and well-being of the whole society to which they belong. Thus, the primary concern here is with the interest of the individuals rather than that of the general public, which is regarded only secondarily. Part of the Qur’ānic legislation and most of that of the Sunnah are concerned with this category of *maṣlaḥah*.⁴⁵

Contextualizing the idea of *maṣlaḥah* in pre-modern times, Ibn ‘Āshūr’s theory of *maṣlaḥah* necessitates following facets:

- The broader connotations of the term *maṣlaḥa* vis-à-vis its morphology is derived either from *salāḥa* or *salūḥa* connoting the usefulness, goodness and rightfulness. Being in the morphological form of *maf'alah*, it signifies the predominance of the quality of goodness and utility in its application in the context it is applied to. Consequently, Ibn 'Āshūr defines the term *maṣlaḥa* in terms of an 'attribute of the act (*fi'l*) whereby righteousness and goodness (*salah*) takes place, that is to say utility and benefit (*naḥf*) always or mostly for the public or individual'.⁴⁶
- Qualifying an interest as *maṣlaḥa* requires the consequential absolute state of benefit or the predominant state of benefit regulated under all situations or the most of them respectively, in most of the cases it is involved in.⁴⁷
- Ibn 'Āshūr broadly classifies *maṣlaḥa* into two categories, *maṣlaḥa al-'āmmah* as public interest and *maṣlaḥa al-khāṣṣah* as private interest. The public interests take care of whole society or the most of it while the private interests take care of the individuals.⁴⁸

While delving deep into classifications of the *maṣlaḥa* and their textual roots, Ibn 'Āshūr reiterates the Qur'ānic distinctive way of legislation. In the field of legislation, Ibn 'Āshūr argues that the Qur'ān legislates for the universal and general aims and interests while as it is the prerogative of the Sunnah of the Prophet to address the specific and individual interests by working in the specific situations. This lays the basic working plan for the working of public (*'āmmah*) interests and personal (*khāṣṣah*) interests in tandem for the higher intents of the Sharī'ah. In the schemata of Ibn 'Āshūr, it is significant to understand the way the public and private interests are different. The interests- *'āmmah* and *khāṣṣah*, are not always definite, it is neither sought to be so. The public (*'āmmah*) interests while engaging with public spaces does not ignore the interests of the individuals. In the same way, the private (*khāṣṣah*) interest cannot do away with the universal interests, rather it indirectly serves the purposes of the *maṣlaḥa al-'āmmah*, the shared interests of the community. So, the nature of these two classes of interests- *'āmmah* and *khāṣṣah*, is working in tandem for mutual consolidation of the utilities- communitarian or personal, divorcing any breaches or the presumed conflicts between them.⁴⁹

1.6. *Maṣlaḥah* and the Evolutionary Phases of the Theory of *‘Ilm al-Maqāṣid al-Sharī‘ah*

From this standpoint and scope of *maṣlaḥah*, Ibn ‘Āshūr proposed his framework of the *‘ilm al-maqāṣid al-Sharī‘ah* which is the establishment of the independent legal discipline to study the universal goals of the *Sharī‘ah* and the realization of the well-being of mankind. *Maqāṣid al-Sharī‘ah* is hence defined as the paradigm of realization of the well-being of the mankind which organically gives birth to hierarchical tri-layered *maqāṣid* mechanism embedded in their priorities with relation to human welfare: *ḍarūrat* (essentials), *ḥājīyāt* (needs) and *taḥsīnīyat* (embellishments). El-Mesawi considers Ibn ‘Āshūr the first one in the modern era to attempt a comprehensive definition of *maqāṣid al-Sharī‘ah* unlike the pre-modern attempts that conflated the concept of *maṣlaḥah* with *maqāṣid al-Sharī‘ah*.⁵⁰

