CHAPTER FIVE:

MAQĀŠID AL-SHARĪ‘AH: THE NEW DEFINITIVE FIGURE OF THE SCIENCE OF UŠŪL AL-FIQH
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The foregoing chapters have suggested that certainty in the legal methods of inference is falling a part. Criteria designed to achieve certainty in the legal field would vary from language, to reason, to Siyāq in its broadest sense, or to the combination of all. This variety of criteria gave birth to a huge legacy that has rendered its assimilation by ordinary people almost impossible. Besides, the multiple views on one single issue became an advantage that some authorities would resort to in a bid to camouflage the truth and satisfy personal desires.

5.1 The Rational behind calling for a definitive science in the legal field.

The overwhelming view pertaining to the science of Usūl al-Fiqh was that the principles of Islamic jurisprudence are mostly speculative. Yet, this assertion does not seem to have gained momentum among some scholars who weight Usūl al-Fiqh with different scales. From al-Imām al-Juwaynī to al-Shāṭibī to al-Imām al-Ṭāhir bin ‘Ashūr of the modern time, there appeared a new trend of legal reasoning that aims at establishing a new science of legal inference, having "certainty" as its main characteristic. This new trend, therefore, endeavored to bypass the speculation underlying Usūl al-Fiqh and the repercussions culminated thereof. Calls to target certainties in Usūl al-Fiqh¹

¹ One of those who endeavored to discard speculation from Usul al-Fiqh was al-Imam Ibn Hazm in his renowned book al-Ahkām Fī Usūl al-Ahkām. The firm rejection of taʾlīl in Qiyās was an attempt by him to yield more certainties to the science of Usūl al-Fiqh. (al-Ahkām, 2/245). The concept of infallibility
looked dim, for they were regarded as views bracing for a tight closure of the gates of Ijtihad.

Al-Imām al-Juwaynī was perhaps the first scholar unleashing a gale of criticism addressed to the then deteriorating intellectual and political situations. He proposed a definitive Uṣūl al-Fiqh that had to deal with universalities (Kulliyāt) instead of particulars (Juz'īyyāt). Ibn Rushd al-Andalusī, through his renowned book, Bidāyat al-Mujhtahid wa Nihāyat al-Muqtaṣid and Al-Kashf ‘An Manāḥij al-Adillah, was targeting the definitive universalities (Kulliyāt).

Al-Imām Al-‘Izz ibn ‘Abd al-Salām4 (d.660 A.H.) wrote a book on Maqāṣid al-Shari‘ ah in which he singled out at the unique harmony existing between Shari‘ah and Tabī‘ah (nature). The said harmony would help unveil a number of Maṣāliḥ (interests) and avoid Mafāsid (mischiefs) and that of course, has to be grasped by way of reason.5 This would definitively imply that the rules, which the jurist must enact, should be grounded with a more definitive platform as nature is typically governed by definitive laws.

('Ismah) of Wilāyīt al-Faqīh was another attempt made by Shi‘ah to lace the views of their Imams with more certainties. See Islāmuna of Muḥammad Baqir al-Ṣadr, p. 289.

2 This will be addressed in a subsequent item.


4 ‘Abd al-‘Azīz bin ‘Abd al-Salām bin Abī al-Qāsim ‘Izz al-Dīn (577-660 A.H). He was born in Damascus where he grew up and mastered the religious sciences according to the Shafi ‘I Madhhab. He traveled to Baghdād then to Egypt where he was assigned judiciary and lecturing functions. He died in Cairo after leaving a considerable legacy that would include: Qawā ‘id al-Aḥkām Fī Maṣāliḥ al-Anām; Maqāṣid al-Ri‘āyah and al-Imām Fī Adillat al-Aḥkām. See al-‘Āṣim of al-Zarkalī (4/144)

Al-Imām al-Qarāfī, on his commentary on al-Maḥṣūl of al-Rāzī, ascertains that,

"the issues of Uṣūl are certain (Qaṭʿ iyyah), and, hence, speculation is not enough (in Uṣūl al-Fiqh)".

The same assertion was to be repeated by the leading figure of certainty in Uṣūl al-Fiqh, al-Imām al-Shāṭībī in his introduction of al-Muwāfaqāt. He held that,

"Uṣūl al-Fiqh is certain (Qaṭʿ iyyah), and the evidence proving that is induction (Istiqrāʾ) that entails certainty...".

In the modern age, the certainty of Uṣūl al-Fiqh was echoed in an outstanding work "Maqāṣid al-Sharīʿah al-Islāmiyyah", (the objectives of Sharīʿah) by the late al-Sheiyykh Muḥammad al-Ṭāhir bin ʿĀshur. The latter called for a fresh substitution of the "speculative Uṣūl al-Fiqh" with a more definitive science that would have to target certainties while enacting new laws. The new science, according to bin ʿĀshūr, is the science of Maqāṣid al-Sharīʿah (the objectives of Sharīʿah).

Among all the jurists who referred to the certainty of the methods of legal inference, three of them appear to have been more vocal in ascertaining the certainty of "Maqāṣid al-Sharīʿah", considering it the new definitive science enhancing or substituting the rules of Uṣūl al-Fiqh. They are al-Imām Abū Al-Maʿālī al-Juwaynī through his seminal work "Ghiyāth al-Umam Fil Ilīyāth al-Zulam; al-Imām Abū Iṣḥāq al-Shāṭībī through his outstanding

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6 ʿAbd al-Majīd al-Saghīr, Al-Fikr al-Uṣūlī, p. 352
7 Al-Shāṭībī, al-Muwāfaqāt, 1/29

My selection of these three scholars is based on the following reasons:

1. Unlike other scholars, the three scholars openly advocated the possibility of establishing definitive methods of inference.

2. They all agree that "Maqāṣid al-Shārī ‘ah", if well realized and confirmed, would certainly produce definitive laws, hence, narrowing down the scope of unnecessary disagreement, and putting an end to views of gross violations of law enactment.

3. It appears that those three scholars were representing a new trend, if not a new school of thought, that would target certainties in a bid to tackle the global dilemma in which the Muslim Ummah was embroiled. We shall see, through the views of these scholars, that they were very much keen to project their views into their respective societies, trying to mend the methods of inference and embolden the position of the Muslim Ummah against its deterioration and fragmentation throughout the span of the Islamic history.

The common denominator between the three scholars is their conviction that Maqāṣid al-Shārī ‘ah, unlike Uṣūl al-Fiqh, is ought to produce rules of inference of definitive nature. This has even been spurred by the rigidity of some rules of Uṣūl al-Fiqh that appears to have hindered the process of rules deduction. Their approach appears clashing with the traditional one, which would not subscribe to the certainty of Uṣūl al-Fiqh.
It is worth mentioning that their views aimed of reforming the deteriorating situation of the Muslim Ummah after the glamour of the Islamic Civilization faded away. Al-Juwaynī witnessed the political instability that had influenced the jurist, rendering him more reluctant to enact laws of political nature. Al-Shāṭībī, witnessed an era full of bid'ah (heresy) and faced a view calling for the closure of the doors of Ijtihād. Al-Sheikh Bin Āshur witnessed an era where the role of the jurist was so restricted, and Usūl al-Fiqh was being dissociated from the religious and worldly needs of the Muslim society.

Hence, the call to consider "Maqāṣīd al-Sharīʿah" the new source of Fiqh, given its definitive structure, is worth studying and analyzing. But before we unveil the definitive aspects of the new science, we shall recall what has been said about "Maqāṣīd al-Sharīʿah".

5.2 A brief historical account of the idea of Maqāṣīd:

Maqāṣīd al-Sharīʿah are the objectives and ends that the Islamic law is targeting. The main objective of Sharīʿah appears to be the realization of Maṣlaḥah (interest) that is rooted in every aspect of man’s life. Determining Maṣlaḥah and its categories and the way it is used to derive legal rules, is actually the main theme of the science of Maqāṣīd.

The idea of Maqāṣīd is deep rooted in the Islamic jurisprudence that dates back to the first century A.H. Since its inception, it was advocated by the bulk of jurists but disputed when its applicability is raised.
Al-Juwaynī was perhaps the first jurist to categorize Maṣlahah. He divided it into Դարուիyyat (Necessities), Հաջիյա (Exigencies) and Թահսունիyyat (Facilities). He is also credited with the infamous division of Դարուիyyat into Five: Դին (Religion), Նաֆս (self), 'Ագ (mind), Նաս (progeny) and Մալ (wealth). His student al-Ghazālī addressed in his book Շիֆա' al-Ghalīl and al-Mustafa three classes of Maqāṣid and their complementaries.

Then, al-Imām Fakhr al-Dīn al-Rāzī came to advocate ta'līl (ratiocination), which is the backbone of the science of Maqāṣid. Then Al-Āmīdī came to confine the necessities into five only. Then, al-Qarāfī and Ibn Al-Subkī added al-İrd (moral dignity) to the five major necessities. Then, there emerged al-İzz ibn 'Abd al-Salām with his seminal work "Qawā'id al-Îhkām fi Maṣāliḥ al-Anām", in which he expressly theorized for the doctrine of "Maṣlahah".

As the machineries of Ijtihād broke down at the end of the sixth century of hijrah and at the beginning of the seventh, al-Shāṭibī (790 A.H.) emerged in Spain to galvanize the potentials of the Muslim mind by introducing a book of a great depth of legal reasoning, "Al-Muwāfaqat Fī Usūl al-Shari'ah", of which volume two is entirely devoted to propounding the theory of Maqāṣid. Ibn Taymiyyah, from his part, advocated the use of Maṣlahah as it is deeply associated with people's various needs; nevertheless, he had his own reservations on Maqāṣid in general.