Ibn ‘Āshūr attempted this demarcation of *maqāṣid al-Sharī‘ah* in three stages⁵¹. In the first stage, he attempted to define the universal or most general goals of the *Sharī‘ah* (*maqṣad al-‘āmm*). The twelfth chapter of the treatise by the title *al-maqāṣid al-‘āmm min al-tashrī‘* (the general objectives of Islamic legislation) deals with this concept of universal objectives of the *Sharī‘ah*. This overarching conception of the general objective of Islamic legislation, Ibn ‘Āshūr explains, is the ‘preservation of the social order of the community’ and insuring its ‘healthy progress by promoting the well-being and righteousness (*ṣalāh*) of the human species’.⁵² The positive indicants of this state of well-being and righteousness consist of the soundness of the intellect, uprightness of the deeds- worldly or otherwise, that they face where they live.⁵³ In the second stage of the definition of *maqāṣid al-Sharī‘ah*, Ibn ‘Āshūr attempts identification of the objectives of the *Sharī‘ah* that sprout out from the universal principles. The category of the *maqāṣid* thus formed are classified into more specific and less general *maqāṣid*. The objectives that are termed as *maqāṣid ‘āmmah*, the general objectives, notes Ibn ‘Āshūr. He explicates upon the general objectives of *Sharī‘ah* as:

The general objectives of Islamic legislation consist of the deeper meanings (*ma‘ānī*) and inner aspects of wisdom (*ḥikam*) considered by the lawgiver (*Sharī‘*) in all or most of the areas and circumstances of legislation (*aḥwāl al-tashrī‘*). They are not confined to a particular type of the *Sharī‘ah* commands. Thus, they include the general

characteristics of *Sharī'ah*, its general purpose and whatever notions contemplated by the legislation. They also include certain meanings and notions that are present in many, though not all, of the *Sharī'ah* commands.⁵⁴

Taher el-Mesawi makes a point here that the *Sharī'ah*'s general features (*awsāf 'āmmah*) like *samāha* are also categorized among the *maqāṣid*. So, these features play a dual nature of being the properties as well the ends of the *Sharī'ah*, which is defined by the perspective we approach them with.⁵⁵

In the third and last stage of defining the *maqāṣid*, Ibn 'Āshūr attempts at identifying the specific intents (*maqāṣid khāṣṣah*) in each individual arena of Islamic legislation. The third part of the book deals with the identification of these specific ends titled as *maqāṣid al-tashrī' al-khāṣṣah bi anwā' al-mu'āmalāt bayn al-nās* to mean the specific ends of the Islamic legislation in the field of various human transactions. Ibn 'Āshūr argues for these aims consisting of the procedures intended by the *Sharī'ah* to realize the useful purports for the human beings in order to ensure the safety of their public interests (*maṣāliḥ 'āmmah*) that concern their private demeanor. The purport in this part is to regulate the private conduct in a way to help people from avoiding falling into their whims and desires at the cost of the established public interest.⁵⁶

1.7. Introduction of *'Ilm al-Maqāṣid al-Sharī'ah*: A Developing Trend

El-Mesawi infers from the contributions of famous Muslim philosopher, Ibn Khaldūn⁵⁷ and French philosopher Andre Lalande⁵⁸ (1867-1964) the four basic qualifications for any science (*'ilm*) to be called as an independent realm of inquiry. Firstly to have a specific subject matter (*mawḍū'* and *masā'il*). Secondly, a set of unequivocal general prepositions. Thirdly, a frame of rules and procedures that function as the guiding steps of research in this paradigm of inquiry and investigation (epistemological and methodological roots). And fourthly, the space for the researchers to arrive at the objective verifiable conclusions.⁵⁹

Ibn 'Āshūr penned *maqāṣid al-Sharī'ah al-Islāmīyah*, probably the most significant and original contribution to *maqāṣid* studies only after al-Shāṭibī's *al-Muwāfaqāt*, to address and design the basic requirements- subject matter, basic premises, epistemo- methodical design and practical quantifiable utility. It was meant to establish an autonomously organic dominion of enquiry (*'ilm al-maqāṣid al-Sharī'ah*) into Islamic jurisprudence and Islamic legal philosophy specifically, and more

generally, the broader systematic procedure to re-address the queries pertaining to the socio-historical existence of the humans. The treatise *maqāṣid al-Sharīah al-Islāmīyah* consists of three major parts:

- Part I: Establishing *maqāṣid al-Sharīah* in Islamic legislation (*ithbāt annā li al-Sharīah maqāṣid min al-Tashrīṭ*).
- Part II: About the general objectives of Islamic legislation (*fi maqāṣid al-tashrīṭ al-‘amma*).
- Part III: *Maqāṣid al-Sharīah* in human dealings (*maqāṣid al-tashrīṭ al-khāṣṣah bi-anwā’ al-mu‘āmalāt bayn al-nās*).

The first part of the book primarily sets two important prepositions. First is the establishment of the purposive nature of the Islamic legislation, which is a parallel system of interpretation to the literalist source methodological approach. Secondly, it is to analytically investigate various legal methodologies to arrive at the objectives aimed by the *Sharīah*.⁶⁰ In the second part, ibn ‘Āshūr deals with the subject matter of the discipline, theorization of the *maqāṣid* thought embedded in *fiṭrah*. Establishing his *maqāṣid* theory in human primordial nature (*fiṭrah*), ibn ‘Āshūr addresses the necessary inquiry into the human social existence, not just an effort making at explaining the objectives of the *Sharīah*.⁶¹ In this part, he paves way for the pattern of social theorization that is potent enough to transcend the materialistic-reductionist epistemology of the post-renaissance philosophies focusing on the nature of man and society and their interconnectedness. This part of the work investigates into the detailed analysis of the foundational concepts of *maṣlaḥa* and *mafsada* and their categorizations. In addition to the expression of *maqāṣid al-Sharīah* as the holistic field of examination against the traditionally accepted atomistic theories, he establishes it methodically and epistemologically to be liberated from the historical baggage of the constricted legal methods.⁶² The third and the last part of the work is applied examination of the *maqāṣid* theory he explicated upon in the previous parts of the book. It deliberates upon the various domains of human life and its social existence like family life, financial transactions, judiciary etc.

Ibn ‘Āshūr displays the nexus between the human transactions and the *maqāṣid* and by extension the manifestation of the objectives of the *Sharī‘ah* through Islamic legislation for the welfare of the subjects. All this is preceded by the important reflection on the identification of the ends and means in the human transactions, their dialectical relationship and moral concerns imbedded in the process of moving from means to ends.⁶³

1.8. Conclusion

The above analysis deliberates upon one of the most vibrant Muslim intellectual response to the condition of post-coloniality and modernity imposed upon the Muslim subjects in specific and modern man in general. It deliberates upon ibn ‘Āshūr’s recourse to the *maqāṣid al-Sharī‘ah* framework as the most effective and meaningful framework to deal with the issues of legal subjects of Islamic law. Commonly supposed ‘traditional’ *uṣūlī* framework, where exercising *ijtihād* is majorly dominated by exercising strict *qiyās* (analogical reasoning), is identified as poorly equipped to offer meaningful and authentic solutions to the problems of modern times. This sense of inadequacy in the traditional legal framework, major modern *uṣūlī* scholarship ended up at the theories of *maqāṣid al-Sharī‘ah* and *maṣlaḥa*. They revived the Ghazālī - Shāṭibī *maqāṣid* model, ibn ‘Āshūr being its earliest pioneer in modern era and most original legal philosopher revisited this whole legacy of *maqāṣid al-Sharī‘ah* thought and emerged out with his theory of ‘*ilm al-maqāṣid al-Sharī‘ah*, a novel replacement for the traditional legal set-up. It does not, however, mean to belittle the pre-modern legal scholarship on the subject but to evolve it to its logical form- ‘*Ilm al-maqāṣid al-Sharī‘ah*, the advanced legal theory potent to cater the contemporaneous issues of legal subjects.

Analyzing the contrasts between the methodologies of the dominant legal theory and the *maqāṣid* theory, ibn ‘Āshūr concluded the *maqāṣid* theory as the ‘built upon the traditional legal theory’ and it turns out to be epistemologically more sound. The methodical probability of the *maqāṣid* theory being more close to certitude, makes the *maqāṣid* framework more valid as a legal procedure. With this legal procedure, the jurists are equipped with more flexibility and the scope of approaching the legal texts to interpret the law is vast vis-à-vis admission and accommodation of legal change within Islamic legal framework.