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8 Al-Juwaynī, Al-Burhān, 1/36
10 Al-Rāzī, Al-Maḥsūl, 2/101
11 Al-Āmīdī, Al-İhkām, 3/34
The Maliki Mazhab remarkably adopted the idea of *Maqāsid*. They established most of their *Uṣūl* on *Maṣlaḥah*, making its use inevitable. This is evident in a number of *Shariʿah* sources established by them like *al-Maṣlaḥah al-Mursalah* (unrestricted interest), *Sadd al-Dharāʾiʿ* (blocking the means), *Istīḥsān* (equity in Islamic law), which are all deemed attached to the interests of people. Even at the level of the other *Madhāhib*, which rejected *al-Maṣlaḥah Mursalah* as a source of *Fiqh*, they implicitly employ it in their methods of inference.\(^{12}\)

In the modern world, the only daring theorization for the idea of *Maqāsid* was made by al-Sheiykh al-Ṭāhir bin ʿĀshūr in his book "*Maqāsid al-Sharīʿah al-Islāmiyyah*" who ascertained the certainty of *Maqāsid* and that it should replace *Uṣūl al-Fiqh*, which, according to him\(^ {13}\), failed to produce definitive rules. This is considered a new approach to put an end to the endless disagreement among jurists, which was regarded by bin ʿĀshur as a negative aspect tarnishing the credibility of *Uṣūl al-Fiqh*.

5.3 *Al-Maṣlaḥah* (utility) and its classes:

Literally comes from the root word ʿ-š-l-h whose derivatives carry the meaning of goodness, be it moral or material.\(^ {14}\) Technically, it means utility (*Manfaʿah*) or benefit.

Al-Ṭūfī\(^ {15}\) defined *Maṣlaḥah* as "the cause (sabab) leading to *Ṣalah* and *Nafʿ* 'like trade

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\(^{12}\)  Al-Qaṭīfī, *Tanqīḥ al-Fuṣūl*, 2/309

\(^{13}\) We will mention his views when we present his theory of *Maqāsid* in page 286 of this research.

\(^{14}\) Ibn Maṇẓūr, *Liṣān al-ʿArab*, 2/309

\(^{15}\) Sulaymān bin ʿAbd al-Qawiyy, known as Najm al-Dīn al-Ṭūfī (673-716A.H). He was born in Tūfī (a province in Iraq) where he studied *Fiqh* and grammar. He traveled to Baghdad where he studied the science of *ḥadīth* and *Uṣūl al-Fiqh*. He traveled to Egypt where some of his views appears to have been tainted with the *Shiʿah* Madhhabs, especially his views towards the *Ṣaḥīḥah* of the Prophet (S.A.W). He was a Ḥanbali

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leading to profit'.\textsuperscript{16} Al-Ghazālī defined it as "the acquisition of utility (manfa‘ah) and the avoidance of harm (Maḍarrah)"\textsuperscript{17}

\textbf{Types of Maslahah}

There are three types of \textit{Maṣāliḥ} (interests):

\textit{Dārūriyyāt} (necessities), \textit{Ḥājiyyāt} (Exigencies) and \textit{Tahṣiniyyāt} (Facilities).

\textit{Dārūriyyāt} are those on which the lives of people depend and their absence would lead to a total disorder and chaos.\textsuperscript{18} They are five in number: Religion, self, mind, progeny and wealth. They are not only initiated by the Islamic law but also protected. All the injunctions of Shari‘ah are believed to be directed to initiate or protect the five necessities.

\textit{Al-Ḥājiyyāt} refer to a kind of interests, the neglect of which would lead to hardship (Mashaqqah) in life but not necessarily leading to chaos.\textsuperscript{19} It is held that Shari‘ah granted a number of concessions (Rukhas) to make people's life at ease. Hence, allowing the ill and the traveler to break their fast, and permitting the latter to shorten and combine his/her prayer, are merely examples of the role of Ḥājiyyāt in putting people's life at ease.


\textsuperscript{17} Al-Ghazālī, \textit{al-Mustafā}, 2/306

\textsuperscript{18} Al-Shāṭibī, \textit{Muwāfaqāt}, 2/31

\textsuperscript{19} Ibid
Tahsiniyat are the interests whose realization would lead to the improvement of people’s life in all aspects. They are mainly associated with cleanliness, moral virtues and moderation in expenditure and upholding justice when enforcing the Islamic penal law. The above-mentioned interests, i.e.: Daruriyyat, Hajiyat and Tahsiniyat are governed by the following rules:

1. Daruriyyat are given top priority over Hajiyat and Tahsiniyat.
2. The disruption of Daruriyyat would automatically lead to the disruption of both Hajiyat and Tahsiniyat.
3. The disruption of Hajiyat would not affect Daruriyyat but affects Tahsiniyat.
4. The disruption of Tahsiniyat would affect neither Hajiyat nor Daruriyyat.
5. We must maintain Hajiyat and Tahsiniyat in order to maintain Daruriyyat.

Undoubtedly, these rules come with examples that our scope of study would not allow mentioning them.

Methods of confirming the objectives of Shari‘ah

Al-Shātibī suggested a few methods, which are as follows:

1. Grasping Maqāṣid according to the Arab tongue.

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20 Ibid
21 Ibid, 2/35
2. *Awāmir* (commands) and *Nawāhi* (prohibitions) as clarified by the legal texts.

3. Considering the original *Maqāsid* and subordinate *Maqāṣid*.

4. The silence of Shariʿah over certain issues.

5. *Istiqrāʾ* (induction): tracing the entire body of rules to deduce the objective underlying them.\(^{22}\)

From this brief account on *Maqāṣid* we conclude the following:

i. *Maqāṣid* deal with universalities and not with particular rules. Accordingly, the universalities (*Kullīyyāt*) are more transcendent than the rules of *Uṣūl al-Fiqh*, which appear to be confined within limited boundaries. Thus, *Maqāṣid* may transcend over the views of *Madhāhib* (schools of *Fiqh*), as it is not bound by the same frameworks set by the jurists when setting their sources of *Fiqh*.

ii. *Maqāṣid* is deeply attached to reason, as it is the proper vehicle to identify and confirm that a particular meaning is tantamount to an objective of Shariʿah. Al-Imām al-Ījī ascertained that reason could adjudicate on the compatibility between a legal rule and its objective and whether or not it amounts to *Maṣlaḥah* or *Mafsadah*.\(^ {23}\)

Reason can play a major role in evaluating *Maṣlaḥah*:

1. Reason can interpret the legal texts based on the objectives they carry.

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\(^ {22}\) Ibid.

\(^ {23}\) Al-Ījī, *Al-Mawāqif*, 1/123
2. Reason can trace the changeable *Maṣlaḥah* and *Mafsādah* based on the time-space factor.

3. Reason can determine the facets of clash between *Maṣlaḥah* and *Mafsādah* and give preference to one over the other.

4. Reason can determine *al-Maṣlaḥah al-Mursalaḥ* (unrestricted *maṣlaḥah*)\(^{24}\)

In short, *Maqāṣid* appear to be the most solid platform on which legal rules are better formulated. These legal rules are duly featured by practicality and objectivity as they are enacted based on thorough examination of *Maṣlaḥah* and *Mafsādah*. Raising the intellectual horizons of the jurist high to the apex, he would ultimately find himself dealing with *Kullīyyāt* (universalities) rather than *Juzʿiyyāt* (particulars). The new framework of inference would escape the predicaments of *Juzʿiyyāt*, which sometimes hinder the jurists to grasp the objective of the text in its entirety.

The foregoing meanings were to instigate the three scholars (Juwaynī, Shāṭibi, and bin Ṭāhir) to set up the science of *Maqāṣid* on definitive grounds. We shall begin with al-Imām al-Juwaynī as he was the first to anticipate the pivotal role that *Maqāṣid* can play in remedying the ailments of the Muslim *Ummah*.

5.4 Al-Imām al-Juwaynī and the certainty of *Maqāṣid*

Al-Imām al-Juwaynī lived in an era when the role of jurists was drastically reduced to enact politics-free rules. He observed that the political authority and that of the jurists

was falling apart due to the uncompromising attitude that the rulers had taken against the jurists.

Al-Juwaynī’s new trend stems from two assumptions he made:

a) What would happen if the political authority fails to be the anchor for the Muslim Ummah? The answer he forwarded was: Scholars would assume the new role to salvage the Ummah.25

b) What if an era fails to produce scholars of whom the Ummah is in disparate need?26

The answer is: the establishment of the science of "Maqāṣid al-Sharīʿah" that would be made at the disposal of the Ummah whenever a new issue emerges. Therefore, the science of Usūl al-Fiqh, as propounded by jurists, falls short of remedying the dilemma befallen the Muslim Ummah, as observed by al-Juwaynī.27 He justified his contention by maintaining that Usūl al-Fiqh is speculative, and this would not help the Ummah tackle its needs. As such, the Ummah is in desperate need of a definitive science, which is no more than Maqāṣid al-Sharīʿah.28 Al-Juwayni considers this view a new one, as it had never been foreseen before. In his Ghiyathī, he repeatedly mentioned that he would come up with "strange things"29 that would make his book the new anchor for the Muslim Ummah.

25 Al-Juwaynī, Ghiyathī, p304
26 Ibid., p100
27 'Abd al-Majīd al-Saghīr, Al-Fikr al-Uṣūlī, p.382
28 Ibid, p.383
29 Al-Juwaynī, Ghiyathī, 1/559
Futility of the absolute Maṣlaḥah:

Al-Juwaynī would not regard the absolute Maṣlaḥah, which does not refer to a divine source, as a valid source of law. To him, referring to the absolute Maṣlaḥah would unleash a gale of chaos and instability in the Muslim community. But determining the degree of Maṣlaḥah is what al-Juwaynī was trying to regulate. He noticed that many scholars do not draw a decisive line of demarcation between definitive and speculative legal proofs. He realized that the bulk of jurists involved in this science would seek certainty where only speculation in conceivable. To substantiate this idea further, he unveiled a method by which certainties in the legal field are drawn.

After tracking down the proofs of Sharīʿah, he concluded that the principles of Sharīʿah are built on the element of "Contrast" (Taqābul). The following examples would clarify this:

- *Nafy* (rejection) in **contrast** with *Ithbāt* (confirmation).
- *Amr* (command) in **contrast** with *Nahy* (prohibition)
- *Ilāq* (freedom) in **contrast** with *Hajr* (interdiction)
- *Ibāḥah* (permissibility) in **contrast** with *Ḥazr* (prohibition)

He observed that if two principles happen to contrast, then "exactness/accuracy" would be the feature of either one.\(^\text{31}\)

This rule would help realize definitive principles and objectives so that no room for disagreement would be possible. He tried to apply this rule on one of the issues that

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\(^{30}\) Ibid, 2/ 69

\(^{31}\) Ibid., 645
jurists broadly disagreed upon, which is the issue of *Najāsah* (filth). According to al-Juwaynī, the filth is only what the law would consider as such through a clear text (*Naṣṣ*) or deduction. By contrast, what is not considered filth by a text or deduction would be considered pure (*Ṭahir*).²² The application of the "Contrast" rule would generate "exactness" in determining the rules of the law. All this is inspired by *Maqāṣid al-Sharīʿah* that require one unique view when the authority of the scholars is absent.

**The Certainty of *Maqāṣid***

We have pointed out that al-Juwaynī rejects the absolute *Maṣlaḥah* in contrast with a *Malahah* which is both legal and definitive. We have also seen that he considers the rules of both *Fiqh* and *Uṣūl* speculative. Accordingly, he strongly advocated the certainty of *Maqāṣid* for a few reasons:

1. The widespread of disagreement taking place among jurists, which sometimes goes unfounded. *Maqāṣid*, in its capacity as a universal (*Kullī*) science, would be able to settle possible disputes.

2. Elevating the speculative into the definitive. For as long as the subject-matter upon which disagreement has taken place is speculative, the jurists would find more justifications for disagreement even if some views appear to be erroneous.

²² Ibid., 648
3. *Maqāṣid* would help in referring particulars (*Juz' iyyāt*) to universals (*Kulliyāt*). Otherwise, referring a particular to another particular would only widen the sphere of speculation in the legal field.

4. *Maqāṣid* would narrow down the scope of Ḥarām and open up the scope of ḥalāl. Thanks to the rule of "contrast" mentioned earlier.

**How does the Certainty of Maqāṣid generate definitive rules?**

Al-Juwaynī applied the inductive method to come up with the principle of "contrast" he advocated. The same method had helped him to "confine" certainty only to the rules whose prohibition is clearly stated in the two sources (*Qur'an* and *Sunnah*). As such, this confinement is the only way to identify the definitive rules from the speculative ones. This is in line with al-Juwaynī's view that the proofs of the legal rules are confined and limited.33

To apply this doctrine, al-Juwaynī selected *Tahārah* (purity) as a case study. *Tahārah* is one of the topics upon which the conflict of views was quite evident. Taking into consideration that using water is one of the necessities of life that would ultimately maintain one's life, classifying it as pure or filthy should be a matter of certainty. Al-Juwaynī, unlike other jurists, would confine the filthy waters only to those *Shari‘ah* has ruled to be so. Therefore, al-Juwaynī held:

"*Whoever gets certain about filth, should avoid it; and if he gets certain that a water is devoid of filth, he shouldn’t hesitate to use it, and whoever gets skeptic about a*

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water, he should consider its purity and discard its impurity..."34

This appears in contract with the general trend among jurists who kept insisting on the absolute purity of water in order to be considered valid,35 like the Shāfiʿīs.

The deep contention of al-Juwaynī, as the researcher sees it, lies in confining the sphere of  ḥarām that would result in an extraordinary expansion of the sphere of Ḥalāl. Most importantly, it is the Maqāṣid that is urging the use of such a method; thus, in the new operation suggested by al-Juwaynī, the enactment of rules is governed by Maqāṣid after confining the scope of ḥarām and expanding that of ḥalāl. But this method is workable only when the Maqāṣid are deemed certain.

Undoubtedly, this new doctrine amounted to nothing less than a shift in the methods of inference preceding al-Imām al-Juwaynī, making him the pioneer of certainty in the legal methods of inference.

Certainty of Maqāṣid and the law of Necessity

What constitutes definitiveness and speculation in the legal field appeared to be problematic in the writings preceding al-Imām al-Juwaynī. This perplexity manifested itself more in Muʿāmalāt (dealings) than in ʿIbādāt (acts of devotion), as the former is more prone to taʿlīl (ratiocination). To vanish this perplexity, al-Juwaynī posed a question: what if the whole life is spoilt, and ḥarām appears to be sweeping people's foods, clothes and the like? In other words, what if the ḥarām seems unavoidable?

34Ibid., 658
35 Ibid.
Al-Juwaynī notices that what the early jurists suggested to answer this question appeared to be more individualistic. That is to say, the solutions provided by jurists apply only when one single individual is facing the problem in question. Rules like "al-Ḍarūrāt Tubīh al-Maḥḍūrāt" (That which is ḥarām becomes ḥalāl by necessity) was part of some solutions provided by jurists when someone's life happens to be in extreme danger.

The same jurists would stipulate the extent of ḥarām that would be permitted to commit when facing necessity. They held that "what is permissible by necessity is estimated by the extent thereof", 36 and any transgression of that extent would amount to haram again. Al-Juwaynī criticized this approach, considering it against the objectives of Sharīʿah. The fresh and abstract implementation of the rule of "Ḍarūrāt" would be detrimental to the stability and welfare of the Muslim community. For approaching the haram only when someone is trapped in a necessity, al-Juwaynī observed, would undermine the fabric of society especially the extent of ḥarām to be committed would be forcefully limited. 37 He further observed that Muslims would be an easy prey to the enemies of Islam who may take advantage of the weak situation Muslims are trapped in. He, then, mended the rule of "Al-Ḍarūrāt Tubīh al-Maḥḍūrāt" to denote the following:

1. This rule should be socially oriented rather than individually oriented. For the prejudices resulting from the former are worth considering than the latter.

2. The extent of committing the ḥarām in case of necessity should be broadened to preserve the strength of the Muslim society.

37 Al-Juwaynī, Ghyāthī, 1/740
These two amendments would preserve the objectives of Shari‘ah which are mainly: the preservation of Din (Religion), the preservation of Nafs (self). It is clear now that looking at the rule of Darurat from a Maqasid perspective, which is universal in nature, would change completely or partially the applicability of the rules enacted by jurists, and it would open new horizons for Fiqh to meet people’s needs, be they individual or collective. This is warranted by definitive objective of Shari‘ah (Maqasid), which al-Juwayni is presenting as the new anchor for the Muslim Ummah.

Al-Juwayni’s polemics culminated in a more potent innovation. While presupposing the chaotic situation in which the Ummah may face a state of anarchy and the haram is muddled up with the halal, he urged Hajiyyat to assume the rank of Daruriyyat as long as such a step would prevent prejudice, harm, and help people to lead a stable life.38

This new view would boldly review the rule of necessity set up by jurists before al-Juwayni. Accordingly, even Tahsinyyat can be promoted into Daruriyyat as far as the stability of people’s life is concerned39. The criterion, then, is the avoidance of prejudice and harm that may lead to the destruction of the objectives of Shari‘ah.

It is worth mentioning at the end of item that:

1. Al-Juwayni considers the solutions he provided useful only when the Ummah fail to produce religious authorities in charge of law enactment. But al-Juwayni’s contention is merely hypothetical, rendering his project an assumption that may or may not materialize. From the time of al-Juwayni up

38 Ibid., 1/745
39 An example of this would be the classification of purity (Taharah) under Tahsinyyat as maintained by the theorizers of Maqasid. Yet, given the fact that purity is very crucial in maintaining one’s health,
to now, the *Ummah* has never failed to produce scholars who would guide people to know the *ḥalāl* and *ḥarām*. Perhaps, the quality of scholars produced after the intellectual stagnation occurring in the 6th century A.H., was not identical to that found in the golden age of Islamic legal system. It would have been more proper if al-Juwaynī constructed *Maqāṣid al-Shari‘ah* and its certainty without attaching it to a hypothesis whose credibility may or may not be proved or justified.

2. He resorted to the inductive method to establish the rule of "contrast" and to ascertain that *Maqāṣid al-Shari‘ah* is a definitive science. The views of al-Juwaynī had inspired another scholar living in the 7th century who faced more or less, the same circumstances striking the Muslim *Ummah*; he is nonetheless al-Imām Abū Ishāq al-Shāṭibī.