References and Endnotes

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- ¹ Nafi, Basheer M. "Tahir ibn 'Ashur: The Career and Thought of a Modern Reformist 'Alim with Special Reference to his work of Tafsir", p. 02, *Journal of Qur'anic Studies*, Edinburg University Press on behalf of the Centre for Islamic Studies at SOAS, Vol. 7, No. 1 (2005), pp. 1-32.
- ² Abu-Nasr, Jamil M. *A History of the Maghrib in the Islamic Period*, p. 278, Cambridge University Press, Cambridge, 1987, as quoted in "Tahir ibn 'Ashur: The Career and Thought of a Modern Reformist 'Alim with Special Reference to his work of Tafsir" by Basheer Nafi, p. 03.
- ³ Hourani, Albert. *Arabic Thought in the Liberal Age, 1798-1939*, Cambridge University Press, 1983, p.67.
- ⁴ For a detailed note on Khayr al-Din al-Tunisi and his book, *Aqwam al-Masaliq*, see Albert Hourani, *Arabic Thought in the Liberal Age, 1798-1939*, Cambridge University Press, 1983, pp. 84-95.
- ⁵ Hourani, Albert. *Arabic Thought in the Liberal Age*, Cambridge University Press, pp. 85-87, 1983. Abu-Nasr, Jamil M. *A History of the Maghrib in the Islamic Period*, University Press, Cambridge, 1987, p. 285-289.
- ⁶ Green Arnold H. *The Tunisian Ulama: 1873- 1915*, BRILL, Leiden, 1978, pp. 111-117, as quoted in "Tahir ibn 'Ashur: The Career and Thought of a Modern Reformist 'Alim with Special Reference to hiswork of Tafsir" by Basheer Nafi, p. 05.
- ⁷ Green Arnold H. *The Tunisian Ulama: 1873- 1915*, pp. 129-135, BRILL, Leiden, 1978, as quoted in "Tahir ibn 'Ashur: The Career and Thought of a Modern Reformist 'Alim with Special Reference to hiswork of Tafsir" by Basheer Nafi, p. 06-07.
- ⁸ Ibid.
- ⁹ Nafi, Basheer M. "Tahir ibn 'Ashur: The Career and Thought of a Modern Reformst 'Alim with Special Reference to His Work of Tafsir", pp. 08-09, *Journal of Qur'anic Studies*, Edinburg University Press on behalf of the Centre for Islamic Studies at SOAS, Vol. 7, No. 1 (2005), pp. 1-32.
- ¹⁰ Ibid.
- ¹¹ Green, Arnold H. *The Tunisian Ulama: 1873- 1915*, BRILL, Leiden, 1978, p. 185
- ¹² Nafi, Basheer M. "Tahir ibn 'Ashur: The Career and Thought of a Modern Reformist 'Alim with Special Reference to his work of Tafsir", p. 10.
- ¹³ Ibid, p. 24.
- ¹⁴ El-Mesawi, Mohamed El-Tahir. *Beyond Usul al-Fiqh: Ibn 'Ashur's 'Ilm Maqasid al-Shari'ah in Maqasid al-Shari'ah- Explorations and Implications*, ed., and intro. by Mohamed El-Tahir El-Mesawi, Islamic Book Trust, Malaysia, 2018, p. 31.
- ¹⁵ Ibid, p. 32.
- ¹⁶ Ibid, p. 31.
- ¹⁷ Ibn 'Ashur, Muhammad al Tahir. *Maqasid al Shari'ah al-Islamiyyah*, Dar al-Kitab al-Lubnani, Beirut, 2011, pp. xviii-xx.

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- ¹⁸ Al-Juwayni, Abu al-Ma'ali. *Al-Burhan fi Usul al-Fiqh*, v. I, Cairo: Dar al-Wafa, 1992, p. 79.
- ¹⁹ Al-Shatibi. Abu Ishaq. *Al-Muwafaqat fi Usul al-Shari'ah*, v. I, Lebanon: Dar al-Kutub al-Ilmiyyah, 2004, pp. 29-33.
- ²⁰ Ibn 'Ashur, Muhammad al-Tahir. *Maqasid al-Shari'ah al-Islamiyyah*, Dar al-Kitab al-Lubnani, Beirut, 2011, pp. xvi-xxii.
- ²¹ Ibid. pp. 03-06.
- ²² Ibid. pp. 04-05.
- ²³ Ibid. pp. 41 & 63.
- ²⁴ Ibid, pp. 63-64.
- ²⁵ Al-Ghazali, Abu Hamid Muhammad. *Al-Mustasfa min 'Ilm al-Usul*, ed. Hamza Zuhayr Hafiz, V. II, Jeddah, 1993, pp. 481-482.
- ²⁶ Ibn 'Ashur, Muhammad al-Tahir. *Maqasid al-Shari'ah al-Islamiyyah*, Dar al-Kitab al- Lubnani, Beirut, 2011, p. 91.
- ²⁷ Ibid. p. 65.
- ²⁸ Ibid. p. 65-66.
- ²⁹ Ibid. pp. 95- 99.
- ³⁰ Ibid. p. 108.
- ³¹ Ibid., p. 33.
- ³² Ibn 'Ashur, Muhammad al-Tahir. *Treatise on Maqasid al-Shari'ah*, tr. Mohamed El- Tahir El- Mesawi, The International Institute of Islamic Thought (IIIT), London, 2006, p. 81. Ibn 'Ashur, Muhammad al-Tahir. *Tafsir al-Tahrir wa al-Tanwir*, v. 10, Tunis, 1997, p. 90.
- ³³ Ibn 'Ashur, Muhammad al-Tahir. *Treatise on Maqasid al-Shari'ah*, tr. Mohamed El- Tahir El-Mesawi, The International Institute of Islamic Thought (IIIT), London, 2006, p. 85.
- ³⁴ Ibn 'Ashur, Muhammad al-Tahir. *Tafsir al-Tahrir wa al-Tanwir*, v. 01, Tunis, 1997, p. 194.
- ³⁵ Al-Qur'an, 07: 172.
- ³⁶ El-Mesawi, Mohamed El-Tahir. *Beyond Usul al-Fiqh: Ibn 'Ashur's 'Ilm Maqasid al-Shari'ah in Maqasid al-Shari'ah- Explorations and Implications*, ed., and intro. by Mohamed El-Tahir El-Mesawi, Islamic Book Trust, Malaysia, 2018, pp. 37-38.
- ³⁷ Naquib al-Attas maintains that it points to man's essential nature and the purpose of his worldly existence both as God's servant (*'abd*) and vicegerent on the (*khalifah*) on earth (see, *Islam and Secularism*, Mohammad Naquib al 'Attas, Kuala Lumpur: International Institute of Islamic Thought and Civilization, ISTAC, 1993, 99. 139-140). He also argues about the conception of man's covenant with God 'is the starting point in the Islamic conception of religion and is the dominant element in all other Islamic concepts bound up with it, such as those of freedom, responsibility, justice, knowledge, virtue, brotherhood etc'. (see *Prolegomena to the Metaphysics of Islam*, Syed Naquib al-Attas, International Institute of Islamic Thought and Civilization, ISTAC, Kuala Lumpur, 1995, p. 75).

³⁸ El-Mesawi, Mohamed El-Tahir. *Beyond Usul al-Fiqh: Ibn 'Ashur's 'Ilm Maqasid al-Shari'ah in Maqasid al-Shari'ah- Explorations and Implications*, ed., and intro. by Mohamed El-Tahir El-Mesawi, Islamic Book Trust, Malaysia, 2018, p. 38.

³⁹ Ibn 'Ashur, Muhammad al-Tahir. *Tafsir al-Tahrir wa al-Tanwir*, v. 05, Tunis, 1997, p. 168. El-Mesawi, Mohamed El-Tahir. *Beyond Usul al-Fiqh: Ibn 'Ashur's 'Ilm Maqasid al-Shari'ah in Maqasid al-Shari'ah- Explorations and Implications*, ed. and intro. by Mohamed El-Tahir El-Mesawi, Islamic Book Trust, Malaysia, 2018, p. 39.

⁴⁰ Al-Qur'an, 33: 72. It says: "We offered the trust to the heavens and the earth and the mountains, but they refused to bear it, because they were afraid of it. But man bore it: he surely proved unjust and ignorant."

⁴¹ Talbi, Muhammad. Bucaille, Maurice. *Reflections sur le Coran*, Paris: Seghers, 1989, as quoted in *Beyond Usul al-Fiqh: Ibn 'Ashur's 'Ilm Maqasid al-Shari'ah in Maqasid al-Shari'ah- Explorations and Implications*, Mohamed Tahir El-Mesawi, ed. and intro. by Mohamed El-Tahir El-Mesawi, Islamic Book Trust, Malaysia, 2018, p. 40.

⁴² Ezzati, A. *Islam and Natural Law*, London: Islamic College for Advanced Studies, 2002, p. 103, as cited in *Beyond Usul al-Fiqh: Ibn 'Ashur's 'Ilm Maqasid al-Shari'ah in Maqasid al-Shari'ah Explorations and Implications*, Mohamed Tahir El-Mesawi, ed. and intro. by Mohamed El-Tahir El-Mesawi, Islamic Book Trust, Malaysia, 2018, p. 40.