Between al-Juwaynī and al-Shāṭibī, efforts had never ceased to refine the Islamic legacy from unwarranted conjectures that had only added to the plight of *Uṣūl al-Fiqh*. Scholars like al-‘Izz ibn ‘Abd al-Salām tried to unveil the role of *Maqāṣid* in *Ijtihād* through his book *al-Qawā‘id*. Although his attempt was a remarkable addition to the science of *Uṣūl*, it did not seem to have born new dimensions that can cause a remarkable shift in the legal studies. Al-Ghazālī, from his part, tried to expose *Uṣūl al-Fiqh* with a special touch of logic, an attempt that I would regard futile as it didn’t succeed to unite jurists on uniformed set of rules of deduction. He also did not point how the propositions of logic, which he introduced in the introduction of *al-Mustasağa‘*, can be projected on the issue of *Maqāṣid* that he raised. These shortcomings were to be avoided by the al-Shāṭibī in his seminal work: *al-Muwāfaqāt Fī Uṣūl al-Shari‘ah*.

especially when we come to know that the modern science has uncovered deadly viruses breeding in filthy waters causing death or chronic diseases, thus promoting *Taḥṣinyyāt* to the level of *Darūriyyāt*.

5.5 Al-Imām Abū Ishāq al-Shāṭibī and the Certainty of Maqāṣid

At the beginning of the 8th century, the juristic thought in the west, especially in Spain, was heading more towards rationalization, prompting "demonstration" to be the main feature of the Islamic modes of inference.

Gharrāta (Granada) in Spain, the hometown of al-Shāṭibī, was governed by rulers, more or less, similar to those al-Juwaynī had witnessed in the 5th century.

The intellectual situation was heading more towards a real stagnation. For, they were some jurists who "spoilt jurisprudence" by merely rewriting it and producing nothing new to be worth appreciating. The social situation was featured by bid'ah (heresy) that had left its prints on the entire religious life. The social life was described by al-Shāṭibī as being in a state of Ghurbah (strangeness) where the people holding the truth would be fewer than those upholding falsehood.

Despite the deteriorating situation plaguing the religious life in Spain, al-Shāṭibī fought bid'ah with both his tongue and pen. His book al-I'tiṣām, which is entirely devoted to tackle the problem of bid'ah, earned him much appreciation from scholars worldwide.

Though he himself was accused of promoting bid'ah, he never gave up nor his zealous ambitions abated to salvage the Ummah. It is within these circumstances that al-Shāṭibī wrote his Muwāfaqāt to tackle the serious problems of the Ummah, be they intellectual, juristic, social, or even political.

42 Al-Shāṭibī, al-I 'tiṣām, (Beirut: dār al-Ma 'rifah, n.d), 1/21
Diving deep into the dilemma striking the juristic field, al-Shāṭībī discovered that the greatest challenge lies in restoring the methods of legal reasoning.

According to him, the juristic legacy failed to institutalize a law of definitive structure. This is because, definitiveness was mixed with speculation, and the criteria of both appeared inconsistent. Al-Shāṭībī then, like al-Juwaynī, discovered that only a definitive science with a high deal of certainty could save the modes of inference from the inconsistency and fluctuation featuring them. This science is the science of *Maqāṣid al-Shāriʿ*ah (the objectives of *Shariʿ*ah).

In his introduction of al-Muwāfaqāt, al-Shāṭībī announced that he was instituting *Maqāṣid al-Shāriʿ*ah based on "*Al-Istiqrāʿat al-Kulliyah, without being confined to particulars (Juzʾiyyāt), and clarifying its (Maqāṣid) origins from the texts with the help of rational evidences..." The new science that al-Shatibi was instituting would focus on the following:

1. **Using the inductive method:**
   
   Al-Shāṭībī believes that the certainty of *Maqāṣid* rests on the certainty of the method leading to it. In this respect, he kept tracking down the "secrets" of *Shariʿ*ah based on a firm methodology that will be highlighted later on. He presented a comprehensive methodology that had helped him to come up with certainties.

2. **Referring to rational principles:**

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43 Al-Shāṭībī, *al-Muwāfaqāt*, 1/23
Reason covered a wide range of al-Shāṭibī's inference while establishing *Maqāṣid* al-Shari'ah. But that too, was governed by *Naql* (texts), which al-Shāṭibī used to give priority in case of possible clash.

3. Ascribing certainty to the legal rules resulting from the foregoing steps. And that is the ultimate aim of al-Shāṭibī through his *Muwāfaqāt* and *Iʿtiṣām*.

4. Ascribing the feature of universality (*Kulliyah*) to the rules derived through the foregoing steps. For establishing universalities instead of dealing with particulars (*Juzʿīyyāt*) would raise the degree of certainty in the process of legislation.

5. The new science would bridge the gap of disagreement among scholars so that a new uniformed pattern of inference is adopted.

As far as the certainty of *Maqāṣid* is concerned, al-Shāṭibī was very meticulous to lay a method by which such a certainty is achieved. He chose to apply *Induction* as his favorite method and discarded the one applied by the bulk of jurists. He repeatedly emphasized that induction, if adequately applied, would always entail certainty. To him, induction is the strongest method that ought to be applied not only to confirm the objectives of Shari'ah, but also to be used in the promulgation of the Islamic law in general.

This would require, from our part, an assessment of the credibility of the method advocated by al-Shāṭibī to establish the science of *Maqāṣid*. Interestingly enough to note that al-Shāṭibī's approach of enquiry is echoed in the modern world through western
logicians who are still stressing that the inductive method is a new breakthrough in the modern methods of enquiry. This is why we feel the need to unveil the main aspects of al-Shaṭibi’s inductive method, which he considers a definitive method of research.

Since the main issue that al-Shaṭibi was emphasizing was induction through which Maqāṣid are realized, we shall give a comprehensive theorization of the inductive method that he utilized to establish the new definitive science, i.e.: the science of Maqāṣid al-Shari‘ah.

Al-Imām al-Shaṭibi and the certainty of Induction

Al-Imām al-Shaṭibi was a jurist of a great depth of reasoning. His method to unveil the objectives of Shari‘ah was unique in that it applied a high level of intellectuality, never attempted before. Feeling the need to rescue his society from sinking into bid‘ah, and the jurists from manipulating the law, al-Shaṭibi chose to be decisive, discarding the speculation marring most of the juristic rules.

It is, therefore, clear that al-Shaṭibi was trying to amend the methodology whereby the principles of jurisprudence are established. Reviewing the available writings of Uṣūl al-Fiqh, he observed that most of them lacked a genuine theorization for the objectives of Shari‘ah. He noticed that many conflict of proofs can be resolved and many new rules can be established through a proper realization of Maqāṣid. Most importantly, Maqāṣid would establish a uniformed set of Uṣūl al-Fiqh, which would be then enjoying certainty.
The method that al-Shāṭībī believed to be the most certain is "induction". The task here is to show how al-Shāṭībī established a strong inductive method and how did he use it to set up the new definitive science, i.e.: *Maqāṣid al-Sharīʿah*.

To achieve this target, we shall consult the works that stressed the logical plausibility of induction. However, some preliminary items like definition, historical development, attitudes of Muslim jurists and philosophers, are worth to begin with. Views of non-Muslims on Induction will receive some reference as seems to be necessary.

i. Definition and Historical Development:

Literally, the word *Istiqrāʾ* (Induction) is derived from the word *qaraʾtu al-Shayʿān* (I have collected and bound something together). It also means "tataabbū", tracing or tracking down.

Logicians define it as the transition from the *juzʾ* (the particular) to the *Kullī* (universal) as the former is subsumed "under the latter." Muslim philosophers, like Ibn Sīnā defined Induction as "ascripting universality or wholeness to a proposition in as much as it

44 The same concept had been, more or less, advocated by al-Imām al-Izz ibn ‘Abd al-Salām. He held that "whoever traces the objectives of Sharīʿah pertaining to Maṣāḥīḥ (utilities) and Maṣāṣīd (mischiefs) would have a strong conviction, out of the number of proofs he already traced, that this particular utility must not be ignored and that mischief must not be approached, though such a view is not supported by Ijma’, a clear text or Qiyās, for grasping the ‘essence of Sharīʿah’ would stipulate that". See al-Izz Ibn ‘Ad al-Salām, *Qawāʾid al-Aḥkām*, p.46.


exists in its many particulars. [This induction is either complete or incomplete]. Jurists, from their parts defined Induction as “tracing particular propositions, the outcome of which would be attached to a universal one containing those particulars.  

In fact, the word “induction” in derived from the Latin translation of Aristotle’s *Epagoge*. The technical study of induction began with Aristotle. Although, his writings carry suggestions of many of the forms of induction, he clearly describes at least two types, which have come to be termed perfect and ampliative induction.

Aristotle pioneered the methodological aspects shaping induction. He plainly spoke of the complete and the incomplete induction. While tracing the particulars (*Juz’iyāt*) is exhaustive or complete in the former, it is incomplete in the latter. That is why Aristotle believes in the certainty of the complete induction and stressed the speculation of the incomplete. The first deals with the universals; it is used to demonstrate the first premises of Syllogism (*Qiyās*), which is, according to Aristotle, the highest form of rational inference.

The certainty that Aristotle ascribed to the complete induction and speculation to the incomplete has been sharply criticized by early and modern philosophers, Muslims and non-Muslims alike.