⁴³ Ibn 'Ashur discusses this concept of *maslaha* and *mafsada* in the chapters 13th -15th of the titles as *Bayan al-Maslaha wa al-Mafsada* (the meaning of *maslaha* and *mafsada*), in *Treatise on Maqasid al-Shari'ah*, p. xxiii, tr. Mohamed El-Tahir El-Mesawi, The International Institute of Islamic Thought (IIIT), London, 2006. pp. 96-133

⁴⁴ Ibn 'Ashur, Muhammad al-Tahir. *Treatise on Maqasid al-Shari'ah*, tr. Mohamed El-Tahir El-Mesawi, The International Institute of Islamic Thought (IIIT), London, 2006, p. 96

⁴⁵ Ibid. p. 97.

⁴⁶ Ibid. p. 96.

⁴⁷ Ibid.

⁴⁸ Ibid. p. 97.

⁴⁹ Ibid. pp. 97-98.

⁵⁰ Ibid, p. 66.

⁵¹ Ibid.

⁵² Ibid, p. 91

⁵³ Ibn 'Ashur observes: "From a comprehensive thematic analysis of the textual sources of the Shari'ah pertaining to the objectives of legislation, we can draw the following conclusions. Both its general rules and specific proofs indicate that all-purpose principle (*maqasad 'amm*) of Islamic legislation is to preserve the social order of the community and insure its healthy progress by promoting the well-being and righteousness (*salah*) of that which prevails in it, namely, the human

species. The well-being and virtues of human beings consist of the soundness of their intellect, the righteousness of their deeds as well as the goodness of the things of the world where they live that are put at their disposal.” (p. 91)

⁵⁴ Ibid. p. 71

⁵⁵ El-Mesawi, Mohamed El-Tahir. *Beyond Usul al-Fiqh: Ibn ‘Ashur’s ‘Ilm Maqasid al-Shari’ah* in *Maqasid al-Shari’ah- Explorations and Implications*, ed., and intro. by Mohamed El-Tahir El-Mesawi, p. 68

⁵⁶ Ibn ‘Ashur, Muhammad al-Tahir. *Treatise on Maqasid al-Shari’ah*, tr. Mohamed El-Tahir El-Mesawi, The International Institute of Islamic Thought (IIIT), London, 2006, pp. 231-32.

⁵⁷ Ibn Khaldun, ‘Abd al-Rahman. *Muqaddimah (The Prolegomena)*, V. I, tr. Frenz Rosenthal, Routledge, London, 1967, p. 77

⁵⁸ Andre’ Lalande, *Vocabulaire technique et critique de la philosophie*, V. II, p. 954, Presses Universitaires de France, 1988, as quoted in El-Mesawi, Mohamed El-Tahir. *Beyond Usul al-Fiqh: Ibn ‘Ashur’s ‘Ilm Maqasid al-Shari’ah* in *Maqasid al-Shari’ah- Explorations and Implications*, ed., and intro. by Mohamed El-Tahir El-Mesawi, pp. 86-87.

⁵⁹ El-Mesawi, Mohamed El-Tahir. *Beyond Usul al-Fiqh: Ibn ‘Ashur’s ‘Ilm Maqasid al-Shari’ah* in *Maqasid al-Shari’ah- Explorations and Implications*, ed. and intro. by Mohamed El-Tahir El-Mesawi, pp. 86-87.

⁶⁰ Ibn ‘Ashur, Muhammad al-Tahir. *Treatise on Maqasid al-Shari’ah*, tr. Mohamed El-Tahir El-Mesawi, The International Institute of Islamic Thought (IIIT), London, 2006, pp. 26-67, 13-25.

⁶¹ El-Mesawi, Mohamed El-Tahir. *Beyond Usul al-Fiqh: Ibn ‘Ashur’s ‘Ilm Maqasid al-Shari’ah* in *Maqasid al-Shari’ah- Explorations and Implications*, ed. and intro. by Mohamed El-Tahir El-Mesawi, pp. 88-89.

⁶² Ibn ‘Ashur, Muhammad al-Tahir. *Treatise on Maqasid al-Shari’ah*, tr. Mohamed El-Tahir El-Mesawi, The International Institute of Islamic Thought (IIIT), London, 2006, pp. 91-186.

⁶³ Ibid, 229-340.