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In the Modern world, philosophers like Francis Bacon (1561-1626)\(^{51}\) and John Stuart Mill (1806-1873) were the first western philosophers to censure and by pass Aristotle’s views on induction\(^{52}\). They developed induction into a set of logical patterns that lately came to be termed “the inductive logic.” Outstanding philosophers like Karl popper\(^{53}\) and David Hume\(^{54}\) agreed that Aristotle’s induction is not demonstrative. With the defects underlying the authority of induction, as portrayed by critics of Aristotle, Muslims philosophers as well as jurists took the initiative to mend its flaws so that it can either yield certainty or something near to it.

Al-Kindi (175-252 A.H.), in his commentaries of Aristotle’s *Organon*, favored the hypothetical and disjunctive syllogism preferred by stoics and Neoplatonists. To him, mathematical knowledge leads to the first intelligibles and it is more certain than the syllogistic reasoning adopted by Aristotle\(^{55}\). Ibn Sīnā (370-428 A.H.) believes that induction is one of the three methods used in demonstration. Yet, induction is bound to operate with syllogism (*Qiyās*) in order to reach an adequate *Hadd* (definition). The latter is the platform of *tasawwur* (conceptualization) upon which definitive knowledge stands. Ibn Hazm (384-456 A.H.), from his part, gave full prominence to the complete induction, considering the incomplete one non-demonstrative\(^{56}\).


\(^{52}\) Irving Copi, *Introduction to Logic*, 54


\(^{55}\) George Matiyah, *Al-Kindi, the Philosopher of the Arabs*, (Pakistan: Research Institute Publication), p.34

Al-Imām al-Ghazālī pointed out that induction, with its two major types, i.e.: the complete and the incomplete is to be applied only on Sharʿīyyat (Islamic jurisprudence) and not on Yaqīniyyāt (Absolute knowledge). He maintained that the more our induction is exhaustive, the certain the ruling we want to establish would become⁵⁷.

Accordingly, Muslims rejected the Aristotelian logic, which is mainly syllogistic in form. They had attacked it and went to blemish it with sharp censure, then substituted it with a new logic called the inductive logic.⁵⁸ That is why, "the most daring innovation ever made by the Muslim mind was its invention of the inductive method."⁵⁹

By virtue of the inductive method, experts of Arabic language laid down the rules of grammar and composition. Jurists from their part used induction to classify the different types of waters; identify the difference between Ḥayd (Menstruation), Iṣṭihādah (abnormal menstruation) and Nifāṣ (childbed blood) and the duration for each. They also used induction to determine the maximum and the minimum period of pregnancy.

Jurists dealing with Usūl al-Fiqh used Induction to construct the principles of Fiqh. Whether it is the method of Mātākallimin (Shāfiʿīs, Mālikis and Ḥanbalis) or Aḥnāf, in going from the universal to the particular as done by the former or going the other way around as done by the Ḥanafīs, their methods were purely inductive.

⁵⁸ Al-Nashshārī, Manāḥij al-Baḥth, 56.
⁵⁹ Ibid, 60
Nonetheless, the certainty of induction was disputed between two major groups. Logicians vs. jurists of *Uṣūl al-Fiqh*: jurists vs. al-Inām al-Shāṭībī:

1. **Logicians vs. Muslim jurists:**

The certainty of induction (complete and incomplete) has some convergent and divergent scopes. While the two groups agree that induction leads to knowledge and that our mind is set to it instinctively, the specter of their disagreement has been of crucial significance. The divergent scope includes the following:

(a) **The completion of induction.**

Logicians stipulate that the complete induction must really exhaust all the available elements in order to be considered certain. Hence, the retardation of only one element would be good enough to demolish the ‘universal’ already established. Whereas, the jurists would not overrule the ‘universal’ if a few ‘particulars’ have not been exhausted or traced. This would explain why the logicians consider the induction of the jurists merely incomplete.\(^{60}\)

(b) **The goal of induction.**

Logicians would target the universal (the *Kullī*) to ascribe a judgment to it. Once the *Kullī* is established through complete induction, the particulars would be regarded as an integral part of the *Kullī*. Thus, the *Kullī* is disposed of if only one particular would

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oppose it. The goal is different with the jurists who are targeting the ‘particulars’ through their induction.\textsuperscript{61}

\textbf{(c.) The framework of induction:}

Logicians would subject the reliability of induction to rational frames of reference. The certainty of induction is logically implicated in the exhaustive enumeration of all the available particulars. In other words, the certainty of induction has only one reference, i.e.: reason. Jurists, on the other hand, would adopt a framework that goes beyond the rational one. This would include, ‘\textit{\'{A}dah} (custom)\textsuperscript{62}, language, circumstances and most important of all, \textit{Wahy} (Revelation)

The foregoing comparison would result in the following conclusions:

- If induction were constructed upon \textbf{definitive principles}, it would surely produce \textbf{certain knowledge}.

- If induction misses some definitive principles, its authenticity would then vary according to its degrees:
  
  i. In case we have a near certainty situation, logicians would overrule it but the jurists would consider it.
  
  ii. In case we have ordinary speculation, logicians would throw it all together and jurists would hold on until evidence emerges, raising induction to the upper class, thus accepted, or degrading it to the lower class, thus, rejected.

\textsuperscript{61} Ibid.

\textsuperscript{62} Ibid, 2/346.
• If induction were completely baseless, it would also produce certain knowledge in that it becomes quite certain that the issue in question cannot be inductively proved.

In short, we can conclude that induction has been demonstrated by logicians but only justified by jurists.

2. Jurists vs. al-Imām al-Shāṭibi

It would be of a great interest to note that both jurists and al-Shāṭibi maintain that induction is authentic and thus, can be used in the legal field. Nonetheless, both sides disagree on whether induction can be conducive to certainty. The jurists are of the opinion that induction would lead to certainty only when it is complete. Thus, the incomplete one, the most rampant in the legal field, is merely speculative. Al-Imām al-Qarāfī held that induction is “a speculation that is authoritative in our (Madhhab) and with the rest of Fuqahā’ (Jurists)”

Al-Imām al-Isnawi, in his commentary on al-Minhāj of al-Baydāwī, maintained that

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63 Ḥabannakah al-Maydānī, .DAO nut al-Ma ‘rifah, 188.

64 Al-Qarāfī, Tanqīh al-Fuṣūl, p. 200.

65 ʿAbd al-Rahmān binal-Ḥasan, known as al-Isnawi (704-772A.H). He was born in Isnā (a province in Egypt) then moved to Cairo where he mastered al-Shāfiʿī Madhhab. He was an authority in many sciences especially the science of Uṣūl al-Fiqh. He wrote: al-Tamhīd Fi Tanẓil al-Furūʿ ‘Alā al-Furu‘; Niḥyāyat al-Sawl and al-Kawākib al-Durīyyah. See al-ʿĀʾīm of al-Zarkalī (2/515)

66 ʿAbd Allah bin ʿUmar bi Muḥammad, known as al-Baydāwī (d.685A.H). He was born in al-Madinah al-Baydā’ (a province in Persia). He was a Shaḥīfī ʿĪ adherent and became a judge in Shirāz (Persia) for a period of time. He wrote: Minhāj al-Uṣūl Ila ʿIlm al-Uṣūl; Sharḥ al-Muntakhab and Sharḥ al-Tanbih. See Tabaqāt al-Shāfiʿīyyah of Ibn al-Subkī (5/59).
induction is among the evidences that al-Shāfi‘ī accepted.\textsuperscript{67} In his introduction advocating the use of logic in *Sharī‘ah*, al-Imam al-Ghazālī held that induction belongs to the category of *Mashhūrāt* (widespread things) that are far from being certain.

Al-Imām al-Shāṭībī is, perhaps, the only scholar who systematically advocated the certainty of induction, rejecting the speculation ascribed to it, and unveiling the main methodological aspects underlying it. The first thing al-he did was the expansion of the scope within which induction is operational. His main tool to unveil the objectives of *Sharī‘ah* (Maqāṣid al-Sharī‘ah) was induction. The text referring to this reads:

\textit{"... And after the hidden secrets were made vivid [due to Allah’s guidance], I kept restricting its [general contexts] and joining its scattered [ones], whether specific or general ... and depending on al-Istiqrā‘at al-Kulliyyah (the universal inductions) ... [all this] in order to elucidate the ends (Maqāṣid) of Kitab and Sunnah."}\textsuperscript{68}

From the first introduction of his Muwāfaqāt, al-Shāṭībī advocated the certainty on induction. To him \textit{"Uṣūl al-Fiqh is definitive (Qaṭ ‘iyyah), and the evidence proving this is “induction” that is conducive to certainty"}\textsuperscript{69}.

This certainty, al-Shāṭībī contends, stems from a continuous tracing of a number of speculative particulars that would continue to corroborate each other to yield certainty. In other words, it is the transition from the speculative particular (*Juz Ḥ*) to the definitive universal (*Kullī*). He put it as follows:


\textsuperscript{68} Al-Shāṭībī, *al-Muwāfaqāt*, 1/23.

\textsuperscript{69} Ibid, 1/29.
"The evidences that are [legally] considered are those traced from a multitude of speculative proofs that kept corroborating each other on one single meaning until they turns it definitive ... and for the same reason, tawātūr (the process of continuous recurrence) denotes certainty. And this is a kind of it. And if the outcome of tracking down the proofs of a particular legal issue appears to bring about (necessary) knowledge, it would be enough to unreservedly accept it, for it is like al-Tawātūr al-Ma‘nawi (the connotative continuous recurrence)."\(^{20}\)

The foregoing text discloses a number of foundations upon which the certainty of the inductive method stands. We shall divide these foundations into two: legal and logical.

i. **The Legal Foundation:**

1. **Correspondence with the Qur'anic methodology.**

The transition from the speculative (Juz'ī) to the definitive (Kullī) finds its roots well in the entire legal system. In this respect, al-Shāfi‘ī is inspired by the same method applied in the Qur'an. He tried to use the latter to substantiate the former. As such, he held that:

\("\text{[Based on the theory of transition being discussed] the obligation (wujūb) attached to the five (pillars) i.e.: prayer, almsgiving...etc. has been confirmed in a very definitive way. For if someone would like to establish the ruling of obligation to prayer by merely referring to the verse "}\) and establish regular prayer\(", \) ... his inference would be disputable in some ways. But a multitude of external proofs...\)\(^{20}\)

\(^{20}\) Ibid, 1/36.
Those external proofs would include, every command ordaining the establishment of prayer; prohibiting its negligence, reprimanding its negligence, praising its establishers and fighting those who give it up and stood against it; all those proofs, though individually speculative, they are definitive when they corroborate each other.

2. The correspondence with the method confirming the authoritativeness of the sources of Shari‘ah:

The way the authenticity of some sources of Shari‘ah is confirmed is purely inductive. Ijma’, standing as the most authoritative source after Quran and Sunnah, is confirmed through a multitude of speculative proofs like ‘My Ummah shall never agree on a error’. Al-Imam al-Razi noted that more than eighteen hadith stand supporting this hadith through a process that he called al-Tawatur al-Ma‘nawi (connotative continuous testimony).

Accordingly, each hadith stands speculative if individually considered, but would be definitive if corroborated, and that is the core of induction advocated by al-Shaţibi.

b. The Logical Foundation:

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71 Ibid.

72 Ibn Majah, Sunan, II, 1303, Hadith no. 3950.

73 Al-Razi, Al-Maḥsūl 1/183.
Al-Shāṭībī endeavored to prove that the induction he is using is logically grounded. He referred to two logical proofs:

1. **The element of the logical impossibility.**

Al-Shāṭībī attempted to equate induction with *al-Tawāṭur al-Ma’nawi* (the connotative recurrent report). The similitude embodied in both processes convinced al-Shāṭībī that since *al-Tawāṭur al-Ma’nawi* yields certainty, induction would do the same. The focal point is that the recurrence of incidents and the multitude of reports revolving around one meaning would come to a certain point where only certainty is conceivable. This of course, has something to do with priori faculties orienting our judgments. Thus, it would be absurd if countless of proofs would only generate speculative knowledge.

2. **Demonstration by Absurd:**

While trying to substantiate the rationality of induction, Al-Shāṭībī justified the use of induction on the pretext that the five major necessities (Religion, self, mind, procreation and wealth) are not confirmed by individual proofs for “if (the objectives of Shari‘ah) are to lean on some (proofs), [these proofs] should have been mentioned [by the sources]”. Thus, the absence of specific proofs referring to the ends of Shari‘ah would eventually pave the way for scholars like al-Shatibi to trace the relevant proofs and build up the new science according the universals of Shari‘ah.

75 Ibid, 1/38
To justify further the certainty of induction, al-Shāṭībī looked into its applicability within two fields: Nature and *Sharī‘ah*.

### a.1. Nature:

Al-Shāṭībī maintains the following:

"The norms ('Awā‘id) are of two categories in as much as they exist in reality. 'Ammah (General) and these are norms that will not change according to the variation of eras, regions and circumstances... and (secondly) the norms that would change according to the space-time factor.... the first category is contingent on an eternal universal 'Adah (Norm), upon which life stands and the interest of Mankind depend... as has been proved by induction".\(^{77}\)

Al-Shāṭībī is smartly linking the certainty of induction with two definitive laws governing nature, i.e.: The law of universal causation and the law of the uniformity of nature. This linkage has been censured by western philosophers like John Stuart Mill (1806-1873) who maintained that this linkage suffers a problem of circularity; hence, *induction can only justify the law of uniformity of nature but does not demonstrate it*.\(^{78}\)

As far as the Islamic paradigm is concerned, al-Shatibi viewed no reason why induction cannot demonstrate the above-mentioned natural laws. He noticed that Shari ‘ah has been promulgated according to the unchangeable universal norms.\(^{79}\) Tracing the individual components of *Sharī‘ah* whether to confirm the ends of *Sharī‘ah* or any other universal

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79 Al-Shāṭībī, *al-Muwāfaqāt*, 2/298
principle would most likely to be certain so long as the transition from the Juz’ī to the Kullī is genuinely done.

a.2. **Sharī‘ah:**

Induction would trace a multitude of Juz’īyyāt to establish Kullīyyāt. This process appeared very problematic in the writings of logic and the modes of reasoning. In the modern logic, logicians would undermine the Kullī as soon as a new Juz’ī appears to hold a contradictory status.

In other words, the retardation of only one Juz’ī is good enough to demolish the established Kullī.²⁸⁰ Al-Shāṭibi, from his part, believes that the Kullī would not be negated if one of its Juz’īyyāt (particulars) were retarded. For "if the three universal (utilities) have been legislated to preserve their specific interests, then they cannot be negated by the mere retardation of solitary Juz’īyyāt."²⁸¹

Al-Shāṭibi justified his contentions with a number of reasons:

1. The mere opposition of some Juz’īyyāt would not undermine the established Kullī so long as those Juz’īyyāt are unable to form another Kullī that may compete with the original one.

2. The contradiction of Juz’īyyāt to Kullīyyāt would not undermine the latter so long this contradiction is operational within waḍ’īyyāt (non-rational rules) and not ‘Aqliyyāt (rationalities).

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²⁸⁰ Ibid.

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3. The contradictory *Juzʿ iyyāt* might have been opposing the *Kullī* for some reasons, putting the former out of the context of the latter.\textsuperscript{82}

4. The contradictory *Juzʿ iyyāt* might have been a part of the *Kullī*, but we fail to realize how the *Kullī* contains those *Juzʿ iyyāt*.

5. The contradictory *Juzʿ iyyāt* may be contained by the *Kullī*, but those *Juzʿ iyyāt* are contradicted in their turn, by other *Juzʿ iyyāt* which by then are given priority to maintain the original *Kullī*.

6. The retardation of the *Juzʿ ʿī* (particular) aims at preserving the typical *Juzʿ ʿī* in its *Kullī* in a different way.\textsuperscript{83}

Consequently, justifying the retardation of some particulars from the fold of the universal, has paved the way for al-Shāṭibī to consider induction a definitive method of research.

The Certainty of Induction

But how far the certainty advocated firmly by al-Shāṭibī is demonstrative? Modern scholars and thinkers assessed al-Shāṭibī’s patterns of thought and came up with divergent views. A group of thinkers would consider al-Shāṭibī’s certainty as demonstrative and as such, they place al-Shāṭibī in the school of *Burhān* (demonstration) that includes Ibn Ḥazm, Ibn Rushd and others.\textsuperscript{84} Though this classification is widely disputed, the said

\textsuperscript{81} Ibid.

\textsuperscript{82} Ibid.

\textsuperscript{83} Ibid.

scholars showed vivid inclination towards rationalizing a great deal of the Sharī‘ah’s injunctions. However, renowned modern writings on Ḥṣūl al-Fiqh\(^85\) stressed that al-Shāṭibi’s certainty is not demonstrative in the purest sense of the word. For “demonstration” from the logical point of view would require the following:

- Full correspondence with Greek philosophy
- Upholding the empiricist approach in reasoning, i.e.: Nature is the sole source of knowledge.

It would appear that “demonstration” would resort to reason as far as the certainty of the question at hand is concerned. Being a jurist, al-Shāṭibi would give priority to the revealed text over reason, and that the latter is workable only within the limits of the former.\(^86\)

As for the connection of induction with “demonstration”, Prof. Dr. Ṭāhā ‘Abd al-Raḥmān\(^87\) pointed out that a clear distinction must be made between the Aristotelian induction, deemed demonstrative if complete, and al-Shāṭibi’s. The former would lean on Syllogism (Qiyās) to prove its rationality. For “Now”, Aristotle contends “induction, or rather the syllogism which springs out of induction, consists in establishing syllogically

\(^{85}\) Like the distinguished Book “Tajdid al-Manhaj Fī taqwim al-Turūkh” by Dr. Ṭāhā Abdur Raḥmān, 1\(^{st}\) ed. 1994. Casablanca.

\(^{86}\) Al-Shāṭibi, Al-Muwāfaqat, 1/87.

\(^{87}\) Ṭāhā ‘Abd al-Raḥman, a contemporary Moroccan logician and philosopher. He has a genuine interest in evaluating the Islamic methods of reasoning. He is very keen to present the Islamic methods of inference as a typical model for the modern civilization. He has written: al-‘Amal al-Dinī Wa Tajdid al-‘Aql; ‘Ani al-Istidāl Fī al-Nāṣṣ al-Khaldūnī; Tajdid al-Nāṣr Fī Ishkhāqiyyat al-Sababiyyah ‘Inda al-Ghażālī’, and his latest book al-Lisān wal Mīzān.
a relation between one extreme and the middle by means of the other extreme."\(^{88}\) Al-Shāṭibī's induction would not need this syllogistic form to acquire certainty, for the latter is fully contingent on the element of "corroborative evidences."\(^{89}\)

The Kullī (the universal) and the Juzī (the particular) and the justification of the Certainty of Maqāṣid.

The rules governing the inductive method manifested themselves greatly in the relationship between the Kullī and the Juzī. The former would be established only when a number of Juzʾiyyāt are inductively tracked down. The following relations would clarify this:

1. The Kullī and the Juzī are reciprocally considered:

Al-Shāṭibī ascertained that the establishment of Kullī depends chiefly on the Juzī as the latter is the sole constituent of the former. Besides, the consideration of the Juzʾī afterwards must be taken in the light of its Kullī. And this is the first relation binding the Juzʾī which the Kullī that has been inductively established. Al-Shāṭibī puts it:

"Thus, it is imperative to consider Juzʾiyyāt in the light of [their] Kulliyāt... for it is impossible for Juzʾiyyāt to operate without their Kulliyāt, as it is wrong to apply a single text pertaining to a Juzʾī while neglecting its Kullī. Yet, it is wrong to consider a Kullī without its Juzʾī just as


\(^{89}\) Ṭahā ʿAbdur Raḥmān, *Tajdīd al-Manhaj*, p. 119.
it is wrong to consider a Juz’ī without its Kullī.”

2. The Kullī would not absorb every Juz’ī, but it may have an authority governing every Juz’ī subsumed under it:

Al-Shāṭībi observed that,

"as Shari ‘ah aims at preserving the three major interests, Darūriyyāt, Ḥājiyyāt and Taḥṣīniyyāt, which make their presence in the entire body of Shari ‘ah without having specific evidences referring to peculiar issues... the legal consideration, then, is so general that no specific Juz’ī is necessarily addressed by the law... The three utilities are, then, Kulliyāt that would address every Juz’ī which can be classified under them”.

This is indeed the nature of Kulliyāt. They tend to focus on the meaning relating a number of Juz’īyyāt without addressing every Juz’ī in particular. And this can only be guaranteed if induction is fairly exercised.

3. The opposition of some Juz’īyyāt would not negate the Kullī after being inductively established. This has already been addressed when discussing the problem of induction in the legal field.

4. The knowledge of the Kullī would not render the knowledge of the Juz’ī worthless after the former is established. This is the answer provided by al-Shāṭībi in response to the following objection:

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90 Al-Shāṭībi, al-Muwāfaqāt, 3/8-10
"It may be held that: what would be the benefit of the Juz’i after the Kulli is established, for the Kulli is established through tracing inductively all the Juz’iyyat or the majority of them. As such, every Juz’i would be subsumed under the Kulli as stipulated by the complete induction. Accordingly, considering the Juz’i would be of no avail, and even assuming its opposition to the Kulli afterwards would be a wrong assumption..."\(^\text{92}\).  

Al-Shāṭībī disagreed with this stand, prompting him to liken this Sharī‘ah with a medical doctor whose universal knowledge about illness and diseases would not prevent him from diagnosing separately each one of them. He put it as follows:

"As the medical doctor would not confine himself to the Kulli without checking the Juz’i and vise versa, Sharī‘ah would just do the same as it is the greatest doctor"\(^\text{93}\).  

This kind of legal reasoning is the highest apex of Ijtihād and the ultimate aim of Mujtahidin.\(^\text{94}\) Consequently, these rules are apt to grant induction a high level of certainty and make the process of inference in the legal field more accurate and adequate.

\(^{91}\) Ibid, 3/5-7  
\(^{92}\) Ibid, 3/10  
\(^{93}\) Ibid, 3/14
5.6 Mohammad al-Ṭāhir bin ‘Ashūr and the Certainty of Maqāṣid.

Al-Sheiykh bin ‘Ashūr is perhaps the only scholar whose deep knowledge in the Islamic legacy led him to call for a new science substituting that of Usūl al-Fiqh. In this respect, he is adding his voice to the call made to reform Usūl al-Fiqh, a call had boldly been pioneered by al-Imām al-Juwaynī in the fifth century.

Bin ‘Ashūr was born in Tunisia in 1879 A.D. from a family known for the scholarship of its members. He devoted his entire life seeking knowledge and assumed different posts ranging from Lecturing to Judiciary functions. He, like al-Juwaynī and al-Shāṭibī witnessed another phase of the intellectual stagnation plaguing the Muslim Ummah. Unlike al-Juwaynī and al-Shāṭibī, Bin ‘Ashūr witnessed the colonialism torments that ripped the Muslim Ummah for its resources and destroyed its law mercilessly. But what had preoccupied Bin ‘Ashūr the most was the situation of Usūl al-Fiqh, which had failed to serve the purpose for which it was established, that is to regulate the methods of inference in the legal field.

Bin ‘Ashūr observed that the main rules of Usūl al-Fiqh are speculative. As such, disagreement among scholars has widely spread, causing a big difficulty to assess the reliability of their views. Bin ‘Ashūr puts it as follows:

"The motive behind writing this book - Maqāṣid al-Shari‘ah al-Islāmiyyah - is that I have noticed, from the difficulty arising among

94 Ibid. 3/13

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According to the bulk of jurists, most of the rules of *Uṣūl al-Fiqh* are speculative\(^96\). The following are a few reasons:

1. *Uṣūl al-Fiqh* is drawn from a number of speculative issues and in accordance with the various methods of *Ijtihād*.

2. It falls short serving the objectives of *Shari‘ah*.\(^97\)

3. Its inability to differentiate between the *Qaṭā‘ī* (definitive) and *Zannī* (speculative).\(^98\)

This had urged bin ‘Abūl-Dāhir to propound a new science that would escape the pitfalls of *Uṣūl al-Fiqh* so that disagreement is minimized and certainty is upheld.

Now that Bin ‘Abūl-Dāhir is proposing "*Maqāṣid al-Sharī‘ah*" to assume the place of this new science, it is quite important to point out the definitive aspects featuring it.

\(^{95}\) Moḥd al-Ṭāhir bin ʿAbūl-Dāhir, *Maqāṣid al-Sharī‘ah al-Islāmiyyah*, p. 5

\(^{96}\) A-Imām al-Shāṭibī began his *Muwaṭṭa‘* with an introduction in which he strongly advocated the certainty of *Uṣūl al-Fiqh*. He maintained that *Uṣūl al-Fiqh* is certain as it refers to the universals of *Shari‘ah* (*Doḥūyyū‘*, *Hājīyyū‘* and *Taḥṣīnīyyū‘*). This has been proven by the complete induction that yields certainty. He also held that if *Uṣūl al-Fiqh* were speculative, this would make the universals of *Shari‘ah* speculative too as the former is drawn from the latter. This, according to al-Shāṭibī, would result in making the basis of *Shari‘ah* speculative as well. Further, if we accept the existence of speculation in *Uṣūl al-Fiqh*, it will also be justifiable to accept speculation in *Uṣūl al-Dīn*, and that is extremely not possible. Al-Shāṭibī supported his contention by referring to al-Bāqillānī who called for the speculative rules of *Uṣūl al-Fiqh* to be discarded from *Uṣūl*. But this view was criticized by al-Māzīrī who would still accept the speculation of some rules of *Uṣūl* as they are merely tools to derive legal rules from the sources. See al-*Muwaṭṭa‘* of al-Shāṭibī, edited by ‘Abdullah Dīraz, (Vo 1, pp-19-22).

\(^{97}\) Ibid, p. 6

\(^{98}\) Ibid.
Like al-Imām al-Shāṭibi, Bin ʿĀshur laid a great emphasis on induction (Istiqrāʾ) as a definitive method unfolding the objective of Shariʿah. This is to be clarified in the following item.

The "greatest" method of realizing Maqāṣid: Induction

Realizing and confirming the objectives of Shariʿah would have to resort to the inductive method. Like al-Shaṭibi, Bin ʿĀshūr aimed at yielding certainty to the method he is using so that Maqāṣid al-Shariʿah, waiting to substitute Usūl al-Fiqh, would be scrupulously grounded. Bin ʿĀshūr identified two kinds of induction:

i. Tracing a number of ʿillal (effective causes) that have been confirmed by Maṣālik al-ʿIlah (methods unveiling the effective cause). And this has two phases:

Phase 1: Confirming valid the effective causes ʿillal upon which the legal rules stand.

Phase 2: Tracing those causes, out of which an objective of Shariʿah is realized.99

Here, there is a dual induction that is granting Bin ʿAshur's doctrine of induction more certainty. Bin ʿĀshūr mentioned the following example:

- The legal cause underlying the prohibition of Muzabanah (a contract of barter in dates) is our ignorance of the weight of either counter value (fresh dates or dry dates). In the ḥadīth, the Prophet (S.A.W.) was responding to someone asking him about the case of selling fresh dates for dry dates. The Prophet
(S.A.W.) pointed out that the fresh dates would also get dry and, therefore, loosing weight. This 'illah is extracted by way of Īmā' (gesture).

- The legal cause underlying bay' al-Juzāf (sale of things of uncertain quantity or undetermined quantity) is also the uncertainty featuring the exact quantity of goods sold. This 'illah is extracted by way of deduction.

- The Prophet (S.A.W.) prohibited any kind of cheating while concluding a sale. This is to guarantee the right of the customer to claim his money back if cheated. Bin 'Āshūr observed:

"After knowing all these causes, we can extract one single objective thereof, which is the prohibition of Gharar (Aleutory selling) in all kinds of commutative contracts (Mu'āwaqāt). Thus, any commutative contract containing a danger or prejudice either in the price or the good exchanged would definitely render this contract void."¹⁰⁰

Accordingly, all the surveyed 'illal would converge on one single meaning, paving the way for the establishment of a particular objective of Sharī'ah.

ii. Tracing the proofs of certain legal rules sharing a common 'illah. This would lead us to have a strong conviction that this 'illah is a fresh objective of Sharī'ah.

Again this is a dual induction of two phases:

Phase 1: Realizing the 'illah pertaining to each legal rule.

Phase 2: Tracing those causes ('illal) to find the similarity featuring them.

There are some examples in this respect:

⁹⁹ Ibid, p. 90
• The legal cause behind the prohibition of selling food before being possessed is to make food widely available in the market.

• Selling food with food on *Nasi'ah* (delayed usury) basis would go against the availability of food in the market.

• The prohibition of hoarding food would create a great shortage of food in the market, and this is based on the *hadith*:

"*He who hoards food is a sinner*" (*Muslim*).

These three pieces of evidence converge on one single *'illah*, which is *Ra'āj al-'Ta'am* (food availability)\(^{101}\). The latter would be considered the new objective that the Shari'ah has come to uphold.

It is worth mentioning that the inductive method applied by Bin 'Āshūr would produce definitive objectives. For the texts surveyed by him are limited and, therefore, a complete induction is logically justified. Hence, with the presence of countable texts, a complete induction would generate nothing but certainty, and this is exactly one of the definitive aspects of the new science that Bin 'Āshūr was trying to establish.

According to Bin 'Āshūr, the credibility of induction depends on the following:

1. The nature of the evidences used in the inductive operation.\(^{102}\)

2. The possibility of having some evidences opposing the conclusion of induction.

3. The extent of the inductive operation, i.e.: how far is it exhaustive?

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\(^{100}\) Ibid.

\(^{101}\) Ibid, p. 21

\(^{102}\) Ibid, p. 44
These elements would play a major role to come up with a definitive objective of Shari‘ah, a near definitive, or a speculative one.

i. **A definitive objective:**

This is when induction is complete and no piece of legal evidence seems to be left untraced.

ii. **A near definitive objective:**

Bin ‘Āshur referred to al-Shatibi’s example about *al-Ẓanni al-Rāji‘ ilā Aṣl Qat ‘iyy* (a speculative evidence referring to a definitive principle). This is understood from the hadith "*La Ğarar wa lā Dirār*" (Harm is neither inflicted nor tolerated in Islam). This is classified under a definitive principle holding the meaning of avoiding harm, no matter whether it is inflicted or tolerated. For this meaning manifests itself in the entire *Ju`f `īyyāt* and *Kulliyyyāt* of Shari‘ah.103

iii. **A speculative objective:**

This can be arrived at by not tracing a big number of legal proofs. In other words, this is realizing an objective of Shari‘ah by applying an incomplete induction that would amount to speculation.104

What has remained at the end of this chapter is an assessment of these attempts made by the trio Al-Juwaynī, Al-Shāṭibī and Bin ‘Āshūr. And this can be done through a comparative study.

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103 Ibn Mājah, *Sunan*, II, 784

5.7 Al-Juwaynī, Al-Shāṭibī and Bin ʿĀshūr: A comparative analysis

Undoubtedly, the three jurists contributed greatly to the science of Ḥūl al-Fiqh, making daring innovations and exemplifying the accuracy of the Muslim mind when it reaches its intellectual apex. Thus, their attempts must be regarded as complementary to each other, as the views of the precedent were inspiring those of subsequent.

The domain of comparison would include the following:

1. **The motive:** The three jurists had been motivated by the intellectual and social backwardness plaguing their eras, though invariably conceived. This is because these jurists in particular were initiating projects to preserve the potential of the Muslim mind, not merely explaining what had already been produced.

2. **The objectives:** The three jurists intended to make "Maqāṣid al-Sharīʿah" the new science that would salvage the ailing Muslim Ummah. That is because this science deals with kulliyāt (universals) and transcends over the juzʿ iyyāt that has shut the mind of the jurist and reduced his juristic faculty to a mere tool of explanation and not of innovation.

3. **Emphasis:** the three jurists were emphasizing on the certainty of "Maqāṣid al-Sharīʿah as a prerequisite to attain their goals. However, there were some discrepancies featuring the three approaches of how to materialize the idea of Maqāṣid.
1. Al-Juwaynî was more apologetic in his approach. For he assumed the worst to have the best. In other words, he assumed the total absence of any religious authority paving the way for the "best solution", i.e.: Maqâṣid, to assume the role of the "Savor". But his approach would be more practical if it were to be observed and implemented on the existing legal issues. Yet, al-Juwaynî stressed a lot on the certainty of Maqâṣid without demonstrating enough the certainty of the methods by which Maqâṣid are confirmed.

2. This is what had been expressly done by al-Imâm al-Shâṭibi when the word "certainty" was the main tone of his Muwâfaqât. He was more concerned to prove the certainty of the main method by which Maqâṣid are proved certain, that is the inductive method. For the certainty of Maqâṣid is from the certainty of the method, and this is what al-Shâṭibi had excelled in. Besides, his approach works in favour of both the Kulli and Juz'i, as both are reciprocally considered.

Dr. 'Abdul Majid al-Najjâr,105 in a comparative study between al-Shâṭibi and Bin 'Āshûr, pointed out that the former was falling into a "generalization" when he (al-Shâṭibi) was ascertaining that Maqâṣid are certain. He even held that Bin 'Āshur critisized al-Shâṭibi with regards to this contention. In fact, it is not clear whether Bin 'Āshur was rejecting the kind of certainty al-Shâṭibi was ascribing to the whole Maqâṣid. The only substantial difference between the two scholars was that al-Shâṭibi believes in the certainty of the inductive method, be it complete of incomplete, whereas bin 'Āshûr believes only in the certainty of the complete induction. Besides, Al-Shâṭibi was more concerned to theorize for the universal utilities (Darûriyyât, Hâjjiyyyât and Taḥsiniyyât) more than the particular

objectives of Sharīʿah. Yet, Bin ʿĀshūr, while talking about the "greatest method" by which Maqāṣid are to be confirmed, was more inclined to talk about Maqāṣid Khāṣṣah (particular objectives of Sharīʿah), making his claim about Maqāṣid featured mainly by partiality and hence, lacking some accuracy.

It is very surprising that Dr. al-Najjār has observed the opposite, amounting his approach to a clear disparagement of an extraordinary theory propounded by the leading scholar of the universal interests, al-Imām Abū Ishāq al-Shāṭibi.

This would prompt us to imagine three circles of Maqāṣid:

- **Maqāṣid** pertaining to a specific legal rule. This is an objective attached to a specific verse or a ḥadīth.

  E.g.: "Establish regular prayer: For prayer restrains from shameful and unjust deeds" (29:45)

- **Maqāṣid** pertaining to a particular set of legal rules. This is the realization of an objective of Sharīʿah through observing an ensemble of legal rules sharing the same objective. This is similar to the examples given earlier by Bin ʿĀshūr

- **Maqāṣid** pertaining to a universal set of legal rules. This is the case of the three universal utilities (Daʿūriyyāt, Ḥājiyyāt, and Taḥṣīniyyāt) realized from the entire body of Sharīʿah.

These three classes of Maqāṣid can be presented in the following figure.
It is very important to realize that these three classes are interrelated in a remarkable harmony. The certainty of these three circles is to be conceived by means of centrifugal and centripetal motions.

i- Centrifugal motion (moving away from the center):

This motion begins by realizing an objective of Shari‘ah at the level of a specific legal rule. The realization of this objective is left to certain methods of realizing...
Maqāṣid, be they textual or rational, suggested by the pioneers of the science of Maqāṣid. Whatever the method is, the objective realized would amount to mere speculation as it is extracted from individual evidences lacking corroboration from other pieces of evidence.

In a centrifugal motion, the similar specific objectives would move to the second circle to form a particular objective of Shari‘ah. The latter is composed of an ensemble of specific legal rules sharing the same objective, and this would form the second circle.

As the number of the particular objectives augments, a universal objective of Shari‘ah is well established. This is achieved by placing the particular objectives, which happen to be identical, under a unique ‘universal’ that would be called a universal objective of Shari‘ah.

ii- Centripetal motion: (moving towards the center)

The establishment of the universal objective is warranted by the adequate centrifugal motion explained in the previous item. As the universal objective is established, it begins a centripetal motion to target the center again. This motion aims at serving the same circles out of which the universal objective is formed. Thus, if the objective realized at the level of the first circle (center) happens to be speculative, it would be elevated to become definitive by virtue of being an integral component of the universal objective.

Consequently, the certainty of Maqāṣid, with its three circles, is operated by means of centrifugal and centripetal motions respectively. This would certainly open up a wide scope for Shari‘ah to be all-embracing of people’s needs. This is conceivable in the
field of Qiyās where new issues will not only be referred to those already covered in Qur ‘an and Sunnah i.e.: referring a particular issue to another on the basis of having the same ‘illah, but also to Maqāsid Khāṣṣah. In this case the latter would become the Aṣl and the new issue is the Far ‘ and the process of referral would be between a particular Far ‘ and an objective of Shari ‘ah106. Given this peculiar advantage, the science of Maqāsid will be qualified to assume the new definitive figure of the science of Uṣūl al-Fiqh.